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AMENDED
NOTICE OF APPEAL OF TOMADELLI
ELECTRONIC CORPORATION.

In Chancery of New Jersey

Between

EDWARD L. KATZENBACH, At-
torney General of the State
of New Jersey,

Complainant,

and

THE TOMADELLI ELECTRONIC
CORPORATION, a corporation
of the State of New Jersey,
and JUAN J. TOMADELLI,

Defendants.

*Amended
Notice of
Appeal of
Tomadelli
Electronic
Corporation.*

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Tomadelli Electronic Corporation, one of the
defendants herein, appeals from the order made
herein by the Chancellor on the advice of John
H. Backes, Vice-Chancellor, dated March 28, 1928,
to the Court of Errors and Appeals in the last
resort in all cases.

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L. EDWARD HERRMANN,
Solicitor for and of Counsel with Defendant.

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

L. EDWARD HERRMANN,
Of Counsel.

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**AMENDED NOTICE OF APPEAL OF JUAN J.
TOMADELLI.**

IN CHANCERY OF NEW JERSEY.

10 *Between*

EDWARD L. KATZENBACH, At-
torney General of the State
of New Jersey,

Complainant,

and

THE TOMADELLI ELECTRONIC
CORPORATION, a corporation
of the State of New Jersey,
and JUAN J. TOMADELLI,

20

Defendants.

*Amended
Notice of
Appeal of
Juan J.
Tomadelli.*

30 Juan J. Tomadelli, one of the defendants herein, appeals from that part of the order made herein by the Chancellor upon the advice of John H. Backes, Vice-Chancellor, which enjoins this defendant from selling, offering for sale, purchasing, offering to purchase, negotiating, advertising or distributing within this State any shares of the capital stock or any other securities of the defendant Tomadelli Electronic Corporation until the information, statements and reports required by the questionnaire attached to the bill of complaint and marked Schedule C are furnished to the complainant, dated March 20, 1928, to the Court of Errors and Appeals in the last resort in all cases.

40 L. EDWARD HERRMANN,
Solicitor for and of Counsel for Defendant.

Amended Notice of Appeal of Juan J. Tomadelli.

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

L. EDWARD HERRMANN,
Of Counsel.

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**PETITION OF APPEAL OF JUAN J.
TOMADELLI.**

New Jersey Court of Errors and Appeals

10	<p style="text-align: center;">EDWARD L. KATZENBACH, At- torney General of the State of New Jersey, <i>Complainant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">THE TOMADELLI ELECTRONIC CORPORATION, a corporation of the State of New Jersey, <i>Defendant.</i></p>	<p style="font-size: 3em; line-height: 1;">}</p> <p style="text-align: center;"><i>Petition of Appeal of Juan J. Tomadelli.</i></p>
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To the Honorable Court of Errors and Appeals
in the last resort in all cases:

The petition of Juan J. Tomadelli, defendant
in the above-entitled cause, respectfully shows:

That your petitioner finds himself aggrieved
by an order made in the Court of Chancery of
New Jersey, by his Honor Edwin Robert Walker,
dated March 28, 1928, in the above-entitled cause
in these respects, to wit: That the said order
orders:

(1) That this defendant be enjoined from
selling, offering for sale, promoting, negotiating,
advertising or distributing within this State any
shares of the capital stock or any other securities
of the defendant, the Tomadelli Electronic Cor-
poration, until the information, statements and
report required by the questionnaire attached to
the bill of complaint and marked Schedule C are

Petition of Appeal of Juan J. Tomadelli.

furnished by the said the Tomadelli Electronic Corporation to the complainant.

Your petitioner humbly appeals from such decree of the Chancellor upon the ground that the statute under which the Chancellor made such order is unconstitutional, in that it contravenes the contract and due process clauses thereof, and further that it deprives the Court of Chancery of its power to control its process of subpoena and injunction, in that it requires the said Court to issue the same in instances where the issuance of said process is neither legal nor equitable. 10

Your petitioner therefore prays that said order may be set aside, reversed and for nothing holden and that your petitioner may have such relief in the premises as to the Honorable Court shall seem meet. 20

L. EDWARD HERRMANN,
Solicitor for and of Counsel with Appellant.

I hereby consent to the filing of the within petition of appeal as within time.

RICHARD C. PLUMER,
Special Asst. Attorney General.

September 25, 1928.

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**PETITION OF APPEAL OF TOMADELLI
ELECTRONIC CORPORATION**

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	EDWARD L. KATZENBACH, Attorney General of the State of New Jersey, <div style="text-align: right; padding-right: 20px;"><i>Complainant,</i></div>	}	<i>Petition of Appeal of Tomadelli Electronic Corporation.</i>
	<i>vs.</i>		
20	THE TOMADELLI ELECTRONIC CORPORATION, a corporation of the State of New Jersey. <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>		

20 To the Honorable Court of Errors and Appeals in the last resort in all cases:

The petition of Tomadelli Electronic Corporation, defendant in the above-entitled cause, respectfully shows:

30 That your petitioner finds itself aggrieved by an order made in the Court of Chancery of New Jersey, by his Honor, Edwin Robert Walker, dated March 28, 1928, in the above-entitled cause in these respects, to wit: That the said order orders:

(1) That process of subpoena be awarded out of the Court of Chancery requiring this defendant by its proper officers and agents to appear and testify before Richard C. Plumer, Special Assistant Attorney General, at a time and place therein named, said subpoena to contain a direction to this defendant by its proper officers and

Petition of Appeal of Tomadelli Electronic Corp.

agents, to produce before said Special Assistant Attorney General, its cash book, stock register and stock book and journal:

(2) That it orders this defendant, its officers, directors, agents, employees, brokers or stockholders to be enjoined from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this State any shares of the capital stock or any other securities of this defendant until the information settlement and reports required by the questionnaire attached to the bill of complaint are furnished to the complainant. 10

Your petitioner humbly appeals from such decree of the Chancellor upon the ground that the statute under which the Chancellor made his said order is unconstitutional, in that it contravenes the contract and due process clauses thereof, and further that it deprives the Court of Chancery of its power to control its process of subpoena and injunction in that it requires the said Court to issue the same in instances where the issuance of and process is neither legal nor equitable. 20

Your petitioner therefore prays that said order may be set aside, reversed and for nothing holden and that your petitioner may have such relief in the premises as to the Honorable Court shall seem meet. 30

L. EDWARD HERRMANN,
Solicitor for and of Counsel with Appellant.

I hereby consent to the filing of the within petition of appeal as within time.

RICHARD C. PLUMER,
Spec. Asst. Atty. General.

September 25, 1928.

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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

To Edwin Robert Walker, Chancellor of the State of New Jersey:

10 The complainant, Edward L. Katzenbach, Attorney General of the State of New Jersey, respectfully shows that:

1. During all of the times hereinafter mentioned, the complainant was and still is the Attorney General of the State of New Jersey residing at No. 438 Bellvue avenue, in the City of Trenton, in the County of Mercer in said State.

20 2. The Tomadelli Electronic Corporation, one of the defendants herein is a corporation of the State of Delaware, having a principal office in this State at 15 Exchange Place, Jersey City, New Jersey, and the agent of said corporation upon whom process against such corporation may be served in the Registrar & Transfer Company, 15 Exchange Place, Jersey City, New Jersey.

30 3. Juan J. Tomadelli, one of the defendants herein, was during all the times hereinafter mentioned and still is the president of the Tomadelli Electronic Corporation above named.

40 4. Complainant prosecutes this suit pursuant to the authority contained in an act of the Legislature of the State of New Jersey, known as the New Jersey Securities Act and entitled "An Act declaring unlawful certain practices in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution of securities within this State and providing for the investigation and

Bill of Complaint.

prevention of such practices," approved March 19, 1927.

5. The defendant, The Tomadelli Electronic Corporation, was organized under the Laws of the State of Delaware as aforesaid in the year 1921, the name of the company originally being The Tomadelli Corporation, which was later changed to The Tomadelli Electronic Corporation. The character of business for which said corporation was organized and which it was to transact in this State is set forth in the statement marked "Schedule A," which is attached hereto and made a part hereof. It was capitalized for \$1,500,000, divided as follows:

100,000 shares "Class A" Common Stock, par value \$10 per share.

50,000 shares "Class B" Common Stock, par value \$10 per share.

The "Class A" stock had voting rights and the "Class B" had no such rights.

6. All of the "Class A" stock above named was turned over to the said Juan J. Tomadelli, together with 10,000 shares of the "Class B" stock. This was in consideration for all his rights and interests in any and all inventions for the United States and all foreign countries relating to the rendering of energy available for use in the form of light, heat, power or other useful forms by what the said Juan J. Tomadelli termed as electronic atmospheric induction. Although certain application had at that time been filed in the name of Juan J. Tomadelli for United States patents based on an electronic lamp which he claimed to have invented, none of such patents had at that time been issued and granted, nor have they been issued or granted up to the

Bill of Complaint.

present date so far as complainant is able to ascertain. Neither has complainant been able to ascertain that any application for patents has been filed by the said Juan J. Tomadelli or The Tomadelli Electronic Corporation for the purpose of applying starting energy to said lamp and the same is not described nor disclosed in any of the applications above referred to. The total value of the stock aforementioned that was turned over to the said Juan J. Tomadelli is \$1,100,000, although no appraisement or valuation of his invention or patent rights was obtained by either of the defendants.

7. Ever since the organization of said corporation, the defendants at irregular intervals have been and now are engaged in selling, offering for sale, promoting, negotiating, advertising and distributing stock of the defendant, The Tomadelli Electronic Corporation, to the public within this State at prices ranging from \$10 to \$50 per share, but of the treasury stock of the corporation so sold, offered for sale, promoted, negotiated, advertised and distributed to the public within this State only about 40% of the proceeds of said sales was received by The Tomadelli Electronic Corporation, the balance being paid to salesmen of said stock as commissions and used for other expenses incident to such sales, promotion, advertisement and distribution. Approximately \$250,000 has been received by The Tomadelli Electronic Corporation from stock subscriptions.

8. On or about August 29, 1927, at a meeting of the Board of Directors held at 986 Bergenline avenue, Union City, New Jersey, the said Juan J. Tomadelli was given sole authority in the best interests of the said corporation to enter into any

Bill of Complaint.

business transactions incident to extracting the said corporation from its present financial condition.

9. As a part of their campaign to sell, offer for sale, promote, negotiate, advertise and distribute stock of the defendant, The Tomadelli Electronic Corporation, the defendants, caused a circular or prospectus to be issued, published and circulated in and about this State to persuade and induce the public to buy stock of The Tomadelli Electronic Corporation and said prospectus or circular is still being used by said defendants for that purpose. A true copy of said circular or prospectus is attached hereto and made a part hereof, marked "Schedule B."

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10. The said circular or prospectus contains the following statement and representation:

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"The company was organized to develop and perfect the inventions of Mr. J. J. Tomadelli, after whom the corporation was named. The first one of Mr. Tomadelli's inventions to be developed and perfected being an electronic lamp, self-contained, complete in itself and requiring no connection whatever, after being lighted, with any source of power, and designed to give off continuous light of undiminishing intensity for a period of about three years."

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In truth and in fact the said Tomadelli has never invented an electronic lamp which is self-contained, complete in itself and which requires no connection whatever after being lighted, with any source of power and is designed to give off continuous light of undiminishing intensity for a period of about three years.

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Bill of Complaint.

11. The said circular or prospectus contains the following statement and representation:

10 “* * * since the lamp would be portable, without wire connections, practically cold, and hermetically sealed, it would eliminate the possibilities of fires such as are caused at present by gas light, kerosene lamps and candles.”

In truth and in fact the said Tomadelli has never invented a lamp which is portable, without wire connections, is practically cold and hermetically sealed and will eliminate the possibilities of fires such as are caused by gas light, kerosene lamps and candles.

12. The said circular or prospectus contains the following statement and representation:

20 “At the time of organization Mr. Tomadelli assigned to the Company all rights, title and interest to and in his inventions, including the possible application of his new principles and discoveries in the development of power and heat.”

30 In truth and in fact the said Tomadelli did not then have and now has no rights, title nor interest in any inventions that were or are of any value whatsoever.

13. The said circular or prospectus contains the following statement and representation:

 “The Company holds title to the brick building located at South Bergen and Sixth Streets, Harrison, N. J., originally purchased for the price of \$50,000, which building has 15,000 square feet of floor space, representing two floors and concrete basement.”

Bill of Complaint.

In truth and in fact the said defendant company, The Tomadelli Electronic Corporation, referred to in said circular or prospectus does not own a brick building located at South Bergen and Sixth streets, Harrison, N. J., nor does it own any other real estate.

14. The said circular or prospectus contains the following statement and representation:

“Machinery which has cost about \$8,000, constituting a fully equipped machine shop, is part of the assets.”

In truth and in fact the said defendant, The Tomadelli Electronic Corporation, has no machinery of any appreciable value and has no fully equipped machine shop nor has it a machine shop of any kind.

15. The said circular or prospectus contains the following statement and representation:

“The Invention.”

“The principles involved in the first invention which the Company is to perfect may be best described as including two distinct features, viz: (1) the lamps containing certain metallic alloys, and (2) the apparatus necessary to start activity of energy in the metallic alloys within the lamps.

The lamps, the alloys, the apparatus and the manner in which they are designed to function individually and in relation to each other, may briefly be described as follows:

(1) The lamps, smaller than the present electric bulbs, consist of two parts: (a) The base containing certain alloys which are subjected to the influence of the electrical discharge received from the generating section

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Bill of Complaint.

of the apparatus and which react in accordance with certain principles, or laws, applied by Mr. Tomadelli and which constitute an important part of his inventions, and (b) a glass bulb with a very strong and resistant filament, which should outlast the lamp itself.

10 (2) The apparatus, composed of over one hundred thousand parts and over twenty thousand connections, attracts and collects from the atmosphere a tremendous amount of electrical energy which is transformed, condensed and controlled. Scientists admit that electrical energy is present everywhere throughout the universe. This type of electrical energy is absolutely different from
20 ordinary electric current as commonly known, and is characteristic in its action and effects. It is released and discharged into the base of the lamps where it affects the alloys contained therein to start the activity that creates the light within the bulb.

It will be readily understood that it would not be prudent for the Corporation, at this time, to disclose full and complete information regarding the details of the invention and the laws and principles involved.”

30 In truth and in fact the defendant, The Tomadelli Electronic Corporation, has never perfected any invention such as the one above described, nor has any lamp such as the one above described ever been invented by the defendant Juan J. Tomadelli. Neither has the said defendant Juan J. Tomadelli ever invented an apparatus such as is described in paragraph two, quoted above, and said defendant The Tomadelli Electronic Corporation has never developed or perfected any such
40 apparatus.

Bill of Complaint.

16. The said circular or prospectus contains the following statement and representation:

“The construction of the generating and discharging section of the apparatus has been completed. The apparatus has already been tested and actually produces electrical energy, which travels through the space of about 35 feet, separating the generating and receiving sections of the apparatus.” 10

In truth and in fact the construction of the apparatus above described has never been completed, and even though such an apparatus were completed and tested which would cause electrical energy to travel through 35 feet of space, such a phenomenon would in no way bring about the results claimed by said prospectus or circular. 20

17. The said circular or prospectus contains the following statement and representation:

“The Company is at present engaged in making mechanical adjustments in the apparatus to render all the parts in unison with each other. As soon as this is completed it is expected to demonstrate lighted electronic lamps absolutely complete in themselves which will astonish the commercial and scientific world.” 30

In truth and in fact the defendant company, The Tomadelli Electronic Corporation, is not and never has been engaged in making mechanical adjustments in the apparatus above described, nor has it ever completed any of such adjustments, nor has it demonstrated lighted electronic lamps at any time.

18. The said defendants through their agents and servants represented to the public in this 40

Bill of Complaint.

10 State, on or about November 8, 1927, in connection with the sale, offer for sale, promotion, negotiation, advertisement and distribution within this State of the stock of said defendant, The Tomadelli Electronic Corporation, that it was the object of the company to sell sufficient stock in the locality of Vineland, New Jersey, to enable the company to erect a factory near Millville, New Jersey, for the manufacture of said electronic lamps.

