St. John's Law Review

Volume 30, May 1956, Number 2 Article 2

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THE CASE OF THE RECALCITRANT DEBTOR: A STUDY IN CREDITORS' RIGHTS

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IN OUR culture, the obligation to pay one's debts is moral as well as legal. Yet there were times when the obligation in both respects, was subject to a general remission.[1] But an economy based on credit could hardly exist without both the legal sanction and the moral duty to honor and pay one's debts.

Refusal to pay debts because means are not available is at long last treated leniently by our law. The struggle was long and hard fought and is not yet over. But now we know that society benefits when a clean slate is given to one who, overtaken by misfortune or even lack of prudence, has mortgaged the fruits of his future toil to his creditors. On the other hand, where refusal to pay debts finds expression in the all too human desire to husband hidden resources, the law is unsympathetic. Here, the machinery for collection of judgments has been carefully constructed. That such machinery is often complicated and costly to manipulate is probably a result of our passion for "due process"; "due process" is not only a limitation contained in a written constitution, it is also what Judge Learned Hand has called a "mood"—or so strong a preference for certain forms of conduct as to make solid substance out of mere form.

In this, the fourth case history chosen for analysis,[2] the vast cleavage between law in books and law in action will be

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[1] Deuteronomy 15:1, 2. *But see* NORTH, SOCIOLOGY OF THE BIBLICAL JUBILEE 32, 180-81 (1954), for the view that the verse can not be read literally and does not involve remission of the debt itself, but rather a return to the debtor of the property pledged.

[2] The prior three case histories were published in this Review. See Finkelstein, *The Case Of The Beverly Hotel—A Study Of The Judicial Process*, 27 ST. JOHN'S L. REV. 261 (1953); *The Case Of The Broker's Commission*, 28 ST. JOHN'S L. REV. 220 (1954); *The Case Of Angelina v. Euclid: A Study In Procedural Entanglements*, 29 ST. JOHN'S L. REV. 36 (1954).

further traced, this time with reference to efforts to collect a judgment against the will and over the strongest resistance of the debtor and his lawyer. It will, of course, be plain that we come in this case to the very "brink," to use a word with a recently acquired new meaning, of propriety.

The judgment here involved was not easily obtained. The struggle involved a genuinely difficult point of law which had to be passed on by the high courts of appeal.[3] But at long last it was entered and the creditor, London Terrace, Inc., was awarded a money judgment in the sum of $5,875.05 against Hans Jaeger on January 22, 1948. The final disposition of the matter took place on December 4, 1952, nearly four years after the entry of the judgment. By that time, however, the judgment creditor had collected nearly $9,000 on the judgment. The legal fees and disbursements involved far exceeded the amount collected, the attorneys for the judgment creditor having been instructed to leave no stone unturned to effectuate collection.

The first step in the attempt to collect a judgment is the formal issuance of execution to the Sheriff. This, as was not unanticipated, produced no results. Counsel then proceeded to step two, the examination of the judgment debtor in proceedings supplementary to judgment.[4]

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[3] The problem arose under the New York State Commercial Rent Laws. Laws of N.Y. 1945, c. 314, § 13. The defendant, Hans Jaeger, operated as lessee, a restaurant in premises owned by London Terrace, Inc. The lease was ultimately assigned to a corporation known as King Arthur Restaurant, Inc. The assignee brought a proceeding against the landlord, London Terrace, Inc., to obtain an interpretation of the lease as affected by the Commercial Rent Laws. The landlord cross-claimed against Hans Jaeger for rent due it from him for a period prior to the assignment of the lease. It appeared that the lease provided for an annual rent of $10,000, plus a percentage of tenant's sales. The parties modified the lease for two successive years—from March 1, 1944 to February 28, 1946—by waiving the percentage rent. This waiver, however, was not renewed for the year beginning March 1, 1946. The Commercial Rent Laws went into effect March 28, 1945. Special provisions of that law exempted variable and graduated rents from its prohibitions. Since the lease provided for variable and graduated rents, the landlord claimed that the emergency rent laws did not apply. Since at the time the lease went into effect, the percentage rents had been waived, the tenant claimed that the rent was frozen at the actual amount being paid on June 1, 1945—the freeze date. The courts divided. At Special Term, Aurelio, J., summary judgment was ordered for the tenant. On appeal, the Appellate Division reversed and gave judgment for the landlord. King Arthur Restaurant, Inc. v. London Terrace, Inc., 273 App. Div. 233, 76 N.Y.S.2d 452 (1st Dep't 1948). On March 4, 1949, the Court of Appeals dismissed the appeal (not reported).

