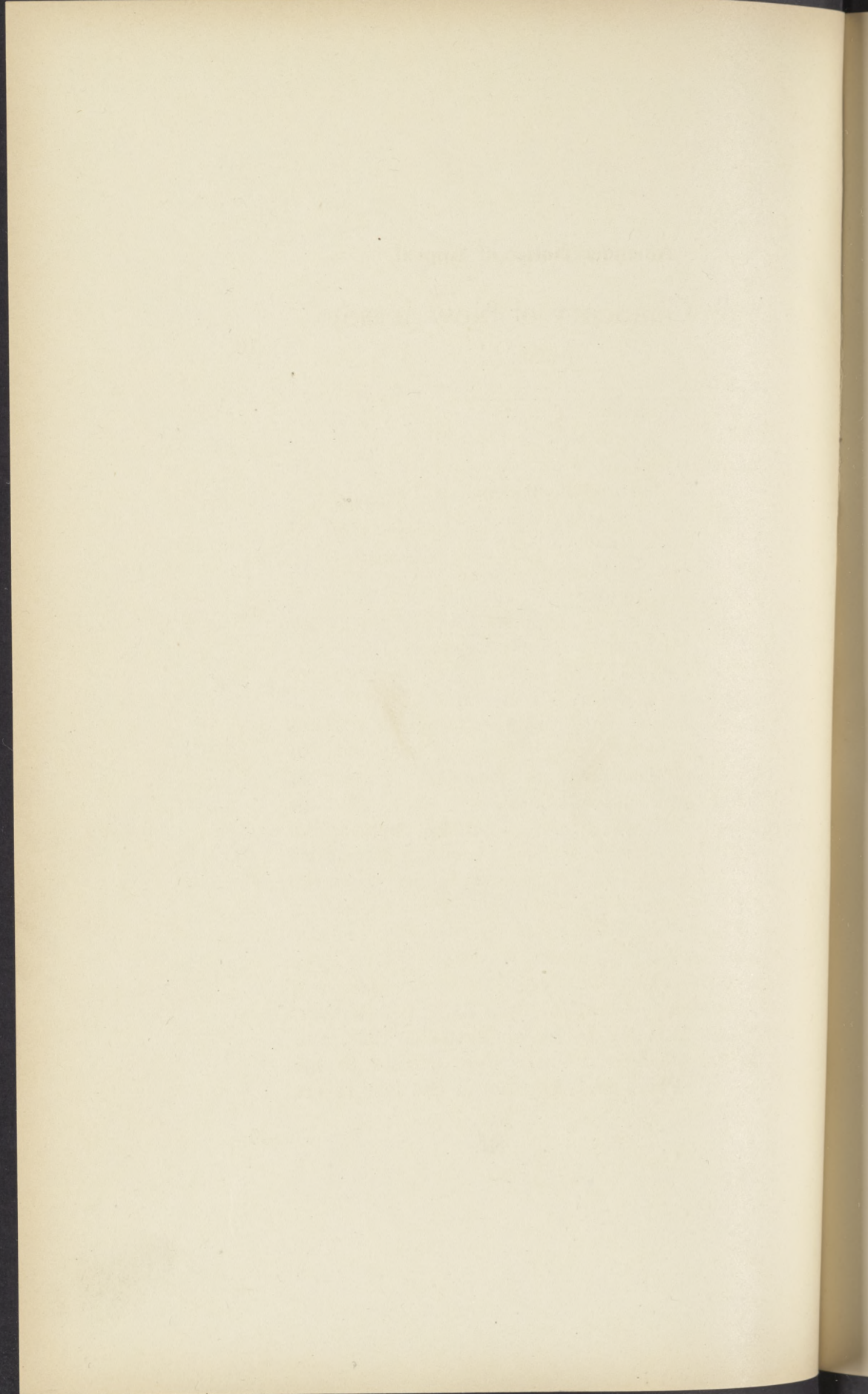


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Amended Notice of Appeal.

In Chancery of New Jersey

#69-627.

10

*Between*

CHARLES EISLER,

*Complainant,*

*and*

INTERSTATE TITLE EXAMINERS,  
INC., a corporation,

*Defendant.*

*Amended  
Notice of  
Appeal.*

20

TAKE NOTICE that FAITOUTE MUNN, JACOB SCHMIDT, RALPH H. ABBEY, MAE M. BRAENDER, IDA SINCLAIR, ROBERT H. MONTGOMERY, SARAH J. WRIGHT and EUGENE A. TRACEY and L. C. M. CORPORATION, creditors of the defendant corporation in the above entitled cause, and having claims against said corporation, hereby appeal from the order passing the account of the Receiver herein, and fixing the allowance of the Receiver and the counsel fees of his solicitor and counsel and the fees of the accountants retained by the Receiver, which order is dated the 24th day of December, 1928 and filed herein December 24th, 1928, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort

30

40

*Amended Notice of Appeal.*

in all causes; that said order was made by the Chancellor on the advice of Vice-Chancellor Alonzo Church.

Dated, Newark, N. J., February 6th, 1929.

10

WILLIAM A. KIRK,  
Solicitor for and of counsel with  
Faitoute Munn, Jacob Schmidt,  
Ralph H. Abbey, Mae M. Braender,  
Ida Sinclair, Robert H. Montgomery,  
Sarah J. Wright and  
Eugene A. Tracey & L. C. M. Corporation.

I conceive there is good cause for appeal in the above stated cause.

20

WILLIAM A. KIRK,  
Of Counsel with Faitoute Munn,  
Jacob Schmidt, Ralph H. Abbey,  
Mae M. Braender, Ida Sinclair,  
Robert H. Montgomery, Sarah J.  
Wright and Eugene A. Tracey and  
L. C. M. Corporation.

Copy received Feb. 6, 1929, Kalisch & Kalisch.

30

40

**On Bill, &c., Affidavit.**

IN CHANCERY OF NEW JERSEY.

*Between*

CHARLES EISLER,

*Complainant,*

*and*

INTERSTATE TITLE EXAMINERS,

INC., a corporation,

*Defendant.*

*On Bill, &c.  
Affidavit.*

10

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

20

JAMES M. BROOKS being duly sworn, says:

That he is over twenty-one years of age.

That on the sixth day of February, 1929, he served the Amended Notice of Appeal in the above stated cause, a copy of which is hereto annexed, on Messrs. Hyman Besser & Co. at their office #790 Broad Street, Newark, New Jersey, by delivering to and leaving the same with Benjamin Dubow who was in charge of their office.

That on the sixth day of February, 1929, he served the Amended Notice of Appeal in the above stated cause, a copy of which is hereto annexed, on Herbert L. Elins at his office #790 Broad Street, Newark, New Jersey, by delivering to and leaving the same with Miss S. Tuffty who was in charge of said office.

JAMES M. BROOKS.

Sworn to before me this }  
6th day of February, 1929. }

40

ROGER HINDS,

Master in Chancery of New Jersey.

**Petition of Appeal.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10 *Between*  
CHARLES EISLER,  
*Complainant,*  
*and*  
INTERSTATE TITLE EXAMINERS,  
INC., a corporation,  
*Defendant.*

20 FAITOUTE MUNN, JACOB  
SCHMIDT, RALPH H. ABBEY,  
MAE M. BRAENDER, IDA SIN-  
CLAIR, ROBERT H. MONTGOM-  
ERY, SARAH J. WRIGHT, EU-  
GENE A. TRACEY and L. C. M.  
CORPORATION,  
*Creditors Appellant,*  
*against*

30 HARRY G. HENDRICKS, Receiver,  
HERBERT L. ELINS, Counsel  
for Receiver, HYMAN BESSER  
& Co., accountants, and MAL-  
TESE HOLDING CORPORATION,  
creditor,  
*Respondents.*

*Petition of  
Appeal.*

TO THE HONORABLE THE COURT OF ERRORS AND AP-  
PEALS IN THE LAST RESORT IN ALL CAUSES:

40 The petition of Faitoute Munn, Jacob Schmidt,  
Ralph H. Abbey, Mae M. Braender, Ida Sinclair,

*Petition of Appeal.*

Robert H. Montgomery, Sarah J. Wright, Eugene A. Tracey and L. C. M. Corporation, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by an order or decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, advised by Honorable Alonzo Church, Vice-Chancellor, bearing date the 24th day of December, 1928 in a cause wherein Charles Eisler was complainant and Interstate Title Examiners, Inc., a corporation, was defendant, and your petitioners, Faitoute Munn, Jacob Schmidt, Ralph H. Abbey, Mae M. Braender, Ida Sinclair, Robert H. Montgomery, Sarah J. Wright, Eugene A. Tracey and L. C. M. Corporation, are creditors, and Harry G. Hendricks was receiver of the defendant corporation, Herbert L. Elins was counsel to said receiver, Hyman Besser & Co. were accountants employed by said receiver, and Maltese Holding Corporation was an alleged creditor, in this respect, to wit: that the said order or decree adjudges and decrees:

1. That the accounts filed by said receiver in said cause be and the same are hereby allowed and confirmed, and it appearing that the receiver's receipts have amounted to \$24,850.15, and that his disbursements amount to \$400.81, leaving a balance of \$24,449.34.

2. That Harry G. Hendricks, receiver, be and he is hereby allowed the sum of \$2500.00 together with his disbursements, and that Herbert L. Elins be allowed the sum of \$2500.00 as counsel for the receiver together with his disbursements and taxed costs, and that Hyman Besser & Co., the accountants retained by the receiver be and they are hereby allowed the sum of \$1000.00.

*Petition of Appeal.*

10           3. That no distribution of the balance of the fund remaining in the hands of the receiver be made to the priority or general creditors, it appearing that the amount of the claims filed by said claimants may be diminished in the collection of part of said claims from banks and trust companies on forged and fraudulent checks and that said fund be held by the receiver until the further order of this Court.

20           And your petitioners humbly appeal from that part of the said order or decree of the Chancellor which orders or decrees as aforesaid upon the ground that the same is erroneous in the following particulars:

30           FIRST: That the allowance of Twenty-five hundred (\$2500.) Dollars, together with his disbursements to Harry G. Hendricks, receiver of the defendant corporation; that the allowance of Twenty-five hundred (\$2500.) Dollars to Herbert L. Elins as counsel for the said receiver, together with his disbursements and taxed costs; and that the allowance of One thousand (\$1000.) Dollars to Hyman Besser & Co., the accountants retained by the receiver are:

(a) In excess of reasonable compensation for the services rendered by said receiver, counsel and accountants, and said allowances are, to the contrary, excessive, exorbitant and unreasonable, being in excess of  $24\frac{1}{2}\%$  of the total assets of the estate of said corporation.

40           (b) So indefinitely and loosely stated in said order as to permit the said receiver,

*Petition of Appeal.*

counsel and accountants to collect sundry disbursements from the estate of said corporation which are not specified either in their account or in said order and to the contrary it is impossible to determine on the face of said order, the amounts which said receiver and his said counsel and accountants are collecting from the estate of said corporation in excess of the sum of Six thousand (\$6000.) Dollars. 10

SECOND: That the said order in said cause allows and confirms the accounts filed by said receiver; that objections were filed to said accounts by these appellants upon the grounds that said accounts were erroneous: 20

(a) In that a claim of Sixteen thousand (\$16,000.) Dollars of the Maltese Holding Corporation was allowed in its entirety by said receiver and by the Court of Chancery when the whole or a large part of said claim has been collected by the said Maltese Holding Corporation from other sources, whereas the said order and the said account provide that all the other creditors must wait a distribution until the amount which their claims may hereafter be diminished by collections of the whole or parts of said claims from banks and trust companies on forged and fraudulent checks is ascertained thereby discriminating in favor of the said Maltese Holding Corporation which is a foreign corporation not authorized to do business in the State of New Jersey and which has no standing in this Court. 30

*Petition of Appeal.*

10 (b) In that the said receiver and his said counsel contend therein that they performed sundry and diverse laborious services on behalf of this estate wherein as a matter of fact their sole services consisted in receiving Twenty-five thousand (\$25,000.) Dollars voluntarily paid by the Aetna Insurance Company upon a fidelity bond on one Howard M. Hirschberg, and collecting two bank accounts which were voluntarily paid over by the banks after the appointment of the receiver and one of which accounts was not collected until after objections and protest was made by these appellants.

20 (c) In that the said receiver paid One hundred (\$100.) Dollars for an appraisal of the assets of this estate which consisted of Twenty-five thousand (\$25,000.) Dollars paid over by the Aetna Insurance Company as aforesaid, and two bank accounts, and in that the said receiver paid One hundred (\$100.) Dollars for searching titles to real estate whereas as a matter of fact the insolvent corporation owned no real estate or interest in real estate.

30 (d) In that the said Court of Chancery failed to hear sundry objections filed by the appellants to the accounts of said receiver or to hear testimony thereon when said Court was requested so to do.

40 (e) In that no opportunity was given to these creditors by the Court of Chancery to be heard upon or question the statements of the receiver and his counsel as to the services performed by them, such statements having been filed by the said receiver and his counsel

*Petition of Appeal.*

subsequent to the date of hearing fixed by  
Vice-Chancellor Church.