20 In truth and in fact neither one of said defendants ever had any such intention and do not now have such an intention. Furthermore, as hereinbefore set forth, no electronic lamp of the type described in the prospectus or circular attached hereto and marked "Schedule B" has ever been invented or perfected by said defendant, Juan J. Tomadelli or developed and perfected by either of the defendants herein named. Repeated efforts to obtain a demonstration of the electronic lamp and apparatus claimed to have been invented by the defendant Juan J. Tomadelli have been without success and complainant has been unable to discover any person who has ever seen in operation the electronic lamp claimed to have been invented by said Juan J. Tomadelli. The
30 said defendant The Tomadelli Electronic Corporation has no assets of any appreciable value and has never engaged in the development or manufacture of any product or article whatsoever, nor have any of the inventions of said Juan J. Tomadelli, particularly the invention hereinbefore described, ever been developed or manufactured by anyone for the benefit and account of either of the defendants herein.

40 19. By reason of the foregoing, it appeared to the complainant that the defendants herein

Bill of Complaint.

were selling, offering for sale, promoting, negotiating, advertising and distributing within this State, shares of capital stock of the defendant The Tomadelli Electronic Corporation, and were about to sell, offer for sale, promote, negotiate, advertise and distribute within this State, the capital stock of the defendant The Tomadelli Electronic Corporation, by deception, misrepresentation, concealment, suppression, fraud, and false pretense in the State of New Jersey in violation of the aforesaid New Jersey Securities Act. 10

20. Complainant, believing it to be in the public interest that an investigation should be made of the use and employment by said defendants of such deception, misrepresentation, concealment, suppression, fraud and false pretense in the sale, offer for sale, promotion, negotiation, advertisement and distribution within this State of the capital stock of said defendant The Tomadelli Electronic Corporation, caused a questionnaire, a true copy of which is attached hereto and made a part hereof, marked "Schedule C," to be served upon The Tomadelli Electronic Corporation on November 10, 1927, requiring said corporation to file the information called for thereby under oath at the office of the said Attorney General, Division of Securities, 24 Commerce street, Newark, New Jersey, on or before Monday, November 21, 1927, at four o'clock in the afternoon. 20 30

21. The defendant, The Tomadelli Electronic Corporation, has refused and still does fail and refuse to answer the questions contained in said questionnaire or to furnish the information called for thereby by reason whereof complainant has been hindered and impeded in his investigation of the methods employed in the sale, offer for sale, 40

Bill of Complaint.

promotion, negotiation, advertisement and distribution within this State of the capital stock of the defendant, The Tomadelli Electronic Corporation.

10 THE COMPLAINANT IS WITHOUT AN ADEQUATE REMEDY IN THE COURTS OF LAW AND, THEREFORE, PRAYS:

1. That the Tomadelli Electronic Corporation and Juan J. Tomadelli, defendants, may answer this bill of complaint and each statement herein made.

20 2. That an order may be made awarding process of subpoena out of this Court to the said defendant, The Tomadelli Electronic Corporation, requiring it, by its proper officers and agents, to appear and testify before Richard C. Plumer, Special Assistant Attorney General, at No. 24 Commerce street, Newark, New Jersey, at such time as this Court may designate.

30 3. That said subpoena may contain a direction that the said defendant, by its proper officers and agents, produce before the said Richard C. Plumer, Special Assistant Attorney General as aforesaid, the following of its books, records, documents, accounts, and papers, namely cash book, stock register and journal.

40 4. That a writ of injunction may issue restraining the said defendant The Tomadelli Electronic Corporation, its officers, directors, agents, employees, brokers and stockholders, specifically including the defendant Juan J. Tomadelli from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this State any shares of the capital stock or any other

Bill of Complaint.

securities of the said defendant until the information, statements and reports called for by said questionnaire are furnished to the complainant.

5. That the said defendants, The Tomadelli Electronic Corporation and Juan J. Tomadelli may be ordered to show cause why a preliminary injunction should not be granted restraining the said Juan J. Tomadelli and The Tomadelli Electronic Corporation, its officers, directors, agents, employees, brokers and stockholders from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this State any shares of the capital stock of The Tomadelli Electronic Corporation or any other securities of The Tomadelli Electronic Corporation aforesaid until the further order of this Court.

6. That a writ of subpoena may be issued commanding the said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

7. That the complainant may have such other and further relief as to this Honorable Court shall seem meet and proper.

EDWARD L. KATZENBACH,
Attorney General of the State of New Jersey.

RICHARD C. PLUMER,
Special Assistant Attorney General and
Solicitor of the Complainant.

Bill of Complaint—Schedule “A.”

SCHEDULE “A”

FOLLOWING IS AN EXACT COPY OF THE SPECIFIC OBJECTS OF INCORPORATION OF THE TOMADELLI ELECTRONIC CORPORATION AS THEY APPEAR IN THE ORIGINAL CHARTER:

1. To design, manufacture, build, purchase, or otherwise acquire, import, export, sell, lease, trade, or otherwise dispose of, own, maintain, deal in or otherwise use:

(a) Electrical and other lighting, heating, power and similar apparatus, appliances, devices, systems, equipments, accessories, implements, appurtenances and other articles and things and all materials that may be used in connection therewith, and particularly electric lamps that will give off light without attachment to any electrical wiring system, motor, battery or dynamo.

(b) Motors, engines, machines and other devices and appliances, of any and every kind and description, for the generation or development of steam, compressed air, gas, electric, gasoline, kerosene, or other forms of power now known or which, may hereafter be discovered.

(c) Air ships, aeroplanes, hydro-aeroplanes, sea planes, flying boats, machines, flying apparatus or other mechanical contrivances and devices for aerial or marine operations or navigation, or both, of any and every kind and description, and any future improvements or developments of the same.

2. To design, build and install lighting, heating and power lay-outs and plants for all manner of purposes, and to operate, for its own use, any such plants.

Bill of Complaint—Schedule “A.”

3. To produce by mining, manufacture or otherwise, all metals, products or compounds useful or necessary in connection with the whole or any part of the business of this corporation.

4. To erect, build, equip, maintain, buy, sell, hire, lease, rent or in any other manner acquire, use, operate, conduct or dispose of, any and all buildings, offices, workshops, factories, plants, experimental, electro-mechanical laboratories, machinery, apparatus, devices and appliances or other things necessary, useful or advisable for the purpose of carrying out the objects of this corporation. 10

5. To design, apply for, obtain, purchase, lease or otherwise acquire; to hold, own, protect, register, renew, use, develop, operate and introduce; to sell, assign or grant or otherwise dispose of in whole or in part; and to grant license in respect of or otherwise use, exercise, develop and turn to account, any and all franchises, patents, patent licenses, patent rights, patent applications, trade marks, trade names, labels, copyrights, and distinctive marks, formulae, secret or other processes, devices, designs, inventions, improvements, concessions and the like conferring any exclusive or non-exclusive or limited rights, whether such be used in connection with or secured under letters patent, registration or grants, both domestic and foreign, issued by the United States, or any other Government or otherwise; also to purchase, acquire, hold, operate and grant licenses and territorial rights under such applications for patents, and under such patents and patent licenses; to receive royalties, license fees and payments thereunder and therefor; and to manufacture, sell, hire, lease, use and repair, operate, maintain, 20
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Bill of Complaint—Schedule "A."

exploit, and develop any and every invention, improvement, device, process and design, which shall be covered by such applications and patent under which this corporation shall acquire any right, title or interest or any license or licenses or territorial rights, and also any and every invention, improvement, device, process and design which shall be otherwise acquired, designed or caused to be designed by this corporation.

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20
30 6. To manufacture, purchase, lease or otherwise acquire, to hold, own, mortgage, pledge, sell, assign, and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise, and real and personal property of every class and description and in particular buildings, business concerns and undertakings, concessions, produce and any interest in real or personal property, and any claims against such property, or against any person or corporation, and to carry on any business concern, or undertaking so acquired.

30 7. To acquire the good will, rights and property, and to undertake the whole or any part of the assets and liabilities, of any person, firm, association or corporation, and to pay for the same in cash, stock or bonds of this corporation or otherwise.

40 8. To purchase, receive, hold and own, bonds, mortgages, debentures, notes, shares of capital stock and other securities, obligations, contracts and evidences of indebtedness of any company, corporation or association, or of any government, state, municipality or body politic; to receive, collect and dispose of interest, dividends and income upon, of and from any of the bonds, mortgages, debentures, notes, shares of capital stock, secu-

Bill of Complaint—Schedule "B."

rities, obligations, contracts, evidences of indebtedness and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual ownership thereof, including the right to vote thereon. 10

"SCHEDULE B"

August Zeugner

Representing

THE
TOMADELLI ELECTRONIC
CORPORATION 20

Office 986 Bergenline Ave., Union City, N. J.

~~Laboratory and Executive Offices~~~~533-535 Bergen Street, Harrison, N. J.~~~~Telephones: Harrison 9000-9001~~

Capitalization, \$1,500,000 150,000 Shares
(All Common Stock)

History and Purpose of the Company

The Tomadelli Corporation was incorporated under the laws of the State of Delaware in 1921, capitalized at \$1,500,000 divided into 100,000 shares of "Class A" (Voting Stock) and 50,000 shares of "Class B" (Non-Voting), both classes being common stock, with a par value of \$10.00 per share and each to participate equally in the dividends of the corporation. 30

The name of the corporation was later changed to The Tomadelli Electronic Corporation.

The company was organized to develop and perfect the inventions of Mr. J. J. Tomadelli, 40

Bill of Complaint—Schedule "B."

10 after whom the corporation was named. The first one of Mr. Tomadelli's inventions to be developed and perfected being an electronic lamp, self-contained, complete in itself and requiring no connection whatever, after being lighted, with any source of power, and designed to give off

10 continuous light of undiminishing intensity for a period of about three years.

The retail price of such an electronic lamp of about 75 candle-power, designed to last approximately three years, would be about \$3.00, or a cost to the consumer of about 9c a month (several times less than the cost of any present method of lighting), and since the lamp would be portable, without wire connections, practically cold, and hermetically sealed, it would eliminate

20 the possibilities of fires such as are caused at present by gas light, kerosene lamps and candles.

"Get into an enterprise the public will support; and get in before they awake to its possibilities. Here lies the secret of fortune."

PROPERTY OF THE COMPANY.

INVENTION RIGHTS.

30 At the time of organization Mr. Tomadelli assigned to the Company all rights, title and interest to and in his inventions, including the possible application of his new principles and discoveries in the development of power and heat.

PATENTS.

40 Applications for patents on the lamps have been filed in the United States and in 31 foreign countries. As a result of such applications patents granted by the Union of South Africa, Belgium, Spain, Mexico, Cuba, Argentine, Italy, Portugal, Turkey, Egypt, New Zealand, Brazil,

Bill of Complaint—Schedule "B."

France and Peru are now in the possession of the Corporation and other patents are expected to be received from other countries as soon as they are acted upon by the respective Patent Offices.

REAL ESTATE.

The Company holds title to the brick building 10
located at South Bergen and Sixth Streets, Har-
rison, N. J., originally purchased for the price of
\$50,000, which building has 15,000 square feet of
floor space, representing two floors and concrete
basement.

MACHINERY AND TOOLS.

Machinery which has cost about \$8,000, consti-
tuting a fully equipped machine shop, is part of
the assets. 20

INSURANCE.

The Company has insured the electrical appa-
ratus which it has constructed for the sum of
\$100,000, covering approximately its cost, and
the building for \$50,000. In general it may be
said that all possible safeguards in the protec-
tion of the interest of the stockholders have been
effected.

LIABILITIES. 30

The Company has in the past met its obliga-
tions when due and has no outstanding liabilities
other than issued stock, current bills and the
mortgage on the building.

THE INVENTION.

The principles involved in the first invention
which the Company is to perfect may be best de-
scribed as including two distinct features, vis:
(1) the lamps containing certain metallic alloys, 40

Bill of Complaint—Schedule "B."

and (2) the apparatus necessary to start activity of energy in the metallic alloys within the lamps.

The lamps, the alloys, the apparatus and the manner in which they are designed to function individually and in relation to each other, may briefly be described as follows:

10 (1) The lamps, smaller than the present electric bulbs, consist of two parts: (a) The base containing certain alloys which are subjected to the influence of the electrical discharge received from the generating section of the apparatus and which react in accordance with certain principles, or laws, applied by Mr. Tomadelli and which constitute an important part of his inventions, and (b) a glass bulb with a very strong and resistant filament, which should outlast the lamp itself.

20 "Wise men never knowingly neglect to investigate any proposition that offers a chance of profit."

(2) The apparatus, composed of over one hundred thousand parts and over twenty thousand connections, attracts and collects from the atmosphere a tremendous amount of electrical energy which is transformed, condensed and controlled. Scientists admit that electrical energy is present everywhere throughout the universe. This type of electrical energy is absolutely different from ordinary electric current as commonly known, and is characteristic in its action and effects. It is released and discharged into the base of the lamps where it affects the alloys contained therein to start the activity that creates the light within the bulb.

30 It will be readily understood that it would not be prudent for the Corporation, at this time, to disclose full and complete information regarding

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Bill of Complaint—Schedule "B."

the details of the invention and the laws and principles involved.

PROGRESS MADE.

The construction of the generating and discharging section of the apparatus has been completed. The apparatus has already been tested and actually produces electrical energy, which travels through the space of about 35 feet, separating the generating and receiving sections of the apparatus. 10

The Company is at present engaged in making mechanical adjustments in the apparatus to render all the parts in unison with each other. As soon as this is completed it is expected to demonstrate lighted electronic lamps absolutely complete in themselves which will astonish the commercial and scientific world. The whole world would benefit through the perfection of this marvelous invention. Incidentally, considering the exceptionally small capitalization for an enterprise of this character, the shares of the Company, after the demonstration, should be worth a large amount each, thereby greatly rewarding all those who courageously contributed to the development and perfection of Mr. Tomadelli's invention. Shares are now offered by the Company at \$10 each. The price is subject to change without notice. 20 30 40

POSSIBILITIES.

Statistics published in the *Electrical World* show that manufacturers of electric bulbs produced over 200,000,000 during the year of 1922 and this vast number was absorbed by about 37% of the population of the United States. This 40

Bill of Complaint—Schedule "B."

37% amounts to about 39,000,000 of the total population of the United States which is 105,000,000 according to the census of the year 1920. This leaves a population of about 66,000,000 using gas, kerosene or candles, any one of which could not compete with an electronic lamp lasting
 10 three years, the cost of which would be only about 9c a month.

As the 39,000,000 population consumed 200,000,000 electric bulbs it may be estimated that the total 105,000,000 population would represent a market capable of consuming a proportionately larger quantity of bulbs, or millions of electronic lamps. It has been estimated that an electronic lamp of approximately 75 candle-power retailing for \$3.00 would return a profit of about \$1.00.

20 "Thousands of Americans possess fortunes because they invested their earnings in new things."

The lamps of 100, 200, 500, 1,000 and 2,000 candle-power would naturally net larger profits. Such a light would be a great boon for mines, light-houses, ships, airplanes, trains, tunnels, highways, farms, theatres, automobiles, etc. This briefly, only begins to give an idea of the possibilities of the invention when perfected and placed on a commercial basis and takes into consideration the United States alone.
 30

What are its possibilities considering that the population of the whole world is 1,700,000,000? (See pages 30 and 68, *Electrical World*, January 6, 1923.)

CONCLUSION.

It is well to remember that all great inventions, such as the telephone, wireless, airplane, subma-
 40

Bill of Complaint—Schedule “B.”

rine, radio, etc., were considered before being demonstrated, as impossible. THAT IS WHY THEY WERE GREAT. No one could conceive them because they had never been demonstrated. IT IS UP TO YOU NOT TO MAKE THE SAME MISTAKE OTHERS DID IN THINKING IT IS IMPOSSIBLE. Investigate immediately, before it is too late, and ascertain for yourself personally that the facts given herein are true. Satisfy yourself of the sincerity and seriousness of purpose of the Company, after which decide on the basis of the facts ascertained without putting off until tomorrow. Tomorrow does not exist, it never comes. 10

THE TOMADELLI ELECTRONIC CORPORATION. 20

DIRECTORS.