[4] Such proceedings are provided for by Article 45 of the Civil Practice Act.

The first of such examinations took place on April 9, 1948. At that first examination it was learned: (1) that Hans Jaeger had no assets in his name; (2) that the restaurant operated at the corner of Lexington Avenue and 85th Street, known as the "Hans Jaeger House," was owned by a corporation known as Hans Jaeger, Inc.; (3) that Hans Jaeger owned no stock in that corporation; (4) that the only stockholders of the corporation were the judgment debtor's wife and daughter; (5) that Hans Jaeger had assigned his stock to the corporation, because he was indebted to it; (6) that Hans Jaeger worked for the corporation and received no regular salary, but his expenses were paid and that such expenses amounted to about $300 per month; (7) that Hans Jaeger had sold his other restaurant, "Twin Gables," on 48th Street for $50,000 in cash, but the money had been paid to creditors; (8) that in short, he had nothing of value which would interest the judgment creditor.

Though the prospects looked dreary and bleak, Hans Jaeger was again examined on April 19, 1948. This time, it was learned that a "Mr. Isidore Enselman," the judgment debtor's wife's lawyer, had custody of the corporate books of Hans Jaeger, Inc., and that a "Mr. Joseph Inselman," an accountant, kept the record books and had custody of them. Probing also revealed the existence of another corporation, known as the "128 West 48th Street Holding Corporation." This newly discovered corporation owned the building at that address. The stockholders of the corporation were the wife and children of Hans Jaeger. His own stock had been assigned "to the corporation." It turned out, however, that the son and daughter did not pay for the stock; as Mr. Jaeger put it, "they did not pay anything; that is Hans Jaeger, Inc., put in the money." No other information was forthcoming. Papers and books were not available; dates were forgotten or guessed at; amounts due from the judgment debtor simply could not be produced. He knew next to nothing about his affairs. The accountant had the books, the dates, the papers —in short, everything.

The next witness to be examined in these supplementary proceedings was Margaret Backes, a daughter of the judgment debtor. This took place on May 26, 1948. Obviously

a truthful witness, she testified that 100 shares of the stock of 128 West 48th Street Corporation were in her name; that her father had custody of them; that the shares were a gift made to her in 1947, by her father; that she knew nothing about the affairs of the corporation, had never seen a report, or received a dividend, or anything of value; and that she did not even know who managed the building owned by the corporation.

The next witness was examined on July 1, 1948, and he was Frank Ralph Jaeger, a son of the judgment debtor. He likewise stated that he had received, as a gift from his father, 100 shares of stock of 128 West 48th Street Corporation and that he had turned the stock certificate over to his father. He knew nothing about the affairs of the corporation, but he knew that sister Dorothy owned 100 shares; that brother Hans owned 100 shares; that sister Margaret owned 100 shares; and he added: "I do not know if my father owns any."

It will be observed that the information gleaned in the above examinations was too scanty to afford any basis for a suit. Moreover, while the children testified forthrightly enough, their knowledge was meager. The judgment debtor himself was evasive, difficult and inarticulate, while his lawyer kept interposing objections which made full disclosure impossible to get. Accordingly, counsel for the judgment creditor invoked a remedy provided by the Civil Practice Act and secured an order appointing a referee before whom witnesses offered by the respective parties could be examined under oath.[5]

The examinations began before the referee on August 10, 1949, and were concluded on October 6, 1949. In all, 389 typewritten pages of testimony were taken. The witnesses included Hans Jaeger, his lawyer, his wife, her lawyer and the accountant.

