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**Bill of Complaint.**

(Filed February 28, 1942.)

IN CHANCERY OF NEW JERSEY.

To His Honor, Luther A. Campbell, Chancellor  
of the State of New Jersey: 10

The complainants, Georgina Fox, Cecilia Fox, Frances A. Fox, individually, and Frances Fox, co-executrix under the last will and testament of Peter J. Fox, deceased, of the City of Jersey City, County of Hudson and State of New Jersey, respectfully show that:

1. On or about March 17, 1931, there was organized under the General Corporation Act of New Jersey a corporation named "Phox Bus Company" for the purpose of operating one or more automobile passenger buses on what is commonly known as the "Bergen Avenue Line", a line that is operated mainly in Jersey City by a group of auto bus owners who are organized in a voluntary association known as the Bergen Avenue Bus Owners Association. 20

2. This association of owners operate their several auto buses under a mutual pooling arrangement and conduct their business under the supervision of the Board of Public Utility Commissioners of N. J., and are required to obtain licenses for operation from the municipal authorities of Jersey City. 30

3. At the time of the organization of the Phox Bus Co., the aforementioned corporation, its certificate of incorporation authorized an issue of 1,000 shares of stock at a par value of 40

*Bill of Complaint.*

10 \$100.00 each, and the incorporators named therein and the amount subscribed for by each were as follows: Peter J. Fox, since deceased, eight shares; Anna Fox, the wife of Peter J. Fox, one share; and Frances A. Fox, one of the complainants, one share.

4. On or about March 18, 1931, an organization meeting was held by the three incorporators, who thereupon elected Peter J. Fox as president, the complainant, Frances A. Fox, secretary and treasurer, and one Harry Fox, vice-president.

20 5. No regular meeting of stockholders or directors was ever held thereafter and the affairs of the company were handled and controlled by its president, Peter J. Fox, until his death in December, 1938, during which time the said Peter J. Fox served as one of the two complementing drivers of the bus and handled the funds of the company through his own personal bank account and contracted for repairs, and in general, conducted the company's business.

30 6. Upon organization of the corporation at the direction of Peter J. Fox, who had transferred his bus franchise and bus to the corporation, the corporation issued stock for the amount of the subscription to aforementioned incorporators, namely, Peter J. Fox, eight shares; Frances A. Fox, one share, and Anna Fox, one share.

40 7. Thereafter, Peter J. Fox transferred one share of his original 8 shares to L. Arthur Frame, and another share to J. Raymond McBride, with the express understanding that the same was to be transferred to him merely as

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nominee for the said Peter J. Fox, and that the actual and beneficial ownership of said share was to remain in Peter J. Fox.

8. Thereafter, on or about March 18, 1935, Peter J. Fox, desiring to qualify James Raymond McBride as a driver to operate the said bus, caused to be issued five new shares upon the books of the corporation to the said James Raymond McBride for the apparent consideration of the sum of \$500.00. This transfer was without authority from the stockholders and directors of the corporation and was made only for the purpose of nominally qualifying the said James Raymond McBride with the ownership of said stock, although actually the said James Raymond McBride was not to become the owner of the shares; that the same was still to remain the property of Peter J. Fox, for the consideration of \$500.00, which was apparently advanced on behalf of James Raymond McBride to Peter J. Fox for the shares by one Mary Hayes, a relative of James Raymond McBride, was repaid to her by the said Peter J. Fox.

9. No approval was obtained from the Board of Public Utility Commissioners of New Jersey for the original issuance of the stock, nor for the transfer of any shares to L. Arthur Frame and James Raymond McBride, nor for the issuance of the five additional shares to James Raymond McBride, although by statute in N. J. such approval is required.

10. The complainants further show that on or about July, 1935, a special meeting of the corporation was held, which authorized an amendment to its certificate of incorporation,

*Bill of Complaint.*

10 which was duly filed with the Sec. of State, and which provided for the change of the capital stock to no par stock, pursuant to which certificates of stock were prepared but were never executed, in the following amounts to the following persons: 120 shares to Peter J. Fox, 10 shares to Anna Fox, 10 shares to Frances A. Fox, and 10 shares to L. Arthur Frame.

11. No approval was ever obtained from the Board of Public Utility Commissioners of N. J. for the issuance of any such stock, although such approval was required by law.

20 12. Complainants further show that on or about April 16, 1937, Peter J. Fox applied to Board of Public Utility Commissioners of N. J., by petition, for approval of the issuance of fifteen shares of capital stock, having no par value but having a stated value of \$100.00 per share, total issue \$1,500.

30 13. Pursuant to said petition, on or about October 14, 1937, Peter J. Fox appeared before the Board of Public Utility Commissioners of N. J. upon the hearing conducted with respect to said petition, and testified that the Phox Bus Co. was requesting the approval of the issuance of fifteen shares of capital stock; that no stock had ever been actually issued by the Phox Bus Co. prior thereto; that the owners of the stock would be his wife, Anna T. Fox; his sister, Frances A. Fox; that he, Peter J. Fox, would hold twelve of the shares and that one share each would be held by the other three persons named; that the consideration for the issuance of the stock was the transfer of the bus from the name  
40 of Peter J. Fox to the Phox Bus Co.

C.

*Bill of Complaint.*

14. Pursuant to the aforementioned petition and the aforementioned testimony of Peter J. Fox, the Board of Public Utility Commissioners of N. J. on October 28, 1937, approved the issuance of the fifteen shares of capital stock of no par value.

10

15. Complainants say that this was the only issuance ever approved by the Board of Public Utility Commissioners of N. J. and the only shares of stock validly issued by Phox Bus Co.

16. Complainants further state that the one share of stock issued to Arthur Frame by the said Peter J. Fox was issued unto the said Arthur Frame, the nephew of the said Peter J. Fox, by way of gift inter vivos.

20

17. Complainants further state that from the date of said issuance until the death of the said Peter J. Fox in January, 1939, and at the death of Peter J. Fox on the aforementioned date, the ownership of the issued and outstanding stock of Phox Bus Co. stood in the following manner: Peter J. Fox, 12 shares; Arthur Frame, 1 share; Anna T. Fox, widow of Peter J. Fox, 1 share, and Frances A. Fox, 1 share.

30

18. Complainants further state that upon the death of the said Peter J. Fox, the testate, his last will and testament was admitted to probate by the Surrogate of Hudson County, N. J.; that under said last will and testament the said Peter J. Fox bequeathed the aforementioned twelve shares of stock to his wife, Anna Ryan Fox, and his three sisters, the complainants, Georgina Fox, Cecilia Fox and Frances A. Fox, to be divided equally among them, share and share alike.

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19. Under said last will and testament, the said Peter J. Fox nominated Anna Ryan Fox, his wife, and Frances A. Fox, his sister, to be the executrices of his last will and testament, and that upon the said will being admitted to probate the said Anna Ryan Fox and Frances A. Fox did qualify as co-executrices and have continued to serve in that capacity down to the present date.

20. Complainants further state that Anna Ryan Fox and Frances A. Fox, as co-executrices under the last will and testament of Peter J. Fox, deceased, are now owners of and have the legal and equitable title to the twelve shares of stock aforementioned of the Phox Bus Co. owned by Peter J. Fox and held by him or by his nominees at the time of his death, and that by reason of the provision aforementioned in the last will and testament of Peter J. Fox, deceased, Anna Ryan Fox, the widow, and Georgina Fox, Cecilia Fox and Frances A. Fox, the sisters of the deceased, Peter J. Fox, will become entitled by way of distribution from the aforementioned co-executrices of a one-fourth share each of the aforementioned twelve shares of stock.

21. Complainants further show that subsequent to the death of Peter J. Fox and on or about March 3, 1939, one Robert J. Taylor filed a bill in Chancery against the Phox Bus Co., pursuant to which the Court of Chancery on March 6, 1939, made an order appointing Edward M. Salley, Jr., of the City of J. C., N. J., as the receiver of the said defendant, Phox Bus Company, and of all its assets and property of every character and description whatsoever, with full power and authority to demand, sue

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for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, franchises, papers, choses in action, notes and property of any and every description belonging to the said Phox Bus Co., or to which it may be entitled; that said receivership was ordered because the Court of Chancery had determined that the defendant, Phox Bus Co., was insolvent. 10

22. Complainants further show that subsequent thereto the receiver, Edward M. Salley, Jr., conducted a number of hearings with respect to the ownership of the stock and the issuance of the stock by the Phox Bus Co.; that pursuant thereto the said Edward M. Salley, Jr., filed a report with the Court of Chancery in which he made a determination as to the ownership of the said stock; that upon exceptions taken to the report by Frances Fox, Georgina Fox and Cecilia Fox, the Court of Chancery overruled the exceptions and sustained the report of the receiver. 20

23. Complainants further show that an appeal was prosecuted by the complainants from the order of the Court of Chancery approving the report of the receiver with respect to the stock ownership, and that on said appeal, the Court of Errors and Appeals ordered that the report be set aside and nullified to the extent that it made any determination of the stock ownership of the corporation, upon the ground that the receiver was without authority to make such a determination, and upon the further ground that such determination could only be made in 30

*Bill of Complaint.*

an original proceeding instituted and commenced for the said purpose.

10 24. Complainants further show that in the aforesaid receivership proceeding, an order was made by the Chancellor on the 26th day of October, 1940, instructing and directing the said receiver to accept a bid of \$13,500.00, in cash, for the bus license and franchise of the defendant Phox Bus Co., and directing the receiver to execute and deliver to one, B. J. Gannon, any and all necessary and proper conveyances, assigns, and acquittances to carry said order into effect upon payment by the said B. J. Gannon of the sum of \$13,500.00.

20 25. Complainants further show that they appealed to the N. J. Court of Errors and Appeals from said order, and that upon the said appeal the same was ordered reversed, set aside, and for nothing holden.

30 26. Complainants further show that the said N. J. Court of Errors and Appeals, by its remittitur, ordered, adjudged, and decreed that there should be a further continuance of the operation of the bus business of the Phox Bus Co., by the receiver for a reasonable period for the purpose of producing sufficient moneys to satisfy all creditors and costs of the receivership, and to enable the Court of Chancery, on proper application and showing, to direct the receiver to reconvey the assets of the defendant Phox Bus Co. to those ultimately entitled thereto.