- Juan J. Tomadelli, Inventor New York, N. Y. deceased
- ~~Thomas J. McGeary, M. D. Jersey City, N. J.~~
- ~~Alfred L. West New York, N. Y.~~
- Chas. L. Cast, Real Estate Jersey City, N. J.
- Peter Capri New York, N. Y.
- John E. Mueller, Vice Pres. Treas, 986 Bergenline Ave.,
- Geo. Pforr, 101 Webster Ave. Jersey City. 30

OFFICERS.

- Juan J. Tomadelli President
- ~~Thomas J. McGeary, M. D. Vice President~~
- Peter Capri Secretary-Treasurer
(Formerly Assistant Cashier, Italian Credit Bank)

Bill of Complaint—Schedule "C."

The Corporation as such, and its directors and officers individually, disclaim any responsibility for statements, promises or agreements, written or verbal, which are not contained herein, or are not approved, in writing, by a duly authorized officer of the Corporation.

10

"SCHEDULE C"

STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY-GENERAL

DIVISION OF SECURITIES

24 COMMERCE STREET, NEWARK, N. J.

20

In the Matter of an inquiry
regarding
Tomadelli Electronic Corporation
Conducted pursuant to the
provisions of the New Jersey
Securities Act (Chapter
79 of the Laws of 1927).

GENERAL
QUESTION-
NAIRE.

30

To Tomadello Electronic Corporation, Registrar
& Transfer Co. (Reg. Agt.) 15 Exchange Place,
Jersey City, New Jersey.

In accordance with Chapter 79 of the Laws of
1927, you are hereby required to file in writing
under oath at the office of the Attorney-General,
Division of Securities, 24 Commerce Street, New-
ark, New Jersey, on or before Monday, November
21, 1927, at four o'clock in the afternoon a state-

40

Bill of Complaint—Schedule "C."

ment and report containing the information called for in the following questionnaire.

EDWARD L. KATZENBACH,
Attorney-General.

Richard C. Plumer
Spec. Asst. Atty.-Gen. 10

DEFINITIONS AND INSTRUCTIONS

(Read carefully before answering any questions)

In this questionnaire the word "Securities," wherever used, includes the following:

Stocks	
Bonds	
Notes	20
Debentures	
Evidences of Indebtedness	
Certificates of Interest	
Certificates of Participation	
Interim Certificates	
Interim Receipts	
Foreign Currency Orders	
Foreign Currency Calls	
Options for any of the Foregoing	30
All Other Instruments Commonly Known as Securities	

There is no space provided on this paper for answers and they should be attached hereto, numbered to correspond with the questions. All exhibits should be marked for identification.

If subject is a corporation or trust the answers must be signed at the end and sworn to by the officers duly authorized to execute papers on behalf thereof. If subject is a partnership, the

Bill of Complaint—Schedule "C."

answers must be signed at the end and sworn to by all the partners. The form of oath will be found on the last page hereof.

QUESTIONS

- 10 1. State whether subject is a corporation, deed of trust, partnership or individual.
2. Under the laws of what State was subject organized?
3. Where is subject's principal place of business (do not give incorporating address unless it is the place from which business is actually done)?
4. Give address of subject's principal place of business in New Jersey.
- 20 5. Give addresses of all branch offices and the names under which they are respectively conducted.
6. What is the general plan and character of the business?
7. State the authorized capitalization or capital structure of subject, specifying in your answer:
 - A. Issues (by classes), dividend rate and par value.
 - 30 B. Total amount of each, authorized and issued.
 - C. Options or contracts on same and specific reservations for conversion.
 - D. Increases and authority therefor, including action by stockholders, by directors and by public authorities.

If any of the issues are preferred stock, give the following information in regard thereto:

 - E. Cumulative or non-cumulative?
- 40

Bill of Complaint—Schedule "C."

- F. Preferences, including voting power and dividends.
 - G. Distribution of assets on dissolution of merger.
 - H. Redemption.
 - I. Convertibility.
 - J. Special provisions. 10
8. What percentage of the price paid by the investor is net to the company treasury after stock selling and other organization expenses?
9. What commission is paid to salesmen of subject's securities?
10. Have any securities been sold on the installment plan? If the answer is "yes," give the following information: 20
- A. Number and classification.
 - B. Net amount of money actually received by subject therefor to date.
 - C. Amount now due and unpaid therefor.
 - D. Attach copy of contract signed by purchasers.
11. State what full paid securities are now outstanding, particularizing as to number and classification, and giving the net amount of money actually realized by subject therefor. This question is intended to cover only securities issued for cash. See questions immediately following: 30
12. Have any securities been issued by subject for any of the following:
- A. Real property.
 - B. Personal property.
 - C. Services rendered.
 - D. Securities of other corporations.
 - E. Bonus.
 - F. Anything other than cash. 40

Bill of Complaint—Schedule "C."

- If the answer regarding any of the foregoing is in the affirmative, state to whom the securities were issued their nature and classification, the number of units, value and full particulars of each transaction, describing in detail just what subject got in return therefor.
- 10
13. Has subject ever held any of its stock as treasury stock? If the answer is "yes," give the following information:
- A. Amount and classification.
- B. How was it acquired?
- C. Number of shares disposed of to date for cash and net amount of money actually realized by subject therefor.
- 20
- D. Number of shares disposed of to date for something other than cash. State in detail what subject actually received therefor.
14. What were the assets at the date of organization? Describe in detail.
15. At what price has stock been sold by subject? Has price fluctuated? If so, give prices and number of shares sold at each price.
- 30
16. What is the total amount of cash actually invested in property by subject to date?
17. What is the total amount of cash actually invested in improvements by subject to date?
18. Give general description and location of all all real estate owned by subject.
19. State from whom real estate was acquired and purchase price paid.
- 40
20. If any real estate is not owned outright, state extent of subject's interest therein,

Bill of Complaint—Schedule "C."

giving full particulars as to any incumbrances, options or contracts.

21. Is there any funded indebtedness? If answer is "yes," give following information:
 - A. Date created.
 - B. Amount.
 - C. Net proceeds to subject from sale of certificates. 10
22. Have any dividends been paid or distribution of profits made? If so, when and in what amount?
23. What were the gross earnings during the last fiscal year? From what sources derived?
24. What were the total expenses during the last fiscal year? Give detailed statement of items composing same. 20
25. What were the net earnings during the last fiscal year?
26. In what state or states is subject now licensed or registered to sell securities?
27. In what state or states has subject ever applied for license or registration to sell securities?
28. Has subject ever been refused a license or registration in any state, or had a license or registration revoked? (Give particulars.) 30
29. Does subject agree to buy back or resell any stock issued? If so, on what terms?
30. Submit specimen of both common and preferred stock certificates.
31. What is present ratio of quick assets to current liabilities? Current assets to current liabilities? 40

Bill of Complaint—Schedule "C."

32. Give names, residences, business addresses, titles and personal history of officers, directors, fiscal agents and other men prominently connected with subject.
- 10 33. On basis of present financing plan, approximately, what value of business must be done by subject in order to earn and pay interest requirements and preferred dividend requirements after taxes and depreciation?
34. How long, approximately, will it take before subject is selling its product in this necessary volume?
35. What channels of distribution have been or are being established?
- 20 36. Give names and addresses of principal distributors or agents selling subject's product.
37. Give names and addresses of principal purchasers of subject's product.
38. Are any United States patents owned or leased by subject? If answer to the foregoing is "yes," give the following information:
- 30 A. Serial numbers and dates.
 B. Has practicability been established?
 C. Where?
 D. Has validity been sustained by courts?
 E. Where?
 F. Name of case.
 G. Name of Judge.
 H. At what book value are patents carried on subject's assets?
39. At what book value is good will carried on subject's assets?

Bill of Complaint—Schedule "C."

40. Give the names, residences, and business addresses of all the stockholders or shareholders who hold on the books of subject the proportionately large blocks of voting stock or shares of subject, and also the amount held in their names, specifying whether or not such shares are held in a representative capacity. 10
41. Are any classifications of subject's capital stock without voting power? If so, describe such stock, specifying the authorized amount, also total amount issued and outstanding, and par value.
42. Has subject, through its employees or representatives, sold any securities during the past five years?
43. Is subject, through its employees or representatives selling any securities at the present time? 20
44. Has subject, directly or indirectly, made any contract or arrangement for the sale of securities during the past five years? If the answer to the foregoing is "yes" give the following information:
- A. Were such contracts or understandings oral or written? If the latter, attach copies. 30
- B. Give names and addresses of parties to such contracts or understandings.
- C. Selling price of such stock.
- D. Terms of payment.
- E. Compensation paid by subject for services on such sales.
- F. Names and addresses of persons to whom such compensation was or is paid.
45. Has subject or any officer or member ever been convicted of a crime? If so, when 40

Bill of Complaint—Schedule "C."

- and where and what was nature of conviction?
46. Has subject or any officer or member ever been declared a bankrupt or been in the hands of a receiver, and if so, state when and where?
- 10 47. State the compensation, whether as salaries, commissions, or bonuses, paid to all officers of subject during the past five years, specifying:
- A. The rate of such compensation.
 - B. The total amount of same.
 - C. Whether paid in cash, notes, stock or otherwise.
 - D. The name, position and address of each of the officers receiving same.
- 20 48. On what exchanges have subject's securities been listed; specifying in your answer:
- A. Dates of such listings.
 - B. Date when removed from such listing, if such is the fact.
 - C. Description of securities so listed.
 - D. Number of units so listed.
 - E. On what exchanges have subject's securities been traded on or are now traded on?
- 30 49. For what purpose are proceeds from the sale of subject's securities used?
50. State the name and location of the banks with which subject maintains its accounts.
51. Attach hereto balance sheet, certified by your auditor, cashier or bookkeeper as of your most recent closing and a similar statement one year prior thereto, accounting for all assets and liabilities of subject, including:

Bill of Complaint—Schedule "C."

- A. All capital liabilities.
 - B. Paid in capital.
 - C. Book value of all corporate real estate.
 - D. Mortgages upon same.
 - E. Book value of investments with a separate analysis of same.
 - F. Organization expenses with a separate analysis of same. 10
 - G. Deferred charges with a separate analysis of same.
 - H. Plant and equipment itemized, and the amount of depreciation written off.
 - I. Accounts payable with a separate analysis showing the character of same.
 - J. Notes payable with an analysis of same showing to whom payable and the dates when notes are due. 20
 - K. Inventories, specifying whether cost or market value.
 - L. Does any item of appreciation appear on your books? If so, specify the date and amount of same, the property to which same relates, the name and address of appraiser, if any, and the basis upon which such item has been made.
52. Attach hereto a sworn copy of subject's income and profit and loss statement as of most recent closing and a similar statement one year prior thereto. 30
53. Attach hereto an analysis of your surplus account for the past three years.
54. Do you have your accounts audited by a certified public accountant? If so, give name of accountant, address and date of last audit.

Bill of Complaint—Schedule "C."

55. Give the name and address of your book-keeper or auditor or the person in charge of your accounts.
56. Submit a copy of each of the following:
- 10 A. Stock subscriptions contracts.
 B. All securities that have been issued by subject.
 C. Prospectus.
 D. Circulars.
 E. Certificate of incorporation with amendments to date. (If subject is a corporation.)
 F. By-laws with amendments to date.
 G. Copy of articles of co-partnership. (If subject is a limited partnership.)
 H. Copy of declaration of trust, trust agreement or deed of settlement. (If subject is a common law trust.)
- 20

AFFIDAVIT OF SERVICE.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON. } ss.

30 Sgt. John J. Cassells, being duly sworn according to law, on his oath deposes and says that he is a Sergeant at Police Headquarters, Jersey City, N. J., that he served the within questionnaire on Tomadelli Electronic Corporation by leaving a duplicate copy thereof with Registrar & Transfer Co. at 15 Exchange Place, Jersey City, New Jersey. on Nov. 10th 1927

John J. Cassells

Sworn to and subscribed before me
 this 10th day of November, A. D.
 1927

40 Joseph G. O'Neill
 Notary Public of N. J.

Affidavit of Dewi T. Evans.

AFFIDAVITS.

IN CHANCERY OF NEW JERSEY.

Between

EDWARD L. KATZENBACH, At-
torney General of the State
of New Jersey,

Complainant,

and

THE TOMADELLI ELECTRONIC
CORPORATION, a corporation,
and JUAN J. TOMADELLI,

Defendant.

10

On Bill, Etc.

Affidavit.

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

DEWI T. EVANS, of full age being duly sworn according to law upon his oath deposes and says:

I am employed as Examiner of Securities by the Department of the Attorney General, Division of Securities, with offices at No. 24 Commerce street, Newark, New Jersey, my appointment having become effective July 5, 1927. Ever since the day of my appointment, I have been engaged in fulfilling my duties under said appointment as Examiner of Securities.

30

On or about November 7, 1927, I was directed by Richard C. Plumer, Special Assistant Attorney General in charge of carrying into effect the provisions of the New Jersey Securities Act, to investigate the Tomadelli Electronic Corporation and the methods employed by it in advertising, offering for sale, selling and distributing its stock

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Affidavit of Dewi T. Evans.

in this State. Pursuant to such direction, I, on November 9, 1927, went to Vineland, New Jersey, and first talked to Arthur J. Scholz, Secretary of the Vineland Chamber of Commerce, who informed me that one August Zeugner was then stopping at 104 East Pine street, Millville, New Jersey, at the home of James Guirffa and I went to interview him at once. I asked Zeugner if the company used any printed matter in their stock selling and he replied "I think I have a copy on my desk which I will let you have." He then gave me the circular which is attached hereto and marked "Schedule B." In the course of our conversation, he scratched out the following words: "Laboratory and Executive Office, 533-535 Bergen Street, Harrison, New Jersey, Tele-
20 phones: Harrison 9000-9001," and wrote the following words "Office, 986 Bergenline Ave., Union City, N. J." He said he was a personal representative of the defendant, Juan J. Tomadelli, the president of the defendant, The Tomadelli Electronic Corporation and that he had been offering stock for several weeks past at Millville, New Jersey, Vineland, New Jersey, and vicinity. He claimed that there were approximately 2,600 stockholders of The Tomadelli Electronic Corporation principally in Essex and Hudson Counties in the State of New Jersey, and he further
30 said that it was the object of the company to sell sufficient stock in the locality of Millville and Vineland to erect a factory near Millville for the manufacture of the electronic lamps mentioned in the circular. He said that these electronic lamps were set on a machine and charged, after which they would remain lighted without electrical contact of any kind for a period of between two and three years. I asked him whether he had ever

Affidavit of Dewi T. Evans.

seen the electronic lamp mentioned in "Schedule B" and he replied that he had not. I asked him a number of questions and in reply to most of them, he suggested that I get in touch with the defendant, Juan J. Tomadelli or one of the officers of the company at its offices, 986 Bergenline avenue, Union City, New Jersey.

10

I also interviewed Mr. Slade of Moore & Slade, realtors, 25 North High street, Millville, New Jersey; Edwin T. Slimmer, Jr., 236 Cedar street, Millville, New Jersey; Newell Corson, 25 North High street, Millville, New Jersey, and Mr. Miller, Secretary of the Board of Trade, Millville, New Jersey. All of these men had been solicited by Zeugner and in some instances the defendant, Juan J. Tomadelli, was present with Zeugner at the interviews.