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[5] Section 785 of the Civil Practice Act provides that: "At any stage of the proceedings the court may make an order directing that any examination or testimony be taken by, or that a question arising be referred to a referee designated in the order for hearing and report, together with his opinion thereon. A referee shall have power to subpoena and examine any witnesses he deem necessary and to determine any questions of law arising during the proceeding. The appellate division in any department may assign official referees to preside at examinations in proceedings under this article in such county or counties as it may designate."

The testimony thus taken provided several leads that looked promising. It appeared, or rather counsel for the judgment creditor thought it appeared, that substantial sums of money were siphoned out of Hans Jaeger, Inc. into 128 West 48th Street Corporation, and that the books of Hans Jaeger, Inc. showed that these sums were lent by it to Hans Jaeger personally, and in turn loaned by Hans Jaeger to 128 West 48th Street Corporation. If this was the fact, then Hans Jaeger was a creditor of the 128 West 48th Street Corporation, and had an asset subject to being reached by his creditor. Moreover, the gifts of the stock of the 128 West 48th Street Corporation by Hans Jaeger to his children seemed to counsel to be void as against creditors, occurring as they did at a time when the donor's liabilities exceeded his assets.

Accordingly, on January 20, 1950, the judgment creditor moved in the Supreme Court for the appointment of a receiver of the property of Hans Jaeger. The motion was bottomed on an affidavit referring to the testimony taken in the supplementary proceedings; particularly the testimony of John Drury, the bookkeeper for Hans Jaeger, Inc. and 128 West 48th Street Corporation, who stated that the latter company was indebted to Hans Jaeger personally, in the sum of $6,883.23. The motion was opposed, but only on the ground that the affidavit in support was insufficient in certain technical respects. These inadequacies were cured by a proper reply affidavit and the motion was thereupon granted. An order was made on February 16, 1950, appointing Rose Lader, Esq., an attorney, as receiver, and staying the judgment debtor from making any transfers of his property.

Prior to the appointment of the receiver, the judgment creditor instituted a suit against Hans Jaeger, Hans Jaeger, Inc., 128 West 48th Street Corporation, Margaret Backes, Hans E. Jaeger, Frank Ralph Jaeger and Dorothy Jaeger. In this suit it was alleged that on November 7, 1947, Hans Jaeger was the owner of 500 shares of stock of 128 West 48th Street Corporation; that on that day he transferred 100 shares to the defendant Margaret Backes, 100 shares to the defendant Hans E. Jaeger, 100 shares to the defendant Frank Ralph Jaeger, and 100 shares to the defendant Hans Jaeger,

Inc. It was then alleged that these transfers were without consideration, made while the transferor was insolvent, and void as against the judgment creditor. The court was asked to order the retransfer of all the shares to Hans Jaeger, to impress a lien upon them, and to order their sale at public auction.[6]

Shortly thereafter, the receiver commenced an action at law against 128 West 48th Street Corporation to recover $6,883.23 alleged to be due to Hans Jaeger personally, from that corporation. The defense interposed here was to the effect that the debt was due to Hans Jaeger, Inc. and not to Hans Jaeger personally.

Plaintiff-receiver moved for summary judgment. The motion was based on the testimony of Drury, bookkeeper of Hans Jaeger, Inc., which had been given in supplementary proceedings. There he had stated that Hans Jaeger personally borrowed money from Hans Jaeger, Inc. and lent it to the defendant, 128 West 48th Street Corporation. Moreover, Drury had testified that the corporate books showed a debt due to Hans Jaeger personally, in excess of the amount sued for by the receiver. The defendant, in opposition, filed an affidavit by an accountant to the effect that he was the accountant for the corporation and had personal knowledge of its books and records; and that according to said records, the defendant corporation was "not indebted to Hans Jaeger for any sums of money whatsoever." In spite of this affidavit, the court, Pecora, J., granted summary judgment to the receiver, stating: "The answering affidavits fail to demonstrate the existence of any bona fide issues requiring a trial." The defendant appealed.