40 27. Complainants further show that pursuant to the remittitur, aforesaid, of the N. J. Court of Errors and Appeals there was entered in this

*Bill of Complaint.*

Court in the said receivership cause an order pursuant to which so much of the order of this Court made on the 28th day of October, 1940, in the receivership cause confirming, ratifying, and allowing the first intermediate report of Edward M. Salley, Jr., receiver in that cause, with respect to the determination of the ownership of the capital stock of the Phox Bus Co. was thereby reversed, set aside, and for nothing holden; and by which it was further ordered that the order made by this Court in the said cause on October 28, 1940, instructing and directing the receiver to accept the bid of \$13,500.00, as aforesaid, was thereby reversed, set aside, and for nothing holden; and which order further ordered that there be a further continuance of the operation of the bus business of the Phox Bus Co., by the receiver for a reasonable period for the purpose of producing sufficient moneys to satisfy all creditors and costs of the receivership, and to enable this Court, on proper application and showing, to direct the receiver to reconvey the assets of the Phox Bus Co. to those ultimately entitled thereto.

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28. Complainants further show that this proceeding has been instituted by them in order to obtain a determination of the stock ownership of the Phox Bus Co. for the purposes aforementioned.

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29. Your complainants have obtained an order from this Court in the aforementioned receivership proceedings permitting your complaints to name as a party defendant to this action the said Edward M. Salley, Jr., receiver of the Phox Bus Co.

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*Bill of Complaint.*

Your complainants are without an adequate remedy at law and therefore pray:

10 1. That Anna Fox, individually, Anna Fox, co-executrix under the last will and testament of Peter J. Fox, deceased, L. Arthur Frame, James Raymond McBride, Edward M. Salley, Jr., receiver of the Phox Bus Co., a corporation of the State of N. J., who are the defendants to this suit may answer this Bill of Complaint and each statement therein made.

20 2. That a decree may be made by this Court determining who among the complainants and the defendants are the actual and beneficial owners of the capital stock of the Phox Bus Co.

30 3. That a decree may be made by this Court decreeing that there is now issued and outstanding a total number of 15 shares of capital stock of no par value representing the lawfully issued and outstanding capital stock of the Phox Bus Co., or that in lieu thereof a decree may be made by this Court directing and commanding that there be issued a total of 15 shares of capital stock of no par value which shares shall represent the total issued and outstanding capital of the Phox Bus Co.

40 4. That a decree may be made by this Court declaring and decreeing that the said 15 shares of capital stock shall be owned and held by the following persons in the following amounts: namely, Anna T. Fox, individually, 1 share; Frances A. Fox, individually, 1 share; Arthur Frame, individually, 1 share; and Anna T. Fox and Frances A. Fox, as co-executrices under

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the last will and testament of Peter J. Fox, 12 shares.

5. That a decree may be made by this Court declaring and decreeing that James Raymond McBride has no interest, claim, title, or ownership, actual or beneficial, in and to any of the shares of stock of the Phox Bus Co. 10

6. That a writ of subpoena may issue commanding said defendants to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

IRVING CHARLES PICKER,  
IRVING CHARLES PICKER,  
— Solicitor for Complainants. 20

MAURICE C. BRIGADIER,  
MAURICE C. BRIGADIER,  
of Counsel.

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**Answer of Defendant Anna T. Fox, Individually and as Co-Executrix.**

(Filed April 16, 1942.)

IN CHANCERY OF NEW JERSEY.

#139-543.

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Between

GEORGINA FOX, et als.,  
Complainant,

and

ANNA T. FOX, et als.,  
Defendants.

On Bill &c.

20

Anna T. Fox, individually, and Anna T. Fox, as co-executrix under the Last Will and Testament of Peter J. Fox, deceased, residing at 186 Dwight Street, in the City of Jersey, County of Hudson and State of New Jersey, by way of Answer to the Bill of Complaint filed herein, says that:—

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1. These defendants leave the complainants to their proof as to the allegations contained in each and every paragraph of the Bill of Complaint.

ARMSTRONG & MULLEN,  
Solicitors of Defendants, Anna T. Fox,  
individually, and Anna T. Fox, as  
co-executrix of the Last Will and  
Testament of Peter J. Fox, deceased.

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**Answer and Counterclaim of Defendant  
James Raymond McBride.**

(Filed April 16, 1942.)

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[SAME TITLE.]

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The defendant, James Raymond McBride, residing in Jersey City, N. J., answering the bill of complaint filed in this cause says:

1. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs 1, 2, 3, 4, 5 and 6 inclusive.

2. This defendant admits that part of paragraph 7 which alleges that Peter J. Fox transferred one share of his stock to L. Arthur Frame and another share to this defendant but denies that the same was to be transferred to him merely as a nominee for said Peter J. Fox and denies that the actual and beneficial ownership of said share was to remain in Peter J. Fox.

20

3. This defendant admits that on or about March 18th, 1935 Peter J. Fox, desiring to qualify this defendant as a driver to operate said bus, caused to be issued five new shares upon the books of the corporation to this defendant, but denies that the apparent consideration was \$500. This defendant states that the actual consideration was \$500. This defendant denies that this transfer was without authority from the stockholders and directors of the corporation. This defendant denies that actually he was not to become the owner of said shares. This defendant denies that same was still to remain the

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*Answer and Counterclaim of Defendant  
James Raymond McBride.*

10 property of Peter J. Fox. This defendant admits that the actual consideration for the transfer was \$500. This defendant has no knowledge or information sufficient to form a belief that said \$500. was repaid to one Mary Hayes but alleges that if said \$500. was repaid as is alleged said payment was without the authority of the corporation and without the consent of this defendant.

4. This defendant has no knowledge or information sufficient to form a belief as to statements in paragraphs 9, 10, 11, 12, 13, 14, 15 and 16.

20 5. This defendant denies the allegations of paragraph 17.

6. This defendant has no knowledge or information sufficient to form a belief as to statements in paragraphs 18 and 19.

7. This defendant denies the allegations contained in paragraphs 20.

30 8. This defendant has no knowledge or information sufficient to form a belief as to statements in paragraphs 21, 22, 23, 24, 25, 26, 27, 28 and 29.

By way of counterclaim against the complainants this defendant alleges:

40 1. He is the owner of 6 shares of the common stock of the Phox Bus Company, which shares were purchased by him from said corporation and for which stock there was paid to said corporation the sum of \$500.

*Answer and Counterclaim of Defendant  
James Raymond McBride.*

2. Subsequently thereto Peter J. Fox, acting without authority of said corporation, paid to one Mary Hayes the sum of \$500. in attempting to repurchase shares of stock in said corporation owned by this defendant. Said payment to said Mary Hayes was made without the consent of this defendant. 10

3. Upon demand being made upon this defendant by Edward M. Salley, Jr., duly appointed Receiver of said corporation, this defendant paid to him as such Receiver the sum of \$627.50 being \$500. due as the purchase price of said stock plus \$127.50 interest thereon.

4. Complainants herein deny that this defendant owns said 6 shares of stock and have prayed for a decree of this Court that they are the sole owners of said 6 shares of stock belonging to this defendant and that this defendant owns no shares of stock in said corporation. 20

This defendant therefore prays:

1. That Anna Fox, individually, Anna Fox, co-Executrix of Peter J. Fox, Georgina Fox, Cecelia Fox, Frances A. Fox, complainants herein, and Edward M. Salley, Receiver of the Phox Bus Company, who are defendants in this counterclaim, may answer this counterclaim and each statement therein made. 30

2. That a decree may be made by this Court determining that this defendant is the owner of said 6 shares of stock of the Phox Bus Company. 40



**Answer of Defendant L. Arthur Frame.**

(Filed April 21, 1942.)

—◆—  
[SAME TITLE.]  
—◆—

The defendant L. Arthur Frame, also known as Arthur Frame, answering the bill of complaint, says that:

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1. He admits the allegations of fact contained in paragraphs 1, 2, 3, 4, 6, 7, 10, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the complaint.

2. He admits the allegations of paragraph 13, except that there should be included therein the name of Arthur Frame as an owner to the extent of one share of the Phox Bus Company capital stock.

20

3. He denies knowledge or information sufficient to form a belief as to the allegations of paragraphs 5, 8, 9, 11 and 15.

WALTER E. COOPER,  
Solicitor for and Of Counsel with  
the defendant L. Arthur Frame,  
also known as Arthur Frame,  
15 Exchange Place,  
Jersey City, New Jersey.

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**Replication to Answer of Defendant  
L. Arthur Frame.**

(Filed May 4, 1942.)

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[SAME TITLE.]

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The complainants, Georgina Fox, Cecelia Fox, Frances Fox, individually, and Frances Fox, co-executrix under the last will and testament of Peter J. Fox, deceased, by way of replication unto the answer of L. Arthur Frame say that:

The complainants join issue on the allegations contained in the answer of the defendant, L. Arthur Frame.

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IRVING CHARLES PICKER,  
IRVING CHARLES PICKER,  
Solicitor of Complainants.

MAURICE C. BRIGADIER,  
MAURICE C. BRIGADIER,  
Of Counsel with Complainants.

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**Replication and Special Replication to Counterclaim of Defendant James Raymond McBride.**

(Filed May 4, 1942.)

—◆—  
[SAME TITLE.]  
—◆—

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The complainants, Georgina Fox, Cecelia Fox, Frances Fox, individually, and Frances Fox, co-executrix under the last will and testament of Peter J. Fox, deceased, by way of replication unto the answer of James Raymond McBride say that:

1. The complainants join issue on the allegations contained in the answer of the defendant, James Raymond McBride, to the Bill of Complaint in the above entitled cause. 20

By way of special replication to the counterclaim aforesaid by the defendant, James Raymond McBride, the complainants say that:

1. Complainants deny the allegations of paragraph one of the counterclaim.
2. Complainants deny the allegations of paragraph two of the counterclaim. 30
3. Complainants deny the allegations of paragraph three of the counterclaim except that the complainants admit that the defendant did pay to the Receiver, Edward M. Salley, Jr., the sum of \$627.50 but that said payment was improper and unauthorized and that the Receiver, Edward M. Salley, Jr., in receiving said payment acted without any authority at law. 40

*Replication and Special Replication to Counterclaim of Defendant James Raymond McBride.*

10 4. The complainants admit that they deny that the defendant owns six shares of stock referred to in the counterclaim but they deny that they have prayed for a decree of this Court; that they are the sole owners of the said six shares of stock; but further answering the same, the complainants say that the six shares of stock belong to Frances A. Fox and Anna T. Fox as co-executrices under the last will and testament of Peter J. Fox, deceased.