20

On or about November 10, 1927, I went to 986 Bergenline avenue, Union City, New Jersey, the address given to me by Zeugner as the office of the defendant, The Tomadelli Electronic Corporation and found that it was a furniture store, the owner being Mr. John Mueller, the vice-president of the defendant, The Tomadelli Electronic Corporation. He informed me that at the time of organization in 1921, all the "Class A" stock had been turned over to the defendant, Juan J. Tomadelli in return for his patents and that of the "Class B" stock about 33,000 shares had been sold to the public at prices ranging from \$10 to \$50 per share and about \$250,000 had been received by the company from stock subscriptions. He further stated that the defendant, The Tomadelli Electronic Corporation was without funds and had no bank account. He also said that the corporation had never made up a balance sheet, that he had never seen the

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Affidavit of Dewi T. Evans.

completed electronic lamp and could not produce one of the lamps for examination by me. He showed me a letter purporting to be minutes of the meeting of the Board of Directors of The Tomadelli Electronic Corporation held at his store on August 29, 1927, in which the defendant, Juan J. Tomadelli was given sole authority, in the best interests of the corporation to enter into any business transactions incident to extracting the defendant, The Tomadelli Electronic Corporation from its present financial condition. He stated that the corporation owned no real estate and that such machinery that it had was in the Hudson City Storage Warehouse, Union City, New Jersey, where it had been for approximately two years.

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DEWI T. EVANS.

Sworn to and subscribed before me this 23rd day of December, A. D. 1927.

ANTHONY J. SALVADORE,
A Notary Public of N. J.

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Affidavit of Richard C. Plumer.

IN CHANCERY OF NEW JERSEY.

Between

EDWARD L. KATZENBACH, At-
torney General of the State
of New Jersey,

Complainant,

and

THE TOMADELLI ELECTRONIC
CORPORATION, a corporation,
and JUAN J. TOMADELLI,

Defendants.

10

On Bill, Etc.

Affidavit.

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

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RICHARD C. PLUMER, of full age, being duly sworn according to law, deposes and says:

I am an attorney and counsellor at law of the State of New Jersey, with offices at No. 24 Commerce street, in the City of Newark, New Jersey.

On June 10, 1927, I was appointed by the complainant, Edward L. Katzenbach, Attorney-General of the State of New Jersey, a Special Assistant Attorney-General of said State to especially represent the office of the Attorney-General in accordance with Chapter 79 of the Laws of 1927 and its requirements, being deputized to proceed with said work commencing July 5, 1927. Ever since said date, I have been engaged in the fulfillment of my duties of carrying into effect the provisions of said Chapter 79 of the Laws of 1927, known as the New Jersey Securities Act.

On November 5, 1927, a letter from A. J. Scholz, Secretary of the Chamber of Commerce, Vineland,

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Affidavit of Richard C. Plumer.

New Jersey, informed me that stock of The Tomadelli Electronic Corporation was being offered for sale in the vicinity of his city, the salesmen thereof claiming that an inventor, Juan Tomadelli, had perfected a light bulb which furnished "perpetual" light to the extent that the
10 lighting qualities remained in the bulb for a period of from three to five years without the aid of electricity or any other agency. I called Mr. Scholz by telephone and requested him to give me further details, which he did, by communicating to me the names of several people who had been solicited to buy the stock above mentioned. I directed Dewi T. Evans, who is employed in the Division of Securities, Department of the Attorney-General, as Examiner of
20 Securities to investigate The Tomadelli Electronic Corporation and the methods employed by it in selling, offering for sale, promoting, negotiating, advertising and distributing its securities within this State. Pursuant to such direction, the said Evans instituted an investigation under my supervision, the details of which are set forth in his affidavit attached hereto. After he visited Vineland and Millville, as mentioned in said affidavit, I, on November 10, 1927, caused a
30 form of questionnaire, a copy of which is attached hereto and made a part hereof marked "Schedule C" to be served on The Tomadelli Electronic Corporation by Sergeant John J. Cassells, of the City of Jersey City, New Jersey, a police officer of the State of New Jersey, by leaving a duplicate copy thereof with the Registrar & Transfer Company, 15 Exchange Place, Jersey City, New Jersey, the agent of said corporation designated by its statement on file in the office of the Secretary of State at Trenton, New Jersey. Although
40 the said defendant corporation was notified and

Affidavit of Richard C. Plumer.

required to file the information called for by said questionnaire at the office of the Attorney-General Division of Securities, 24 Commerce street, Newark, New Jersey, on or before Monday, November 21, 1927, at four o'clock in the afternoon as reference to said "Schedule C" will more fully show, said corporation has failed to file said information and still fails so to do. 10

RICHARD C. PLUMER.

Sworn and subscribed to before me this 22nd day of December, 1927.

ETHEL I. JACOBUS,
A Notary Public of New Jersey.

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Affidavit of Dr. Clayton H. Sharp.

IN CHANCERY OF NEW JERSEY

Between

10 EDWARD L. KATZENBACH, At-
torney-General of the State
of New Jersey,

Complainant,

and

THE TOMADELLI ELECTRONIC
CORPORATION, a corporation,
and JUAN J. TOMADELLI,

Defendants.

On Bill, Etc.

Affidavit.

20 STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

DR. CLAYTON H. SHARP, of full age, being duly sworn according to law, upon his oath deposes and says that:

I reside at White Plains, New York, and am technical director of the Electrical Testing Laboratories at 80th street and East End avenue, New York City.

30 I graduated from Hamilton College in 1890 with the degree of B. A. and in 1895 received the degree Ph.D. from Cornell University having specialized in physics. I also studied at the University of Leipsic in Germany and at one time was an instructor at Cornell. I am past president of the Illuminating Engineering Society and a fellow of the American Institute of Electrical Engineers. I have given special attention to questions of electrical measurements and the production, measurement and utilization of light.
40 In 1906, I presented a paper before the American Institute of Electrical Engineers of the newly

Affidavit of Dr. Clayton H. Sharp.

invented Tungsten Lamp, together with demonstrations thereof. This was the first public presentation in this country. I have been active in the work of the International Illumination Commission organized in 1913 and am president of the United States National Committee of that Commission.

10

My duties with the Electrical Testing Laboratories are that of general technical oversight and direction of the work, particularly as it appertains to lamps and their measurements. I also have direct charge of the more unusual and more difficult scientific and physical problems arising in connection therewith. In general, I have taken every opportunity to familiarize myself with all the physical principles that may be involved in or related to the so-called electronic lamp mentioned in "Schedule B."

20

I have talked to Juan J. Tomadelli, one of the defendants herein, about said electronic lamp and also have inspected, in so far as I was allowed to do so, the machinery of the defendant, The Tomadelli Electronic Corporation, before it was put into storage where I am informed that it now is. My conversations with Tomadelli indicated that he had sufficient knowledge of modern scientific terminology to use it with a limited degree of accuracy, but many of his statements were so utterly at variance with known scientific facts as to be unworthy of any credence whatsoever. His explanation of the action that he got in manipulating the apparatus and machinery was very vague and in many instances contradictory and inconsistent. In the machinery and apparatus that was shown to me and in the explanations and statements made by Tomadelli there was absolutely nothing which would in any way in-

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Affidavit of Dr. Clayton H. Sharp.

dicate that either his theories or machines were industrially or commercially practical. I have no knowledge of any physical or other scientific laws by which the apparatus shown to me by Tomadelli could be expected to bring about the results claimed in "Schedule B."

10

CLAYTON H. SHARP.

Sworn and subscribed to before me this 20th day of December, A. D. 1927.

C. E. SLOCUM,
Notary Public, N. Y. Co. No. 686,
New York Register No. 8834,
Term expires March 30, 1928.
No. 71868, Series B.

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

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I, WILLIAM T. COLLINS, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, having a seal, Do HEREBY CERTIFY, That C. E. Slocum, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well ac-

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Affidavit of Dr. Clayton H. Sharp.

quainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 22 day of December, 1927.

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WILLIAM T. COLLINS,
Clerk.

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ORDER TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

Between

10 EDWARD L. KATZENBACH, At-
 torney General of the State
 of New Jersey,

*Complainant,**and*

THE TOMADELLI ELECTRONIC
 CORPORATION, a corporation,
 and JUAN J. TOMADELLI,

*Defendants.**On Bill, Etc.**Order to
 Show Cause.*

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This matter being opened to the Court by Richard C. Plumer, Esquire, Special Assistant Attorney General, and the Court having read and considered the bill of complaint and the affidavits thereunto annexed:

It is on this 3rd day of January, 1928, OR-
 DERED that the defendants, The Tomadelli Elec-
 tronic Corporation and Juan J. Tomadelli, show
 cause before the Chancellor at the Chancery
 30 Chambers in the Industrial Office Building, No.
 1060 Broad street, City of Newark, County of
 Essex and State of New Jersey, on Tuesday, the
 10th day of January, 1928, at the hour of ten
 o'clock in the forenoon or as soon thereafter as
 counsel can be heard why an order should not be
 made awarding process of subpoena out of this
 Court to the said defendants, requiring the said,
 The Tomadelli Electronic Corporation by its
 proper officers and agents to appear and testify
 40 before Richard C. Plumer, Special Assistant

Order to Show Cause.

Attorney General, at No. 24 Commerce street, Newark, New Jersey, at such time as this Court may designate, such subpoena to contain a direction that the said The Tomadelli Electronic Corporation, by its proper officers and agents, produce before the said Richard C. Plumer, Special Assistant Attorney General as aforesaid, its cash book, stock register and journal; also why a writ of injunction should not issue restraining the said Juan J. Tomadelli and the said The Tomadelli Electronic Corporation, its officers, directors, agents, employees, brokers and stockholders from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this State any shares of the capital stock or any other securities of the said defendant, The Tomadelli Electronic Corporation, until the information, statements and reports required by the questionnaire attached to the bill of complaint and marked "Schedule C" are furnished to the complainant, also why a preliminary injunction should not be granted restraining the said Juan J. Tomadelli and the said The Tomadelli Electronic Corporation, its officers, directors, agents, employees, brokers and stockholders from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising, or distributing within this State any shares of the capital stock of the said The Tomadelli Electronic Corporation or any of its other securities until the further order of this Court.

It is further ORDERED that a true but uncertified copy of this order and the petition and affidavit on which said order is issued be served within three days from the date hereof on the defendant The Tomadelli Electronic Corporation by leaving

Order to Show Cause.

the same with The Registrar & Transfer Company, 15 Exchange Place, Jersey City, New Jersey, the agent of said defendant corporation designated by its statement on file in the office of the Secretary of State at Trenton, New Jersey.

- 10 It is further ORDERED that a true but uncertified copy of this order and the petition and affidavits on which said order is issued be served within three days from the date hereof on the defendant, Juan J. Tomadelli, either within or outside of this State by leaving the same at his usual place of residence.

E. R. WALKER,
C.

- 20 Respectfully advised.

JOHN H. BACKES,
V.-C.

A true copy.

RICHARD C. PLUMER,
Spec. Asst. Atty. Gen.

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Affidavit of L. Edward Herrmann.

AFFIDAVITS.

IN CHANCERY OF NEW JERSEY.

Between

EDWARD L. KATZENBACH, At-
torney General of the State
of New Jersey,

Complainant,

and

THE TOMADELLI ELECTRONIC
CORPORATION, and JUAN TOMA-
DELLI,

Defendants.

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On Bill, &c.

Affidavit.

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STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

L. EDWARD HERRMANN, being duly sworn according to law, on his oath deposes and says, that he is the solicitor, and of counsel with the defendants: That on November 14, 1927, or thereabouts, deponent received from John Mueller, assistant secretary of the defendant, Tomadelli Electronic Corporation, the form questionnaire addressed to the said corporation by Richard C. Plumer, Special Assistant Attorney General; in reply thereof and in reply thereto, in behalf of Tomadelli Electronic Corporation, deponent addressed a letter to said Richard C. Plumer, in which he advised that said corporation was not engaged in selling stock in this state and has not sold any of its stock for a period of two years last past, and further, that should it at any time offer its stock for sale prior to so doing he would furnish him

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Affidavit of L. Edward Herrmann.

with the information sought, a copy of which letter is hereto annexed and marked Schedule A.

Under date of November 18, 1927, deponent received from the said Richard C. Plumer, a letter stating that he had direct evidence that stock of the company had been offered for sale within
 10 the past week or two, and stating that deponent was laboring under a misapprehension, and demanded that the answers to the questionnaire be filed in his office on the return day, a copy of which letter is hereto annexed and marked Schedule B.

To this letter deponent replied addressing a letter to the said Richard C. Plumer on November 19th, in which he again reiterated the statement that the company had not for at least two
 20 years last past, offered any of its stock for sale, and is not now offering any stock for sale, and does not contemplate in the immediate future to offer any of its stock for sale, and further, that if any stock was offered for sale it was the stock of some individual and not stock of the company.

Deponent further conveyed assurance that before any stock is offered for sale, that the Department would be furnished with the fullest information respecting the affairs of the Company, a copy
 30 of which letter is hereto annexed and marked Schedule C. To this letter deponent received no reply.

L. EDWARD HERRMANN.

Sworn to and subscribed before
 me at Jersey City, N. J., this
 6th day of January, 1928.

JOHN D. CRAVEN,
 Master in Chancery of
 New Jersey.

Affidavit of L. Edward Herrmann.

SCHEDULE A.

November 15, 1927.

RICHARD C. PLUMER, Esq.,
Sp. Asst. Attorney General,
Division of Securities,
24 Commerce Street,
Newark, N. J.

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My dear Sir:—

For the Tomadelli Electronic Corporation I acknowledge receipt of form questionnaire in the matter of inquiry regarding this corporation. In reply thereto I beg to advise you that this corporation is not engaged in selling securities in the State of New Jersey, and has not sold any of its stock for a period of two years last past.

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Should they at any time offer their stock for sale prior to so doing I will be glad to furnish you with the information you seek.

Yours very truly,

(Signed) L. Edward Herrmann.

SCHEDULE B.

November 18, 1927.

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L. Edward Herrmann,
15 Exchange Place,
Jersey City, N. J.

TOMADELLI ELECTRONIC CORPORATION.

Dear Sir:—

Your letter of recent date has just been received. As we have direct evidence that stock of this company has been offered for sale within the

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Affidavit of L. Edward Herrmann.

past week or two, you are apparently laboring under a misapprehension. The answers to the questionnaire must be filed in this office on the return day.

Yours truly,

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(Signed) Richard C. Plumer

SCHEDULE C.

November 19, 1927.

RICHARD C. PLUMER, Esq.,
Special Assistant Attorney General,
Securities Division,
24 Commerce Street,
Newark, N. J.

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Dear Sir:

I acknowledge receipt of yours of the 18th inst., and in reply thereto, feel called upon to repeat the advice which I have heretofore conveyed to you. This company has not for at least two years last past offered any of its stock for sale, is not now offering any of its stock for sale, and does not contemplate in the immediate future to offer any of its stock for sale. If any stock was offered for sale it was the stock of some individual and not stock of the Company. You may be assured that before any stock is offered that your Department will be furnished with the fullest information respecting the affairs of this Company

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Yours very truly, L. EDWARD HERRMANN
H/O

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Affidavit of August Zeugner.

IN CHANCERY OF NEW JERSEY.

Between

EDWARD L. KATZENBACH, At-
torney General of the
State of New Jersey,

Complainant,

and

THE TOMADELLI ELECTRONIC
CORPORATION and JUAN J.
TOMADELLI,

Defendants.

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On Bill, &c.

Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

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AUGUST ZEUGNER, of full age being duly sworn according to law, on his oath deposes and says, that he has read the affidavit of Dewi T. Evans, filed in the above-entitled cause. He admits that the said Dewi T. Evans visited him on November 9, 1927, and that he furnished him with the pamphlet marked Schedule B, and that he scratched out certain details thereon, and that he wrote other words thereon. He admits that he told him that he was a personal representative of defendant Juan J. Tomadelli but denies that he told him that he was offering stock for several weeks past in Millville and Vineland, New Jersey, and vicinity, or that he was offering, or had been offering stock at any time at any other place. He admits that he told him that there were approximately 2600 stockholders of the Tomadelli Electronic Corporation, but denies that he said it was the object of the company to sell suf-

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Affidavit of August Zeugner.