THIRD: That the said account and the said decree should specify the extent to which the claim of each creditor is allowed and whether or not said claim may or may not be diminished by collections from banks and trust companies, etc., and the said receiver and his said counsel should be required to file an intelligent account and statement of their proceedings with respect to this estate. 10

FOURTH: That said order or decree should be vacated and this cause referred back to the Court of Chancery to hear testimony on the objections filed by these appellants. 20

Your petitioners pray that said order or decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable court shall seem just.

WILLIAM A. KIRK,  
Solicitor for and of counsel  
with the appellants. 30



*Affidavit of Service of Petition of Appeal.*

That on the 21st day of February, 1929 at 790 Broad Street, Newark, N. J., he served the petition on appeal herein on Herbert L. Elins, Solicitor for and of Counsel with Harry C. Hendricks, the Receiver in the above stated cause by delivering the same to him personally and leaving the same with him; on Messrs. Kalisch & Kalisch, Solicitors for and of counsel with the Maltese Holding Corporation, by delivering the same to the clerk or person having charge of their offices; on Hyman Besser & Co., by delivering the same to Hyman Besser, the person having charge of the office of Hyman Besser & Co., and leaving the same with him. 10

JAMES M. BROOKS.

Sworn to before me this } 20  
 4 day of March, 1929. }  
 ROGER HINDS,  
 Master in Chancery of New Jersey.

30

40

### Answer to Petition of Appeal.

TO THE HONORABLE COURT OF ERRORS AND APPEALS  
IN THE LAST RESORT IN ALL CAUSES:

10 The answer of the above named defendant-respondents, to the petition of appeal of Faitoute Munn, Jacob Schmidt, Ralph H. Abbey, Mae M. Braender, Ida Sinclair, Robert H. Montgomery, Sarah J. Wright, Eugene A. Tracey and L. C. M. Corporation.

20 1. These defendant-respondents not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless say and admit that a decree was, on the 24th day of December, 1928, last past, made and entered in the Court of Chancery, in the cause, for that purpose mentioned in the said petition as is therein stated, but as to the substance and form thereof these defendant-respondents pray to refer thereto when the same shall be produced. And these defendant-respondents are advised and believe that the decree is agreeable to equity and pray that the same may be affirmed with costs to be adjudged to these defendant-respondents.

30 HERBERT L. ELINS  
Solicitor and of Counsel  
with defendant-respondents.

### On Bill, &c. Petition.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

The petition of Harry G. Hendricks, respectfully shows unto your Honor and alleges:—

1. That he is the duly qualified and acting custodial receiver of the above named defendant corporation, having been appointed by order of this court dated the 21st day of September, 1928. 10

2. That petitioner has ascertained that one Howard M. Hirschberg, an officer of said defendant corporation, has absconded with approximately \$75,000.00 of moneys belonging to said defendant corporation and that a warrant has been sworn out for the arrest of said Hirschberg. 20

3. That petitioner has been informed and believes that said Howard M. Hirschberg has a certain vault and safety box in the People's Trust & Guaranty Co., at 210 Main Street, Hackensack, N. J. in which safety box are certain papers and instruments belonging to the defendant corporation.

4. That petitioner has the key to said safety box. That the said financial institution refuses to permit petitioner to examine the vault without an order of this court. 30

WHEREFORE petitioner prays that an order may be made by this court ordering the said financial institution to open the vault of said Howard M. Hirschberg at the request of petitioner.

And your petitioner will ever pray, etc.

HARRY G. HENDRICKS,  
Petitioner. 40

*On Bill, &c., Affidavit.*

STATE OF NEW JERSEY }  
 COUNTY OF ESSEX. } ss:

HARRY G. HENDRICKS, being duly sworn according to law upon his oath deposes and says that:—

10 1. I am the petitioner named in the foregoing petition; that I have read the contents thereof and same is true to the best of my knowledge, information and belief.

HARRY G. HENDRICKS.

Sworn and subscribed to before me }  
 this 21st day of September, 1928. }  
 GERTRUDE BOTWINICK  
 Notary Public of N. J.

20 A true copy  
 THOMAS BARBER  
 Clerk

30

40

**On Bill, &c. Order.**

Upon reading and filing the duly verified petition of Harry G. Hendricks, as receiver of the above named defendant corporation, and due cause being shown for the granting of this order, it is on this 21st day of September, 1928, on motion of Herbert L. Elins, solicitors for the complainant 10

ORDERED that Harry G. Hendricks be and he is hereby authorized and directed to open the vault and safety box of Howard M. Hirschberg in the People's Trust & Guaranty Co. of Hackensack, N. J. and to withdraw the contents of said box, and it is further

ORDERED THAT the trust company be and it is hereby ordered to permit the said receiver to forthwith examine the contents of said box, and to deliver to the said Receiver all cancelled vouchers and statements of the account of said Howard M. Hirschberg. 20

Respectfully advised,  
ALONZO CHURCH V. C.                      E. R. WALKER, C.

A true copy  
THOMAS BARBER  
Clerk 30

**On Bill, &c. Petition.**

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

The petition of the undersigned respectfully  
10 shows :

1. That he is the receiver of the above named defendant corporation duly qualified and acting.

2. That petitioner has been informed and verily believes that one Jacob Levey has certain papers, books, documents and instruments of and belonging to the above named defendant corporation.

3. That although due demand has been made  
20 upon said Jacob Levey, he has failed, neglected and refused to turn over said papers, books, documents and instruments which constitute and are a part of the estate of said defendant corporation.

WHEREFORE petitioner prays that an order may be made for the said Jacob Levey to turn over all the books and papers of said defendant corporation in his possession.

30 And your petitioner will ever pray, etc.

HARRY G. HENDRICKS,  
Petitioner.

*On Bill, &c. Petition.*

STATE OF NEW JERSEY }  
 COUNTY OF ESSEX. } ss:

HARRY G. HENDRICKS, being duly sworn according to law upon his oath deposes and says that:—

1. I am the petitioner named in the foregoing petition; that I have read the contents thereof and same is true to the best of my knowledge, information and belief. 10

HARRY G. HENDRICKS.

Sworn and subscribed to before me }  
 this 21st day of September, 1928. }

SADIE C. TUFFLEY,  
 Notary Public of New Jersey.

A true copy 20

THOMAS BARBER  
 Clerk

30

40

*On Bill, &c. Order.*

10 This matter being opened to the Court by Herbert L. Elins, Solicitor for the complainant, and it appearing that one Jacob J. Levey, has certain papers belonging to the defendant corporation, and upon reading and filing the duly verified petition of the Receiver, it is on this twenty-first day of September, 1928

ORDERED, that Jacob J. Levey, be and he is hereby ordered to forthwith deliver to Harry C. Hendricks, Receiver of said defendant corporation any and all papers, instruments documents, books and correspondence of any nature, sort or character belonging to the Interstate Title Examiners, Inc.,

20 Respectfully advised,

ALONZO CHURCH V. C.

E. R. WALKER, C.

A true copy  
THOMAS BARBER  
Clerk

30

40

### On Bill, &c. Report and Account of Receiver.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

The petition of Harry G. Hendricks respectfully shows unto your Honor and alleges:—

1. That he is the statutory receiver of the above named defendant corporation duly qualified and acting, having been appointed custodial receiver on the 21st day of September, 1928, and having thereafter been continued as statutory receiver by order of October 2, 1928. 10

2. That at the time of his appointment defendant corporation was engaged in the business of securing abstracts of title and had its principal place of business in Jersey City, Hudson County, New Jersey. 20

3. That one Howard M. Hirschberg was in charge of the affairs of said corporation, and prior to the appointment of said petitioner, as receiver, said Howard M. Hirschberg absconded with certain funds of said defendant corporation in the amount of upwards of \$75,000.00 by reason of fraudulent mortgages and bonds which were guaranteed by the Interstate Title Examiners, Inc., a corporation as valid liens and encumbrances.

4. That immediately upon his appointment petitioner held examination of certain employees of the corporation and friends of said Howard M. Hirschberg, and his attorney, for the purpose of ascertaining the assets of said defendant corporation and if possible for the purpose of ascertaining whether said Howard M. Hirschberg had concealed any assets of the defendant corporation which petitioner might ascertain. 30

*On Bill, &c. Report and Account of Receiver.*

10 5. That among the assets of said defendant corporation petitioner ascertained was a bond covering Howard M. Hirschberg in the penal sum of \$25,000.00, which bond has expired, same being a yearly bond, but petitioner ascertained that he had six months after the expiration date in which to file claims.

20 6. Petitioner and his counsel had numerous conferences with the bonding company for the purpose of avoiding lengthy and costly litigation which would ensue if the bonding company would not pay the bond, and finally, after the preparation of several reports and proofs of claim petitioner and his counsel convinced the bonding company of their liability and secured the sum of \$25,000.00 less fees paid to the accountants representing the bonding company of approximately \$500.00. That thereby petitioner and his counsel saved this estate endless and costly litigation.

7. That for the purpose of ascertaining further assets petitioner did cause searches to be made in Essex, Bergen, Union, Hudson and Morris Counties for real estate and mortgages and ascertain that the corporation had no real property or mortgages.

30 8. That petitioner and his counsel have devoted part of almost every day in straightening out the affairs of this corporation and in its operation with its creditors, who are mortgagees, and in its operation with other corporations operated by said Howard M. Hirschberg, among them being the Jean Monroe Holding Corp., a corporation, for which a receiver has also been appointed and which corporation sold the fictitious mortgages through the Interstate Title Examiners, Inc.

40

*On Bill, &c. Report and Account of Receiver.*

9. Petitioner did also examine into the claims filed and with the assistance of his counsel did reduce the claim of the Maltese Holding Corporation as shown in the list of claims filed and hereto annexed.

10. That among the proceedings instituted were proceedings against one Jacob J. Levey for the recovery of all papers, documents and instruments of the Interstate Title Examiners, Inc., which petitioner did secure for the purpose of properly administering the estate. 10

11. That an order has been entered barring creditors from further filing claims.

12. That because of the peculiar nature of this case and the disappearance of said Howard M. Hirschberg, who was subsequently apprehended, petitioner did have numerous conferences with the prosecutors and detectives in this County and with the bonding company detectives and with one Jacob J. Levey, the attorney for Howard M. Hirschberg, and as aforementioned has spent part of each day since his appointment as has his counsel, in carrying on the affairs of defendant corporation. 20

13. That petitioner and his counsel have also interrogated said Howard M. Hirschberg in the Essex County jail for the purpose of ascertaining whether he has any assets which petitioner may secure but ascertained that the only asset is the bond which petitioner has collected and petitioner believes that there will be no further or other assets in this estate. 30

14. That petitioner has been informed by one Arthur T. Schmidt, who appears as counsel-representing several mortgages, that they expect to collect a large proportion of their several claims and 40

*On Bill, &c. Report and Account of Receiver.*

demands from banks and financial institutions by reason of the checks which they gave in tender of said mortgages being made to fictitious persons or fraudulently endorsed, and that thereby the said claims as filed may be decreased to a large extent.

10 15. Petitioner therefore believes that dividends should not be declared to the creditors at the present time until such litigation as aforementioned has been determined and prays the instructions of this Court as to same.

20 16. That petitioner also desires the Court to pass upon the fees of one Hyman Besser, a certified public accountant obtained by him to aid and assist in the administration of the estate, said accountant having rendered invaluable services in assisting petitioner and his counsel in securing the money from the bonding company and in all other respects in this estate.

17. That annexed hereto and marked Exhibit "A" is a list of all receipts.

18. That annexed hereto and marked Exhibit "B" is a list of all disbursements paid by petitioner for which he prays allowance.

30 19. That annexed hereto and marked Exhibit "C" is a list of all preferred claims filed.

20. That annexed hereto and marked Exhibit "D" is a list of all general claims filed.

21. That petitioner has a balance on hand in the sum of \$24,449.34.

WHEREFORE petitioner prays that an order may be made passing this, his report and account, and for the further instructions of this Court.

And your petitioner will ever pray, etc.

40

HARRY G. HENDRICKS,  
Petitioner.