IRVING CHARLES PICKER,  
Solicitor of Complainants.

20 MAURICE C. BRIGADIER,  
Of Counsel with Complainants.

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**Answer of Defendant, Edward M. Salley, Jr.,  
Receiver for Phox Bus Company, a Corporation.**

(Filed May 18, 1942.)

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[SAME TITLE.]

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Defendant, Edward M. Salley, Jr., Receiver for Phox Bus Company, a corporation, for his answer, says:

1. He admits the allegations contained in Paragraphs #1 and #2 of the Bill of Complaint filed herein.

2. He neither denies nor admits the other allegations contained in said Bill of Complaint, and leaves the complainants to their proof thereof.

20

Respectfully submitted,

PAUL J. DUFFY,  
(PAUL J. DUFFY)

Solicitor for and of Counsel with  
defendant Edward M. Salley,  
Jr. Receiver for Phox Bus Co.  
Inc.

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*Colloquy of Counsel.*

like to read this letter from him, supplementing this statement.

The Court: Relative to what?

Mr. Cooper: Relative to a possible defense, or, at least, a possible contribution which he has to the proof in this case.

The Court: What do you mean by that? As a witness? 10

Mr. Cooper: As a witness, yes, sir.

The Court: Has he any personal interest in it?

Mr. Cooper: He has. One of the shares of the Phox Bus Corporation was issued to him. At least, his name was put down as one of the shareholders, in the records of the company, and in the bill of complaint it is admitted that that is so. It may be that the proof which is developed here will be enough for your Honor to decide the case without his presence here. I do, however, feel that he should not be prejudiced. 20

The Court: What is your contention relative to that share? That he was a bona fide holder of it?

Mr. Cooper: Yes, sir. My contention is that a completed gift was made with regard to that share, and there is a possibility that there was some consideration for it. Those are the matters about which this man can testify, and I feel that his testimony is necessary to establish his case. The letter that I got from him is dated July 5, which sets forth these contentions. I feel that your Honor may want to read it. 30

The Court: I can not take his letter for the testimony.

Mr. Cooper: I do not intend it as testimony 40

*Colloquy of Counsel.*

but just his contention of the fact that he may be a material witness in so far as his own case is concerned.

10 The Court: What does the other side say about it? What do you gentlemen say about it? What do you say about the interest of this defendant?

Mr. Brigadier: We have alleged in the bill of complaint that he is the owner of one share of stock but there is a possibility, if I may say so to your Honor, that you may find that this share and all of the shares belonged to the decedent. I do not know. I can not tell which way this case is going to go.

20 The Court: What does the other side say about it? I guess they say nothing. I will see that his interest is protected. Proceed with the case.

Mr. Brigadier: Do you want me to make an opening statement?

The Court: No.

Mr. Brigadier: May I ask if the Clerk in Chancery sent up the file in the other case as well?

The Court: What other case?

30 Mr. Brigadier: The Taylor case, from which this suit springs. This suit, your Honor may recall from my statement, springs out of another suit, Taylor v. Phox Bus Company, and the Court of Errors in that case directed the bringing of this case, a plenary suit to determine this question.

The Court: Is it necessary to have that file here?

40 Mr. Brigadier: I think you might find it helpful to find out what the Court of Errors meant in its opinion.

*Paul J. Duffy—for Complainants—Direct.*

The Court: That is on record, isn't it?

Mr. Brigadier: Yes, sir.

The Court: That has been reported, hasn't it?

Mr. Brigadier: I have set forth the citation in my statement.

10

PAUL J. DUFFY, called as a witness on behalf of the complainants, being first duly sworn, testifies as follows:

Direct examination by Mr. Brigadier:

Q. You are a member of the Bar of the State of New Jersey. A. Yes, sir.

20

Q. You were appointed by the Chancellor as counsel to the receiver of the Phox Bus Corporation. A. Yes, sir.

Q. What is the name of that receiver? A. Edward M. Salley, Jr.

Q. As counsel to the receiver, are you in possession now of the books, records and documents of the Phox Bus Company? A. Yes, sir.

Q. Do you have them here this morning? A. I have some of them.

30

Q. Will you state what books you have here this morning that relate to the Phox Bus Company? A. I have the minutes of the corporation, a copy of the amended certificate of incorporation, dated in 1935, a copy of the order issued by the Board of Public Utility Commissioners, dated October 28, 1937, approving the issuance of 15 shares of stock of this company. I have another book which contains copies of capital stock tax and income tax returns. I have a check book which covers the period September

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*Paul J. Duffy—for Complainants—Direct.*

16, 1935, showing the stub of a check which I presume is of interest, and a photostatic copy of the check itself, which I found in the records, the original check itself being missing. I have two stock certificate books and stock transfer book.

10

Q. From whom did the receiver obtain possession of those books? A. I think it was from Mrs. Anna Fox, or Miss Frances Fox, or both.

Mr. Brigadier: I should like to offer these in evidence at this time.

The Court: Is there any objection? They will be admitted.

20

Mr. Brigadier: I think we had better mark them as separate exhibits, because all of the other witnesses are going to testify on these books.

The Court: You had better put them in in the order they were mentioned.

Mr. Brigadier: I offer the minute book of Phox Bus Corporation.

(Marked Exhibit C. 1.)

30

I offer in evidence the certificate of approval of the Board of Public Utility Commissioners in the matter of the application of the Phox Bus Corporation.

(Marked Exhibit C. 2.)

The Court: For what?

Mr. Brigadier: For approval of the issuance of stock and execution of conditional sales contract.

40

I offer the stubs of the check book of Peter J. Fox.

*Exhibits Offered in Evidence.*

(Marked Exhibit C. 3.)

I offer in evidence a photostatic copy of a check drawn on The Trust Company of New Jersey, official check, to the order of Mrs. Mary Hayes, for \$500, May 20, 1935.

10

(Marked Exhibit C. 4.)

I offer in evidence stock certificate book of the Phox Bus Corporation, and the shares attached thereto or contained therein.

(Marked Exhibit C. 5.)

I offer in evidence stock certificate book of the Phox Bus Corporation for no par value shares and the stock certificates contained therein.

20

(Marked Exhibit C. 6.)

I offer in evidence the stock transfer book of the Phox Bus Corporation.

(Marked Exhibit C. 7.)

I am going to offer in evidence a copy of the certificate of amendment of the Phox Bus Corporation.

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(Marked Exhibit C. 8.)

The Court: Any questions?

Mr. Cooper: No questions.

Mr. Brigadier: If the Court please, I am calling Mr. Armstrong out of turn,

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*Thomas J. Armstrong—for Complts.—Direct.*

- with your Honor's permission, because he is called away to another hearing, which is being conducted here on behalf of the County, I believe. So that his testimony is being produced out of turn.
- 10 The Court: All right, so long as the other side does not object.
- 

THOMAS J. ARMSTRONG, called as a witness on behalf of the complainants, being first duly sworn, testifies as follows:

Direct examination by Mr. Brigadier:

- 20 Q. Mr. Armstrong, you are a member of the Bar of the State of New Jersey. A. Yes.
- Q. And you conduct your practice of law in partnership with Mr. Mullen. Is that right? A. Yes.
- Q. Mr. Mullen, who represents the defendant, Mrs. Fox.

Mr. Cooper: I object to that as being immaterial.

- 30 A. Frankly, I do not know whom he represents in this proceeding, but I know he is here representing one of the parties litigant.
- Q. Did you represent the Phox Bus Corporation during the lifetime of Peter J. Fox? A. I represented the Phox Bus Corporation for and on behalf of the law firm of Townsend and Doyle. I was never personal counsel to either Mr. Fox or the Phox Bus Corporation. Messrs. Townsend and Doyle asked me to undertake one
- 40

*Thomas J. Armstrong—for Complts.—Direct.*

phase of certain litigation on behalf of the Phox Bus Corporation.

Q. And that litigation was before the Board of Public Utility Commissioners. A. Yes, sir.

Q. Did you, in connection with that matter, prepare a petition on behalf of the Phox Bus Corporation? A. I did. 10

Q. Is this a copy of the petition which your office, Armstrong and Mullen, prepared (Handing a paper to the witness)? A. Yes, sir.

Mr. Brigadier: I offer it in evidence.

Mr. Cooper: No objection.

(Marked Exhibit C. 9.)

Q. Mr. Armstrong, from whom did you receive the information which you set forth in this petition? A. I can not remember whether the information concerning the balance sheet was given to me by Mr. Fox or by his accountant. The balance of the information contained in the petition was given to me by either Mr. Fox himself or Mr. Doyle. 20

Q. Did you attend the hearing before the Board of Public Utility Commissioners? A. Yes, sir.

Q. (Continuing) With Mr. Fox A. I tried the case, yes. 30

Q. And offered the evidence, did you not, on behalf of the Phox Bus Corporation? A. That is correct.

Mr. Brigadier: I wish to offer in evidence at this time a certified transcript of the testimony taken before the Board of Public Utility Commissioners of New Jersey. 40

*Thomas J. Armstrong—for Complts.—Direct.*

Mr. Cooper: No objection.

The Court: It will be admitted.

(Marked Exhibit C. 10.)

10 Q. I direct your attention, Mr. Armstrong, to the questioning conducted by Commissioner Hanson of Peter J. Fox.

Mr. Jentz: If the Court please, I object to the characterization of any testimony. The transcript is offered.

The Court: He has not asked the question yet. I do not know what his intentions are.

20 Q. Did you hear this question asked of Peter J. Fox, the decedent, by Commissioner Hanson?

Mr. Jentz: I object, if your Honor please. They offered the entire transcript of his testimony in evidence, and I consented that it be admitted. It is not proper for them to pick out certain portions and ask counsel whether he heard them, or not.

30 The Court: I will allow him to answer yes or no.

Q. (Reading) "Who will be the owner of the stock?" A. I don't remember.

Q. You do not remember hearing the question. A. No. You see, this hearing was at least five or six years ago. And for me to remember a specific question asked by the Commissioner would be taxing my memory beyond limit.

40 Q. Did you look at this transcript?

*Thomas J. Armstrong—for Complots.—Direct.*

The Court: What is the purpose of that?

Mr. Brigadier: The purpose is to find out whether or not this witness did not have a conversation with the decedent prior to the hearing, in which the decedent disclosed to him who the owners of the stock were, because the decedent did testify at the hearing. 10

Mr. Jentz: I certainly object.