10 ficient stock in the locality of Millville and Vine-
land to erect a factory near Millville for the
manufacturing of electric lamps mentioned in the
circular. Deponent does not recall whether or
not that he told him that these lamps were set on
a machine after which they would remain lighted
without electric contact of any kind for a period
of between two and three years. Deponent's best
recollection is that he did not discuss the matter
of the lamps with the said Evans, and denies that
he admitted that he had never seen the electric
lamp mentioned in Schedule B. Deponent avers
that if he had discussed the lamps with the said
Evans, he would have stated that he had seen
said lamps in operation, for on numerous oc-
casions deponent has attended the demonstration
20 made by Juan J. Tomadelli, when the Tomadelli
Electronic Corporation maintained its experi-
mental plant at Nos. 533-535 Bergen street, Harri-
son, New Jersey.

Deponent denies that he offered any stock for
sale to any of the parties named in the affidavit
of the said Evans, and has no knowledge with re-
spect to the statements made by said parties to
the said Evans.

30 Deponent is a stockholder of the Tomadelli
Electronic Corporation, and has been a stock-
holder thereof from the inception of the enter-
prise.

Deponent has confidence in the ultimate suc-
cess of the company and firmly believes that the
said company will ultimately demonstrate its
ability to produce lamps under the process dis-
covered by the said Juan J. Tomadelli. That de-
ponent in his enthusiasm frequently discusses his
belief in the ultimate success of the undertaking
40 with friends and acquaintances. That deponent

Affidavit of August Zeugner.

has never been authorized by the corporation to sell any stock for it, and to deponent's knowledge no stock of the corporation has been offered for sale since February, 1926. That the company has been inactive for approximately two years, and that no attempt has been made to raise any additional capital.

10

While deponent was at Millville, the said Evans visited him and introduced himself to deponent by presenting his official card showing that he was an investigator in the office of the Attorney General as an examiner of securities. The said Evans told deponent that he was investigating the affairs of the company, and deponent told him that he was closely identified and associated with Juan J. Tomadelli, the president of the Company, but that he was not a director thereof, and that if he desired any information he should call upon the directors and officers of the company who were located in Union City, and Jersey City, and deponent furnished the said Evans with the names of two of the directors, John Mueller of 986 Bergenline avenue, Union City, and George Pfoor of 103 Webster avenue, Jersey City, informing him that these gentlemen would be glad to furnish him with all the information he desired. The said Evans thereupon asked deponent whether he had a prospectus, deponent told him that he believed that he had an old prospectus from some years back, when the stock was being sold, but that the information contained thereon was not accurate in that the Company no longer maintained the laboratory and executive offices at Nos. 533-535 Bergen street, Harrison, New Jersey, and that the directors named thereon were not the present directors. Deponent thereupon erased the names of

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Affidavit of August Zeugner.

those who were named as directors who were not now directors. The said Evans thereupon asked deponent as to whether he might take said prospectus and deponent told him he would be glad to let him have that and give him any other information that he was able to, but that he believed
10 he could secure accurate information from the officers of the company.

The said Evans then asked deponent as to whether he was selling stock for the company, and deponent replied that he was not, and that if he desired to sell stock he did not believe he could sell it around Vineland or Millville.

The meeting between the said Evans and deponent was cordial, and deponent recognized that the said Evans was visiting him in an official capacity, and therefore desired to give him all
20 the information which he desired to obtain, and told him that it could best be furnished by the officers of the company rather than by himself, because he did not possess any accurate information to furnish to one acting in an official capacity.

AUGUST ZEUGNER.

Sworn to and subscribed before me
30 at Jersey City, N. J., this 6th day of
January, 1928.

JOHN L. KELLER,
Master in Chancery of New
Jersey.

Affidavit of Juan J. Tomadelli.

IN CHANCERY OF NEW JERSEY.

*Between*EDWARD L. KATZENBACH, At-
torney General of the State
of New Jersey,*Complainant,**and*THE TOMADELLI ELECTRONIC
CORPORATION, and JUAN J.
TOMADELLI,*Defendants.*

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*On Bill, &c.**Affidavit.*STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

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JUAN J. TOMADELLI, being duly sworn accord-
ing to law, on his oath says that he is the presi-
dent of the Tomadelli Electronic Corporation;
that he is also a director of said corporation;
that the said corporation was formed under the
laws of the State of Delaware, as is alleged in
the bill of complaint filed herein; that the au-
thorized capital stock of the said corporation is
100,000 shares of Class A, common stock at a par
value of \$10 per share, and 50,000 shares of Class
B, common stock at the par value of \$10 per
share; that the said company has not been au-
thorized or permitted the sale of its stock since
May, 1926; that the said corporation has been in-
active and has not endeavored to obtain capital
through the sale of its stock.

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That no person has been employed in connec-
tion with the issuance, sale, offer for sale, pur-
chase, offer to purchase, promotion, negotiation,

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Affidavit of Juan J. Tomadelli.

advertising or distribution within this state of any stocks, bonds, notes, debentures, evidences of indebtedness, certificates of interest or participation, interim certificates or receipts, foreign currency, options or calls of option therefor or other instruments commonly known as securities, nor
 10 has it offered directly or indirectly the sale thereof.

That no monies have been received by the said corporation since May, 1926, from the sale of any securities or from the sale of its stock, nor has any contract for the sale thereof been entered into by the Company since May, 1926.

Deponent further states that no corporate action has been taken by which it contemplates the sale of any securities, or of any of its stock
 20 within the immediate future.

The prospectus annexed to the bill of complaint and marked Schedule B, is a prospectus which was used at the inception of the Company for the sale of its stock. The corporation has none of these prospectus on hand to distribute and none have been distributed for upwards of three years.

JUAN J. TOMADELLI.

Sworn to and subscribed before me at
 30 Jersey City, N. J., this 6th day of
 January, 1928.

JOHN D. CRAVEN,
 Master in Chancery of New
 Jersey.

Affidavit of John Mueller.

IN CHANCERY OF NEW JERSEY.

Between

EDWARD L. KATZENBACH, At-
torney General of the State
of New Jersey,

Complainant,

and

THE TOMADELLI ELECTRONIC
CORPORATION, and JUAN J.
TOMADELLI,

Defendants.

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On Bill, &c.

Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } *ss.*

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JOHN MUELLER, being duly sworn according to law, on his oath deposes and says that he is the assistant secretary and treasurer of the Tomadelli Electronic Corporation; that he is also a director of said corporation; that the said corporation was formed under the laws of the State of Delaware, as is alleged in the bill of complaint filed herein; that the authorized capital stock of the said corporation, is 100,000 shares of Class A common stock at a par value of \$10 per share, and 50,000 shares of Class B common stock at the par value of \$10 per share; that the said company has not authorized or permitted the sale of its stock since May, 1926; that the said corporation has been inactive and has not endeavored to obtain capital through the sale of its stock.

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That no person has been employed in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation,

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Affidavit of John Mueller.

advertising or distribution within this state of any stocks, bonds, notes, debentures, evidences of indebtedness, certificates of interest or participation, interim receipts or certificates, foreign currency, options or calls of option therefor or other instruments commonly known as securities, nor
 10 has it offered directly or indirectly the sale thereof.

That no monies have been received by the said corporation since May, 1926, from the sale of any securities or from the sale of its stock, nor has any contract for the sale thereof been entered into by the company since May, 1926.

Deponent further states that no corporate action has been taken by which it contemplates the sale of any securities, or of any of its stock
 20 within the immediate future.

The prospectus annexed to the bill of complaint and marked Schedule B, is a prospectus which was used at the inception of the company for the sale of its stock. The corporation has none of these prospectus on hand for distribution and none have been distributed for upwards of three years.

JOHN MUELLER.

30 Sworn to and subscribed before me at Jersey City, N. J., this 6th day of January, 1928.

JOHN D. CRAVEN,
 Master in Chancery of New
 Jersey.

OPINION OF VICE-CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between

ATTORNEY GENERAL (Katzen-
bach) OF THE STATE OF NEW
JERSEY,

Complainant,

and

THE TOMADELLI ELECTRONIC
CORPORATION, *et al.*,
Defendants.

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On bill on rule to show cause why subpoena and injunction should not issue. 20

The Attorney General is entitled to subpoena and injunction upon a showing that it appears to him that the defendant has, is or is about to engage in the sale of securities condemned by Chapter 79, laws of 1927, or whenever he believes it to be in the public interest that an investigation of such matters should be made, and that the defendant refuse to make a report of the affairs.

For the Attorney General, Richard C. Plumer. 30

For defendants, L. Edward Herrmann.

BACKES, Vice-Chancellor:

The bill, in effect, charges that the defendant company, a Delaware corporation, and its president, to whom most of its capital stock was issued, have been and now are engaged in the sale of the stock in this state and that approximately \$250,000 has been taken in from such sales, and that the sales were made upon fraudulent representation (the nature of the frauds are particu- 40

Opinion of Vice-Chancellor.

larized); and that defendants refused to file a report as to the facts concerning the issue and sale of the stock as demanded by the Attorney General. The prayer is that the defendants be restrained from further selling of stock until they file the report, and that a subpoena issue that they make discovery. Now, upon the return of the order to show cause, the defendants do not attempt to deny the charges of fraud but set up that they are not now selling and have not for two years past sold any stock in this state, and that they would make the statutory report to the Attorney General before, in the future, making any sales.

Under the Fraudulent Securities Act, Chapter 79 of the laws of 1927, the Attorney General is entitled to a report from vendors of securities condemned by the act whenever it *appears* to him upon complaint or otherwise that any person "has engaged in, is engaged in, or is about to engage in" the sale of such condemned securities or "whenever the Attorney General *believes* it to be in the public interest that an investigation of such sales of securities should be made; and to entitle the Attorney General to this court's subpoena and injunction all that need be shown is that it so appears to him, not that it so appears to the Court, or that he believes the public interest requires an investigation and that the persons charged refuse to make the required report. It rests absolutely with him when and whether an investigation should be made. He need not in the first instance allege and establish the guilt of the defendants of fraudulent sales. That may come on a supplemental bill for a permanent injunction after discovery by the defendants.

Subpoena and injunction will issue.

ORDER.

IN CHANCERY OF NEW JERSEY.

Between

EDWARD L. KATZENBACH, At-
 torney General of the State
 of New Jersey,

Complainant,

and

THE TOMADELLI ELECTRONIC
 CORPORATION, a corporation,
 and JUAN J. TOMADELLI,

Defendants.

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*On Bills, etc.
 Order.*

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An order to show cause having been made in the above-entitled matter on January 3, 1928, directing the defendants to show cause before the Chancellor at the Chancery Chambers No. 1060 Broad street, Newark, New Jersey, on Tuesday, the 10th day of January at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard why an order should not be made awarding process of subpoena out of this court to the said defendants, requiring the said, The Tomadelli Electronic Corporation, by its proper officers and agents to appear and testify before Richard C. Plumer, Special Assistant Attorney General at No. 24 Commerce Street, Newark, New Jersey, at such time as this court might designate, such subpoena to contain a direction that the said The Tomadelli Electronic Corporation by its proper officers and agents produce before the said Richard C. Plumer, Special Assistant Attorney General as aforesaid, its

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Order.

cash book, stock register and journal; also why a writ of injunction should not issue restraining the said Juan J. Tomadelli and the said The Tomadelli Electronic Corporation, its officers, directors, agents, employees, brokers and stockholders from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this State any shares of the capital stock or any other securities of the said defendant, The Tomadelli Electronic Corporation, until the information, statements and reports, required by the questionnaire attached to the bill of complaint and marked "Schedule C" are furnished to the complainant, also why a preliminary injunction should not be granted restraining the said Juan J. Tomadelli and the said The Tomadelli Electronic Corporation, its officers, directors, agents, employees, brokers and stockholders, from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this State any shares of the capital stock of the said The Tomadelli Electronic Corporation or any of its other securities until the further order of the Court.

And it appearing that all the said defendants have been duly served with said order to show cause and the bill of complaint and affidavits.

And the Court having duly considered the bill of complaint and affidavits and having heard argument of counsel from which it appears that the complainant is entitled to the relief prayed for by him;

It is on this 28th day of March A. D. 1928, on motion of Richard C. Plumer, Special Assistant Attorney General ORDERED that process of sub-

Order.

poena be awarded out of this court requiring the said The Tomadelli Electronic Corporation by its proper officers and agents to appear and testify before Richard C. Plumer, Special Assistant Attorney General at 24 Commerce street, Newark, New Jersey, on Tuesday, the 17th day of April A. D. 1928, such subpoena to contain a direction that the said The Tomadelli Electronic Corporation by its proper officers and agents produce before the said Richard C. Plumer, Special Assistant Attorney General as aforesaid its cash book, stock register and journal; 10

It is further ordered that the said Juan J. Tomadelli and the said The Tomadelli Electronic Corporation, its officers, directors, agents, employees, brokers and stockholders be enjoined from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising, or distributing within this State any shares of the capital stock or any other securities of the defendant The Tomadelli Electronic Corporation until the information, statements and reports required by the questionnaire attached to the bill of complaint and marked "Schedule C" are furnished to the complainant. 20

E. R. WALKER,
C. 30

Respectfully advised,

JOHN H. BACKES,
V.-C.

The first part of the paper is devoted to a general
 introduction of the subject. It is then divided into
 three main sections. The first section deals with
 the history of the subject. The second section
 discusses the present state of the subject. The
 third section discusses the future of the subject.
 The paper concludes with a summary of the main
 points discussed.

New Jersey Court of Errors and Appeals

Between

EDWARD L. KATZENBACH, At-
torney General of the State
of New Jersey,
Complainant-Respondent,

and

THE TOMADELLI ELECTRONIC
CORPORATION, a corporation
of the State of New Jer-
sey, and JUAN J. TOMA-
DELLI,
Defendants-Appellants.

On Bill, etc.

*On Appeal
from the
Court of
Chancery.*

BRIEF OF RESPONDENT.

Statement.

This is an appeal from an order made by the Court of Chancery in a proceeding brought under the New Jersey Securities Act (Chapter 79 Laws of 1927). Section 2 of said statute declares certain practices to be illegal and section 3 reads in part as follows:

“3. Whenever it shall appear to the Attorney General, either upon complaint or otherwise, that any person, partnership, corporation, company, or association, has engaged in, or is engaging in, or is about to engage in, any practice declared to be illegal and prohibited by this act, or whenever the Attorney General believes it to be in the public interest that an investigation of any such matters should be made, he, or any assistant attorney general or other officer designated by him, may

(a) Require or permit such person, partnership, corporation, company, or association to file with him on such forms as he may prescribe, a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the issuance, sale, offer for sale, purchase, offered to purchase, promotion, negotiation, advertisement or distribution, of securities, within this State, by said person, partnership, corporation, company or association, and such other data and information as he may deem relevant and material thereto."

Section 4 provides for issuance of a subpoena out of the Court of Chancery and the relevant parts thereof are quoted below:

"4. In case any person, partnership, corporation, company or association shall fail, or refuse to file any such statement or report, * * * the Court of Chancery of this State, upon application made to it and upon proof being made of such failure or refusal, may make an order awarding process of subpoena or subpoena duces tecum, out of the said court for such witness to appear and testify before the Attorney General, any assistant attorney general or other officer designated by him as aforesaid, and may make an order or orders that any person give testimony and answer questions as required, and produce books, records, documents, accounts or papers as required * * *."

Section 5 gives authority for the issuance of an injunction and reads in part as follows:

"5. In case any person, partnership, corporation, company or association shall fail or refuse to file any such statement or report, * * * the Attorney General, any assistant attorney general or other officer designated by him, in addition to the other remedies provided for herein, may apply to the Court of Chancery for, and upon proof of such failure or refusal the court may grant an injunction restraining the issuance, sale, offer for sale,

purchase, or offer to purchase, promotion, negotiation, advertisement or distribution within this State of securities, by such person, partnership, corporation, company, or association, and any agents, employees, brokers, partners, officers, directors, and stockholders thereof, until the filing of the statement or report, * * * and such other and further relief as the facts may warrant."