*On Bill, &c. Report and Account of Receiver.***Exhibit "A"***Receipts*

Corn Exchange Bank .....	\$	322.90	
Aetna Casualty & Surety Company...		24527.25	
		<hr/>	10
		\$24850.15	

**Exhibit "B"***Disbursements*

Sept. 28, 1928	Nicholas LaVeechia, approving bond...	\$	3.00	
Dec. 4, 1928	C. J. Simons Co.— bond .....		25.00	20
Dec. 3, 1928	Newark Evening News—Adv. ....		14.56	
Dec. 3, 1928	Marion W. Ogden— Stenographer ....		158.25	
Nov. 15, 1928	L. W. Vinson, Ap- praising .....		100.00	
Nov. 26, 1928	Wm. Harris, search- ing title .....		100.00	
			<hr/>	30
			\$400.81	

## RECAPITALULATION.

Total Receipts .....	\$24850.15
Total Disbursements .....	400.81
	<hr/>
Balance on hand .....	\$24449.34

*On Bill, &c. Report and Account of Receiver.***Exhibit "C".**

## INTERSTATE TITLE EXAMINERS.

## PREFERRED CLAIMS.

10	Gertrude Schultz, 410 Halladay Street, Jersey City, N. J. ....	96.00
	New Jersey State Franchise Tax. c/o Edward L. Katzenbach .....	75.00
	TOTAL .....	\$171.00

**Exhibit "D".**

## CLAIMS FILED.

## 20 INTERSTATE TITLE EXAMINERS.

	Miss Katherine Trofiniak, 330 East 27th Street, New York, N. Y. ....	448.58
	Lackawanna Laundry Company, c/o Osborne, Cornish & Scheck, Chamber of Commerce Bldg., Newark, N. J. ...	5.25
	Great Bear Spring Company, 227 Ful- ton Street, New York, N. Y. ....	11.60
30	N. R. Kitzman, c/o Herbert L. Elins, 790 Broad Street, Newark, N. J. ....	1,727.95
	Rudolph H. Amberg, c/o Herbert L. Elins, 790 Broad Street, Newark, N. J. ....	12,411.16
	Charles Eisler, c/o Herbert L. Elins, 790 Broad Street, Newark, N. J. ....	6,000.00
	R. L. Polk & Company Inc., 524 Broad- way, New York, N. Y. ....	562.50
	Karkus Bros. Inc., Perth Amboy, N. J.	10.12

*On Bill, &c. Report and Account of Receiver.*

Maltese Holding Corporation, c/o Kalisch. Filed \$19,927.77. Reduced to 16,556.92. 790 Broad Street, Newark, N. J. ....	19,927.77	
W. Faitoute Munn, c/o William A. Kirk, 32 Liberty Street, New York, N. Y. ....	1,820.00	10
Ida Sinclair, c/o William A. Kirk, 32 Liberty Street, New York, N. Y.....	900.00	
Sarah J. Wright, c/o Wm. A. Kirk, 32 Liberty Street, New York, N. Y.....	2,270.00	
Mae M. Braender, c/o Wm. A. Kirk, 32 Liberty Street, New York, N. Y.....	3,680.00	
Ralph H. Abbey, c/o Wm. A. Kirk, 32 Liberty Street, New York, N. Y.....	18,715.00	
Robt. J. Montgomery, c/o Wm. A. Kirk, 32 Liberty Street, New York, N. Y. ....	2,630.00	20
Jacob Schmidt, c/o Wm. A. Kirk, 32 Liberty Street, New York, N. Y.....	1,600.00	
Eugene A. Tracey, c/o Wm. A. Kirk, 32 Liberty Street, New York, N. Y..	4,800.00	
N. J. Bell Telephone Company, c/o Wilbur F. Wriggins, Esq., 281 Washington Street, Newark, N. J. ....	10.54	
The Chisholm Printing Company Inc., 409 Pearl Street, New York, N. Y...	25.50	30
TOTAL .....	<u>\$77,555.97</u>	

A True Copy

FERD GARRETSON  
Clerk

*On Bill, &c.—Order to Show Cause on Receiver's Account.*

STATE OF NEW JERSEY }  
 COUNTY OF ESSEX } ss.:

10 HARRY G. HENDRICKS, being duly sworn according to law upon his oath deposes and says that:

1. I am the petitioner named in the foregoing petition; that I have read the contents thereof and same is true to the best of my knowledge, information and belief.

HARRY G. HENDRICKS

Sworn and subscribed to before me }  
 this 17th day of December, 1928. }

20 GERTRUDE BOTWINICK  
 Notary Public of N. J.

30

40

**On Bill, &c. Order to Show Cause on Receiver's Account.**

Harry G. Hendricks, the receiver of the above named defendant company, heretofore appointed by this Court, having presented and filed his report as such receiver covering the period of his receivership, and it appearing that there are no further assets of said defendant corporation which the receiver was able to secure other than appears in the report and account, and that there is no further work for the receiver to do in connection with the securing of further assets, and it appearing that the receipts of said receiver amount to \$24,850.15 and that his disbursements amount to \$400.81, leaving a balance of \$24,449.34, and that the said receiver is desirous of having his account passed upon and allowed, it is on this 18th day of December, 1928, on motion of Herbert L. Elins, solicitor for and of counsel with said receiver,

ORDERED that the creditors of the defendant company who have filed claims with the said receiver, as set forth in the receiver's report and account, show cause before the Chancellor, at the Chambers, Room 638 Prudential Building, Broad Street, Newark, N. J. on the 22nd day of December, 1928 at ten o'clock in the forenoon on that day or as soon thereafter as counsel can be heard thereon, why the report of said receiver should not be approved, and the account of said receiver allowed; why an order should not be made fixing and determining the fees and allowances of said receiver in the administration of his trust, and

*On Bill, &c.—Order to Show Cause on Receiver's Account.*

10 fixing and determining the fees, costs and allowances of his counsel, and that of the solicitor for the complainant, and why a dividend or distribution should not be made of the balance of the fund after the payment of administration expenses to the priority and general creditors as set forth in said receiver's report, or why said distribution to the creditors should not be held up by said receiver pending the outcome of the actions brought by the several creditors against several banks which may result in the diminishing of the claims filed, and why allowances should not be granted to Hyman Besser & Co., accountants, and why in the event distribution is ordered, 20 the receiver should not be discharged from all liability in connection with his trust upon payment of the fees, allowances and dividends to creditors, and it is further

30 ORDERED that forthwith a copy of this order which may be uncertified, together with a notice or statement of the filing of said account, and a statement of the amount said receiver will ask the Court to allow him as compensation for his services rendered, and also the amount which the counsel for the complainant will ask, and the amount which the counsel for the receiver will ask to allow him for his services, be mailed to each of the creditors of said defendant company, who have filed their claims with said receiver, or their attorneys, as the same appear, at their respective Post Office addresses, if the same can be ascertained, with the postage prepaid thereon, and it is further

*On Bill, &c.—Order to Show Cause on Receiver's Account.*

ORDERED that a copy of said receiver's account be deposited with the Sergeant at Arms at the Chancery Chambers, in the Industrial Office Building, Broad Street, Newark, N. J. which shall remain open for inspection until the return of this order. 10

E. R. WALKER  
C.

Respectfully advised,  
ALONZO CHURCH  
V. C.

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*On Bill, &c.—Order to Show Cause on Receiver's Account.*

TO THE CREDITORS OF INTERSTATE TITLE EXAMINERS,  
INC.

10 TAKE NOTICE that the receiver has filed his report and account, and a copy thereof is on file with the Sergeant at Arms of the Chancery Chambers, Industrial Office Building, Broad Street, Newark, N. J., open for inspection to the creditors, and take further notice that the receiver will ask the Court to allow him for his services rendered the sum of \$5,000.00 and that Herbert L. Elins, solicitor for the complainant and of counsel for the receiver will ask the Court to allow him for his services and disbursements the sum of \$5,000.00 together with taxed costs.

20 Dated, December 18, 1928.

HARRY G. HENDRICKS, Receiver.

HERBERT L. ELINS, Esq.,  
Sol'r for and of Counsel  
with Receiver,  
790 Broad Street,  
Newark, N. J.

30 A true copy.  
THOMAS BARBER  
Clerk.

### Exceptions to Receiver's Account.

#### IN CHANCERY OF NEW JERSEY.

The following creditors of the defendant corporation, having claims against said corporation of the amounts set opposite their several names, to-wit:

Faitoute Munn .....	\$1,820.00
Jacob Schmidt .....	1,600.00
Ralph H. Abbey .....	18,715.00
Mae M. Braender .....	3,680.00
Ida Sinclair .....	900.00
Robert H. Montgomery .....	2,630.00
Sarah J. Wright .....	2,270.00
Eugene A. Tracey .....	4,550.00

Total amount of claims...\$36,165.00

10

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by William A. Kirk, their solicitor and counsel, respectfully object to the account of the Receiver on file herein as to the following items:

FIRST: They object to the allowance of a claim of \$16,000. of the Maltese Holding Corporation upon the ground that said claim or a large part thereof has been collected from other sources, to-wit, from a Bonding Company who gave a fidelity bond upon the honesty of Howard M. Hirschberg, and upon the further ground that any claim which the Maltese Holding Corporation has is against Howard M. Hirschberg individually and not against the defendant corporation.

30

SECOND: They object to the statement contained in the Receiver's Account to the effect that he collected \$322.90 from the Corn Exchange Bank. The Receiver received \$322.90 from a bank

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*Exceptions to Receiver's Account.*

account in the Chatham Phenix National Bank and Trust Company by check signed by Arthur T. Schmidt.

10      THIRD: They object to the account of the Receiver because of the failure of the Receiver to collect or properly explain his failure to collect approximately \$700. to the credit of this corporation in the Commercial Trust Co. of Jersey City.

20      FOURTH: They object to the statements of the Receiver as to the effort which he made to collect from the Aetna Insurance Company upon the bond on Howard M. Hirschberg the sum of \$25,000. That all work in connection with the collection of this bond was done prior to the appointment of the Receiver and by Arthur T. Schmidt, the President of the defendant corporation, except that the Receiver prepared a formal affidavit upon information and belief, which Mr. Schmidt verified, after his appointment.

30      FIFTH: They object to the statement in the Receiver's Report that the Receiver examined employees and friends of Howard M. Hirschberg to ascertain assets. Any such examinations were conducted not for the benefit of this corporation, but for the benefit of another corporation and for the Estate of Howard M. Hirschberg, of which the Receiver herein was also Receiver.

40      SIXTH: They object to the statement contained in the Receiver's Report that the petitioner and his counsel had numerous conferences with the Bonding Company for the purpose of avoiding lengthy and costly litigation etc. The Bonding Company were at all times ready to pay on their bond.

*Exceptions to Receiver's Account.*

SEVENTH: They object to any allowance to the Receiver or his counsel for searches made in Essex, Bergen, Union, Hudson and Morris Counties for real estate and mortgages. Any such examinations were made for the benefit of another corporation and of the estate of Howard M. Hirschberg of which the Receiver herein was also Receiver. 10

EIGHTH: They object to the statement contained in the Account that the Receiver and his counsel devoted part of almost every day in straightening out the affairs of this corporation.

NINTH: They object to the claim of the Receiver and his counsel that they reduced the claim of the Maltese Holding Corporation. 20

TENTH: They object to the statement that proceedings were brought against one Jacob J. Levy, and demand that the Receiver and his counsel specify what such proceedings were.

ELEVENTH: They object to the allowance of \$100. for appraising this estate. The only assets of this estate consisted of cash in bank and cash received from the Bonding Company and there was nothing to be appraised. 30

TWELFTH: They object to the allowance of \$158.25 to Marion W. Ogden as stenographer. Any fees paid to this stenographer should be borne pro rata by this estate, by the estate of the Jean Monroe Holding Company and by the Estate of Howard M. Hirschberg.

*Exceptions to Receiver's Account.*

THIRTEENTH: They object to the payment of \$100. for searching titles. No title searching was necessary in connection with this estate.

10 FOURTEENTH: They object to the preferred claim of Gertrude Schulz in the amount of \$96.00. This should be \$36.00.

FIFTEENTH: They object to the claim of Katherine Trofiniak, of 330 East 27th Street, New York City, upon the ground that this person has no claim against this corporation.

20 SIXTEENTH: They object to the claim of R. L. Polk & Co., Inc., against this corporation upon the ground that the said corporation has no claim against the same.

SEVENTEENTH: They object to the Account in its entirety upon the ground that it is untrue, erroneous and misleading and is too indefinite and uncertain to give the Court a correct conception of which the Receiver actually did.

30 In general, they object to the allowance of Five thousand (\$5,000.00) Dollars to the Receiver herein and Five thousand (\$5,000.00) Dollars to the counsel for the Receiver herein, or any sum to the Receiver herein in excess of Two hundred fifty (\$250.00) Dollars or any sum to the counsel for the Receiver herein in excess of the sum of Two hundred fifty (\$250.00) dollars upon the ground that the services performed by said Receiver and by his said counsel do not exceed in

*Exceptions to Receiver's Account.*

value in the aggregate more than the sum of  
Five hundred (\$500.00) dollars.

Dated, Newark, New Jersey, December 22, 1928.

Respectfully submitted,

WILLIAM A. KIRK,	10
Solicitor for and of Counsel for the Creditors.	
Faitoute Munn,	
Jacob Schmidt,	
Ralph H. Abbey,	
Mae M. Braender,	
Ida Sinclair,	
Robert H. Montgomery,	
Sarah J. Wright,	
Eugene A. Tracey.	20

A True Copy

THOMAS BARBER  
Clerk.