The Court: You can not prove it by this testimony.

Mr. Brigadier: Let me change the question, then.

Q. Did the witness, prior to the hearing, ever state to you who were the owners of the stock? 20

A. I can not say definitely yes or no to that, Mr. Brigadier. The evidence as contained in transcript must speak for itself, because I have no definite memory on it. I only met Mr. Fox once or twice in my whole life.

Q. If you looked at the transcript, would it refresh your recollection as to what had been stated to you by Mr. Fox? A. I do not know. I will look at the transcript.

Q. Will you look at the transcript? May I suggest that you look at Page 8 of the transcript? A. I do not think you mean page 8, Mr. Brigadier. That is the closing statement of the trial. 30

Q. I am sorry. Page 5. A. No, sir, it does not.

Q. It does not refresh your recollection at all. A. No, sir.

Q. Will you look at pages 7 and 8 of the transcript and see whether they refresh your recol- 40

*Frances A. Fox—Complainant—Direct.*

lection with respect to any conversation you had with the decedent about the ownership of the stock. A. No, sir.

10 Q. I direct your attention to the statement, "Mr. Armstrong: No sir, they are merely corroborative of the fact that no stock ever did issue." The statement proceeds, made by you, "I had nothing to do with them. I am merely showing them for exhibition." Does that refresh your recollection? A. No, it does not, but I do not deny that statement was made, since it is in the transcript.

Mr. Brigadier: That is all.

Mr. Jentz: No questions.

20

FRANCES A. FOX, called as a witness on behalf of the complainants, being first duly sworn, testifies as follows:

Direct examination by Mr. Brigadier:

Q. Where do you live? A. 265 Danforth Avenue, Jersey City.

30 Q. You are one of the complainants in this cause. A. I am.

Q. You are a co-executrix of the estate of Peter J. Fox, deceased. A. Yes, sir.

Mr. Brigadier: I offer in evidence a transcript of letters testamentary issued by the Surrogate of Hudson County to Frances A. Fox and Anna Ryan Fox, as co-executrices under the last will and testament of Peter J. Fox, deceased.

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*Frances A. Fox—Complainant—Direct.*

The Court: They will be admitted if there is no objection.

(Marked Exhibit C. 11.)

Mr. Brigadier: I also offer in evidence a certified copy of the last will and testament of Peter J. Fox, deceased, certified to by the Deputy Surrogate, Hudson County Surrogate's Court, as having been admitted to probate April 10, 1939. 10

The Court: It will be admitted if there is no objection.

(Marked Exhibit C. 12.)

Q. Mrs. Fox, what relation are you to the decedent, Peter J. Fox? A. I am his sister. 20

Q. What is the relationship of the co-complainants, Georgina and Cecelia? A. Also his sisters.

Q. What is the relationship of the defendant Anna Fox? A. She was my brother's wife. She is my sister-in-law.

Q. What is the relationship of the defendant Arthur Frame? A. He is my nephew and my brother's.

Q. A child of whom? A. My sister. My oldest sister's child. 30

The Court: What is the name?

Mr. Brigadier: Arthur Frame. That is the defendant represented by Mr. Cooper, about whom he spoke to you.

Q. What is the relationship of the defendant James McBride, and to whom? A. James McBride is a nephew of Mrs. Anna Fox, the widow of Peter Fox. 40

*Frances A. Fox—Complainant—Direct.*

Q. What is the relationship of Mrs. Mary Hayes, and to whom? A. Mrs. Hayes is the aunt to Mrs. Fox, the widow, and grandaunt, I believe, to James Raymond McBride.

10 Q. Before the Phox Bus Corporation was organized, who owned and operated the bus on the Bergen line? A. My brother, Peter J. Fox.

Q. Individually? A. Individually.

Q. When the corporation was organized, what happened to the bus, which he owned individually, and his individual franchise? A. He transferred it to the company.

Q. And that, I take it, was the only consideration for the stock that was thereafter issued. A. Yes.

20 Q. You gave no money yourself. A. No.

Q. Did Arthur Frame turn over any money that you know of? A. No.

Q. Did Mrs. Fox turn over any money? A. No.

Q. There were three incorporators. Is that right. A. That is right.

Q. Your brother Peter J. Fox. A. That is right.

Q. Your sister-in-law, Anna Fox. A. That is right.

30 Q. And you. A. Yes.

Q. You attended, did you not, the first meeting of the incorporators. A. Yes, I did.

Q. And that meeting took place where? A. 265 Danforth Avenue, the principal office of the corporation.

Q. Whose office was that? A. It is my home.

Q. Was there any attorney representing the corporation at the time? A. No, there was not.

40 Q. I show you the minute book, which is Exhibit C. 1, and direct your attention to the first meeting of the incorporators and subscribers to

*Frances A. Fox—Complainant—Direct.*

the capital stock of the company, first to the waiver of notice of said meeting. Is the signature, "Frances A. Fox", that appears on the waiver of notice, dated March 17, 1931, your signature? A. It is.

Q. And whose signature is that, of Peter J. Fox? A. That is Peter J. Fox's signature. 10

Q. And whose signature is the next signature? A. It is the signature of Anna T. Fox.

Q. His wife? A. His wife.

Q. And those were the three incorporators—right? A. That is right.

Q. I direct your attention to the minutes of the first meeting of incorporators, and ask you whose signatures appear at the bottom of those minutes. A. The signatures of Peter J. Fox, Anna T. Fox, and mine, Frances A. Fox. 20

Q. And they are the signatures of those persons? A. Those are the signatures.

Q. Who signed as witness? A. Cecelia Fox.

Q. That is your sister. A. My sister.

Q. One of the co-complainants in the case. A. That is right.

Q. I direct your attention to that portion of those minutes of this first meeting, which refers to the number of shares that were issued, Peter J. Fox 8 shares, Anna T. Fox 1 share, Frances A. Fox 1 share. A. That is right. 30

Q. Was that in accordance with the subscriptions to the original stock? A. Yes.

The Court: What do you mean by subscriptions?

Mr. Brigadier: Under the certificate of incorporation, each subscriber listed the number of shares he was subscribing for, and those are the same numbers, 8, 1 and 1. 40

*Frances A. Fox—Complainant—Direct.*

Q. I direct your attention, Miss Fox, to Exhibit C. 5. Do you recognize having seen Exhibit C. 5 before? A. Yes.

Q. Was this the first certificate book that the corporation had? A. Yes, the very first.

10 Q. I direct your attention to certificate No. 1, for 8 shares, to Peter J. Fox, dated March 18, 1931, bearing the signature, "Frances A. Fox, Treasurer." Is that your signature? A. It is.

Q. And, "Peter J. Fox, president",—is that your brother's signature? A. That is his signature.

The Court: Were you secretary as well as treasurer?

The Witness: Yes, your Honor.

20

Q. Do you know when that share was signed by you and your brother? A. I believe it was right in the first meeting or perhaps shortly thereafter. I do not recall exactly.

Q. Was the share removed from the book and delivered to your brother? A. No. As I recall, they were left right in the book.

Q. Who attached the revenue stamps? A. I believe I did. It looks like my cancellation.

30

Q. It looks like your cancellation? A. Yes.

Q. Can you see the date that you have placed on it? A. March 18, 1931. "3/18/31", it says.

Q. That is the same day as the date of his certificate. A. Yes.

Q. I call your attention to the stub for Certificate No. 1. Whose signature is that signature on the stub marking the receipt of the share? A. That is the signature of my brother Peter J. Fox.

40 Q. I direct your attention to Certificate No. 2, to Anna T. Fox, for 1 share. Whose signature

*Frances A. Fox—Complainant—Direct.*

appears upon that certificate, whose signatures?

A. My signature, Frances A. Fox, as treasurer, and Peter J. Fox, my brother, as president.

Q. For how many shares? A. For one share to Anna T. Fox.

Q. I direct your attention to the stub opposite the certificate and ask you whose signature has received for that share. A. The signature of Anna T. Fox. **10**

Q. Who cancelled the revenue stamps that appear in that regard? A. I did.

Q. What date? A. 3/18/31.

Q. Was this certificate ever removed from the book, to your knowledge, and delivered? A. No.

Q. It remained in the book? A. It remained in the book.

Q. I direct your attention to Certificate No. 3, for one share, to Frances A. Fox. Whose signatures appear on that certificate? A. My signature as treasurer, Frances A. Fox, and my brother's, Peter J. Fox, President. **20**

Q. Whose signature appears on the receipt on the stub for that certificate? A. My signature, Frances A. Fox.

Q. What date appears upon the cancellation of the revenue stamps? A. 3/18/31.

Q. In whose handwriting? A. In my handwriting. **30**

Q. Was this certificate ever removed from the book? A. No.

Q. So far as you know. A. No.

Q. And delivered? A. No.

Q. Why were these certificates permitted to remain in the book, do you know? A. I really do not know. I do not remember.

Q. Was anything said about their remaining in the book? A. No. They were just left there, that is all. **40**

*Frances A. Fox—Complainant—Direct.*

Q. You will notice that these certificates have, at the present time, apparently been pasted back, after being removed. A. That is right.

Q. They were not in that condition when the book was in your possession? A. No, they were not.

10 Q. How long did this book remain in your possession, Exhibit C. 5? A. Until about—I do not recall the exact date, but it was probably in 1933 or 1934, when my brother received notice from the Utilities to have the stock approved, and he took at that time all of the books and brought them to the office of Mr. Thomas Doyle to have the approval taken care of.

Q. But up to that time these books were in your possession. A. These books were in my possession.

20 Q. I direct your attention to certificate No. 4, for one share of stock to James Raymond McBride. Whose signature appears on that certificate? A. My signature, as treasurer, and that of my brother Peter, as president.

Q. And that bears the same date, March 18, 1931. A. Yes.

Q. Whose signature appears on the stub for that share, certificate No. 4? A. James Raymond McBride.

30 Q. And whose handwriting appears on the stamps for cancellation? A. I do not know whose handwriting it is, but the initials are T. F. D., and the date is 3/19/31. But it is not my lettering. I did not cancel those stamps.

Q. I direct your attention to certificate No. 5, to L. Arthur Frame, for one share. Whose signature appears on that certificate? A. My signature, Frances A. Fox, as treasurer, and Peter J. Fox, as president.