Pursuant to the authority given by section 3, a general questionnaire was served on the appellant The Tomadelli Electronic Corporation on November 10, 1927, and said questionnaire contained a notice that the corporation was required to file in writing under oath at the office of the Attorney-General, Division of Securities, 24 Commerce street, Newark, New Jersey, within a certain period, a statement and report containing the information called for by the questionnaire. The corporation failed and refused to answer the questionnaire and the respondent, in accordance with the provisions of sections 4 and 5, applied for a subpoena from the Court of Chancery and also for injunctive relief. Juan J. Tomadelli, being the president of the company and owner of all the stock that had any voting power, was joined as a party defendant. On March 28, 1928, after reading the bill of complaint with attached affidavits as well as the affidavits submitted by the appellants and hearing argument thereon, the court signed an order (p. 69 of record) awarding process of subpoena requiring The Tomadelli Electronic Corporation to appear before an Assistant Attorney-General, said subpoena to contain a direction that said corporation also produce certain books. It was further ordered that Juan J. Tomadelli and The Tomadelli Electronic Corporation, its officers, directors, agents, employees, brokers and stock-

holders be enjoined from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising, or distributing within this State any shares of the capital stock or any other securities of The Tomadelli Electronic Corporation until the information, statements and reports required by the questionnaire were furnished to the complainant. It was from this order that the appeal was taken.

ARGUMENT.

I. The record shows that it appeared to the Attorney General that the appellants had engaged in, were engaging in and were about to engage in illegal practices and that he believed it to be in the public interest that an investigation should be made. There is nothing even tending to indicate that he did not personally pass on these matters.

The appellants contend that before the investigations provided for in section 3 can be instituted, it must appear to the Attorney-General personally that someone has engaged in, is engaging in or is about to engage in illegal practices or that he must personally believe it to be in the public interest that an investigation should be made. Assuming this to be the rule, a reading of the record shows that the Attorney-General did personally pass on these matters. The bill of complaint was signed by him personally and attention is respectfully directed to paragraph 19 thereof, which reads as follows (page 16 of record):

“19. By reason of the foregoing, it appeared to the complainant that the defendants herein were selling, offering for sale, promoting, negotiating, advertising and distributing within this State, shares of the

capital stock of the defendant The Tomadelli Electronic Corporation, and were about to sell, offer for sale, promote, negotiate, advertise and distribute within this State, the capital stock of the defendant The Tomadelli Electronic Corporation, by deception, misrepresentation, concealment, suppression, fraud, and false pretense in the State of New Jersey in violation of the aforesaid New Jersey Securities Act.”

Attention is also respectfully directed to paragraph 20, which starts as follows:

“20. Complainant, believing it to be in the public interest that an investigation should be made of the use and employment by said defendants of such deception * * * etc.”

The appellants, calling attention to the fact that the Attorney-General's name was printed on the questionnaire, claim that this fact plus the “very form of the General Questionnaire * * * justifies the inference that the matter of its issue had not had the personal consideration of the Attorney-General” (p. 7, l. 15, *et seq.* of brief). The appellants themselves admit that the foregoing is only an “inference,” and if they had ever been serious about it, they could have and would have taken steps to properly raise the question as an issue in the case before this stage of the proceedings. Not having done so, they cannot expect to be taken seriously at this time.

II. The New Jersey Securities Act does not require that it must appear personally to the Attorney General that someone has engaged in, is engaging in or is about to engage in illegal practices; neither is there any requirement that he, personally, must believe it to be in the public interest that an investigation should be made before the inquiry provided for by Section 3 can be instituted.

Section 9 of the New Jersey Securities Act reads as follows:

“9. For the purpose of carrying into effect the provisions of this act, the Attorney-General may appoint and employ such assistants, officers and other persons as he deems necessary, define their duties and authority and fix their compensation in accordance with the existing law.”

It specifically says that the Attorney-General may define the authority of the assistant, officer or other person appointed for the purpose of carrying into effect the provisions of the act. The clear intent of the legislature was to leave it to the Attorney-General as to whether the assistant, officer or other person appointed by him should be allowed to pass on the matters mentioned in section 3. This also applies to section 6, and the way the statute is written indicates beyond question that this interpretation is correct, because section 4 provides that the process of subpoena shall direct the witness “to appear and testify before the Attorney-General, any Assistant Attorney-General or other officer designated by him as aforesaid” (section 4, l. 11). The authority to hear the testimony must necessarily carry with it the authority to decide whether it appears “that any person, partnership, corporation, company or association has engaged in, or is engaging in, or is about to engage in, any practice declared to be illegal” (section 6, l. 3).

As we have said before, however, the record shows that the Attorney-General personally passed on the matters mentioned in section 3 of the statute and the appellants at no time questioned that fact in the court below, nor have they ever put it in issue. This being so, the question as to how much authority the Assistant Attorney-General had is not material to the decision of this case and there was no legal reason for arguing the point in their brief.

III. The statute does not require that every questionnaire shall contain a recital in so many words that it appears to the Attorney General that a person has engaged in, or is engaging in, or is about to engage in an illegal practice or that he believes it to be in the public interest that an investigation shall be made.

The questionnaire in this case contained the following recital:

“In accordance with Chapter 79 of the laws of 1927, you are hereby required to file in writing under oath at the office of the Attorney General, Division of Securities, 24 Commerce Street, Newark, New Jersey, on or before Monday, November 21, 1927, at four o'clock in the afternoon, a statement and report containing the information called for in the following questionnaire.

Edward L. Katzenbach,
Attorney General.

Richard C. Plumer,
Spec. Asst. Atty-Gen.”

This clearly showed to the subject of the investigation why and by what authority the questionnaire was sent. If the Attorney-General had not passed on the matters required by section 3, he would not have caused it to be served on The Tomadelli Electronic Corporation. A recital of

the kind mentioned by the appellants on page 8 of their brief would be of no value to anyone and the fact that the questionnaire was served showed the conclusion to which the Attorney-General had come in regard to the matters mentioned in section 3.

This point, like the ones already argued, is raised for the first time in the appellants' brief. At no time was it brought to the attention of the court below.

The Attorney-General complied fully and completely with the conditions imposed by the statute before causing the questionnaire to be served on The Tomadelli Electronic Corporation, and said corporation having refused to answer the questions as required, the Court of Chancery on application to it, had jurisdiction and authority to award the subpoena and grant the injunctive relief.

IV. The New Jersey Securities Act is constitutional.

In their petitions of appeal, the appellants claim that the New Jersey Securities Act is unconstitutional "in that it contravenes the contract and due process clauses thereof, and further that it deprives the Court of Chancery of its power to control its processes of subpoena and injunction in that it requires the said court to issue the same in instances where the issuance of said processes is neither legal or equitable." In their brief, however, they criticize only the interpretation of certain sections by the Court of Chancery and do not question the constitutionality of the law itself at all. Delaware and Nevada are now the only states which have not passed statutes designed to expose, prevent

and suppress fraudulent practices in connection with the vending of corporate securities. New Jersey was one of the last to enact such a law and its provisions are similar to those of the General Business Law of the State of New York (Chapter 649 of the Laws of 1921 as amended) commonly known as the Martin Act. The constitutionality of that statute was attacked on the same grounds as those advanced here in the case of *Dunham v. Ottinger, Atty. Gen.*, (154 N. E. 298). There is no better argument for the constitutionality of our law than the following quotation from the opinion of Chief Justice Hiscock, beginning in the second column at page 300, line 34;

“Neither can I find any view point from which it can be successfully argued that the provisions of the statute authorize unreasonable search and seizure, deprive anyone of due process of law or compel him to furnish incriminating evidence against himself for the purposes of a criminal prosecution.

The statute does not commission the Attorney-General to embark upon any roving course for the purpose of generally prying into the affairs of any person. Having authorized him to institute proceedings to prevent or punish violations of the statute it authorize him to acquire information, make investigations and conduct examinations ‘as to all the facts and circumstances concerning the subject matter which he believes it is to the public interest to investigate.’ Or again, to examine witnesses under oath and require the production of any books or papers ‘which he deems relevant or material to the inquiry.’ This all to the end of enabling the Attorney-General to determine whether a situation exists which calls upon him for action under the other provisions of the statute and it is to be assumed that he will proceed in good faith and with knowledge of and regard for the principles which govern the relevancy of evidence. If through ignorance or intention he trans-

gresses these principles the victim of his illegitimate and oppressive attempt not only will be immune under statute from punishment for refusing to submit to his unreasonable requests or questions but can always appeal to the courts for protection. (Matter of Hirschfield *v.* Hanley, 228 N. Y. 346.) The question whether a person has refused to appear or answer without 'reasonable cause' is thus one which if presented will in the end be subject to the adjudication of the courts.

It would be tedious and is unnecessary to consider at length the meaning of the 'due process' clauses of the Federal and State Constitutions as they are invoked against the statute. Certainly before they can be successfully appealed to it must appear that some substantial right of the person invoking them is about to be violated by an exercise of governmental powers which run counter to the spirit of our institutions and processes as they have been established by custom and settled maxims of law. It is impossible to find any basis for the claim that this statute proposes such a violation.

The power to investigate and examine witnesses to the end of a better discharge of their duties has been conferred upon administrative boards and officials without successful challenge by so many statutes that it is undesirable to refer to them all. Perhaps there may be properly selected as more or less analogous to the present one the statute conferring upon the Superintendent of Banks the power to investigate the affairs of banks to the end of a proper supervision of their affairs; upon the Commissioner of Agriculture the power to investigate and examine witnesses in order better to discharge the duties conferred upon him; upon the Commissioner of Accounts of the city of New York to subpoena and examine witnesses and require the production of material books as he may deem for the best interests of the city. These and other similar statutes have

been upheld as constitutional and valid. (Matter of Hertle, 120 App. Div. 717; *affd.* 190 N. Y. 531; Matter of Hirschfield, 227 N. Y. 297; Matter of Hirschfield *v.* Hanley, 228 N. Y. 346; People *ex rel.* Bender *v.* Milliken, 185 N. Y. 35; People *v.* Ellenbogen, 114 App. Div. 182; *affd.* 186 N. Y. 603; Matter of Union Bank, 204 N. Y. 313.)

The power here attached is akin to that right of the Legislature to investigate and to subpoena and examine witnesses to the end of safeguarding public interests by appropriate legislation and which is so well established as to have passed beyond the realm of controversy. (People *ex rel.* McDonald *v.* Keeler, 99 N. Y. 463.)

And finally the powers conferred upon the Attorney-General by this statute are not substantially different than and certainly are not in excess of the powers conferred by statutes of other States which have proceeded upon the theory that the business of dealing in and selling securities to the public is one of such public concern and subject to such widespread abuses that it is clearly subject to regulation by license and supervision. The constitutionality of such laws has been upheld not only by the highest courts of many States but also by the United States Supreme Court. Some of these decisions are: *Hall v. Geiger-Jones Co.*, (242 U. S. 539); *Caldwell, Attorney-General v. Sioux Falls, etc., Co.*, (242 U. S. 559); *Merrick v. Halsey & Co.*, (242 U. S. 568); *People v. See*, (311 Ill. 552); *King v. Commonwealth*, (246 S. W. Rep. 162); *Beddle v. Smith*, (148 Tenn. 489); *Standard Home v. Davis*, (217 Fed. Rep. 904). We have no trouble in assenting to the proposition that a license may be required of those proposing to engage in this manner of business. There would seem to be even more chance for deception and fraud and, therefore, more ground for such a requirement in their cases than in the case of an ordinary real estate broker

where we held that a license might be required. (*Roman v. Lobe*, 243 N. Y. 51.)

But our Legislature chose not to follow this course of licensing. In our opinion it went a shorter and perhaps a safer distance than the Legislatures of some other States by simply requiring the Attorney-General to be on the lookout for fraudulent practices and when he saw what seemed to him to be the appearance of such practices, whether existent or threatened, to investigate and if investigation confirmed appearances to take steps to halt the evil. Certainly no fundamental rights were impaired by an investigation and examination authorized in this course of supervision milder than is prevalent elsewhere within the principles of the authorities which have been cited. If our Legislature might have required licenses issued only upon full disclosure of details and revocable upon disclosure of prohibited acts disclosed by searching supervision, it must have the power to go only part of this way and authorize its Attorney-General to appeal to the courts to enjoin unlawful practices disclosed by an examination of those who either are or threatened to become the fraudulent actors. It seems quite impossible to hold that it might require a full disclosure of facts as a condition to a license, and may not authorize examination and investigation to determine whether a person is engaged in practices forbidden by the statute to the end that the courts may stop him in his prohibited course before he has victimized the public."

The constitutionality of the Martin Act was upheld by a unanimous opinion of the Court of Appeals of the State of New York and the decision was taken to the United States Supreme Court by writ of error. This writ of error was dismissed in a *per curiam* decision rendered January 16, 1928. The memorandum will be found

in 72 U. S. Sup. Ct. (Lawyer's Edition) at page 237.

The power to issue subpoenas, examine witnesses under oath, and require the production of books and papers has frequently been delegated by the legislature of this state to administrative or executive officers. It is thoroughly imbedded in our practice inasmuch as it is essential to the performance of the official's duty. Following is a list of commissions, committees and officials of the State of New Jersey to which such a power has been delegated by the legislature and the constitutionality of this power has never been questioned. Immediately following the name of the commission, committee or official, is a citation of the statute by which the authority was delegated.

Public Utility Commissioners, (3 C. S. 4284, Sec. 170);

Civil Service Commission, (3 C. S. 3797, Sec. 64);

State Water Supply Commission, (4 C. S. 5799, Sec. 15);

Legislative Committees (2 C. S. 2240, Secs. 64 and 67).

Analogous powers of subpoena have been delegated by the legislatures of various other States under their securities acts and the constitutionality thereof has been upheld by their courts as the following citations show;

Arkansas.

Secs. 4 and 8 of the Blue Sky Law confer upon the Railroad Commission the power of subpoenaing witnesses in proceedings before it relative to the investigation of securities.

The statute was held constitutional in
Standard Home v. Davis, 217 Fed. 904;
Mechanics B. & L. Assn. v. Coffman, 10
 Ark. 269; 162 S. W. 1090.

California.

Secs. 4 and 17 of the Investment Companies' Act (Laws of 1913) gives the Corporation Department very broad subpoena powers.

The statute was held constitutional in
People v. Simonson, 64 Cal. Ap. 97, 220, p.

Illinois.

Secs. 9, 17 and 24, Illinois Security Law, authorizes the Secretary of State as the Securities Commissioner, to issue subpoena, etc. The power to punish for contempt of such subpoenas is lodged in the Circuit Courts or the judges thereof.

This statute held constitutional in
People v. Lee, 311 Ill. 552, 143 N. E. 196.

Michigan.

Secs. 1, 18, Public Act 220 of 1923, authorizes Securities Commission to subpoena witnesses.

The former statute, containing the same powers of subpoena, held constitutional in

Merrick v. Halsey, 242 U. S. 569, 61 Law
 Ed. 498, 37 S. C. R. 277;
Redmond v. Michigan, 192 N. W. 688.

Missouri.

Secs. 10, 21, Securities Act, Laws of 1923, grants commission, under supervision of Secretary of State subpoena powers by clear inference.

This statute held constitutional in

Schmidt v. Stortz, 208 Mo. Ap. 439, 236 S. W. 694.

Tennessee.

Secs. 10, 18, Chap. 31, of 1913, extra session, amended 1923, gives Commissioner of Insurance and Banking power of examination.

This statute held constitutional in

Biddle v. Smith, 148 Tenn. 489, 236 S. W. 453.