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**On Bill, &c. Order Passing Account of  
Receiver.**

10 An order to show cause having been made here-  
in on the 18th day of December, 1928, why the  
report of the receiver of the above named defend-  
ant company should not be approved and the ac-  
count filed by him allowed and why an order  
should not be made fixing and determining the  
fees and allowances of the said receiver in the  
administration of his trust, and fixing and deter-  
mining the fees of his counsel and the solicitor for  
the complainant and for the accountant employed  
by the receiver, and why a dividend or distribu-  
tion should not be made of the balance of the  
fund after the payment of administration ex-  
penses, the priority and general claims as set  
20 forth in the said receiver's report, or why said  
distribution to the creditors should not be held up  
by said receiver pending the outcome of the action  
brought by the several creditors against several  
banks which may result in the diminishing of the  
claims filed, and why in the event distribution is  
ordered the receiver should not be discharged  
from all liability in connection with his trust upon  
payment of the fees, allowances and dividends as  
aforesaid, and it appearing that a copy of said  
30 order to show cause together with a notice of the  
filing of said account and the statement of allow-  
ance to be asked by the said receiver, his counsel,  
and the solicitor for the complainant as compen-  
sation for their respective services have been  
mailed to the creditors of the defendant corpora-  
tion who have filed claims, and upon filing the  
affidavit of mailing and it appearing that the final  
report of the said receiver, together with an audit  
of his account remained upon the files of the Ser-  
40 geant at Arms of this Court at Newark, in ac-  
cordance with the directions of said order, and it  
appearing that the said receiver's account is cor-  
rect and that the same ought to be allowed, and

*On Bill, &c. Order Passing Account of Receiver.*

in the presence of Kalisch & Kalisch, by Isadore Kalisch, counsel for the Maltese Holding Corp., a creditor, and Arthur T. Schmidt, counsel for creditors, and William A. Kirk, counsel for creditors, it is on this 24th day of December, 1928, on motion of Herbert L. Elins, of counsel with the said receiver. 10

ORDERED, ADJUDGED and DECREED that the accounts filed by said receiver in said cause be and the same are hereby allowed and confirmed, and it appearing that the receiver's receipts have amounted to \$24850.15, and that his disbursements amount to \$400.81, leaving a balance of \$24449.34, it is,

ORDERED that Harry G. Hendricks, receiver, be and he is hereby allowed the sum of \$2500.00 together with his disbursements, and that Herbert L. Elins be allowed the sum of \$2500.00 as counsel for the receiver together with his disbursements and taxed costs, and that Hyman Besser & Co., the accountants retained by the receiver be and they are hereby allowed the sum of \$1000.00, and it is further 20

ORDERED that no distribution of the balance of the fund remaining in the hands of the receiver be made to the priority or general creditors, it appearing that the amount of the claims filed by said claimants may be diminished in the collection of part of said claims from banks and trust companies on forged and fraudulent checks and that said fund be held by the receiver until the further order of this Court. 30

Respectfully advised,

E. R. WALKER, C.

ALONZO CHURCH  
V. C.

40

A True Copy.

THOMAS BARBER  
CLERK.

### Affidavit of Solicitor's Services.

STATE OF NEW JERSEY }  
 COUNTY OF ESSEX } ss.:

10       HERBERT L. ELINS, being duly sworn according  
 to law upon his oath deposes and says that:

1. I am the solicitor for the complainant and  
 counsel for the receiver in the above entitled  
 cause duly retained by the court.

2. That annexed hereto is a list of services ren-  
 dered in connection with the administration of the  
 estate, both as solicitor for complainant and coun-  
 sel for the receiver. That said list is taken from  
 the records of deponent of the time spent, but  
 does not include all services rendered as numer-  
 ous services were not kept in the records.

20

HERBERT L. ELINS.

Sworn and subscribed to before me }  
 this 24th day of December, 1928. }  
 GERTRUDE BOTNMICK.  
 Notary Public of N. J.

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*Affidavit of Solicitor's Services.***Interstate Title Examiners, Inc.***Sept. 19, 1928.*

To conference with Mr. Charles Eisler; checking over mortgages with him; searching records in Essex, Union and Morris County. 1 day. 10

*Sept. 20, 1928.*

To dictating and drawing bill of complaint and order to show cause for appointment of receiver; communicating with the office of Lum Tamblyn & Colyer regarding the application for the appointment of a receiver. 1 day.

*Sept. 21, 1928.*

To conference with the office of Lum, Tamblyn & Colyer and with Arthur T. Schmidt; drawing consent to appointment of receiver and having Mr. Schmidt examine same; appearance before Vice Chancellor Church; having Harry G. Hendricks appointed custodial receiver; conference with Mr. Schmidt; going over the assets with him. 1 day. 20

*Sept. 23, 1928.*

Conference with Harry G. Hendricks, receiver, going over the facts of the case with him; conference with Hyman Besser and Arthur T. Schmidt, regarding the status of the case, the assets and the situation involved; checking over surety company bond. 1 day. 30

*Sept. 24, 1928.*

Going over the order secured from Vice Chancellor Church regarding the securing of the 40

*Affidavit of Solicitor's Services.*

10 cancelled vouchers and the accounts of Howard M. Hirschberg; to examining the contents of the safety deposit box, also the order secured from Jacob J. Levy to turn over all papers; conference with receiver thereon, making arrangements for receiver to go to Hackensack and Jersey City; conference with Isadore Kalisch representing the Maltese Holding Corp., a creditor, conference with Rudolph H. Amberg. 1 day.

*Sept. 25, 1928.*

20 To checking over papers and documents secured from Jacob J. Levey and from the safety deposit vault of Howard M. Hirschberg checking over all personal papers; conference with Mr. Schmidt regarding various corporations in which Hirschberg is interested such as Jean Lucie and others; conference with Rudolph H. Amberg regarding his claim as a creditor. 1 day.

*Sept. 26, 1928.*

30 To dictating and drawing order extending time within which notices of appointment of custodial receiver are to go out to the creditors; to checking over papers and various instruments drawing subpoenas for witnesses. ½ day.

*Sept. 27, 1928.*

To conference with Mr. Glavin re: foreclosure sale; conference with Mr. Greenstone re: foreclosure sale; conference with Hyman Besser, accountant; conducting receiver's examination. 1 day.

*Affidavit of Solicitor's Services.**Sept. 28, 1928.*

Conference with Mr. Wachenfeld; conference with Mr. Besser regarding claim of the corporation against the Aetna Casualty & Surety Co. on the bond; conference with Mr. Jenkins, New York representatives of the bonding company. 1 day. 10

*Oct. 1, 1928.*

To dictating and drawing order appointing statutory receiver; conference with accountant regarding the form in which the claim against the bonding company is to be filed; going over form of claim and contents thereof with accountant; conference with receiver re: same; checking mortgages, bonds and assignments. 1 day. 20

*Oct. 2, 1928.*

Appearance before Vice Chancellor Church on the return day of the order to show cause for the continuance of the receiver checking over claim drawn by receiver preparatory to conference with Mr. Jenkins of the bonding company; redrafting sum of the claims; checking the books with the accountant. 1 day. 30

*Oct. 3, 1928.*

To conference with Mr. Jenkins of the bonding company; going over the accountant's report with him. ½ day.

*Oct. 4, 1928.*

Conference with Mr. Grimm regarding the mortgage covering premises in the Town of Nutley, County of Essex, in which the Interstate Title Examiners, Inc. as a par- 40

*Affidavit of Solicitor's Services.*

10            anticipating interest and which is subordinate to a foreclosing mortgage; getting data from accountant regarding the amount due thereon; communicating with Mr. Schmidt regarding examination. 2 hours.

*Oct. 5, 1928.*

To conference with Mr. Besser and Mr. Schmidt regarding examination to be held; conducting examination for receiver. ½ day.

*Oct. 8, 1928.*

20            To conference with Mr. Schmidt regarding the data the insurance company desires to see whether we have a claim or not; going over the accounts of the various creditors with Mr. Schmidt to ascertain the amount of the fraudulent and fictitious mortgages outstanding; to conference with several creditors advising that they file proofs of claims immediately so that we can ascertain the exact amount due; check over Mr. Hirschberg's confession which was left with the books of the corporation; conference with Mr. Hendricks, receiver. ½ day.

30

*Oct. 9, 1928.*

To looking up law regarding liability of the bonding company on bond and regarding the form of the bond. ½ day.

*Oct. 11, 1928.*

40            To checking over first report submitted by Mr. Besser with data secured; conference with Mr. Isadore Kalisch; informing Mr. Besser to leave out the claim of Maltese

*Affidavit of Solicitor's Services.*

Holding Corp., in the second report; communicating with Mr. Jenkins.  $\frac{1}{2}$  day.

*Oct. 12, 1928.*

To communicating with 210 Main Street corporation regarding the furniture in the premises and the records; and with the representative of the Spingarn Arcade regarding the furniture in the premises and records. 2 hours. 10

*Oct. 15, 1928.*

Communicating with Mr. Jenkins of the bonding company regarding his appointment to go over the facts of the case with him; checking the bond with Mr. Besser. 1 hour.

*Oct. 20, 1928.*

To securing supplemental report of the accountant; checking same with him.  $\frac{1}{2}$  day. 20

*Oct. 22, 1928.*

To preparing data for Mr. Jenkins of the bonding company; conference with Mr. Jenkins regarding payment of claim; conference with Arthur T. Schmidt regarding form of affidavit to give to the bonding company. 1 day. 30

*Oct. 23, 1928.*

To conference with accountant and Arthur T. Schmidt; dictating and drawing affidavit.  $\frac{1}{2}$ m.

*Oct. 24, 1928.*

Conference with Mr. Jenkins of the bonding company re: settlement.  $\frac{1}{2}$ m.

*Affidavit of Solicitor's Services.**Oct. 25, 1928.*

10 To dictating and drawing order limiting creditors; to checking over figures with Mr. Besser before conference with Mr. Jenkins of the bonding company; to securing check from the Aetna Casualty Insurance Co. 1 day.

*Oct. 27, 1928.*

20 To conference with Mr. Hendricks regarding payment of claims; going over the facts of the case with him; going over services to be completed by him; to dictating and drawing notice of order limiting creditors to be inserted in newspaper; communicating with newspaper re: same. 1/2 day.

*Oct. 31, 1928.*

20 To checking over list of mortgages with Rudolph H. Amberg; drawing proof of claim for him and for Miss Kitzman. 1/2m.

*Nov. 5, 1928.*

30 To securing searches regarding properties upon which alleged fictitious mortgages have been given; communicating with mortgagors and property owners, studying the searches. 1/2 day.

*Nov. 7, 1928.*

To conference with Howard F. Elliott regarding his liability. 1 hr.

*Nov. 8, 1928.*

40 To checking search to ascertain whether Jean Lucie has any real estate or any assets and the other corporations Howard M. Hirschberg was associated with. 1 hr.

*Affidavit of Solicitor's Services.**Nov. 9, 1928.*

To conference with Mr. Isadore Kalisch; going over the claim filed by the Maltese Holding Corp. 2 hrs.

*Nov. 13, 1928.*

Examination of Howard F. Elliott. ½ day. 10

*Nov. 20, 1928.*

To conference with Mr. Jacob J. Levey regarding conversation with Mrs. Hirschberg and the present whereabouts of Howard M. Hirschberg; getting data from him; communicating with Mr. Jenkins of the bonding company and notifying him of the present whereabouts of Mr. Hirschberg; communicating with Mr. Schmidt. ½ day.

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*Nov. 21, 1928.*

To looking over claim of Maltese Holding Corp., studying same; conference with Isadore Kalisch; communicating with Mr. Schmidt regarding date fixed for hearing. 2 hrs.

*Nov. 27, 1928.*

To dictating and drawing order barring creditors. 1 hr.

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*Nov. 31, 1928.*

To looking up law regarding subrogation of the bonding company on the bond of the Maltese Holding Corp., examination of claim in the presence of Mr. Schmidt, Mr. Kalisch and Mr. Besser. 1 day.

*Dec. 3, 1928.*

To conference with receiver regarding claim of Maltese Holding Corp. going over the checks with him. ½ day.

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*Affidavit of Solicitor's Services.**Dec. 7, 1928.*

To checking claim of Maltese Holding Corp. and accountant; reducing same; conference with Mr. Kalisch; having reduction accepted. 1 day.

10 *Dec. 15, 1928.*

To conference with Mr. Schmidt regarding the filing of the receiver's report and account and closing the estate as there will be no assets coming into estate other than what the receiver has collected, conference with receiver regarding same; securing from receiver itemized list of receipts and disbursements. 2 hrs.

20 *Dec. 18, 1928.*

To dictating and drawing receiver's report and account and order to show cause on same; having receiver sign same; presenting same to the Vice Chancellor for his signature. 1 day.

Note—

30 That besides the above enumerated services numerous other services were rendered such as conferences with various attorneys representing creditors; conferences with creditors individually; telephone conversations and correspondence of which petitioner has not kept an exact record; which has consumed a great deal of time and as petitioner has alleged in the report and account practically some part of each day was used in services for the benefit of the estate.

A TRUE COPY

THOMAS BARBER

Clerk

**Affidavit of Receiver's Services.**

STATE OF NEW JERSEY }  
 COUNTY OF ESSEX } ss.

HARRY G. HENDRICKS, being duly sworn, according to law, upon his oath deposes and says:—

1. I am the receiver of the above named defendant corporation. 10

2. That annexed hereto is a list of services I rendered in connection with the administration of the Estate which is true to the best of my knowledge, information and belief. Said services as enumerated were rendered by me besides innumerable other services of which I have no record.

HARRY G. HENDRICKS. 20

Sworn and subscribed to:  
 before me this 24 day  
 of December, 1928.

CAROLINE ZIEGLER.

Notary Public of New Jersey.

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*Affidavit of Receiver's Services.***Appointed on September 21st, 1928.**

Went to New York to the office of Arthur T. Schmidt and there took possession of all books and records; then went to Jersey City office of  
 10 Interstate Title Examiners and took possession; from there we went to Hackensack office of Interstate Title Examiners and served notice on Peoples National Bank to give us access to safe deposit box.

Interviewed Levy & Gorrin, attorneys who had been handling legal matters for Interstate Title Examiners and Howard M. Hirschberg, personally.

Sept. 22nd. Went to Hackensack and took possession of office of Interstate Title Examiners and  
 20 Gene Lucie Inc.

Sept. 23rd. Conference with Mr. Elins.