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*Frances A. Fox—Complainant—Direct.*

Q. Whose signature appears on the receipt for that share? A. L. Arthur Frame.

Q. Whose handwriting appears on the cancellation of the revenue stamps? A. It says, T. F. D., 3/19/31.

Q. But it is not your handwriting? A. It is not mine. I did not cancel those stamps. 10

Q. Do you know whether the corporation has received any money from either L. Arthur Frame or James Raymond McBride for their respective one shares? A. It did not.

Q. Nor did it receive any from Anna Fox, or yourself, as I recall it. A. No.

The Court: How long were you treasurer?

The Witness: Since its incorporation. 20

The Court: How long? Until the death of your brother?

The Witness: Until his death. I still am, I believe.

The Court: You are still the treasurer.

Q. I direct your attention to certificates 4 and 5, and ask you from whom those shares, the one to James Raymond McBride and the one to Arthur Frame,—from whom those have been transferred. A. From Peter Fox. 30

Q. So that they did not represent the issuance of two new shares, but merely the transfer from Peter J. Fox of two of the eight shares he had. A. That is right.

Mr. Brigadier: So, up to this point, if I may, with your Honor's permission, review, the shareholders would have been—

The Court: Do not waste so much time. 40

*Frances A. Fox—Complainant—Direct.*

I do not think there is any dispute about this, is there?

Mr. Brigadier: As we go through I want to get it straightened out.

10 The Court: You already have it in evidence. I do not suppose they dispute the signatures.

Q. I direct your attention to certificate No. 6, to Peter J. Fox, for six shares. Whose signatures appear on that certificate? A. My signature as treasurer and Peter Fox as president.

Q. I direct your attention to the stub, receipt stub for such certificate, and ask you whether there is any signature receipting for such share. A. No, no signature.

20 Q. Whose handwriting appears on the revenue stamps? A. T. F. D.

Q. And no date. A. And no date.

Q. Did these six shares represent the issuance of new shares or the transfer of six shares? A. I am sorry.

Q. These six shares represented the balance that remained to your brother. A. Out of the eight.

30 Q. For which a new certificate was issued. A. That is right.

Q. I direct your attention again to the original certificate for eight shares, and ask you whether there is any record on the share to show the return of that share for cancellation.

The Court: That is all in evidence. Why do you waste all that time?

40 Mr. Brigadier: No, your Honor, I haven't gotten in evidence the fact that the original share, which was apparently turned back, has never been cancelled.

*Frances A. Fox—Complainant—Direct.*

The Court: Can't I see that it is not cancelled?

Mr. Brigadier: I wanted to ask her next if she knows why it has not been.

The Court: Ask her. You are wasting a lot of time, it seems to me, with this witness. You could have asked her in five minutes everything you want to know about it. 10

Q. I direct your attention to certificate No. 7, to James Raymond McBride, for five shares, original issue. Whose signatures appear on that certificate? A. My signature, as treasurer, and Peter Fox's, as president.

Q. What is the date of that? A. The date is the 18th day of May, 1935. 20

Q. Whose signature appears on the stub? A. James Raymond McBride.

Q. Were you present at any transaction with respect to the issuance of those shares? A. No. I was just asked to sign the certificate.

Q. Who asked you to sign the certificate? A. I believe it was my brother. It was made up in Mr. Doyle's office, and he asked me to sign the certificate.

Q. Did he make any statement to you as to why this certificate was being drawn to James Raymond McBride? A. Yes. He said it was for the purpose of making him a driver of the bus, and that in order to become a driver the union, or City Hall, or whoever had charge of the matter, insisted that he have 40 per cent of the stock. So they added five additional shares to the one he already had. 30

Q. I direct your attention to certificate No. 8, 40

*Frances A. Fox—Complainant—Direct.*

which is a certificate for six shares to Peter J. Fox. Did you ever see that certificate before?

A. No, I never saw it.

10 Q. Do you know anything about it? A. Well, I was never told anything about it, but it seems to me it is probably—

The Court: No. Strike that out.

Q. You were not told anything about it. A. No.

Q. And you have never see it before. A. No, sir.

Q. Were you present at a conference that was attended by Mrs. Hayes? A. In Mr. Mullen's office. I was present.

20 Q. When was that? A. That was sometime around April 1939.

Q. At that time, did Mrs. Hayes make any statement about the payment of the \$500 for those shares of stock to James Raymond McBride? A. Yes, she did.

Q. What statement did she make? A. She said that she had put up the \$500 and given it to my brother.

30 Q. For what purpose? A. For the purpose of qualifying James Raymond McBride as a driver on the bus.

Q. Did she say anything as to whether she was to get the money back? A. Yes. She said that she did get the money back; that she loaned the money to my brother because she knew she would get it back; and she did get the \$500 back.

40 Q. Did she say anything as to whether she had had any transaction herself with James Raymond McBride? A. She said no, she did not have any transaction with Mr. McBride at all

*Frances A. Fox—Complainant—Direct.*

in this matter; the transaction she had was with my brother.

Q. Did she say she had gotten the money back?

A. She said she had received the \$500 back from my brother.

Q. And how did he manage then? A. He ran the entire matter himself; paid all of the bills. 10

Q. What did he do with the moneys that were received? A. He put them in his own private—he paid the bills with his own private checking account.

Q. Did he open, or did the corporation open, a checking account? A. No, it never did.

Q. At no time? A. At no time.

Q. Were the moneys turned over to you as treasurer? A. They were not.

Q. They were received by Peter J. Fox and kept by him? A. And kept by him. 20

Q. And deposited in his own accounts? A. That is right.

Q. And he disbursed all of the moneys himself? A. He did.

Q. Did he, during his lifetime, ever call a meeting for the purpose—I mean, of stockholders and directors—for the purpose of discussing the affairs of the corporation? A. No, he did not.

Q. Whenever anything had to be done, who took charge of the doing of it for the corporation? A. He did. 30

Q. Did he ever give an explanation as to things that were being done? A. No.

Q. Did you regard yourself as—

Mr. Cooper: I object to what she regarded herself as.

The Court: Yes.

Mr. Brigadier: I withdraw it. 40

*Frances A. Fox—Complainant—Direct.*

Q. Do you recall the occasion of the hearing that your brother attended in Newark with Mr. Armstrong? A. I do.

Q. (Continuing) Before the Board of Public Utility Commissioners? A. I recall that, yes.

10 Q. Do you recall speaking to your brother, or your brother speaking to you, after he returned from that hearing? A. I do.

Q. Will you tell us what he said?

Mr. Jentz: I object to anything regarding what is contained in this official transcript that was admitted in evidence.

The Court: What do you expect to prove by this witness?

20 Mr. Brigadier: I expect to prove by this witness that the decedent made a statement with respect to the McBride ownership.

The Court: Before the Public Utility Commissioners?

Mr. Brigadier: No. What he told her about Mr. McBride after that hearing.

Mr. Jentz: I think the record, if the Court please, in regard to any stockholder is the best evidence.

30 The Court: I will allow her to answer the question. It may not amount to anything, but I will allow her to answer the question.

A. My brother told me Mr. Armstrong had taken him out to the Board of Public Utility Commissioners in Newark, that his testimony had been taken, and that, subsequent to that, the approval was issued, and that the approval was for 15 shares of stock.

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*Frances A. Fox—Complainant—Direct.*

Q. I do not want to know about at the hearing.

Mr. Jentz: Just a minute. You asked her a question and she is answerng.

Mr. Brigadier: The only reason that I am doing it is—

Mr. Jentz (interposing): You asked her a question, and I want to hear the answer.

Mr. Brigadier: I do not care about that testimony. I am trying to comply with the Court's suggestion.

10

Q. What happened at the hearing? I have no objection. Go on. A. He told me the approval was for 15 shares of stock, and that the stockholders were himself, his wife, Anna Fox, my nephew, Arthur Frame, and myself. He told me that the matter of the McBride stock that had been going through was cancelled; that Mr. Armstrong had seen to it that the McBride stock was cancelled; that he was no stockholder of the corporation.

20

Q. Do you recall any conversation with your brother after the stock was originally issued to Mr. McBride, for the five shares, with respect to Mr. McBride's qualifying as a driver,—as to what happened?

30

Mr. Jentz: Your Honor, I object to all of this testimony of conversations about Mr. McBride or anybody else. I contend that the stock book and stock records and issue of shares is the best evidence of the ownership of this stock, and not what this lady and her brother talked about at some later date.

The Court: I understand that. I do not know what bearing it has on it, but it

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*Frances A. Fox—Complainant—Direct.*

may. There hasn't anything developed yet that would have a bearing on it.

Mr. Brigadier: The evidence will be, your Honor, that he ran this bus as his own; that it was, in effect, his own.

10 The Court: I do not think anybody disputes that, do they?

Mr. Brigadier: As a matter of fact, this whole file I have before me in the Taylor case—

The Court: I do not think anybody disputes the fact that he controlled the stock.

Mr. Brigadier: That was the fact.

The Court: She has testified to that several times.

20 Mr. Brigadier: I want her to testify as to the McBride stock. She has testified as to what it was issued for. And I want to show what happened thereafter.

The Court: All right. Ask her.

Q. What happened after the McBride stock was issued? Can you tell us that in your own words? A. The union, or the City Hall, or whoever had control of the drivers of the busses—

30

The Court: How do you know?

Mr. Jentz: May I interrupt?

The Court: Just a minute. How do you know about this?

The Witness: My brother told me.

The Court: I will not allow that. I will sustain the objection.

40 Q. Do you know whether Mr. McBride ever drove the bus?

*Frances A. Fox—Complainant—Cross.*

Mr. Jentz: I object unless she was there and saw him drive.

The Court: I will allow her to answer that question.

A. Not that I know of. He may have taken it out on a trial drive,—I do not know—to see whether he could drive. 10

Mr. Brigadier: That is all.

Cross examination by Mr. Jentz:

Q. Miss Fox, you are familiar with the papers prepared to incorporate a corporation in the State of New Jersey, aren't you? A. Yes.

Q. And you either are now or have been employed in law firms that do that kind of work. A. Yes. 20

Q. And as such, you were familiar with the preparation of the minutes and everything of this corporation. You knew about those things, didn't you? A. I was familiar with it.

Q. All of these minutes in this book that are signed with your name,—are they the actual minutes of this corporation down through the years? A. Yes, they are.

Q. And when special meetings were called and all that sort of thing, the statements made in those minutes,—they are true, aren't they? A. Yes. 30

Q. Wherever your signature appears, that is your true signature. A. That is my signature.

Mr. Jentz: All right, that is all.