The grant of power to the Federal Trade Commission by the Congress of the United States exceeds that delegated to the Attorney-General's office in the New Jersey Securities Act. In discussing the former, Judge Baker in *Sears Roebuck & Co. v. Federal Trade Commission* (258 Fed. 307: C. C. A. 7th), said at page 311:

“But such a construction of Section 5, according to petitioner's urge, brings about an unconstitutional delegation of legislative and judicial power to the commission. Grants of similar authority to administrative officers and bodies have not been found repugnant to the Constitution. *Buttfield v. Stranahan*, 192 U. S. 470, 24 Sup. Ct. 349, 48 L. Ed. 525; *Union Bridge Co. v. United States*, 204 U. S. 365, 27 Sup. Ct. 367, 51 L. Ed. 523; *Penn. Rld. Co. v. International Coal Co.*, 230 U. S. 184, 33 Sup. Ct. 893, 57 L. Ed. 1446, Ann. Cas. 1915D, 315; *National Pole Co. v. Chicago & N. W. Ry. Co.*, 211 Fed. 65, 127 C. C. A. 561.

With the increasing complexity of human activities many situations arise where governmental control can be secured only by the ‘board’ or ‘commission’ form of legislation. In such instances Congress declares the public policy, fixes the general principles that are to control, and charges an administrative body with the duty of ascertaining within particular fields from time to time the facts

which bring into play the principles established by Congress. Though the action of the commission in finding the facts and declaring them to be specific offenses of the character embraced within the general definition by Congress may be deemed to be quasi legislative, it is so only in the sense that it converts the actual legislation from a static into a dynamic condition. But the converter is not the electricity. And though the action of the commission in ordering desistance may be counted quasi judicial on account of its form, with respect to power it is not judicial, because a judicial determination is only that which is embodied in a judgment or decree of a court and enforceable by execution or other writ of the court."

V. There is nothing in the interpretation of the statute by the Court of Chancery that can be held to make its operationⁿ constitutional.

Appellants claim that the Court of Chancery construed the statute as making it mandatory on that court to award process of subpoena and grant injunctive relief on the showing among other things that the subject of the investigation failed or refused to make the required report. As a matter of fact *failure* to answer as opposed to *refuse* was not mentioned in the opinion at all, because this case was one of downright refusal, without reasonable cause or excuse, to make the report and answer the question. That was the situation with which the Court had to deal and it was in regard to it that the opinion was written. There was nothing high handed or arbitrary about the proceeding. The learned Vice-Chancellor listened carefully to the argument of counsel and read the affidavits as well as other papers submitted for the purpose of ascertaining whether there was failure, on account of some reasonable cause or excuse, to answer the questionnaire or a

refusal which would impel the Court to grant the relief prayed. There is absolutely nothing in the statute and nothing has been said or done in this case which in any way justifies appellants' statement that the Attorney-General is given an unlimited and uncontrollable discretion as to the initiation of investigations, or an open commission to embark upon a roving course for the purpose of generally prying into the affairs of any person. Neither is there anything to justify the statement that irrelevant or immaterial information must be given by anyone, or that any court or contract is subjected to the unlimited and uncontrollable caprice of the Attorney-General and his assistants. The appellants entirely misunderstand his function and would clothe him with judicial powers by saying that a constitutional court is converted from an independent tribunal of justice into an instrument of the Attorney-General mandatorily commanded to execute his will. The foregoing is completely answered by the following quotation from the opinion of the Court of Appeals of New York in *Dunham v. Ottinger, Attorney General*, hereinbefore mentioned:

"I find no bestowal upon the Attorney General of any of those judicial powers which by our Constitution are lodged with the courts. He decides nothing in a judicial way. He passes upon no question of civil violation or of criminal guilt. The ultimate and only end to which he can proceed is by action or criminal prosecution to submit to the courts the question whether a person has been guilty of such unlawful practices that he should be enjoined from farther pursuing them or should be subjected to a criminal prosecution. Everything which he does leading up to this point is the performance of an executive or administrative power such as has long been recognized as perfectly appropriate and valid and whatever judicial deci-

sion follows is made by the courts. It is the performance of administrative duties by an executive official and in no sense the decision of justiciable questions exclusively delegated to the jurisdiction of judicial tribunals." (Page 300, 2nd col., line 12).

So far is the Court of Chancery from being a creature of the Attorney-General that it in fact is given power to review and check his activities, and completely controls the issuance of its processes and injunctions as it always has heretofore. In section 4, which outlines the method of applying for a subpoena from the Court, the language used is that upon application and proof the Court "*may* make an order awarding process of subpoena." Later in the same section it is provided that on the motion the Court "*may* order an attachment for contempt to be issued" and "*in its discretion, may* order such offender to be committed." In section 5, which provides for injunctive relief the word used is again "*may* grant an injunction" and the same holds true with section 6. At no place are mandatory words used and it is ridiculous to assume that the Court of Chancery will fail to exercise its sound discretion in these matters. So broad is the control of the Court over the power delegated to the Attorney-General's office that when an application for process of subpoena or injunction is made it can review practically every act done in the course of the investigation. Suppose that under section 3 (a) the Attorney-General or his assistant called for data and information deemed by him to be relevant and material, but which was in fact neither relevant nor material. Suppose further that the subject of the investigation declined to answer and application was made for an injunction under section 5. This situation could be brought to the attention of the Chancery Court by

the persons aggrieved and on review if it was decided that the questions were irrelevant or immaterial, the application would be denied. The same course of procedure could be followed regarding any capricious or arbitrary act of the Attorney-General's office.

We respectfully submit that the point raised by appellants as to the construction of the statute by the court below was not contained in their petition of appeal so they really have no legal right to ask this court to consider it.

VI. The decision of the Attorney General to make an investigation in this case was fully justified by the facts before him and his action was neither arbitrary nor capricious.

A scheme more fantastic than the one outlined by the bill of complaint in this case would be hard to imagine. The company was organized in 1921 as The Tomadelli Corporation, the word "Electronic" being coined later and inserted in the name. The capitalization was \$1,500,000.00, divided into 100,000 shares of "Class A" stock at \$10.00 per share and 50,000 shares of "Class B" stock at \$10.00 per share. Juan J. Tomadelli took all the "Class A" stock, which had the voting rights, and 10,000 shares of the "Class B" stock. This was in consideration for all his rights and interest in his inventions and the patents thereon relating to the rendering of energy available through what he termed electronic atmospheric induction. No patents had been granted to him at that time by the United States nor have we been able to ascertain that any have been granted to date. The first invention which it was alleged would be developed was "an electronic lamp, self contained, complete in itself and requiring no connection whatever, after being

lighted, with any source of power, and designed to give off continuous light of undiminishing intensity for a period of about three years." Two other quotations from the prospectus are also interesting:

"The lamps, the alloys, the apparatus and the manner in which they are designed to function individually and in relation to each other, may briefly be described as follows:

(1) The lamps, smaller than the present electric bulbs, consist of two parts: (a) The base containing certain alloys which are subjected to the influence of the electrical discharge received from the generating section of the apparatus and which react in accordance with certain principles, or laws, applied by Mr. Tomadelli and which constitute an important part of his inventions, and (b) a glass bulb with a very strong and resistant filament, which should outlast the lamp itself.

(2) The apparatus, composed of over one hundred thousand parts and over twenty thousand connections, attracts and collects from the atmosphere a tremendous amount of electrical energy which is transformed, condensed and controlled. Scientists admit that electrical energy is present everywhere throughout the universe. This type of electrical energy is absolutely different from ordinary electric current as commonly known, and is characteristic in its action and effects. It is released and discharged into the base of the lamps where it affects the alloys contained therein to start the activity that creates the light within the bulb.

It will be readily understood that it would not be prudent for the Corporation, at this time, to disclose full and complete information regarding the details of the invention and the laws and principles involved" p. 13 of record). * * *

“The Company is at present engaged in making mechanical adjustment in the apparatus to render all the parts in unison with each other. As soon as this is completed it is expected to demonstrate lighted electronic lamps absolutely complete in themselves which will astonish the commercial and scientific world” (p. 15 of record).

The complainant was never able to find anyone who had seen one of these electronic lamps in operation, and an engineer who visited Tomadelli's “laboratory” came away without having seen a demonstration.

The appellants collected about a quarter of a million dollars from the public when the company was first organized and before the New Jersey Securities Act had been passed. The proposition was then allowed to lie dormant for a time, following which Tomadelli and a man named Zeugner appeared at Millville and started activities again. On page 23 of the record is a copy of the prospectus which has the following heading:

“August Zeugner
Representing

THE
TOMADELLI ELECTRONIC
CORPORATION

Office 986 Bergenline Ave., Union City, N. J.”

Although there were a number of people who said that they had been solicited by Zeugner, in some instances accompanied by Tomadelli, his lack of knowledge of the proposition when questioned by the examiner was rather surprising. Repeated efforts were made to get information, but only vague generalities could be obtained, and it was following all of this that the questionnaire was sent. In order to fortify his posi-

tion, the complainant outlined in his complaint the facts which caused him to decide that a questionnaire should be sent, although such a recital was, by the opinion of the Court, held to be unnecessary.

VII. There is absolutely nothing in the statute nor any judicial interpretation of it that precludes judicial review of the acts of the Attorney General through certiorari.

No one questions the proposition that review by certiorari is an inherent power of the Supreme Court and that a legislative act prohibiting a writ of certiorari is unconstitutional and void. See *Traphagan v. West Hoboken*, (39 N. J. L. 232). The cases cited by appellants apply the rule to various sets of facts, but they are not in point here. The New Jersey Securities Act does not prohibit a review of the Attorney-General's acts by writ of certiorari nor has the Chancery Court attempted to impose any such prohibition. In fact, the first time that writ of certiorari has been mentioned in this case was in appellants' brief. The point was not raised in the court below nor was it mentioned in the petition of appeal.

VIII. The injunction is valid as against Juan J. Tomadelli.

It will be remembered that section 5 empowers the Court to restrain the issuance, sale, offer for sale, purchase, or offer to purchase, promotion, negotiation, advertisement or distribution within this State of securities by the offending corporation or any agents, employees, brokers, partners, officers, directors and stockholders thereof. The injunction as drawn covers

all of these. Juan J. Tomadelli not only owned all the stock that had any voting power, but more besides and was an officer and director of the company. A reading of the record will clearly show that he does not come within that class of stockholders who according to appellants acquired their stock in good faith, held it in their own right and were wholly free from the illegal and prohibited practices of the corporation. But even though he was one of those mentioned, neither he nor they have any moral or legal excuse for passing the stock of a defunct and fraudulent corporation on to other guillible buyers. The fact that he claims not to be a dealer in securities does not alter his status in the slightest degree. One of the best features of the act is that it is so drawn as to make it possible to restrain a man like him from unloading a big block of worthless securities on the public before the Attorney-General's office, through the machinery provided by the statute, has an opportunity to ascertain the real state of affairs.

IX. None of the points argued in appellants' brief were properly raised.

It is a well settled rule that this court will refuse to consider points that were not raised in the court below and not alleged as errors in the petition of appeal; *Johnson v. Argueso*, (77 N. J. E. 599); *Prudential Insurance Co. v. Godfrey*, (77 N. J. E. 267). At no time before the court below did the appellants raise any question as to the constitutionality of the statute. That is the only allegation of error in their petition of appeal, but they do not argue it at all in their brief.

Point I of appellants' brief which has to do with personal consideration by the Attorney-Gen-

eral of certain questions was not raised before the court below nor was it alleged as error in the petition of appeal. The same is true as to Point II which discusses the statutory conditions precedent. Points III, IV and V criticize the construction of the statute by the court below, but the construction was not alleged as error in the petition of appeal. Point VI. was raised for the first time in appellants' brief. It therefore appears that the appellants are not properly before this court on any question.

Conclusion.

The judgment appealed from should be sustained.

Respectfully submitted,

EDWARD L. KATZENBACH,
Attorney-General.

RICHARD C. PLUMER,
Spec. Asst. Atty.-Gen.

New Jersey Court of Errors and Appeals

Between

EDWARD L. KATZENBACH, At-
torney General of the State
of New Jersey,
Complainant-Respondent,

and

THE TOMADELLI ELECTRONIC
CORPORATION, a corporation
of the State of New Jersey,
and JUAN J. TOMADELLI,
Defendants-Appellants.

On Bill, Etc.

*Appeal From
Decree.*

BRIEF OF APPELLANTS.

This is an appeal from a decree of the Court of Chancery entered in a proceeding brought thereon by the Attorney General of the State of New Jersey under the New Jersey Securities Act, commonly known as "Blue Sky Law," Chapter 79, P. L. 1927, page 138, approved March 19, 1927.

Under this law, the Attorney General addressed a document entitled "General Questionnaire," to the defendant Tomadelli Electronic Corporation, requiring the filing in writing under oath, at his office, on or before the time fixed therein of a statement and report, containing the information called for in said questionnaire (Case, pp. 30 to 40, Schedule C).

On November 15th, six days prior to the time fixed in the notice by the Attorney General, defendant corporation acknowledged receipt of the form questionnaire and advised that the corporation was not engaged in selling its stock in this

state and had not sold any of its own stock for a period of two years prior thereto; it further stated that if it at any time offered its stock for sale, that it would be glad to furnish the Attorney General with the information sought by him (Case, p. 57, Schedule A).

In reply to this letter the Attorney General acknowledged receipt thereof, and stated that he had direct evidence that the stock of defendant had been offered for sale within the past week or two, and that the answers to the questionnaire must be filed on the date fixed (Case, pp. 57 and 58, Schedule B).

In reply to this, the corporation, through its attorney reiterated the statement that the corporation had not, for at least two years last past offered any of its stock for sale, is not now offering any of its stock for sale, and does not contemplate in the immediate future to offer any of its stock for sale; and he further stated that if any stock was offered for sale, it was the stock of some individual, and assured him that before any stock is offered for sale by the corporation, that his department would be furnished with the fullest information respecting the affairs of the company.

Thereupon, the Attorney General filed a bill of complaint in the Court of Chancery, naming the corporation and Juan J. Tomadelli as defendants, praying that, in addition to the defendants answering the bill of complaint,

(1) That an order may be made awarding process of subpoena out of the Court of Chancery to the defendant corporation requiring it by its proper officers and agents to appear and testify before Richard C. Plumer, Special Assistant Attorney General, at 24 Commerce Street, Newark, New Jersey, at such time as the Court may designate;

(2) That said subpoena may contain a direction that said defendant, by its proper officers and agents produce before the said Special Assistant Attorney General, its cash book, stock register and journal;

(3) That a writ of injunction may issue restraining the defendant corporation, its officers, directors, agents, employees, brokers and stockholders specifically, including the defendant Juan J. Tomadelli from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this state any shares of the capital stock or any other securities of said defendant until the information, statements and reports called for by said questionnaire are furnished to the complainant.

(4) That the said defendants, the Tomadelli Electronic Corporation, and Juan J. Tomadelli, may be ordered to show cause why a preliminary injunction should not be granted restraining the said Juan J. Tomadelli and the Tomadelli Electronic Corporation, its officers, directors, agents, employees, brokers and stockholders from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this State any shares of the capital stock of The Tomadelli Electronic Corporation or any other securities of The Tomadelli Electronic Corporation aforesaid until the further order of this court.

Upon the filing of said bill of complaint, the Court of Chancery made an order to show cause, which was issued by said Court of Chancery, in and by which it was ordered that the defendants, The Tomadelli Electronic Corporation, and Juan J. Tomadelli, show cause before said court at the time therein fixed, why an order should not be made in accordance with the prayer of said bill of complaint.

Upon the return of said order to show cause, the defendant corporation appeared and presented proofs to the Court that it had not authorized nor permitted the sale of its stock since May, 1926; that the said corporation had been inactive since that time, and has not endeavored to raise any money through the sale of its stock, or any of its securities, either directly or indirectly, nor has any contract for the sale thereof been entered into by the corporation since May, 1926, nor has any corporate action been taken by which it contemplated the sale of any of its securities or any of its stock within the immediate future.

The Court of Chancery after hearing, ordered the issuance of the subpoena and injunction prayed for. The learned Vice-Chancellor construed the act to require the issuance of said subpoena and writ of injunction by the Court of Chancery whenever it is shown to it, that it appears to the Attorney General, or that he believes it would be to the public interest to require an investigation, and that the persons charged, refuse to make the required report, that it need not appear to the court, that such an investigation is required, and that the Attorney General need not in the first instance allege and establish the guilt of the defendants of fraudulent sales, but that all that he was required to do was to state that it *appears to him*, or that *he believes* the public interest requires an investigation (Case, Opinion, *V.-C.*, p. 68).