Sept. 24th. Went to Hackensack and gained access to safe deposit box of Howard M. Hirschberg and took possession of all papers and records pertaining to Interstate Title Examiners, Inc. Went to home of Ray Collins at Cliffside and served notice upon him and his wife to attend hearing.

Sept. 25th. Searching for assets of Interstate  
 30 Title Examiners Jean Lucie, Inc., Howard M. Hirschberg, etc., including lunch wagon, etc.

Sept. 26th. Went to office of Levy & Gorrin and took possession of records and papers pertaining to Interstate Title Examiners.

Sept. 27th. Conference with Hyman Besser, accountant, regarding books and records.

Sept. 28th. Conference with Mr. Besser regarding various properties in name of Interstate Title Examiners and Gene Monroe.

40 Sept. 29th. At Hackensack office of Gene Lucie, Inc. making further examination of papers and

*Affidavit of Receiver's Services.*

records. Conference with Herbert L. Elins, attorney, Arthur T. Schmidt and various creditors.

Oct. 1st. Obtaining preliminary report from Mr. Besser and studying same, with Mr. Elins.

Oct. 2nd. Examining properties shown in Mr. Besser's report as belonging to Interstate Title Examiners and Gene Monroe. 10

Oct. 5th. Attending examination of Arthur T. Schmidt, Ray Collins, etc.

Oct. 8th. Conference with Mr. Elins and Mr. Besser regarding claim of Aetna Casualty Insurance Company.

Oct. 9th. Conference with Mr. Elins regarding claim on bond.

Oct. 10th. Conference with Mr. Elins and Mr. Schmidt. 20

Oct. 11th. Conference with Mr. Elins and Isidore Kalisch, regarding claim of Maltese Holding Corporation.

Oct. 12th. Conference with Mr. Elins regarding furniture in premises at 210 Main Street, Passaic, and in Spingarn Arcade Building, Jersey City.

Oct. 15th. Conference with Mr. Elins and Mr. Besser and arranging for appointment with Mr. Jenkins to go over question of settling bond. 30

Oct. 20th. Obtaining supplemental report of accountant and analyzing same with him.

Oct. 22nd. Conference regarding affidavit and further papers to be filed with bonding company.

Oct. 23rd. Being present at times of preparation of Mr. Schmidt's affidavit.

Oct. 25th. Conference with Mr. Elins and Mr. Besser and receiving word from Mr. Jenkins that papers thus far filed with him are now satisfactory and that check will be turned over to us, and instructing Mr. Besser to obtain check. 40

*Affidavit of Receiver's Services.*

Oct. 26th. Depositing check of Aetna Casualty Company, after conference with Mr. Elins. Conference with Mr. Elins regarding certified copies of orders of appointment of receiver to serve upon banks.

- 10 Besides the above services rendered, petitioner has rendered innumerable services which he cannot at this time recall, consisting of handling of correspondence, conference with attorneys and creditors, telephone communications and general work in the administration of this Estate.

A true copy  
THOMAS BARBER,  
Clerk.

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### Opinion.

THIS MEMORANDUM IS NOT TO BE PUBLISHED IN THE  
OFFICIAL OR UNOFFICIAL REPORTS.

CHURCH, V. C.

The bill of complaint in this cause was filed  
by a creditor claiming that he held certain mort- 10  
gages which were purchased from and through  
the Interstate Title Examiners, Inc., the defend-  
ant corporation, and upon which mortgages cer-  
tificates of title and guarantees of title were issued  
by the defendant. It was alleged by the complain-  
ant that the said mortgages held by him were  
fraudulent and fictitious, for the reasons more  
particularly set forth in the bill of complaint, and  
that he was thereby a creditor of the defendant 20  
corporation. The defendant corporation, through  
the sole remaining officer, director and stock-  
holder, Mr. Arthur T. Schmidt, consented to the  
appointment of the receiver.

The defendant corporation was composed of  
Howard M. Hirschberg and said Arthur T.  
Schmidt.

On or about September 14, 1928, Howard M.  
Hirschberg absconded after he had issued up-  
wards of \$75,000. worth of fictitious mortgages, 30  
which mortgages had been guaranteed by the de-  
fendant corporation. It appears that Howard M.  
Hirschberg was actively in charge of the affairs  
of the corporation and had full charge and control  
thereof. Said Howard M. Hirschberg was in-  
dicted and subsequently apprehended and con-  
victed by the Court of Common Pleas of Essex  
County, but the funds with which he was supposed  
to have absconded were never returned.

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*Opinion.*

Among the assets of the defendant corporation, which came into the possession of the receiver, was a bond of \$25,000.00 issued by the Aetna Casualty & Surety Co. covering said Howard M. Hirschberg, as an officer of the defendant corporation. It appears from the argument of counsel before me that the affairs of the corporation, at the time the receiver was appointed, were in a chaotic condition; that Mr. Arthur T. Schmidt, the sole remaining stockholder of the corporation did not know whether the corporation had any real estate or mortgages in its name, or any assets, and it was necessary for the receiver to make diligent search.

The receiver filed his final report and account and exceptions were filed to the report of said receiver by counsel representing certain creditors, and this matter now comes on before me on the receiver's final report and the exceptions thereto. Seventeen exceptions have been filed by counsel representing creditors, and I will attempt to treat each exception separately in my opinion.

1. In answer to the first exception it appears that the claim of the Maltese Holding Corporation filed with the receiver shows that certain certificates of title were furnished by the defendant corporation on mortgages purchased by or through said defendant. That the mortgages were fictitious, in that, said alleged mortgagor did not own the property described in said mortgage, or that the mortgage purchased did not exist as a record lien against the property, or in the further respect that the certificate in numerous instances did not show mortgages ahead of claimant's mortgage. The contention of exceptants is that the claimant,

*Opinion.*

Maltese Holding Corporation had a surety bond covering Howard M. Hirschberg and therefore should not share in this estate. Although this is not before the Court, there being no proof presented as to the surety bond before mentioned, and although no appeal of the receiver's determination has been filed by the exceptants (Corporation Act of 1896, Section 78), nevertheless, I determine after hearing the matter in summary manner, that the claim of the Maltese Holding Corporation, is a proper claim and allowable by the receiver. That the bond of the claimant does not bar the claimant from sharing in this estate, the said bond being a contract existing between the claimant and the surety company, and the receiver is not a party thereto, and on the further theory that the surety company has a right of subrogation on the claim of the claimant.

2. The money was secured by the receiver by check drawn on the bank mentioned.

3. The receiver collected, as his supplemental report shows, the sum of \$729.55 from the Commercial Trust Co.

4. It is apparent from the receiver's report that he collected the money from the bonding company. This is brought out by the fact that the money was received over a month after the receiver was appointed, upon affidavits prepared by counsel for the receiver, and which were subscribed to by Arthur T. Schmidt. There has been produced before me several different forms of claims and affidavits which were prepared by the receiver, his counsel and the accountant, and were used for the purpose of securing an expeditious settlement from the bonding company. The purpose of the numerous affidavits was to prevent litigation between the

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*Opinion.*

receiver and the surety company. There has been filed an affidavit of services rendered by the receiver and his counsel. Other services not included in the list of services filed, were involuntary bankruptcy proceedings brought by the receiver against Howard M. Hirschberg, which has not been set up in the list of services aforesaid.

5. There has been produced before me a volume of testimony, dated September 27, 1928, and October 5, 1928, of receiver's hearings of witnesses covering 139 typewritten pages.

6. I find as a matter of fact that the receiver and his counsel did have numerous conferences with representatives of the bonding company, both for the purpose of collecting on the bond and for the purpose of apprehending Howard M. Hirschberg.

7. By reason of the facts and circumstances surrounding the appointment of the receiver and the absconding of Howard M. Hirschberg, it was necessary and proper for the receiver to have searches made in the various Counties of this State, to ascertain whether the defendant corporation owned any real estate or mortgages. The receiver would be derelict in his duties if he did not have searches of the real estate made. In fact, I understand from the argument before me that these searches were made at the advice and request of Arthur T. Schmidt.

8. I am satisfied from the list of services rendered and from the services rendered by counsel and his receiver, which are not included in the list, that the receiver and his counsel were conscientious and diligent in their duties; that they properly expedited the administration of the estate and did devote a great deal of time to this cause.

*Opinion.*

9. The receiver's report and account shows that the claim of the Maltese Holding Corporation was originally filed for \$19,927.70 and was reduced to \$16,556.92, and the original claim has been produced before me to show the original amount in which it was filed.

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10. The proceedings brought against Mr. Levey were for a turn over of the books, papers and documents of the defendant corporation which were in his possession. Although the proceedings themselves were not difficult, merely being the filing of a petition and order against him, nevertheless these documents were necessary in the proper administration of the estate, and much time was spent with Mr. Levey, the receiver and his counsel in checking over all the papers.

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11. The receiver informed the court that it was believed at the time of his appointment and before a proper search could be made that the corporation owned a house on Red Road, Teaneck, N. J., and the search showed this to be an estate by the entirety owned by Howard M. Hirschberg and his wife. There was also a question of a mortgage on premises in the Town of Nutley, County of Essex, wherein it appeared that said Interstate Title Examiners, Inc. had an interest by reason of a qualified assignment. A prior encumbrancer started foreclosure proceedings (69-627) and made the defendant corporation a party thereto. The appraisal fee was paid for the purpose of having an appraisal made on real estate in Teaneck, and also an appraisal of the property in which the said corporation had an interest by virtue of the mortgage aforesaid to see whether there were any equities in the said properties for the defendant.

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*Opinion.*

12. The bill of the stenographer was properly paid by the receiver for the testimony taken.

13. The \$100.00 payment for searching the titles in the various Counties I find to be a proper charge against the estate.

10 14. The claim filed as mentioned in this exception was a priority claim for wages due a stenographer. The claim allowed was in the amount as filed, which the receiver found to be due.

15. The claim mentioned in this exception is a general claim filed by one Katherine Trofiniak, who alleged in her claim that she had entrusted Howard M. Hirschberg, as an officer of the defendant corporation with certain moneys for a specific purpose. That this purpose was not carried out and therefore she became a general creditor of the estate for the amount of \$448.58.

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16. The claim of R. L. Polk & Co., Inc. was properly allowed by the receiver as a general claim for the amount of \$562.50 for services rendered by said claimant for the defendant corporation.

The receiver and his counsel each asked for \$5,000.00 as compensation for services rendered. Counsel for the receiver was also the solicitor for the complainant. In view of the services rendered and the quantum of the estate, I believe an allowance of \$2,500.00 to each of them is reasonable and I have allowed them each said sum. In this allowance I am taking into consideration the nature of the services as set forth in the list of services filed by the receiver and his counsel, and also those services which were not included in the list, such as the bankruptcy proceedings; the petition in bankruptcy having been filed by said receiver. I have advised the decree in accordance with these conclusions.

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# New Jersey Court of Errors and Appeals.

*Between*

CHARLES EISLER,  
*Complainant,*  
*and*

INTERSTATE TITLE EXAMINERS,  
INC., a corporation,  
*Defendant.*

FAITOUTE MUNN, JACOB  
SCHMIDT, RALPH H. ABBEY,  
MAE M. BRAENDER, IDA SIN-  
CLAIR, ROBERT H. MONTGOMERY,  
SARAH J. WRIGHT, EUGENE A.  
TRACEY and L. C. M. CORPORA-  
TION,

*Creditors Appellant,*  
*against*

HARRY G. HENDRICKS, Receiver,  
HERBERT L. ELINS, Counsel for  
Receiver, HYMAN BESSER & Co.,  
Accountants, and MALTESE  
HOLDING CORPORATION, Credi-  
tor,

*Respondents.*

*On Appeal  
from  
Chancery  
from Order  
Made by the  
Chancellor on  
the Advice of  
Vice-  
Chancellor  
Alonzo  
Church.*

## BRIEF ON BEHALF OF APPELLANTS.

### Statement.

This is an appeal by and on behalf of certain creditors in the above estate having claims of up-

wards of Sixty-one thousand (\$61,000.) Dollars, being a larger part of the total claims filed, from the whole and every part of an order made by the Chancellor of the State of New Jersey on the advice of Vice-Chancellor Alonzo Church, which order is dated December 24th, 1928, and which order allows the accounts filed by the Receiver of the Interstate Title Examiners, Inc. and makes an allowance of Twenty-five hundred (\$2500.) Dollars, together with disbursements to Harry G. Hendricks, Receiver, and a like amount of Twenty-five hundred (\$2500.) Dollars, together with disbursements and taxed costs to Herbert L. Elins, Counsel for the Receiver, and an allowance of One thousand (\$1000.) Dollars to Hyman Besser & Co., accountants, and further directs that no distribution of the balance of the funds remaining in the hands of the Receiver be made to the creditors until further order of this Court (S. C.—page 36). The report and account of the Receiver was filed on December 18th, 1928 (S. C.—page 19), and an order to show cause on Receiver's account returnable December 22nd, 1928 (S. C.—page 27) and exceptions to the Receiver's account were duly filed (S. C.—page 31), and the attorney for the appellant appeared at the said hearing and requested that testimony be taken on the disputed points as to the facts therein, which request was refused by the Vice-Chancellor. Thereafter and on December 24th, 1928, two days after the hearing, the affidavit of the Solicitor's service (S. C.—page 38), and the affidavit of the Receiver's service (S. C.—page 47) were filed, and the order from which this appeal is being taken was on that day entered. Thereafter and on or about April 7th, 1929, an opinion was written by the Vice-Chancellor (S. C.—page 51).