Mr. Brigadier: That is all.

June 7th, 1943.

10 Transcript of stenographic record of continuation of final hearing in the above-entitled cause before His Honor, Henry T. Kays, Vice Chancellor, at the Chancery Chambers, in the City of Jersey City, in the presence of Mr. Irving Picker, for complainants (Mr. Maurice C. Brigadier, of Counsel); Mr. Walter E. Cooper for defendant, Arthur Frame; Mr. Arthur C. Mullen, of Armstrong & Mullen, for defendant, Anna T. Fox, individually, etc.; Mr. Eric H. Jentz for defendant, James R. McBride.

20 ARTHUR FRAME, a witness being produced upon the part of the defendants, being duly sworn, testifies as follows:

Direct examination by Mr. Cooper:

Q. Mr. Frame, you are a member of the U. S. Navy at the present time? A. That's right.

Q. You're the nephew of the late Peter J. Fox? A. Right.

30 Q. And you were formerly with him during his lifetime, were you not? A. Yes.

Q. Was he the owner of an operating bus which was operated on Bergen Avenue, Jersey City, during his lifetime? A. Yes, sir.

Q. Do you know whether he later transferred that together with the franchise to the Phox Bus Corporation? A. Yes, he did.

Q. Now, during his lifetime did you work with him on this bus? A. Yes, quite often.

40 Q. And in what way? A. Well, he was quite particular about having the bus in good oper-

*Arthur Frame—Defendant—Direct.*

ating condition at all times, and whenever he got a day off, which was about once a week or every ten days, we would take over the bus and check the brakes and ignition and other various parts of the motor, and clean the bus inside and out.

Q. And did you aid him in the work which you just described? A. Yes, quite regularly. 10

Q. Over what period of time were these servicing relations? A. Oh, from about 1929 or 1930 until 1937.

Q. And did you render any other services to him, or to the corporation in connection with the operations of the bus? A. Yes, he used to have me check over the invoices and statements on the expenses of the bus, and bookkeeping.

Q. Will you give us some fair estimate of the number of times you rendered service in connection with cleaning and operating the bus? A. I would say at least two hundred times. 20

By the Court:

Q. During what period? A. From about 1929 until 1937.

By Mr. Cooper:

Q. And how often did you work on the books of account of the company, or Mr. Fox? A. Only a few times. We didn't do it very often. I think about every month, or two months, or something like that. 30

Q. Did you receive any compensation for these services which you rendered? A. Well, no, I didn't receive any compensation. He would buy me cigarettes, and we would have lunch together.

Q. Did you discuss with him at any time the issuance of a share of stock of the bus corpora- 40

*Arthur Frame—Defendant—Direct.*

tion to you? A. Yes. He said he wanted me to take an interest in the business and learn all about the business. He said he wanted to take a rest when I was old enough to drive the bus, and after he had had about a year's vacation he thought he might expand the business.

10 Q. Did he in any way associate the services which you rendered with the issuance of a share of stock? A. Yes, he said he would issue this share of stock to me partly for what I had done, and partly to maintain my interest in the business.

Q. And was the share of stock of this corporation actually issued in your name? A. Pardon?

Mr. Cooper: Will you read the question?

20 (Last question read by stenographer.)

A. Yes.

Q. Did you see it? A. Yes.

Q. Did you have it in your possession? A. Yes, he wrote it out in front of me, and I signed the receipt and he handed the stock to me.

Q. How old were you then? A. I was twenty.

Q. And where did this transaction take place?

A. In his home.

30 Q. Do you recall the address of his home? A. No, I don't recall it.

Q. Did any conversation between you and Mr. Fox take place at that time? I will strike that out. You said you signed a receipt at that time.

A. Yes, I believe it was a small paper attached to the page the stock certificate was on.

Q. Did you take away the share of stock at that time. A. No, he said he would keep it until

40 I was of age and then at that time he would have me drive the bus and he would take a rest, and he would give me the share of stock at that time.

*Arthur Frame—Defendant—Direct.*

Q. Where were you when you became of age?

A. I was here in Jersey City.

Q. Have you been in New Jersey ever since?

A. No, I took a trip to California.

Q. How long have you been in the U. S. Navy?

A. Not quite three years.

Q. Did you go to the office of a Mr. Doyle, the attorney who purported to represent the Phox Bus Corporation after the share had been issued in your name? A. Yes.

10

Q. With whom did you go there? A. With my uncle; with my aunt, Mrs. Frances Fox, and with my uncle's wife.

Q. And did you go at anybody's request, and if so, whom? A. Yes, at my uncle's request.

Q. Your uncle, Peter J. Fox? A. Yes.

Q. Do you recall what transpired at the office of Mr. Doyle? A. Yes, a meeting was held of the corporation and we all signed a paper to have the par value of the stock changed from one hundred dollars per share to no par value.

20

Q. Did you sign such a paper? A. I did.

Q. In what capacity did you sign the paper? A. As a stockholder.

Q. Is it your intention to drive the bus when you are discharged from your present duties?

A. Yes, it is.

30

Mr. Cooper: That's all.

The Court: Any questions?

Mr. Jentz: No questions.

Mr. Brigadier: No questions.

By the Court:

Q. How old are you now? A. Twenty-eight.

The Court: That's all.

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**Exhibit C. 10.**BOARD OF PUBLIC UTILITY  
COMMISSIONERS

Newark, N. J.

10

Thursday October 14, 1937

|   |
|---|
| PHOX BUS CORPORATION—Ap-<br>plication for Approval of<br>Issuance of Stock and Exe-<br>cution of Conditional Sales<br>Contract. |
|---|

20

Before—COMMISSIONER THOMAS L. HANSON Esq.

For the Applicant appears THOMAS J. ARM-  
STRONG Esq.

PETER J. FOX sworn on behalf of Applicant.

Direct examination by Mr. Armstrong:

30 Q. You are an officer of the Phox Bus Cor-  
poration? A. Yes, sir.Q. That corporation is a corporation of the  
State of New Jersey? A. Yes, sir.Q. I show you a certified copy of the original  
certificate of incorporation certified to by the  
Secretary of State and ask you if that is a true  
copy of the original certificate of incorporation?  
A. Yes, sir.

(Mr. Armstrong: May it be marked?)

40

*Exhibit C. 10.*

(Commissioner Hanson: Exhibit P-1.)

(Certified copy of original certificate of incorporation received and marked Exhibit P-1.)

Q. I show you a certified copy of what purports to be an amendment to the original certificate of incorporation, certified to by the Secretary of State of this State, and ask you if that is a true copy of the amended certificate?

10

A. Yes, sir, that is a true copy.

(Mr. Armstrong: May that be marked?)

(Commissioner Hanson: Exhibit P-2.)

(Certified copy of amended certificate of incorporation received and marked Exhibit P-2.)

20

Q. Mr. Fox, did you say you hold the office of President in the corporation? A. Yes, sir.

Q. As such you were asked by the Board of Public Utility Commissioners to recast the balance sheet heretofore filed by you? A. Yes, sir.

Q. Did you do so? A. Yes, sir.

Q. I show you what purports to be a balance sheet as of September 1, 1937, showing the financial setup of the Phox Bus Corporation and ask you if that was prepared under your direction?

30

A. That is right.

(Mr. Armstrong: May that be marked?)

(Commissioner Hanson: Exhibit P-3.)

(Balance sheet received and marked Exhibit P-3.)

40

*Exhibit C. 10.*

Q. The Phox Bus Corporation operates a motor bus in the City of Jersey City, does it not? A. Yes, sir.

Q. On what line? A. The Bergen Avenue Line.

10 Q. What kind of a bus is it? A. Conventional type Mack.

Q. Purchased by the corporation when, if you remember? A. In October, I think, of 1935.

Q. I show you a copy of a conditional sales agreement executed between the Phox Bus Corporation and the Mack International Motor Truck Corporation, and ask you if that motor bus was purchased by the corporation under and by virtue of the terms of that conditional bill of sale? A. Yes, sir.

20

(Mr. Armstrong: May that copy be marked?)

(Commissioner Hanson: Exhibit P-4.)

(Copy of conditional sales agreement received and marked Exhibit P-4.)

30 Q. The Phox Bus Corporation is asking for the approval of the issuance of fifteen shares of capital stock, is it not? A. Yes, sir.

(Mr. Armstrong: May the petition be amended to show that the capital stock is without par value? I did not know about the amended certificate of incorporation at the time this petition was drawn, and the amended certificate shows a no par value setup.)

Commissioner Hanson: All right.

40

*Exhibit C. 10.*

Q. The Phox Bus Corporation is requesting the approval of the issuance of fifteen shares of stock no par value? A. That is right.

Q. Has any stock been issued by the Phox Bus Corporation? A. No stock has ever actually been issued by the Phox Bus Corporation, No, sir. 10

Q. No stock has ever actually been issued? A. No, sir.

Q. This balance sheet, Mr. Fox, that you have submitted shows cash on hand and in the bank of \$165.06? A. That is right.

Q. And that shows the true condition as of September 1, 1937? A. That is right.

Q. The purchase price of the bus was \$7,371.79? A. Yes, sir. 20

Q. And there are outstanding notes unpaid on that motor bus? A. Yes, sir.

Q. Amounting to \$3,301.01? A. That is right.

Q. You are asking this Board for the approval of this conditional sales agreement, whereby the corporation has obligated itself to pay the balance of these notes? A. That is right.

Q. You have depreciated your motor bus in the sum of \$2,000? That is set up in your balance sheet also, is it? A. Yes, sir. 30

Q. And you show a surplus as of September 1, of \$685.84? A. That is right.

Q. And you are asking for the approval of these fifteen shares of stock, having a book value of \$1500 or \$100 per no par value share? A. Yes, sir.

Commissioner Hanson: A book value of \$100 per share?

Mr. Armstrong: Yes, sir. 40

*Exhibit C. 10.*

By Commissioner Hanson:

10 Q. Who will be the owners of the stock? A. The owners of the stock are my wife, Anna T. Fox; Frances A. Fox, my sister; and Arthur Frame, my nephew; and myself, Peter J. Fox.

Q. How much will each hold? A. I will hold twelve, and one each to the other three.

Q. What is the consideration that has been paid or is to be paid for this stock? A. Why, as the bus was transferred—the transferring of the bus from my name to the corporation. There was no money transaction at all.