Although the 128 West 48th Street Corporation had filed a notice of appeal, it did not file a bond, and execution was issued. The receiver attached the bank account of the corporation and seized some $900, and also proceeded to levy execution on the real property of the corporation. The Sheriff

[6] This was a typical suit to set aside a fraudulent conveyance under Section 273 of the New York Debtor and Creditor Law. The theory of the action was that Hans Jaeger, while insolvent, transferred assets to his children and hence the transfers were void, regardless of intent.

complied with the statutory requirements and advertised the real property for sale at public auction.[7]

The judgment entered pursuant to the order of Justice Pecora was in the sum of $7,076.23 and was docketed on August 14, 1950. The bank account of the corporation was in the Colonial Trust Company. It was necessary to examine the bank as a third party in proceedings supplementary to judgment, and then to apply to the court for an order directing the bank to pay the $989.78 on deposit with it to the receiver. All this was successfully accomplished and the sum paid over to the receiver.

The receiver proceeded on all fronts. Two motions were made before Justice Koch, the one asking that the receiver be appointed as receiver of the rents of the building owned by 128 West 48th Street Corporation; the other asking that the receiver be authorized to pay $200 to the Sheriff for expenses of the public sale of the building, and that the receiver have an allowance of $500 for counsel fees. The motions were opposed by the 128 West 48th Street Corporation. It pointed out that the judgment had been appealed and that a bond would be filed as soon as the funds could be raised. Justice Koch was sympathetic to the corporation and disposed of the two motions as follows: [8]

Lader v. 128 West 48th St. Hldg. Corp'n.—Motion for an order appointing the plaintiff in this action as receiver of the rents and profits of certain property located in New York County is granted. Settle order accordingly providing for the amount of the bond. The receiver is not, however, to go into possession for a period of two weeks, during which time the judgment-debtor shall have an opportunity to complete his negotiations for increasing the mortgage he is negotiating with the East River Savings Bank, in which manner it is hoped sufficient funds will be obtained to bond the judgment now under appeal.

Lader v. 128 West 48th St. Hldg. Corp'n.—Motion is granted to the extent of approving the payment of the sum of $200 to the sheriff

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[7] Section 615 of the Civil Practice Act provides for a stay of execution pending an appeal to the Appellate Division, provided a bond is filed. Execution of judgment against real property is provided for in Section 708 to 752 of the Civil Practice Act.

[8] 124 N.Y.L.J. 1058, col. 7-1059, col. 1 (Sup. Ct. Nov. 3, 1950).

for the expenses in connection with the sale of the real property of the judgment debtor. No action should be taken in this respect, however, until the judgment debtor has a reasonable opportunity of completing the refinancing of the mortgage (see disposition in companion motion, published herewith). In so far as the payment of a counsel fee is now sought the motion is denied without prejudice to such an application at the time that the receiver's account is filed.

In the meantime, the advertisement of the sale of the real property had already been made. The newspapers carried the notice on one day in each of six consecutive weeks, on October 20, 27, and November 3, 10, 17 and 24 of 1950. The sale was to take place on December 5, 1950.

As no bond had been filed within two weeks, the receiver paid $200 to the Sheriff and settled down to wait for December 5, the day upon which the sale was to take place. But the receiver did not wait idly. She moved in the Appellate Division on the 31st day of October, 1950, to dismiss the appeal for failure to prosecute and secured an order from that court setting the appeal down for argument on January 2, 1951. The Appellate Division said: "Motion to dismiss appeal granted, with $10 costs, unless the appellant procures the record on appeal and appellant's points to be filed on or before December 15, 1950, with notice of argument for January 2, 1951, said appeal to be argued or submitted when reached. Order filed."