### Statement of Facts.

The Interstate Title Examiners, Inc. is a New Jersey corporation, incorporated on or about February 11th, 1926, and engaged in the business of examining titles, and purchasing and selling mortgages. The principal place of business was in Jersey City, New Jersey. Most of the creditors shown in this action are creditors by virtue of the fact that they purchased mortgages from the Interstate Title Examiners, Inc., and the titles to many of the properties were certified by the said corporation to the said creditors. A great many of the mortgages purchased by these creditors were purchased from the Jean Monroe Holding Corporation and in most instances the Interstate Title Examiners, Inc. certified the title to the said creditors at their direction. One Howard M. Hirschberg was the Treasurer and the title officer of the Interstate Title Examiners, Inc. and had charge of the closing of all titles therein and of the examination thereof. He was bonded in the sum of \$25,000.

On or about September 16th, 1928 Howard M. Hirschberg absconded, leaving a confession in writing that he had stolen approximately Ninety-five thousand (\$95,000.) Dollars from the said corporation or had sold fictitious mortgages to the clients of the Interstate Title Examiners, Inc., and had forged the bonds, mortgages, affidavits of title, and checks in all these transactions. Arthur T. Schmidt, who was the President of Interstate Title Examiners, Inc., immediately closed the office of the Interstate Title Examiners, Inc., and the corporation ceased doing business. Arthur T. Schmidt as President of the Interstate Title Examiners, Inc. immediately notified the Bonding

Company and filed notice of claim and had a conference with the bonding officials on September 17th, 1928, and immediately employed auditors at the suggestion of the Bonding Company.

On September 19th, 1928, the Interstate Title Examiners, Inc. started action against the Jean Monroe Holding Corporation in Chancery of New Jersey, for the purpose of seizing the assets of the said corporation. The President and the holder of the entire stock of the said corporation, Jean Monroe Holding Corporation, was Howard M. Hirschberg, and Harry G. Hendricks was duly appointed as Receiver in that action.

The sole assets of the Interstate Title Examiners, Inc. consisted of two bank accounts, one subject to double signature and the other subject to single signature, and also a bond of the Aetna Casualty & Surety Company bonding the said Howard M. Hirschberg in the sum of Twenty-five thousand (\$25,000.) Dollars. The Bonding Company acknowledged liability immediately.

Howard M. Hirschberg, at the time he absconded, besides his confession, likewise left a list of his assets showing that he had used a part of the money so stolen in purchasing mortgages and real estate, and that the title to the said mortgages and real estate stood in the Jean Monroe Holding Corporation.

On or about September 21st, 1928, an action was started by Charles Eisler against the Interstate Title Examiners, Inc. in Chancery of New Jersey, which resulted in the appointment of Harry G. Hendricks as Receiver of the Interstate Title Examiners, Inc. by consent of the President thereof. Arthur T. Schmidt as President of the Interstate Title Examiners, Inc. then immediately turned over to the Receiver all the books and accounts of the corporation, together with a check

closing out one of the bank accounts of the corporation, together with the bank books of the corporation. The Receiver then discharged the auditors who had been employed by the insolvent corporation, although they had but two more days' work in order to complete their task, which fact was called to the attention of the Receiver and his Solicitor by the auditors and by the said Arthur T. Schmidt. The Solicitor then employed Hyman Besser & Co. to audit the books of the corporation. The arrangement with Hyman Besser & Co. was made in the presence of Arthur T. Schmidt by the Solicitor for the Receiver, and it was agreed that the said Hyman Besser & Co. would use the reports and the work sheets of the auditors who had been dismissed by the Receiver, and that the fee of Hyman Besser & Co. would not be over Two hundred (\$200.) Dollars. Thereafter Arthur T. Schmidt signed a petition requesting the Federal Courts to declare Howard M. Hirschberg in bankruptcy, and Harry G. Hendricks was appointed Receiver in that proceeding.

Prior to the time that Howard M. Hirschberg absconded, he had apparently been doing business with the Maltese Holding Corporation, one of the alleged creditors of the Interstate Title Examiners, Inc. and he was bonded in the sum of Twelve thousand five hundred (\$12,500.) Dollars by the Aetna Casualty & Surety Company in favor of the Maltese Holding Corporation. That the Maltese Holding Corporation has collected the sum of Twelve thousand five hundred (\$12,500.) Dollars as was admitted by their counsel at the hearing before Vice-Chancellor Church. The Maltese Holding Corporation has filed a claim as a creditor of the Interstate Title Examiners, Inc., in the sum of Sixteen thousand five hundred fifty-six and 92/100 (\$16,556.92) Dollars on the ground

that the Interstate Title Examiners, Inc. issued certificates of title to them covering property on which Hirschberg had sold them mortgages. All the certificates of title issued to the Maltese Holding Corporation by the Interstate Title Examiners, Inc. were signed by Howard M. Hirschberg. Several hearings were had of witnesses at which testimony was taken regarding the matters involved in the Interstate Title Examiners, Inc., the Jean Monroe Holding Corporation and Howard M. Hirschberg bankrupt.

That Howard M. Hirschberg when he absconded, left with his list of assets a key to a safe deposit box. An order was made directing the said safe deposit box to be opened by the Receiver (S. C., pages 13-15). The contents of the box were obtained by the Receiver and found to contain no papers whatsoever belonging to the Interstate Title Examiners, Inc. but only mortgages and other instruments belonging to the Jean Monroe Holding Corporation and Howard M. Hirschberg individually. The confession of Howard M. Hirschberg also stated that an attorney in Jersey City had certain papers and instruments belonging to the said Howard M. Hirschberg, and an order was issued to the Receiver to enable him to obtain the said papers (S. C., pages 16-18). The said papers were voluntarily delivered by the said attorney and none of the said papers belonged to the Interstate Title Examiners, Inc. but all of them were the property of the Jean Monroe Holding Corporation or Howard M. Hirschberg individually.

That the only work performed by the Receiver or his counsel in this matter was

(a) Receiving from Arthur T. Schmidt a check closing out one of the bank accounts of the Interstate Title Examiners, Inc.

(b) Closing out the second and remaining bank account of the Interstate Title Examiners, Inc.

(c) Filing an affidavit and collecting from the Bonding Company the sum of Twenty-five thousand (\$25,000.) Dollars.

(d) Opening the safe deposit box of Howard M. Hirschberg and ascertaining that none of the papers therein belonged to the Interstate Title Examiners, Inc.

(e) Obtaining the papers from the attorney of Howard M. Hirschberg as heretofore shown and ascertaining that none of the said papers or instruments belonged to the Interstate Title Examiners, Inc.

(f) Attending to the usual and customary proceedings in insolvency in the publication for debts, the allowance of claims and making the account.

### **Grounds of Appeal.**

1—The allowances to the Receiver, Counsel for the Receiver, and accountant, are excessive, exorbitant and unreasonable.

2—The account and report of the Receiver are erroneous and Court should have allowed the offered testimony to prove these facts.

3—The claim of the Maltese Holding Corporation, one of the creditors, should be decreased as well as those of the other claimants who obtained payments from other sources.

## POINT I.

### **The allowances to the Receiver, Counsel for the Receiver and accountant are excessive, exorbitant and unreasonable.**

Assuming that all the facts stated in the report of the Receiver (S. C., page 19) are true, the allowances are grossly excessive, exorbitant and unreasonable. The statement of facts herein shows that the insolvent corporation employed reputable accountants to audit the books after its Treasurer absconded and prior to the appointment of the Receiver. The Receiver dismissed said accountants and employed Hyman Besser & Co. The Receiver paid the first accountants hired by the insolvent corporation the sum of Five hundred (\$500.) Dollars. This payment, together with the allowance of Twenty-five hundred (\$2,500.) Dollars to the Receiver, Twenty-five hundred (\$2,500.) Dollars to the counsel for the Receiver and One thousand (\$1,000.) Dollars to Hyman Besser & Co., the auditor, (S. C., page 37, l. 20) showed total allowances for the Receiver and counsel of Five thousand (\$5,000.) Dollars, and of auditors Fifteen hundred (\$1,500.) Dollars, making a complete total of Sixty-five hundred (\$6,500.) Dollars. The total assets of the insolvent corporation (S. C., page 23) Twenty-four thousand eight hundred fifty and 15/100 (\$24,850.15) Dollars, plus a bank account of Seven hundred twenty-nine and 55/100 (\$729.55) Dollars, which Receiver neglected to report in his account (S. C., page 53, l. 25), makes a total gross assets of Twenty-five thousand five hundred seventy-nine and 70/100 (\$25,579.70) Dollars. The allowances amount to 25 4/10% of the gross

assets. In *Bock vs. Columbia Brewing Co.*, 99 N. J. Equity 617, Vice-Chancellor Alonzo Church being the same Vice-Chancellor from whose order this appeal is made, held that 18% of the corpus of the estate as an allowance to the Receiver and Counsel was excessive, and finally allowed 8%. In that case the Receivers applied for Twenty-five hundred (\$2,500.) Dollars each, and the Counsel for Five Thousand (\$5,000.) Dollars. This amounted to nearly 18% of the corpus of the estate. In that case, Vice-Chancellor Church stated, "While I have no doubt that the receivers and their counsel did excellent work and sold the property to the best advantage, I believe such a percentage of the estate for allowances is excessive. Consideration must be given, not only to the work done, but to the quantum of the estate. I will allow the receivers \$1,000. each and counsel \$2,500. each".

In *Lemback vs. Jarvis Terminal Cold Storage Co.*, 68 N. J. Equity 352, 4% of the gross estate is held to be a reasonable allowance.

In *Silvers vs. Merchants etc. Building Association*, 56 Atlantic Reporter 294, the allowance of the Receiver was cut from 5% to 3½% on the ground that counsel had apparently done most of the work; and in that same case the counsel having done most of the work, was denied a fee of 10% of the assets and was allowed a fee of 6½% thereof. The amount passing through the Receiver's hands in that case was \$100,000.

The allowance to Hyman Besser & Co. is excessive. As is shown in the statement of facts, the insolvent corporation had already employed reputable auditors at the suggestion of the Bonding Company after the Treasurer absconded and before the Receiver was appointed. The Receiver

dismissed them for no reason whatsoever in opposition to the request and advice of Arthur T. Schmidt, the President and majority stockholder of the insolvent corporation. Hyman Besser & Co. were employed by the Solicitor and the Receiver in the presence of the said Arthur T. Schmidt at a contract price of Two hundred (\$200.) Dollars, it being agreed that the said Hyman Besser & Co. would take over the report and work sheets of the previous auditor and complete them. In the face of this, Hyman Besser & Co. applied for an allowance of Twenty-five hundred (\$2,500.) Dollars at the hearing and was allowed One thousand (\$1,000.) Dollars (S. C., page 37, l. 28). The opinion of Vice-Chancellor Alonzo Church (S. C., page 51) shows no reason for this allowance. At the hearing testimony was offered to prove the above stated facts and Vice-Chancellor Alonzo Church refused to receive the same.

*Bock vs. Columbia Brewing Co.*, 99 N. J. Equity 617,

*Lemback vs. Jarvis Terminal Cold Storage Co.*, 68 N. J. Equity 352,

*McArthur vs. The Montclair Railway Co.*, 27 N. J. Equity 77,

*Conover vs. West Jersey Mortgage Co.*, 96 N. J. Equity 441,

*Silvers vs. Merchants etc. Building Association*, 56 Atlantic Reporter 294.

## POINT II.

**The creditors were refused an opportunity to present testimony to show that the report and account of the Receiver were erroneous, untrue and misleading.**

The report and account of the Receiver were insufficient on their face to permit the fixing of allowances and the affidavits of services of the Solicitor and of the Receiver were filed two days after the actual hearing, and the Vice-Chancellor erred in refusing to receive the testimony from the appellant creditors showing that the report and account of the Receiver were erroneous, untrue and misleading. The services claimed to be rendered by the Receiver and the Solicitor for the Receiver in the account of the Receiver were disputed in many points and a request and demand were made to submit testimony supporting the opposition of the appealing creditors and the Vice-Chancellor refused to hear the same. The affidavits of services of the Solicitor (S. C., page 38) and of the Receiver (S. C., page 47) were sworn to on December 24th, 1928, two days after the hearing and the Receiver's account, and the creditors were afforded no opportunity to dispute same.

The report and account of the Receiver are erroneous, untrue and misleading in the following respects:

(1) The report alleges (S. C.—page 20, L. 12) that the “petitioner and his counsel had numerous conferences with the bonding company for the purpose of avoiding lengthy and costly litigation”. The opinion of the Vice-Chancellor (S. C.—page 54, L. 15) finds, as a matter of fact, that

the Receiver and his counsel had numerous conferences. This is not supported by the affidavit of service of the Receiver (S. C.—page 47) which does not show a solitary conference by the Receiver with the Bonding Company. The Solicitor's affidavit of service (S. C.—page 38) shows five communications with the Bonding Company. There was never any question raised by the Bonding Company of their liability and they admitted liability to the corporation and its President immediately after the Treasurer absconded. The delay of about three weeks in paying the said claim was caused by the fact that a complete investigation of the losses sustained had to be made and by the fact that the Receiver and the Solicitor did not draw the affidavits satisfactory to the Bonding Company. The appealing creditors at the hearing requested an opportunity to present testimony and to have the Bonding Company representative testify, and the Vice-Chancellor refused such request.