Q. In other words, the consideration of the issuance of the stock is the transfer of this bus?

20 A. The transfer of the bus, Yes, sir.

Mr. Armstrong: I don't think he quite understands. Your Honor. May I take the witness?

Commissioner Hanson: Yes, go ahead.

By Mr. Armstrong:

Q. Mr. Fox, the purchase price of this Mack bus was \$7000 some odd dollars, was it not?

30 A. That is right.

Q. Was there anything paid in cash on that bus? A. Yes, sir.

Q. How much? A. Over a thousand dollars.

Q. I beg your pardon? A. Over a thousand dollars.

Q. Do you know how much over a thousand dollars was paid? A. Somewhere around \$1019. I imagine, something in that neighborhood.

40 Commissioner Hanson: The consideration according to your figure was \$7,371.79 and the balance was \$6,360.

*Exhibit C. 10.*

By Mr. Armstrong:

Q. Roughly, \$1,000 was paid to the Mack Company at the time this bus was purchased?

A. That is right?

Q. You formerly ran this motor bus on the Bergen Avenue line as an individual, did you not? A. Yes, sir.

10

Q. Not this physical bus, but another bus? A. Yes, sir.

Q. And was that transferred to the Phox Bus Corporation? A. That is right.

Q. And that was when, approximately? A. In 1931.

Q. And at that time you became the major stockholder, or would have become the major stockholder were any stock ever physically issued? A. Yes, sir.

20

Q. And these other three folks, each one share? A. Yes, sir.

Q. And the combined consideration would be the purchase price from the Mack Company and whatever goodwill you as an individual had by virtue of the operation of this individual motor bus on Bergen Avenue? A. That is right.

Q. And that is represented by \$1,000 in cash, paid to the Mack Company. A. Yes, sir.

30

Q. And the subsequent payment of installment notes? A. Yes, sir.

Q. Just one more question. I show you certificates numbered one to six of the Phox Bus Corporation—unsigned—however—and ask you if those are the certificates which were within your contemplation at the time they were written up but were never in fact issued? A. That is right.

40

*Exhibit C. 10.*

Mr. Armstrong: May they be exhibited to the Board and the record so noted (handing certificates to Commissioner)?

(Commissioner Hanson examines certificates.)

10

Q. These will not be issued?

Witness: No, sir.

Mr. Armstrong: No sir, they are merely corroborative of the fact that no stock ever did issue. I had nothing to do with them. I am merely showing them for exhibition.

Commissioner Hanson: All right.

Mr. Armstrong: That is all.

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Commissioner Hanson: If there is nothing further, the matter will go to conference.

(Matter taken into conference.)

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**Opinion.**

(Filed May 19, 1944.)

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[SAME TITLE AS NOTICE OF APPEAL.]

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MR. IRVING C. PICKER, solicitor for complainants. MR. MAURICE C. BRIGADIER, of counsel. 10

MESSRS. ARMSTRONG & MULLEN, solicitors for defendant, Anna T. Fox, individually, and as co-executrix under the last will and testament of Peter J. Fox, deceased.

MR. ERIC H. JENTZ, solicitor for defendant, James R. McBride.

MR. WALTER E. COOPER, solicitor for defendant, Arthur Frame. 20

MR. PAUL J. DUFFY, solicitor for defendant, Edward M. Salley, Jr., receiver for Phox Bus Company.

KAYS, V. C.

The bill in this case was filed for the purpose of determining the number and types of shares of stock issued by the Phox Bus Company and for the determination of the ownership of the said shares. 30

The Phox Bus Company is a corporation of this state and is now in the hands of a receiver appointed by this court. One of the Vice Chancellors of this court attempted to determine the ownership of the stock in a summary proceeding which was reversed by the Court of Errors and Appeals on that ground and on the further ground that all of the interested parties were 40

*Opinion.*

not brought into court. See *Taylor v. Phox Bus Co.*, 129 N. J. Eq. 610.

10 The company was formed under the general corporation act, R. S. Title 14, on March 17, 1931 for the purpose of taking over and operating a bus theretofore operated by Peter J. Fox in Jersey City. The minute book of the company discloses that the authorized capital was \$100,000.00. The shares were \$100.00 par value and were subscribed to as follows: Peter J. Fox, eight shares; Anna T. Fox, his wife, one share, and Frances A. Fox, his sister, one share. The above named were elected directors and Peter J. Fox, president, Harry T. Fox (who was not a director or stockholder), vice president, and Frances A. Fox, secretary-treasurer.

20 The minutes of the company disclosed that it agreed to accept the proposal of Peter J. Fox to purchase the assets of the said Peter J. Fox without specifying the same. The number of shares was left blank and the delivery date was March —, 1931.

30 The stock book shows that the following certificates were issued: Certificate No. 1, dated March 18, 1931, to Peter J. Fox, eight shares; certificate No. 2, same date, to Anna T. Fox, one share; certificate No. 3, same date, to Frances A. Fox, one share; certificate No. 4, same date, to James R. McBride, one share; certificate No. 5, same date, to L. Arthur Frame, one share; certificate No. 6, same date, to Peter J. Fox, six shares; certificate No. 7, dated May 18, 1935, to James R. McBride, five shares; certificate No. 8, dated July 26, 1935, to Peter J. Fox, — shares. This last certificate was not signed. All of the above certificates had been separated from the stubs and subsequently refastened thereto. None

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*Opinion.*

of them bear the endorsements of the holders named therein. There was testimony that certificates Nos. 4 and 7, issued in McBride's name, certificate No. 5, issued in the name of Frame, and certificate No. 6 issued to Fox, were actually made in July, 1935, and not on the dates appearing in the record.

10

The records are most incomplete. The treasurer was authorized to open an account of the company which was never done. As a matter of fact, the entire finances of the company were handled by Peter J. Fox, individually. All receipts were deposited in his personal checking account and all bills were paid by checks drawn on that account.

I am satisfied from the evidence that Peter J. Fox intended to and issued ten shares of stock, eight of which were to be held by himself and one each by his wife and sister. Subsequently he transferred one share to each of his nephews, McBride and Frame. Why he did this does not appear. He had six shares left in his own name. In order to qualify McBride as a driver of the bus he gave him five shares of the company's stock in order to obtain municipal approval of a non-union man to drive the bus. One Mary Hayes, gave Fox a check for \$500.00 which was intended to be proof of payment for the five shares issued to McBride. Sometime after this, Mrs. Hayes told Peter J. Fox that she needed the money and on September 26, 1935 he repaid the money to Mrs. Hayes by his own check.

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Stock book stub for certificate No. 8, which was never signed, is dated July 26, 1935 and purports to be a transfer of McBride's six shares to Fox. The stock book also disclosed that even after the six shares were supposed to be trans-

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*Opinion.*

ferred to Fox by McBride that McBride was still the holder of six shares.

10 Sometime in September, 1935, it appears that an effort was made to change the stock from par value to no-par value. When this was done it appears that there were issued to Peter J. Fox, one hundred and twenty shares; Anna T. Fox, ten shares; Frances A. Fox, ten shares, and L. Arthur Frame, ten shares. There were also certificates made out for sixty shares to each Peter J. Fox and McBride. None of these certificates were ever executed.

20 Peter J. Fox, on October 14, 1937, appeared before the Board of Public Utility Commissioners and asked permission to issue fifteen shares of no-par value stock. He testified before the Board that "no stock had ever actually been issued". He also testified that the owners of the stock were his wife, Anna T. Fox; Frances A. Fox, his sister; Arthur Frame, his nephew; and himself. He said that he would hold twelve shares and each of the others one share. He also said that the consideration was the transfer of the bus from his name to the corporation and that there was no money transaction. The Public Utility Commission approved the stock issue 30 on October 28, 1937, as follows:

"1. The issuance of fifteen (15) shares of capital stock having no par value, but having a stated value of One Hundred Dollars (\$100.) per share, total issue One Thousand Five Hundred Dollars (\$1,500.)."

40 According to the records of the company, however, no such shares were ever issued. Peter J. Fox continued to operate the business as there-

*Opinion.*

tofore until his death which occurred about the early part of 1939. The receiver was appointed on April 6, 1939.

Under the terms of the will of Peter J. Fox, the residuary estate, which will include the said stock, was left to his wife, Anna, and his three sisters, Georgina, Cecelia and Frances, share and share alike.

10

The complainants contend that the only shares of stock which are valid are those which are approved by the Public Utility Commissioners being the fifteen shares of no-par value stock.

I am satisfied that Peter J. Fox intended to conduct his business under the corporate form, and that, in order to comply with the requirements of the corporation act, he named his wife and sister as two of the three necessary incorporators. Neither of the latter, however, paid for the stock issued to them; Fox alone furnished the consideration for the shares issued.

20

Sufficient steps were taken to constitute the Phox Bus Company a de jure corporation. Fox, however, as a matter of fact, by virtue of his controlling interest, conducted the affairs of the company as if he were the personal proprietor of the business. He was the dominant figure of the company and the others were mere "dummies". He manipulated the stock ownership to suit the needs of the occasion.

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I also find that the corporation actually issued ten shares of its capital stock and that Peter J. Fox was the beneficial owner of all of said ten shares. His wife and sister were "dummies".

It is contended by Frame that the one share he held was by way of gift. This contention is not supported by the proofs. The stock issued to McBride, in my opinion, was issued merely

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*Opinion.*

for the purpose of perpetrating a fraud on the municipal bus bureau. There is no evidence before me as to how McBride got the first share of stock. It is quite clear, however, that he paid no consideration for it.

10 Complainants contend that the stock ownership must be determined in accordance with the approval of the Board of Public Utility Commissioners for the reason that under R. S. 48:3-9 no public utility stock can issue without the approval of the said Board. That statute has no applicability in the question before me. It is a mere regulatory provision and does not effect the ownership of the stock. Such an argument is without merit for, as a matter of fact, while Fox testified before the Public Utility  
20 Commission that the stock would issue or had issued, it never was issued. The Public Utility Commission did not attempt to decide who the stockholders would be or how many shares were to be held by each. The respective rights of the parties are matters of substantive law, to be determined by this Court.

The defendant, McBride, by his counterclaim, asks this Court that in case it is decided he is not the owner of the stock that the receiver be  
30 directed to return to him the money heretofore paid by him. It appears that the receiver, after conducting his hearings, determined that the repayment by Fox to Mrs. Hayes constituted an illegal disbursement of the capital of the company and demanded payment of McBride for the amount so repaid plus interest. Pursuant to this demand, McBride paid the receiver the sum of \$627.50 on June 30, 1940. In view of the above conclusions, the receiver will be directed to reimburse McBride.

