no allowance for this amount was set forth in their report. Upon reviewing the above facts it is hard to see how one could come to a conclusion other than that the Court for whom and by whom a receiver operates felt that the small equity existing would not justify the sale of the real estate or a continuance of the receivership. The claim of all creditors filed, with the exception of two which have bee reduced to judgment, could be barred at this time by a plea of the statute of limitations in the event that the remaining creditors saw fit to enter suit at law, which they could readily have done after the audit was ratified on August 20, 1941. The failure to pursue their rights in a court of law after their equitable rights had definitely been established and their recourse apparently exhausted would naturally lead to the conclusion that it was their intention to abandon their claims. By filing of inactivity one of the Receivers, together with the attorney in this cause, tells the Court, We have slept upon our rights; and the other Receiver as a result of his intervening actions enlightens the Court that he has deserted the post to which he was appointed. The unsecured creditors in turn by their inactivity as much as say, We forgot about it. It is a maxim of equity that equity aids the vigilant.

New legal and equitable rights of their parties have intervened for valid and substantial consideration. The real estate in question had been sold for a good and sufficient consideration, other mortgage liens have been taken by innicent parties, and a deed has been executed.

Earlier in this opinion I referred to the Receivers' right in and to the real estate as a question. It has been a question in my mind from the very outset as to whether the order signed by the Court on February 17, 1941, pursuant to the bill of complaint and answer filed thereto, place in custodia legis the real estate. The rule is that an unsecured creditor cannot ordinarily have a receiver appointed. 2 Clark, Receivers, 29, Par. 918, p. 1340. Had the answer not been filed on behalf of the defendant in this cause one can be reasonably certain from along list of authorities that the rule stated above would have applied, in that the original petitioners was an unsecured creditor, as were all other creditors who participated in this proceeding. By the answer filed on behalf of the defendant, consent is given for the appointment of receivers to dispose of the merchandise contained in the store; however, reference concerning the real estate is not set forth in said consent. In addition theretom it appears to be the general rule that the receiver is only receiver for the property set forth and described in the petition for his appointment.

Smith v. McCullough, 104 U.S. 25, 26 L. Ed. 637;

Jones v. Minogue, 29 Ark. 637.

"A receiver should not be appointed to take charge of property unless it is described with such reasonable certainty as to enable him to ascertain the subject-matter of his trust, and so, where the description of the property is not set out with sufficient exactness to warrant the enforecement of the lien set up, there are no res of which possession can be taken, and it is erroneous to appoint a receiver."

34 Cyx. 113, Par. F.

See Connellee v. Witty, 246 S.W. 715.

For reasons set forth above the relief prayed for in the petition of February 21, 1946 will be denied.

It is thereupon this 25th day of June, 1946, by the Circuit Court for Frederick County, sitting as a Court of Equity, ORDERED, ADJUDGED and DECREED that the petition heretofore filed in this cause on February 21, 1946, be and it is hereby dismissed.

Patrick M. Schnauffer
JUDGE

Filed June 25, 1946.