(2) The report of the Receiver (S. C.—page 21, L. 20) states "petitioner did have numerous conferences with the prosecutors and detectives in this County and with the bonding company detectives" for the purpose of apprehending Howard M. Hirschberg. The affidavits of services of the Receiver and of the Solicitor for the Receiver show no such conferences and none were in fact had.

(3) The report of the Receiver (S. C.—page 21, L. 28) alleges that the affairs of the defendant corporation were carried on. As a matter of fact, the office of the corporation closed immediately and the nature of the business was such that it did not have to be and was not carried on.

(4) The account of the Receiver fails wholly to show the bank account of the insolvent corpo-

ration in the Commercial Trust Company of New Jersey, and the exceptions to the report and account (S. C.—page 32, L. 10) sets this forth.

(5) The account of the Receiver (S. C.—page 23, L. 1) sets forth a bank account of the insolvent corporation in the Corn Exchange Bank. As a matter of fact, there was never an account of the insolvent corporation in the Corn Exchange Bank and that the said account was actually in the Chatham Phenix National Bank & Trust Company (S. C.—page 31, L. 35).

(6) The account of the Receiver (S. C.—page 23, L. 10) shows a payment by the Aetna Casualty & Surety Company of Twenty-four thousand five hundred twenty-seven and 25/100 (\$24,527.25) Dollars. The payment in fact was Twenty-five thousand (\$25,000.) Dollars, and the difference was the payment of the auditor's fee, who was employed by the corporation prior to the appointment of the Receiver and after the Treasurer absconded. This payment to the auditor of Five hundred (\$500.) Dollars is not shown in the Receiver's report.

(7) The statement in the opinion of the Vice-Chancellor (S. C.—page 54, L. 12) regarding the testimony at the Receiver's hearing is incomplete as is shown in the statement of facts hereof. The Receiver in this action is likewise the Receiver for the Jean Monroe Holding Corporation and also for Howard M. Hirschberg bankrupt, and the hearings of the Receiver were held for the mutual benefit of all three estates and should have been divided pro rata. Such a request was made at the hearing and the Vice-Chancellor refused the same, and such a request was also set forth in the exceptions to the Receiver's account (S. C.—page 33, L. 32).

(8) The account of the Receiver shows a payment of One Hundred (\$100:) Dollars to William Harris for searching title (S. C.—page 23, L. 30). The Solicitor for the Receiver is employed by or associated with the said William Harris. In the case of *Conover vs. West Jersey Mortgage Co.*, 96, N. J. Equity, 441, Chancellor Walker held that fees paid for clerk hire by the Counsel of the Receiver must come out of the allowance for the Counsel.

(9) The account of the Receiver (S. C.—page 21, L. 10) and the opinion of the Vice-Chancellor (S. C.—page 55, L. 10) states that Jacob J. Levey was ordered to turn over papers belonging to the insolvent corporation. Said Jacob J. Levey in fact turned over numerous instruments and papers but none of them were the property of the insolvent corporation but actually the property of Jean Monroe Holding Corporation or Howard M. Hirschberg individually. Testimony was offered to prove these statements by the appellants and said testimony were refused.

The creditors were entitled to submit testimony under oath and to question the Receiver and the Solicitor under oath on these disputed points, and the rights of the creditors appealing were prejudiced by the refusal of the Vice-Chancellor to permit testimony to be given or to permit the examination of the Receiver or his Solicitor.

### POINT III.

**The claim of Maltese Holding Corporation should be decreased, \$12,500. representing payments received by them from other sources.**

The Maltese Holding Corporation had collected the sum of Twelve thousand five hundred (\$12,500.) Dollars from other sources as was admitted by their Solicitors to the Vice-Chancellor on the day of the hearing. The absconding Treasurer, Hirschberg, was bonded in favor of the Maltese Holding Corporation by the same Bonding Company under which he was bonded to the Interstate Title Examiners, Inc. Under the terms of the bond to the Interstate Title Examiners, Inc., it specifically states that the Bonding Company shall not participate in any of the assets of the Interstate Title Examiners, Inc. until all the creditors have been paid in full. This does not appear in the record in this case for the reason that the Vice-Chancellor refused to permit the appealing creditors an opportunity to present testimony showing these facts. The order appealed from (S. C.—page 37, L. 30) directs that no distribution of the balance of the fund remaining in the hands of the Receiver be made until further order, it appearing that the amount of the claims filed may be diminished in the collection of part of said claims from banks and trust companies. In the opinion (S. C.—page 53, L. 18) the Vice-Chancellor states in allowing the full amount of the Maltese Holding Corporation claim that the bond held by the Maltese Holding Corporation is “a contract existing between the claimant and the surety company, and the receiver is not a party

thereto". This ruling, if proper, applies with equal force to the fact that the other claimants have contracts with their banks under which they anticipate collecting by reason of forged checks and the Receiver likewise is not a party to the same.

If the claim of the Maltese Holding Corporation is allowed in full, then the insolvent corporation, when it opens for business again, will be subject to a suit from the Bonding Company. In *Monmouth County Mutual Fire Insurance Co. vs. Hutchinson*, 21 N. J. Equity 107, it is held that a release by an insured to a wrongdoer whose negligence has caused a loss of insured property is no defense to a suit by the insurer against the wrongdoer. Any monies collected by the Maltese Holding Corporation under this claim must be partially reimbursed to the Bonding Company under their subrogation clause, if any. *Weber vs. Morris etc. R. Co.* 35 N. J. Law, 409. If the Receiver recognized the right of subrogation in the bond of the Maltese Holding Corporation, then the Bonding Company should have joined in the claim. The insolvent corporation has an absolute defense against the payment of any money to the Bonding Company under their own bond as heretofore set forth which provides that the Bonding Company shall not participate in the assets of the corporation until all the creditors have been paid.

**POINT IV.**

**The claims of the appealing creditors should not be subject to diminishment by collection of part thereof from other sources.**

The order appealed from (S. C.—page 37, L. 30) directs that no distribution of the fund remaining in the hands of the Receiver be made, it appearing that the amount of claims of certain of the claimants may be diminished in the collection of a part of said claims from banks and trust companies on forged and fraudulent checks. It was prejudicial to the claimants who have such alleged claims against their banks for the Court to order that their claims against the insolvent corporation should be diminished by any such payments on the fraudulent checks. The opinion (S. C.—page 53, L. 15) allows the account of the Maltese Holding Corporation in full although payments from other sources are shown but deprives the other claimants in this estate of the same privilege.

**POINT V.**

**The order or decree of the Chancellor herein should be reversed, vacated, set aside and for nothing holden and the allowances of the Receiver, the solicitor and the auditor decreased to a proper and reasonable figure and this cause referred back to the Court of Chancery to hear testimony on the objections filed by these appellants.**

WILLIAM A. KIRK,  
*Solicitor for and of  
Counsel with Appellants.*



## New Jersey Court of Errors and Appeals

*Between*

CHARLES EISLER,  
*Complainant,*  
*and*

INTERSTATE TITLE EXAMINERS,  
INC., a corporation,  
*Defendant.*

FAITOUTE MUNN, JACOB  
SCHMIDT, RALPH H. ABBEY,  
MAE M. BRAENDER, IDA SIN-  
CLAIR, ROBERT H. MONTGOM-  
ERY, SARAH J. WRIGHT,  
EUGENE A. TRACEY and  
L. C. M. CORPORATION,  
*Creditors-Appellant,*  
*against*

HARRY G. HENDRICKS, Re-  
ceiver; HERBERT L. ELINS,  
Counsel for Receiver; HY-  
MAN BESSER & Co., Ac-  
countants, and MALTESE  
HOLDING CORPORATION, Cred-  
itor,  
*Respondents.*

*On Appeal  
from the  
Court of  
Chancery.*

### BRIEF OF RESPONDENT, HARRY G. HENDRICKS, RECEIVER.

The appeal is taken by certain creditors from the order passing the final report and account of the receiver of the Interstate Title Examiners, Inc., a corporation. The respondents are the receiver, who is a layman; counsel for the re-

ceiver, the accountant and a creditor. The receiver is the only party respondent in interest in the appeal, for the reason that it is the receiver's report and account which is appealed from. The other parties respondent are made such by virtue of the order passing the account and report which granted allowances to them and allowed the claim of the Maltese Holding Corporation (p. 36).

The appellant L. C. M. Corporation was permitted to file its claim after the order passing the account of the receiver was granted and therefore does not appear in the list of claims set forth in the receiver's final report and account (pp. 24 and 25). For this reason I do not think said corporation has any standing before the court.

The statement of facts set forth in appellants' brief (pp. 3 to 7 inclusive) does not appear anywhere in the record. The statement of facts are those apparently drawn by counsel for his own purposes. The record before the court is barren of any of the statements set forth as facts except those facts which appear in the opinion of the Vice-Chancellor (pp. 51 and 52). The charges of appellants do not appear in any part of the record and are untrue in fact. The statement of facts are worded by counsel for the appellants as will best suit his argument, although said facts do not appear in any of the pleadings before this court on the record. This court should therefore not take into consideration in its determination, the statement of facts as set forth in appellants' brief, for only those matters set forth in the record are properly before the court. Not alone the state of the case, but the entire docket in the lower court does not show the charges as set forth in appellants' statement of

facts. The only facts, as I mentioned before, are those set forth in the Vice-Chancellor's opinion (p. 51) to the effect that the Interstate Title Examiners, Inc. was composed of Howard M. Hirschberg and Arthur T. Schmidt, said Howard M. Hirschberg having had actual charge of the affairs of the corporation and full control thereof. On or about September 14, 1928, said Howard M. Hirschberg absconded after he had issued upwards of \$75,000.00 worth of fictitious mortgages which had been guaranteed by the defendant corporation, and subsequently the said Howard M. Hirschberg was apprehended, indicted and convicted by the Court of Common Pleas of Essex County, but the funds with which he was supposed to have absconded were never returned. The charge that the bonding company, prior to the appointment of the receiver, was agreeable to paying the \$25,000.00, it subsequently paid on the bond of Howard M. Hirschberg, does not appear anywhere in the record or state of the case by affidavit or otherwise. The charge that an auditor had been employed by the company prior to the appointment of the auditor by the court, who is made a party to this appeal, or that said Hyman Besser & Co., auditors, would render services for which it would receive a fee not in excess of \$200.00 does not appear in the record or state of the case as a part thereof in affidavit or otherwise.

A petition in bankruptcy was filed against Howard M. Hirschberg and same was prepared by counsel representing the receiver and was so filed for the purpose of securing assets into the estate of the insolvent corporation.

It is untrue in fact, nor is it warranted by any of the facts of the case, nor does it appear anywhere in the record by affidavit or otherwise, that

the only work performed by the receiver and his counsel was that as is set forth on pages 6 and 7 of appellants' brief. The opinion of the Vice-Chancellor before whom the matter was heard, and who was familiar with the nature of the case, covers the objections raised by appellants in detail.

There has been filed and made a part of the record (pp. 39 to 50) a list of services rendered by the receiver and his counsel, who also is the solicitor for the complainant. This court can well imagine that it is impossible for counsel to keep an itemized list of every service rendered in an insolvency case. Numerous services are rendered of which no record is kept, either through neglect or inadvertence. Services were rendered in this case by the receiver and his counsel which do not appear in the itemized list of services, as for instance, the filing of the involuntary petition in bankruptcy against Howard M. Hirschberg. For this reason, the court should not be governed by the list of services alone, but should take into consideration the fact that the Vice-Chancellor familiar with the case decreed the allowances to the receiver and his counsel reasonable. Appellants make point of the fact that the only work necessary was the filing of an affidavit and collecting the sum of \$25,000.00 from the bonding company. This is not a fact. Numerous affidavits were filed with the bonding company and numerous conferences held for the purpose of amicably collecting the amount due on the bond rather than litigate, and this is borne out by the fact that although the receiver was appointed on September 21, 1928, the fund was not secured from the bonding company until approximately one month thereafter, and this sum was secured so speedily because of the fact that the bonding company was kept after constantly.

## POINT I.

The allowances granted to the receiver, counsel for the receiver and the accountant are reasonable.

The state of the case does not show any facts from which can be interpreted the charge that the insolvent corporation employed reputable accountants to audit the books prior to the appointment of the receiver after its treasurer absconded as set forth on page 8 of appellants' brief. If auditors, other than the accountant retained by the receiver were working on the books prior to the appointment of said receiver, same were for the purpose of securing certain information for the benefit of the bonding company.

The receiver did not pay the alleged first accountants a fee of \$500.00. The surety company paid to the receiver \$24,527.25 and not \$25,000.00 as appellants state, and said accountants who were working on the books for the bonding company prior to the appointment of the receiver were paid direct by the bonding company and not by the receiver.

The allowance to the receiver and his counsel amounted to \$5,000.00, which is approximately twenty per cent. The receiver's supplemental account filed in the cause is not included in the state of the case and shows that \$25,178.89 was actually secured by the receiver in the administration of the estate.