But the plans of the receiver proved entirely abortive for, on November 24, 1950, the corporation moved in the Appellate Division for a stay of all efforts to collect the judgment pending the appeal from Justice Pecora's order granting summary judgment to the receiver. The motion was made by an order to show cause which contained the following provision:

> Pending the hearing and determination of this motion, it is
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> ORDERED, that the plaintiff-respondent, her attorney, her agents, the receiver, the Sheriff of the City of New York are hereby stayed from taking any steps to enforce the collection of said judgment.

In the moving papers, the attorney for the 128 West 48th Street Corporation stated that he would file a bond and even attached a copy of the proposed bond. Accordingly, on December 7, 1950, the Appellate Division entered an order

staying all proceedings to enforce the judgment until the determination of the appeal from Justice Pecora's order granting summary judgment to the receiver.

At long last the appeal came on to be heard before the Appellate Division. Five judges listened to extensive argument and in the end the court reversed the judgment saying: [9]

Without indicating any view as to the merit of the appellant's claims, we think the order granting plaintiff's motion for summary judgment and the judgment entered thereon should be reversed, without costs, and the motion denied as it does not conclusively appear that there are no triable issues of fact. Judgment unanimously reversed and the motion denied.

But here occurred one of those side frolics, of which there were many in this case. The receiver had seized $989.73 before the judgment against 128 West 48th Street Corporation had been reversed or its collection stayed by the Appellate Division. The corporation moved at Special Term to direct the receiver to return the money. The receiver cross-moved in an effort to consume the fund in fees and expenses. The motion was not without difficulty and involved the exercise of a nice and precise discretion. Justice Hofstadter proved equal to the task. He denied both the motion and the cross-motion, but allowed the receiver to deduct the $210 already spent by her and directed that the balance be paid into court. He wrote an opinion as follows: [10]

Lader v. 128 West 48th Street Holding Corp'n.—The plaintiff, as receiver in supplementary proceedings of one Jaeger, brought an action in this court against the defendant for moneys claimed to be owing by the defendant to the judgment debtor. In that action an order for summary judgment in the plaintiff's favor was made and judgment entered thereon. This judgment and the order supporting it were, however, reversed by the Appellate Division and the motion for summary judgment denied on the ground that it did not appear conclusively that there were no triable issues. During the pendency of the appeal and before the defendant had stayed execution on the judgment by filing an undertaking the plaintiff had, pursuant to order,

[9] Lader v. 128 West 48th Street Holding Corp., 278 App. Div. 562, 102 N.Y.S.2d 441 (1st Dep't 1951) (mem. opinion).
[10] 125 N.Y.L.J. 898, col. 5 (Sup. Ct. March 13, 1951).

received from a bank $989.78, the amount standing to the defendant's credit. The defendant moves to direct the plaintiff to restore the sum so held because of the reversal of the judgment. The application for restitution may properly be made at Special Term (New York Plumbers' Specialties Co., Inc. v. Fitzgerald, 40 N.Y.S. 2d, 787, 790, and cases there cited). The granting of the application is, however, in the court's discretion and where the reversal of the judgment does not finally determine the issues but, as here, sends them back to the lower court for disposition, the court may withhold the remedy (Mirriam v. Wood & Parker Lithographing Co., 155 N.Y. 136; Marvin v. Brewster Iron Mining Co., 56 N.Y. 671; Stahl v. Norwich, 205 App. Div. 424). That course is indicated at this stage of this action and accordingly the motion to direct the plaintiff to pay over the fund held is denied without prejudice to renewal, but the receiver will be required to deposit so much of it as remains in her hands in court, pending the outcome of the action.