Applicants contend that the Court of Chancery erred in its determination, and that if the legislature intended the act as construed by said Court, that it is invalid.

POINT I.

The statutory condition precedent to power to require a statement and report containing the information called for in the "General Questionnaire" was not complied with. There was therefore no jurisdiction to require such statement and report.

Section three (3) of the New Jersey Securities Act (P. L. 1927, ch. 79) provides that: "Whenever it shall appear to the Attorney General either upon complaint or otherwise that any person * * * corporation * * *, has engaged in, or is engaging in, or is about to engage in any practice declared to be illegal and prohibited by this act, or whenever the Attorney General believes it to be in the public interest that an investigation of such matters should be made, he, or any Assistant Attorney General or other officer designated by him, may "require the filing with him on such forms as he may prescribe, of a statement or report in writing under oath or otherwise; examine persons under oath; examine records, books, etc.; compel attendance of persons for examination and the production of records, books, etc., by subpoena."

This section of the statute, it is submitted, makes the powers thereby conferred depend upon its appearing to the Attorney-General that a practice prohibited by the act has been committed or is threatened or upon the belief of the Attorney General that it is in the public interest that an investigation should be made. Consequently, that it so appear to the Attorney General, or that the Attorney General so believe, is a condition precedent to the powers conferred by the section. Only, as it so appears to the Attorney General, or as he so believes are the powers granted by

the section vested in him or any Assistant Attorney General or other officer designated by him. This condition precedent can only be fulfilled by the Attorney General. It is *his* judgment of appearances and *his* belief that is called for; such judgment, such belief, requires the exercise of discretion. Action which involves discretion cannot be delegated.

That it was the legislative intent that the Attorney General should personally form a judgment as to appearances or an opinion as to the public interest is clearly manifested.

Section 3 makes a clear distinction between what is required to be done by the Attorney General personally, and what may be done by the "Attorney General or other officer designated by him." Throughout the act (see Sections, 4, 5 and 6) whenever it is the legislative intent not to require action by the Attorney General alone, but to permit him to act personally or through others it is specifically provided that the action may be taken by "the Attorney General, any Assistant Attorney General or other officer designated by him." The "General Questionnaire," which was not answered: a failure which was the basis of the proceeding below, consisted of an extended and sweeping series of printed definitions, instructions and questions, with the following introduction.

"In accordance with Chapter 79 of the Laws of 1927, you are hereby required to file in writing under oath at the office of the Attorney General, Division of Securities, 24 Commerce street, Newark, New Jersey, on or before Monday, November 21, 1927, at 4 o'clock in the afternoon a statement and report containing the information called for in the following questionnaire. Edward L. Katzenbach, Attorney General, Richard C.

Plumer, Special Assistant Attorney General.”

The name of the Attorney General was *printed*.

The “General Questionnaire,” did not recite, nor did it in anywise show, that its issuance had been personally considered by the Attorney General. It did not recite, nor did it otherwise show, that it appeared to the Attorney General that the one summoned to make statement and report had been engaged in, or was engaging in, or was about to engage in any practice declared to be illegal and prohibited by the act, or that the Attorney General believed it to be in the public interest that the investigation should be made.

The very form of the “General Questionnaire” with the name of the Attorney General printed thereon justifies the inference that the matter of its issue had not had the personal consideration of the Attorney General and that he had delegated to another a duty that under the act is personal to him; involves discretion; and cannot be delegated.

It may be urged that this argument is nullified by section nine of the act which provides that “for the purpose of carrying into effect the provisions of this act, the Attorney General may appoint and employ such assistants, officers and other persons as he deems necessary, define their duties and authority and fix their compensation in accordance with the existing law.” Such a contention is invalid. This general provision of the act, of course, was not intended to enable the delegation by the Attorney General of those duties which under the preceding sections of the act are required to be performed by him in person; in other words, this general provision was not intended to make delegable, duties which under preceding sections are made non-delegable.

In *Mahler v. Eby*, 264 U. S. 32 (a deportation case) Chief Justice Balt said:

“It is essential that when an executive is exercising delegated legislative power he should substantially comply with all the statutory requirements in its exercise, *and that if his making a finding is a condition precedent to this act, the fulfillment of that condition should appear in the record of the act.*”

See also:

State v. Shrieve, 15 N. J. L. 57.

State v. Van Geison, 15 N. J. L. 339.

In the absence of anything to show that the matter of issuing the “General Questionnaire” had been personally considered, by the Attorney General, before its issuance and so in the absence of anything to show that its issuance was based upon its appearing *to him* that the act had been, was being, or was about to be violated, or that *he* believed it to be in the public interest that an investigation should be made; and in the absence of a recital in the “General Questionnaire” that it so appeared to the Attorney General, or that he so believed, it is submitted that jurisdiction and power to require the making of a statement and report containing the information called for in the “General Questionnaire” was wholly wanting.

POINT II.

The court below was without jurisdiction, since the requirement of the filing with the Attorney General of the statement and report was without force because of the failure to comply with the statutory condition precedent to power to impose such requirement.

Section four of the act provided that upon failure or refusal to file any statement or report

with the Attorney General the Court of Chancery on application made to it and *on proof* being made of such *failure or refusal* may make an order awarding process of subpoena or subpoena *duces tecum* out of said court for such witness to appear and testify before the Attorney General, any Assistant Attorney General or other officer designated by him and provides for punishment for contempt for failure to obey.

Section five provides that on failure or refusal to file such statement or report with the Attorney General, the Attorney General, any Assistant Attorney General, or other officer designated by him, in addition to the other remedies provided for by the act, may apply to the Court of Chancery "for, and upon proof of such failure or refusal the Court may grant, an injunction restraining the issuance, sale, offer for sale, purchase, or offer to purchase, promotion, negotiation, advertisement or distribution within this State" of the securities until the filing of the statement or report.

It is on these sections of the act that jurisdiction is sought to be vested for the order and the injunction made and issued in the court below.

The proceeding before the court below was statutory. Except under the authority of the statute the Court was without jurisdiction to entertain and act upon the application made to it. If because of the lack of compliance with the condition precedent prescribed by the statute the requirement of the "General Questionnaire" that the statement and report be filed with the Attorney General was of no force or effect, then it follows that the failure or refusal to file such statement and report would not vest the Attorney General with authority to initiate the proceeding

in the court below, nor confer upon that court jurisdiction of the proceeding or authority to grant the order and injunction hereunder review.

POINT III.

Sections Three, Four and Five of the act as construed by the court below violate both the Federal and State Constitutions in that, without due process of law, they deny and effect a deprivation of liberty of contract.

The court below construed the act as making it mandatory upon it to award process of subpoena, subpoena *duces tecum* and injunction upon the bare showing by the Attorney General (1) *that it appeared to him* that "any person has engaged in, or is engaging in, or is about to engage in practices declared to be illegal and prohibited by the act or that the *Attorney General believes* it to be in the public interest that an investigation should be made;

(2) that he has required the filing with him of a statement or report, and

(3) that there has been a failure or refusal to file such statement or report.

So construed the statute grants to the Attorney General an unlimited and uncontrollable discretion as to the initiation of investigation and as to its direction and scope. So construed the statute confers upon the Attorney General an open commission in unlimited and uncontrollable discretion to embark upon a roving course for the purpose of generally prying into the affairs of any person.

So construed, the statute converts a constitutional court from an independent tribunal of justice into an instrument of the Attorney General

mandatorily commanded to execute his will, and to bend the judicial process to that will, without consideration of other than the fact that it is his will.

All that is required under the statute so construed to justify an inquiry of any scope or extent is a declaration of the Attorney General, that it "appears to him," or that "he believes." Such declaration once made the Attorney General may require the filing of a statement or report and such requirement may extend beyond relevant and material facts and circumstances to "such other data and information as *he* may deem relevant and material thereto."

So construed, the statute requires that the demanded report and statement be filed no matter how grossly arbitrary and capricious the action of the Attorney General in judging as to appearances, or in forming a belief, may have been.

So construed the statute requires that the report and statement be filed no matter how clearly irrelevant and immaterial the information and data demanded may be, if only the Attorney General, any Assistant Attorney General or other officer designated by the Attorney General deem it relevant and material.

So construed, the statute no matter how grossly arbitrary and capricious the action of the Attorney General in judging as to appearances, or in forming a belief, may have been; no matter how clearly irrelevant and immaterial the information and data demanded may be, the Court of Chancery is commanded to compel compliance with the demand made, through the issuance of its process of subpoena and injunction and through attachment for contempt.

So construed the act subjects liberty of contract to the unlimited and uncontrolled will of the Attorney General, and to his arbitrary and capricious action, without opportunity for, and in fact with a denial of, judicial protection and judicial review.

In *Klein v. Barry*, 196 N. W. 457, the Wisconsin "Blue Sky Law" was construed by its Supreme Court with respect to the process conferred upon the commission by its statute the Court said:

"No one could know, nor could a court ascertain in a particular case, the rights of the parties, because final determination rested with the commission, and that, too, after and rather than before the court. Certainly the power of the legislature to declare as it did in the act of 1919, that a violation of the act should render the sale void, was a legislative act and an exercise of legislative power. Here, the legislature, instead of prescribing the rule, has left it to the determination of the commission in each case. There is no claim that the power thus conferred has been abused, or that the commission has not endeavored to act with the highest motives in the public interest; but the validity of the law, is not to be determined by what has been done, but by what it authorizes to be done. Arbitrary power may be wisely exercised, but it opens the door to abuse and oppression. It has been our boast that this is a government of laws rather than of men. The basis of this statement is that officers of the government under the constitution are subjected to constitutional restraints imposed by the people. Where officers are to exercise discretion, it is carefully limited and controlled by the Constitution. The statute in this case furnished no guide, establishes no standard, makes no limitation, but by its terms vests in the commission an unlimited and uncontrollable discretion."

It is submitted that so construed the act denies due process of law in violation of both the Federal Constitution and the Constitution of the State.

The case of *Dunham v. Ottinger*, 243 N. Y. 243, considering the New York statute, does not make against this contention.

As the court there pointed out, the statute of that State, conditions proceedings for failure or refusal to answer, not upon mere failure or refusal, but upon such failure or refusal without "reasonable cause" (pp. 430 and 431). As the Court indicates the New York statute "is by no means lacking in substantial provisions by which to safeguard its execution. An inquiry under it must be relevant for the purposes proposed by it; any person of whom an examination is sought is immune from punishment for refusal to answer unreasonable questions or to comply with unreasonable requests."

These safeguards are not provided by the statute of our State as that statute was construed by the court below; nor under the statute of our State as so construed are our courts open "for any appeal by one who is being persecuted."

The New York statute further enacts that any official conducting an investigation or examination, who gives publicity to the information which has been obtained is himself guilty of a misdemeanor.

We have no such safeguard in this State. True we have Chapter 73 of the Laws of 1927, a supplement to the Crimes Act, which enacts that:

"Any person who shall publish or cause to be published, any complaint, statement, report, subpoena, testimony, investigation, examination or other proceedings made or

conducted, pursuant to 'An Act declaring unlawful certain practices in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement, or distribution of securities within this state, and providing for the investigation and prevention of such practices,' *before the institution of proceedings thereunder in a court of law or equity shall be guilty of a misdemeanor.*"

The words italicized by us will indicate how limited and circumscribed the protection afforded by this statute is. Beyond this it should be noted that this statute was approved March 14, 1927, and that no statute bearing the title quoted therein was approved until March 19, 1927. Both statutes went into effect under the provision of the constitution of the State on July 4, 1927, but the fact remains that on the enactment of Chapter 73, Chapter 79 had not yet been enacted.

POINT IV.

Sections Three, Four and Five of the act as construed by the court below violate the Constitution of the State in that they owe to the acts of the Attorney General finality and preclude judicial review of such acts through certiorari.

If our analysis of the act in the light of the opinion below, is sound, the action of the Attorney General both in initiating the inquiry and in determining its direction and scope, is a finality. The fact that it is wholly arbitrary and capricious and that the inquiry extends to matters clearly neither material or relevant, will then neither afford a defence to an application made to the Court of Chancery by the Attorney General nor lay the basis for relief through certiorari. That the action of the Attorney General is, under the statute a finality would be a com-

plete answer not only to such attempted defence in the Court of Chancery, but also one to an application to the Supreme Court for relief through certiorari.

The Supreme Court of the State is a constitutional court. The review of the action of public officials and the affording protection against the exercise by them of their authority in unreason and arbitrarily and capriciously, even, through the writ of certiorari, been a part of the constitutional power of that court. The statute as construed by the court below impairs this constitutional power and withdraws from the people the protection which such constitutional power of judicial review affords.

See:

Flannigan v. Guggenheim Smelting Co., 63 N. J. L. 647;

New Brunswick v. McCann, 74 N. J. L. 171;

Lighthipe v. Orange, 75 N. J. L. 365;

Traphagen v. West Hoboken, Sup. 39 N. J. L. 232;

In re Cleveland, 51 N. J. L. 311.

POINT V.

Sections Three, Four and Five of the act as construed by the court below violate the Constitution of the State in that the discretion of the Court of Chancery, a constitutional court in granting relief by way of injunction, is impaired and in that they require of that court the performance of non-judicial duties.

The Court of Chancery is a constitutional court. Relief by way of injunction is one of its constitutional powers. The granting or with-

holding of such relief, preliminarily or finally, has always rested in the sound discretion of that court. The statute as construed by the court below mandatorily requires the issuance by the Court not only of the process of subpoena but of injunction as well, not at the Court's discretion, but in the unlimited and uncontrolled discretion of the Attorney General. Does that statute so construed not impair a constitutional power of the Court?

To give to the action of the Attorney General finality, and to require the Court to further such action without question through process of subpoena, or injunction, is to take from the proceedings before the Court every essential aspect of a judicial proceeding, and to reduce the Court to the position of a mere automaton for the execution, under the guise of a judicial proceeding, of the unlimited and judicially uncontrollable will of another department of the government of the State. Can the function so assigned to the Court be said to be judicial?

See cases cited under last preceding point and *In re Walker*, 95 N. J. E. 619; *Hedden v. Hand*, 90 N. J. L. 583-589.

POINT VI.

The order and injunction against Tomadelli personally.

All that has heretofore been urged is applicable not only to the order and injunction against the corporation but to the order and injunction against Tomadelli personally.

But here the situation is further aggravated, for the conclusion of the court below comes to this, that if the Attorney General judges as to

appearances and forms a belief that the public interest demands that investigation be made; requires a statement and report from the corporation, and the corporation fails or refuses to make such report, its stockholders, though their stock was acquired in good faith, and held in their own right, and though wholly free from the claimed illegal and prohibited practices of the corporation, may be enjoined from the sale or offer "within this State" of securities until the corporation files such statement or report. (Section 5 of the Act.)

Defendant Tomadelli was not served by the Attorney General with the general questionnaire, nor was any demand made upon Tomadelli to furnish any information to the Attorney General. The decree of the Court of Chancery enjoins defendant Tomadelli from selling, offering for sale, purchasing, offering to purchase, any shares of the capital stock, or any other securities of the defendant corporation until the information, statements and reports required by the questionnaire are furnished to the Attorney General. The decree therefore extends to defendant Tomadelli, with respect to his private holdings in said corporation. There is no provision in the act to authorize the Court of Chancery to issue its writ of injunction against individual owners of stock.

The act, as its title indicates, is designed to prevent stock brokers, stock salesmen and promoters from perpetrating fraud and imposition on unsuspecting investors. The defendant corporation was organized and engaged in business many years before the statute under review was enacted. The stock owned by defendant Tomadelli was issued to him at the inception of the business and become his property long before the statute was enacted.

It is submitted that the legislature had no power to deprive him of this property or prevent him from freely dealing therewith. He is not a dealer in corporate stocks and does not come within the purview of the statute.

Respectfully submitted,

L. EDWARD HERRMANN,
Solicitor for and of Counsel with
Defendants-Appellants.

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