At the time the receiver was appointed the affairs of the corporation were in a chaotic condition due to the disappearance of said Howard M. Hirschberg, and it was not known what assets the corporation actually had. Because of the nature of this case; the type of business the cor-

poration was engaged in; the disappearance of the person in charge thereof; the sale of fictitious mortgages guaranteed by the insolvent corporation, and the recovery on the bond, it was a case different than the ordinary receivership case where the assets are sold and the fund distributed. At the time of the appointment of the receiver the only tangible asset was the cash in the bank. The receiver and his counsel actually created the entire estate by collection of the sum from the bonding company. It is through the efforts of the receiver and his counsel that the estate is of the amount as set forth. It is because of the diligent work of the receiver and his counsel that the estate has benefited to the amount which the receiver has on hand.

The opinion of the Vice-Chancellor deals in detail with the exceptions which were raised before him and which were heard by him and disposed of in the manner set forth in said opinion, in which he states (p. 54, pr. 8)—

“I am satisfied from the list of services rendered and from the services rendered by counsel and his receiver, which are not included in the list, that the receiver and his counsel were conscientious and diligent in their duties; that they properly expedited the administration of the estate and did devote a great deal of time to this case.”

And further goes on to say (p. 56)—

“In conclusion the receiver and his counsel each asked for \$5000.00 as compensation for services rendered. Counsel for the receiver was also the solicitor for the complainant. In view of the services rendered and the quantum of the estate, I believe an allowance of \$2500.00 to each of them is reasonable and I have allowed them each said sum. In this allowance I am taking into consideration the nature of the services as set

forth in the list of services filed by the receiver and his counsel and also those services which were not included in the list, such as the bankruptcy proceedings; the petition in bankruptcy having been filed by said receiver. I have advised the decree in accordance with these conclusions."

The fee of the accountant was a proper charge and was passed upon by the court and allowed.

The Chancellor has held in determining what the fees of receivers should be based upon in the case of *Conover v. West Jersey Mortgage Co.*, 96 N. J. Eq., p. 441 on 449, as follows:

"In *Harrigan v. Gilchrist*, *supra*, it was observed (at p. 438) that a very large amount of work was done, and in a most methodical way much of it of the kind commonly performed by law clerks; *that the compensation allowable was not the value of the work actually done by the attorney to be computed from the time spent and the amount which an attorney customarily charges his clients, but it is what may appear to be proper for the work that was reasonably necessary to the due administration of the trust, citing Richardson v. Tyson*, 110 Wis. 572; 86 N. W. Rep. 250. *The time actually spent and work actually done are important elements, but the controlling feature is the work reasonably required. There must also be considered, of course, the character of the work, the manner in which it was done, and the beneficial results to the trust. See, also, In re: Hahn*, 84 N. J. Eq. 523." (Underscoring ours.)

The case of *Boch v. Columbia Brewing Company*, 99 N. J. Eq. 617, which is cited by appellants, concerns a corporation which was a subsidiary of the New Jersey Refrigerating Company and the same receivers were appointed in that case as in the New Jersey Refrigerating Company. The court stated that it became neces-

sary to appoint receivers for the subsidiary in order that its assets might be sold and turned over to the parent corporation. It appears to me that the allowance sought was reduced by the court not only because of the size of the estate, but for the further reason that counsel and the Receivers received an allowance in the matter of New Jersey Refrigerating Company in addition to those secured in the Columbia Brewing Company case.

The Chancellor held in the case of *Unger v. Newlin Haines Co.*, 95 N. J. Eq. 16, on page 18, as follows:

“In the first place, it is held that, in determining the amount of compensation, the value of the estate must be taken into consideration. In re: Ellett, etc., Co. (D. C.) 196 Fed. 400. *There the doctrine was invoked to keep down the allowance because the estate was small; but the principle works both ways. In re: Hahn*, 84 N. J. Eq. 523, 94 Atl. 953, *I held that lawyers’ services are not based upon nor restricted to, mere time service; that they are entitled to fees which will adequately compensate them for their services, especially when those services are valuable to their clients; that when recoveries are made, their fees may be, and properly are, somewhat apportioned to the avails gotten for their clients. It has also been held in the federal courts that attorneys for mere claimants are not entitled to allowances out of the estate.*” (Underscoring ours.)

Particular attention is called to that part of the opinion which states that lawyers’ services are not based upon nor restricted to, mere time service; that they are entitled to fees which will adequately compensate them for their services, especially when those services are valuable to their clients, and that when recoveries are made, their fees may be, and properly are, somewhat

apportioned to the avails gotten for their clients. Such is the case before the court where the recovery actually created the entire estate.

Without litigation the estate secured the sum of \$24,527.25. The fact that this was expeditiously secured without the long drawn out litigation that would attend an action of this nature should work to the benefit of the receiver and his counsel as far as fees and allowances are concerned, rather than to their detriment in the amount of the award. The allowances should be not disproportionate with the services rendered the estate, taking into consideration what an individual client would be charged for services of this nature.

In the case of *Landsman v. Globe Art Manufacturing Co.*, 6 N. J. Ad. Rep. 734; the Vice-Chancellor allowed a gross allowance to the receiver and his counsel of \$4,000.00 in an estate of \$24,248.80.

The receiver and his counsel are not seeking a reward for the services rendered. They do not want compensation in excess of that which they believe they are entitled to. They merely desire payment for their services rendered in connection with the expeditious administration of this estate.

The services of the accountant consisted in drawing reports from the books for the benefit of the receiver and his counsel used in the negotiations with the bonding company and also for the purpose of ascertaining the assets. The allowance of \$1,000.00 was ordered by the court. From experience the amount allowed is deemed reasonable by this respondent.

The sum of \$200.00 mentioned in appellants' brief appears nowhere in the state of the case

and is not a fact as far as the recollection of the writer of this brief is concerned or of the receiver.

## POINT II.

**The creditors were given opportunity to be heard by the court.**

The objections filed by the appellants to the report of the receiver were heard by the court as is shown by the opinion of the Vice-Chancellor. Counsel for appellants has stated that the Vice-Chancellor erred in refusing to hear testimony showing that the report and account of the receiver was erroneous, untrue and misleading. As a matter of fact a hearing was had before the Vice-Chancellor on the return of the order to show cause, and the order passing the account of the receiver (p. 36) shows that counsel for appellants, together with other counsel, were present at the hearing and that argument was had on said report. The list of services filed were read to the court at the hearing and at the direction of the court, subsequently filed. In this connection I call the court's attention to the fact that counsel for the appellants in one breath (p. 11 of brief) states that the services claimed to be rendered by the receiver and the solicitor for the receiver in the account of the receiver were disputed in many points, and in the same paragraph states that the list of services of the receiver and his counsel were filed two days after the hearing and the creditors afforded no opportunity to dispute same. Counsel could not dispute the services at the hearing unless he knew what the services were, so that it is brought out as shown by respondent, that the services were orally stated to the court and the list subsequently filed.

Nowhere in the state of the case are the allegations set forth as charged in the latter part of paragraph 1, page 12, of appellants' brief.

The court is well familiar with the fact as I mentioned prior hereto, that it is humanly impossible to keep an exact and accurate list of all services rendered in connection with an insolvency matter. Numerous services are rendered which are forgotten about, except generally, and the list of services rendered specifically states that other services were rendered by both the receiver and his counsel which are not set forth in the itemized list.

The supplemental report of the receiver shows the moneys received from the Commercial Trust Co. in the sum of \$729.55.

In answering Paragraph 6, the amount actually received by the receiver is that as set forth in his report, to wit, \$24,527.25. The statement of counsel that the receiver secured \$25,000.00 is not based on fact. The exact amount received is that as set forth and the receiver made no payment himself to any auditor as claimed.

In answer to Paragraph 7, the charge that the testimony was used for the two corporations and the alleged bankrupt is not founded on fact. There was no reason for dividing the cost of the testimony pro rata as same was charged in this cause and concerned the insolvent corporation, although because of the peculiar nature of this case it referred also to the Jean Monroe Holding Corporation and the alleged bankrupt. The Vice-Chancellor in his opinion (p. 54) specifically states:

“There has been produced before me a volume of testimony dated December 27, 1928, and October 5, 1928, of receiver's hear-

ings of witnesses covering 139 typewritten pages.”

The payment of \$100.00 to William Harris for searching titles is a re-payment by the receiver to the associate of the counsel for the receiver who advanced that sum to have a professional searcher make searches in the county seats of Bergen, Union, Hudson and Essex, for the purpose of ascertaining whether the insolvent corporation had any assets, such as real estate, mortgages and the like in said counties. This search was made at the advice and suggestion of the officer of the corporation and as the Vice-Chancellor states in his opinion (p. 56) the \$100.00 payment for searching titles in various counties I find to be a proper charge against the estate. The payment of \$100.00 was not for clerical services at the instance of counsel for the receiver, but was a specialized service necessary in the proper administration of the estate.

Because of the chaotic condition of this estate at the time the receiver was appointed it was necessary for the receiver and his counsel to go through numerous papers and instruments and study same for the purpose of seeing whether they were proper assets of this estate, such as the papers held by one Jacob J. Levey, an attorney of this State. This was also the reason for securing the order to open the vault of Howard M. Hirschberg to see whether there were any assets there belonging to the insolvent corporation, or which the receiver could secure or attach.

Counsel for the appellants was given an opportunity to be heard before the Vice-Chancellor and argument was had on the receiver's report and account as shown by the order passing the account of the receiver (p. 36) and an opinion

was handed down which is annexed to the state of the case, which in great detail goes into the objections raised by the appellants. The appellants were not prejudiced by the action of the Vice-Chancellor. They were given full and ample opportunity through their counsel to present their objections to the court. The court carefully considered the matter and granted the order appealed from.

The services rendered by the receiver and his counsel were stated to the court and upon consideration were reduced from that requested to the amount allowed. The action of the Vice-Chancellor was in no way an attempt to bar these creditors from properly presenting their position before the court. The position of the appellants was amply and fully stated to the court and the nature of the objection was gone into by counsel who appeared at the hearing.

Nowhere in the state of the case does it appear that the appellants sought an examination of the receiver and his counsel. The ground of appeal set forth in the petition of appeal (p. 8-pr. D) states that the Court of Chancery failed to hear sundry objections filed by the appellants to the accounts of said receiver, or to hear testimony thereon when said court was requested so to do. As a matter of fact the court did hear the objections and same were gone into entirely by counsel on argument before the court and the objections to the receiver's report are fully treated in the opinion of the Vice-Chancellor (p. 51). In this connection I call the court's attention to the fact that the order passing the account of the receiver was entered two days after the hearing on the final report and account.

**POINT III.**

**The claim of Maltese Holding Corporation is properly allowed by the receiver.**

The claim of the Maltese Holding Corporation originally filed in the sum of \$19,927.77 was reduced by the receiver, after an examination of said claim, with the consent of the creditor, to \$16,556.92, in which sum it was allowed as a general claim against the estate.

There is no dispute as to the fact that the Maltese Holding Corporation suffered a loss in the amount as set forth in the claim as allowed. The dispute arises by virtue of the fact that the creditor received indemnification from a surety company in the amount of \$12,500.00. This nowhere appears in the record by affidavit or otherwise.

The law is well settled that a creditor is entitled to recover the entire amount of its claim against the insolvent estate irrespective of any indemnification it may receive by means of bond or otherwise. That the contract between the surety company and the creditor does not concern the wrongdoer who in this case is the insolvent corporation. The creditor is entitled to receive the entire amount of his loss even though in such an event the insurance company might have an equitable claim to be reimbursed by the creditor for the amount of insurance money which it had paid. The appellants maintain that the bonding company should have been a party to the claim, but manifestly that is not necessary. There is nothing in the record to indicate that the bonding company is not a party to the claim as filed in the name of the creditor, for it has a right to file such claim either in its own name or in the name of the creditor.

*Weber v. Morris Essex R. R. Co.*, 36 N. J. L. p. 213, at 215 and 216.

The illustration in appellants' brief as to the forged checks is not pertinent for the reason that if the check given to the insolvent corporation was forged and the bank pays thereon it may then file a claim with the receiver of the estate for the amount it paid, as a creditor of said corporation, and the creditor may also file a claim for the amount of its loss less the amount received from the bank, so that the entire claim would not be more in aggregate than what was due the creditor in the first instance.

The claim filed by the Maltese Holding Corporation whether filed by it or by the bonding company in its name covers the entire loss and though the receiver may for his own protection secure joint releases both from the Maltese Holding Corporation and from the bonding company upon payment of the dividend, this in no way affects the creditors of the estate or the insolvent corporation, for only one claim was actually filed and one dividend is to be paid thereon whether to the bonding company or the creditor.

The point raised in appellants' brief that if the business be continued the bonding company may start suit is not tenable for the reasons aforesaid, and for the further reason that it is an academic question, for the corporation cannot continue in business, it having been declared insolvent and liquidated and will be dissolved by the Court of Chancery.

**Conclusion.**

There is ejected into the case by counsel for the appellants an atmosphere which is not warranted by any of the facts and circumstances of the case. The matter is entirely free of those charges which counsel for the appellants has directed against the Vice-Chancellor, the receiver and counsel for the receiver. The matter was decided fairly and impartially according to the best opinion of the Vice-Chancellor.

It is respectfully submitted that the appeal should be dismissed.

HERBERT L. ELINS,  
Of Counsel with Receiver-Respondent.