The plaintiff, by way of cross-motion, moves for the settlement of her account as receiver. The account filed charges against the fund in question, the only moneys which came into the hands of the receiver, the expenses of the receivership. These include, besides the receiver's commissions, the compensation of her attorney for conducting this action in which up to the present, at least, the defendant has been successful and the cost of printing the plaintiff's brief in the Appellate Division. The expenses for which approval is asked would not alone exhaust the entire fund but leave a deficit. Aside from the obvious irregularity in applying in this action, rather than in the proceeding in which the receiver was appointed, for the approval of her account, the cross-motion cannot be granted. The receivership is obviously not at an end for the plaintiff is continuing this very action and urges that as ground for denial of the defendant's motion for restitution. No need for a present accounting is shown nor has notice been given to all parties entitled to notice on a receiver's accounting.

A more basic objection arises from the serious question whether the expenses will ultimately be chargeable against the fund at all. If the defendant is successful in the action and then obtains an order of restitution it may well be determined that it is entitled to the entire fund and that the receivership expenses must be borne by the judgment creditor at whose instance the receiver was appointed. The cross-motion is, therefore, denied and the receiver is directed to deposit the sum of $989.78 or so much thereof as now remains in her hands in court pending the outcome of this action. Settle order.

But now the corporation was eager to get on with the case and moved to dismiss for failure to prosecute, as the cause had been at issue for more than one year and had not yet been noticed for trial. The receiver was directed by Justice Eder to notice the case for trial for the May, 1951, term. He said: [11]

> Lader v. 128 West 48th Street Holding Corp'n.—Motion to dismiss action for lack of prosecution is granted, unless note of issue is filed for the May term. The delay which has ensued is satisfactorily explained.

The trial took place before Justice Matthew Levy without a jury. It lasted four days and had to be interrupted several times because of Hans Jaeger's illness, and because trial counsel for the receiver was also ill on one occasion (both have since passed on to a better world). The actual trial days were May 25, 28, June 4 and July 12, 1951. The issue at the trial was whether or not the sums owed by 128 West 48th Street Corporation were owed to Hans Jaeger personally, or to Hans Jaeger, Inc.

The receiver, claiming that the debt was due to Hans Jaeger personally, relied on a ledger sheet taken from the defendant corporation's books, entitled "H.J. Personal." This showed a debt from the corporation to Hans Jaeger in the sum of $7,181.41. *Post litem,* however, the defendant's accountant reconstructed this ledger sheet in an attempt to show that the debt was owing to Hans Jaeger, Inc., and not to Hans Jaeger. The attorney for the receiver saw fraud and double dealing in this effort, but Justice Levy said: [12]

> I am not prepared to say that the reconstruction of Plaintiff's Exhibit 6, even though post litem motam, was in any way a vicious or criminal act, as urged by plaintiff's counsel . . . .

He did, however, find that 128 West 48th Street Corporation owed to Hans Jaeger personally, the sum of $5,636.59 and gave judgment to the plaintiff-receiver against the corporation in that amount. Justice Levy dictated his opinion at the close of the trial as follows: [13]

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[11] 125 N.Y.L.J. 1033, col. 4 (Sup. Ct. March 22, 1951).
[12] 126 N.Y.L.J. 109, col. 4 (Sup. Ct. July 19, 1951).
[13] *Ibid.*

Lader, & c., v. 128 West 48th St. Hldg. Corp'n—Findings of fact and conclusions of law having been waived I shall undertake to express the basis for my decision and the material facts orally.

This is not an action for fraudulent conveyance. This is not an action on the basis of which I can undertake to pierce the corporate veil. This is an action at law in which it is claimed by the plaintiff, as receiver of Hans Jaeger, personally, that moneys were loaned and moneys were expended as between Hans Jaeger, personally, and the defendant 128 West 48th Street Holding Corporation and that on the basis of that running account as of July 31, 1949, $7,181.41 was owing from 128 West 48th Street Holding Corporation to Hans Jaeger, personally, which as the receiver of the judgment debtor in the action of London Terrace, Inc., against Hans Jaeger, individually, the plaintiff Rose Lader is entitled to recover in this action.

On the basis of plaintiff's exhibit 6, which is the account of the defendant corporation in the name of Hans Jaeger, individually, entitled "H.J. Personal," account 21, these records being kept in the regular course of business of the defendant 128 West 48th Street Holding Corporation I could appropriately infer that this indicated an account as between the defendant holding corporation and Hans Jaeger, individually. I do so infer, except in so far as with respect to the specific items on which adequate explanation has been made to indicate that the transaction was not with Hans Jaeger, personally, but rather with Hans Jaeger, Inc.

This is a business ledger sheet and is not presumed to be composed of idle mathematical doodling. The bases are business transactions recorded in the bookkeeping accounts of the defendant corporation. Particularly I note that as of December 31, 1949, it is made clear in the certified public accountant's statement marked defendant's Exhibit Z and also in the balance sheet as of December 31, 1947, plaintiff's exhibit 9, there were business transactions between Hans Jaeger, personally, and the defendant holding corporation.

From the exhibits I gather that these entries in the books of the defendant corporation were not other than business transactions and for business reasons an attempt was made to distinguish between the holding corporation and Hans Jaeger, individually, whatever may have been the stock ownership with respect to the holding corporation and members of Hans Jaeger's family, or himself.

I am not prepared to say that the reconstruction of Plaintiff's Exhibit 6, even though post litem motam, was in any way a vicious or criminal act, as urged by plaintiff's counsel, but I am prepared to

say there is a definite sum of money which from all the evidence, I gather is due and owing from 128 West 48th Street Holding Corporation to Hans Jaeger.

A number of checks have been offered in evidence and there has been testimony with respect to other items, and there were indications that checks were drawn running from Hans Jaeger, Inc., to 128 West 48th Street Holding Corporation directly, from Hans Jaeger, Inc., to various other persons, firms and corporations, and from Hans Jaeger, Inc., to Hans Jaeger, personally.

It seems to me that the plaintiff is entitled to judgment against this defendant at least for $5,636.59, which I arrive at in the following manner:

The following checks were made payable by Hans Jaeger, Inc., to Hans Jaeger, personally. At the time that those checks were made payable to Hans Jaeger, personally, all of these checks were signed by Hans Jaeger in his official capacity as president of Hans Jaeger, Inc., and there must have been a reason why in some cases he made the checks payable from Hans Jaeger, Inc., to 128 West 48th Street Holding Corporation, and in other cases to outside firms, as, for example, Gnome Bakeries, Inc., and in the checks which I have in my hand to Hans Jaeger, personally. I am therefore of the opinion that the total amount of checks before me made by Hans Jaeger, Inc., to Hans Jaeger, personally, would indicate an indebtedness, taking all the evidence into consideration, from 128 West 48th Street Holding Corporation to Hans Jaeger, individually, upon which basis the plaintiff is entitled to recover against the Holding Corporation: July 19, 1947, $146.59; July 26, 1947, $590; June 28, 1948, $1,500; January 3, 1949, $2,000; April 1, 1949, $600; a check dated April 28, 1948, but upon inspection you will find that that check should have been dated April 28, 1949, as I recollect the testimony of some weeks ago, that check having been deposited on May 2, 1949, for $600; check dated September 29, 1949, $200; totaling $5,636.59.

Now, I suppose that I would have the right to draw other inferences with respect to some of the amounts set forth in plaintiff's exhibit 6, being account No. 21. It may be that I would also have the right to draw inferences (again in favor of the plaintiff) because of the absence of some records which the defendant controls, whether it be control of his own affairs personally, or that of the Holding Corporation, or that of Hans Jaeger, Inc., or that of the Twin Gables Restaurant. It may be I would have the right to draw certain inferences because of the absence of Hans Jaeger, who did not testify here and whose deposition might have been taken by the defendant. It

may be I would have the right to draw certain inferences because of inappropriate changes in the records of the defendant after the institution of this action. All of this I do. I let the decision rest on the basis which I have outlined, and judgment will be rendered in favor of the plaintiff against the defendant for the sum of $5,636.59, with interest from the date of commencement of this action.

This judgment was ultimately collected. But the amount due to London Terrace, Inc. from Hans Jaeger had grown. There was the steady accumulation of interest, the addition of costs, and the expenses of the receivership. In all, the original $5,875 judgment now amounted to more than $9,000. The collection, therefore, by the receiver of the judgment in full against 128 West 48th Street Holding Corporation left a balance of some $3,500 due to the judgment creditor, London Terrace, Inc. But there were still proceedings pending, enough to satisfy the most demanding judgment creditor. There were three proceedings of that nature: (1) the suit against the children of Hans Jaeger to set aside the transfer to them of the stock of 128 West 48th Street Holding Corporation;[14] (2) the enforcement of the garnishee proceedings which had been filed against Hans Jaeger's salary from Hans Jaeger, Inc.;[15] and (3) the suit pursuant to Section 795 of

[14] This suit was never reached for trial. Examinations before trial were held pursuant to court order. London Terrace, Inc. v. Jaeger, 126 N.Y.L.J. 1650, col. 4 (Sup. Ct. Dec. 14, 1951). However, the suit was settled before trial.

[15] The garnishee of the salary of Hans Jaeger against Hans Jaeger, Inc., was filed January 18, 1950. The company made no payments and suit against it was instituted by London Terrace, Inc. This resulted in a judgment against Hans Jaeger, Inc., in the sum of $868.48. The judgment was obtained in the City Court, on motion for summary judgment. Justice Rivers granted the motion on October 3, 1951, stating:

> London Terrace, Inc. v. Jaeger—Plaintiff's motion for summary judgment under Rule 113, R.C.P., is granted to the extent of directing an assessment to determine the amount owing from defendant to plaintiff. The case is referred for assessment to Max J. Wolff, Esq., referee of this court. Judgment may be entered in favor of the plaintiff and against the defendant in such amount as will be found by the referee to be owing from defendant to plaintiff. Order filed. 126 N.Y.L.J. 719, col. 5 (City Ct. Oct. 3, 1951).

Max J. Wolff, referee, found that Hans Jaeger, Inc., should have paid the Sheriff $749.98 with interest and judgment was entered accordingly. Pursuant to that judgment, a bank account of Hans Jaeger, Inc., was seized and an order was made by the court, per Hofstadter, J., directing the bank to turn that sum over to the plaintiff. London Terrace, Inc. v. Hans Jaeger, Inc., 127 N.Y.L.J. 244, col. 2 (Sup. Ct. Jan. 18, 1952). The proceeding was taken pursuant to Section 684 of the Civil Practice Act.

the Civil Practice Act to fix the reasonable compensation that Hans Jaeger, Inc. should pay to Hans Jaeger for his services.[16] Counsel for London Terrace, Inc., the judgment creditor, flushed with the joy of a long drawn-out battle capped by victory, would have gone on to the end. But the point of saturation had been reached and counsel was directed to settle, which they did, compromising the balance of the claim for $1,500.

Thus ended the effort to collect the judgment from the recalcitrant debtor. It proved that only the hardiest and most persevering judgment creditors can overcome the blandishment of one who resists the payment of his debts. One is also left with a persistent doubt about the facts as found by Justice Levy. Was the debt really owing to Hans Jaeger personally, or to a corporation by the same name? Finally, what can be said for judicial approval of *post litem* correction of books of account? These problems are unsolved. But it is crystal clear that the price of creditors' rights is the sweat from the brows of lawyers.

[16] This is one of the elements of proceedings supplementary to judgment provided for in Article 45 of the Civil Practice Act. The case against Hans Jaeger was settled before this proceeding came to fruition.