40 I will advise a decree in accordance with these views.

**Final Decree.**

(Filed June 14, 1944.)

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 ◆  
 [SAME TITLE.]  
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This cause coming on to be heard in the presence of Irving C. Picker, Solicitor, and Maurice C. Brigadier, of counsel with the complainants, Georgina Fox, Cecilia Fox, Frances A. Fox, individually, and Frances Fox, co-executrix under the last will and testament of Peter J. Fox, deceased, and in the presence of Armstrong & Mullen, Solicitors for the defendant, Anna T. Fox, individually, and as co-executrix under the last will and testament of Peter J. Fox, deceased, Eric H. Jentz, Solicitor for the defendant, Arthur Frame, Paul J. Duffy, Solicitor for the defendant, Edward M. Salley, Jr., Receiver for Phox Bus Company; and the Court having examined the pleadings and having taken testimony orally and in open Court and having heard the arguments of counsel;

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And it appearing that the bill of complaint in this case was filed for the purpose of determining the number and types of shares of stock issued by the Phox Bus Company, and the ownership of the said shares; and it appearing that the Phox Bus Company is a corporation of this State and is now in the hands of a Receiver appointed by this Court; and the Court being satisfied from the evidence that sufficient steps were taken to constitute the Phox Bus Company a de jure corporation, and that the said corporation had actually issued ten shares of its capital stock of a par value of one hundred dollars each, which ten

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*Final Decree.*

10 shares of capital stock remain now issued and outstanding; and it further appearing that the consideration for the issuance of the aforesaid ten shares of stock was furnished by Peter J. Fox alone, and that of the said ten shares of stock eight shares were issued to Peter J. Fox, and one share each to his nominees, Frances A. Fox, and Anna T. Fox, and that the beneficial ownership of all of said ten shares of stock was in and remained in Peter J. Fox until his de-  
20 cease, and upon his death passed to Anna T. Fox and Frances A. Fox, as executrices under the last will and testament of Peter J. Fox, deceased, to be distributed by them under the aforesaid last will and testament of Peter J. Fox, deceased, as part of the residuary estate of the said Peter J. Fox, deceased, which residuary was be-  
30 queathed to Anna T. Fox, Georgina Fox, Cecilia Fox and Frances A. Fox, share and share alike; and it further appearing that the defendants, James R. McBride and Arthur Frame, do not have any interest, claim, title or lien, legal or equitable, in and to any of the shares of capital stock of the Phox Bus Company, and it further appearing that James R. McBride on June 30, 1940, pursuant to the demand made upon him by Edward M. Salley, Jr., Receiver for the Phox Bus Company, paid unto the said Receiver the sum of \$627.50, which aforesaid sum the said James R. McBride is entitled to have repayed to him by reason of the fact that James R. McBride is not entitled to any legal or equitable interest or claim to or in any of the aforesaid shares of capital stock of the Phox Bus Company.

40 It is, on this 14th day of June, 1944, ORDERED, ADJUDGED and DECREED that the Phox Bus Com-

*Final Decree.*

pany, a corporation of the State of New Jersey, was constituted a de jure corporation of New Jersey; that its outstanding and issued capital stock consists of ten shares of a par value of \$100.00 each; that the consideration for the issuance of said shares was paid by Peter J. Fox, alone; that to Peter J. Fox was issued eight of the aforesaid shares and that to Anna T. Fox and Frances A. Fox, each, there was issued one of the aforesaid shares; that Peter J. Fox was at all times the actual owner of all of the aforesaid issued and outstanding ten shares of stock; that Anna T. Fox and Frances A. Fox, to whom there had been issued one share each of the aforesaid ten shares of stock had been issued said shares solely for the purpose of qualifying them for the organization of the corporation, and that at no time were they the actual and beneficial owners of the said shares of stock; that none of the issued and outstanding shares of stock had been issued to, or belong to the defendants, Arthur Frame or James R. McBride; that Peter J. Fox died testate and that under the last will and testament of said Peter J. Fox, Anna T. Fox and Frances A. Fox were duly appointed and did qualify as the co-executrices thereunder; that under the aforesaid last will and testament of Peter J. Fox, deceased, the title to the aforesaid issued and outstanding ten shares of stock vested in Anna T. Fox and Frances A. Fox, as co-executrices to be distributed by them under the terms of the aforesaid last will and testament of Peter J. Fox, deceased, in which his residuary estate, which included the aforesaid ten shares of stock was bequeathed to the defendant, Anna T. Fox and the complainants, Georgina Fox, Cecilia Fox and Frances Fox, share and share alike;

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*Final Decree.*

10 It is further ORDERED, ADJUDGED and DECREED that the Receiver appointed by this Court of the Phox Bus Company, reimburse and repay to the defendant, James R. McBride, the sum of \$627.50, out of the moneys and assets in his hands as Receiver of the Phox Bus Company;

20 It is further ORDERED, ADJUDGED and DECREED that the Receiver of the Phox Bus Company pay out of the moneys and assets in his hands as Receiver of the Phox Bus Company, to Irving C. Picker, Solicitor for complainants, and Maurice C. Brigadier, of counsel, a counsel fee of \$500.00, which is hereby allowed, and that the Receiver of the said Phox Bus Company pay out of the moneys and assets of the Phox Bus Company in his hands to the complainants the costs of this suit to be taxed; and also to pay to Paul J. Duffy, Solicitor for the Receiver, a counsel fee of \$350.00; to Walter J. Cooper, Solicitor for the defendant, Arthur L. Frame, a counsel fee of \$150.00; to Eric H. Jentz, solicitor for the defendant, James R. McBride, a counsel fee of \$150.00; and Armstrong & Mullen, solicitors for defendant, Anna T. Fox, executrix, etc., of Peter J. Fox, deceased, a counsel fee of \$150.00.

30 Respectfully advised,

HENRY T. KAYS,  
V. C.

LUTHER A. CAMPBELL,

40

**Notice of Appeal.**

(Filed September 14, 1944.)

IN CHANCERY OF NEW JERSEY.

#139/543.

Between

GEORGINA FOX, et als.,  
Complainants,

and

ANNA T. FOX, et als.,  
Defendants.

On Bill, &amp;c.

10

To:

IRVING CHARLES PICKER, Esq., Solicitor of Com-  
plainants, 433 Broadway, Bayonne, N. J.JOHN G. FLANIGAN of counsel with PAUL J.  
DUFFY, Esq., Solicitor for Defendant, Ed-  
ward M. Salley, Jr., Receiver for the Phox  
Bus Company, 26 Journal Square, Jersey  
City, N. J.ERIC H. JENTZ, Esq., Solicitor for Defendant,  
James R. McBride, 329 Palisade Avenue,  
Jersey City, N. Y.MESSRS. ARMSTRONG & MULLEN, Solicitors for  
Defendant, Anna T. Fox, individually and  
as co-executrix of the last will and testa-  
ment of Peter J. Fox, deceased, 586 Newark  
Avenue, Jersey City, N. Y.*Sirs:*PLEASE TAKE NOTICE, that L. Arthur Frame,  
one of the defendants in the above entitled pro-

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*Notice of Appeal.*

10 ceeding hereby appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes from the final decree made and entered from the Honorable Luther A. Campbell, the Chancellor of the State of New Jersey on the advice of the Honorable Henry T. Kays, a Vice-Chancellor, on the 14th day of June, 1944, and more particularly from those portions of said final decree reading as follows:

20 “and it further appearing that the consideration for the issuance of the aforesaid ten shares of stock was furnished by Peter J. Fox alone,” \* \* \* “and that the beneficial ownership of all of said ten shares of stock was in and remained in Peter J. Fox until his decease, and upon his death passed to Anna T. Fox and Frances A. Fox, as executrices under the last will and testament of Peter J. Fox deceased, to be distributed by them under the aforesaid last will and testament of Peter J. Fox, deceased, as part of the residuary estate of the said Peter J. Fox, deceased, which residuary was bequeathed to Anna T. Fox, Georgina Fox, Cecilia Fox and Frances A. Fox, share and share alike; and it further appearing that the defendants James R. McBride and Arthur Frame do not have any interest, claim, title or lien, legal or equitable, in and to any of the shares of capital stock of the Phox Bus Company,” \* \* \* “that the consideration for the issuance of said shares was paid by Peter J. Fox, alone;” \* \* \* “that Peter J. Fox was at all times the actual owner of all of the aforesaid issued and outstanding ten shares of stock;” \* \* \*

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*Notice of Appeal.*

“that none of the issued and outstanding shares of stock had been issued to, or belonged to the defendants Arthur Frame”, \* \* \* “that under the aforesaid last will and testament of Peter J. Fox, deceased, the title to the aforesaid issued and outstanding ten shares of stock vested in Anna T. Fox and Frances A. Fox, as co-executrices to be distributed by them under the terms of the aforesaid last will and testament of Peter J. Fox, deceased, in which his residuary estate, which included the aforesaid ten shares of stock was bequeathed to the defendant Anna T. Fox and the complainants, Georgina Fox, Cecilia Fox and Frances Fox, share and share alike.”

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Dated, September 11th, 1944.

WALTER E. COOPER,  
WALTER E. COOPER,  
Solicitor for and of Counsel with  
Appellant, L. Arthur Frame.

I conceive that there is good cause for the above appeal.

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WALTER E. COOPER,  
WALTER E. COOPER,  
Counsellor at Law, and Solicitor  
of the Defendant, L. Arthur  
Frame.

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**Petition of Appeal.**

(Filed October 3, 1944.)

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

10

Between

GEORGINA FOX, CECELIA FOX,  
FRANCES A. FOX, individu-  
ally, and FRANCES A. FOX  
as co-executrix of the last  
will and testament of Peter  
J. Fox, deceased,

Complainants,

and

20

ANNA T. FOX, individually  
and as co-executrix under  
the last will and testament  
of Peter J. Fox, deceased,  
JAMES RAYMOND McBRIDE,  
EDWARD M. SALLEY, receiver  
of the Phox Bus Co., a cor-  
poration of New Jersey,

Defendants,

and

ARTHUR FRAME,  
Defendant-Appellant.

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On Appeal from the  
Court of Chancery.

*To the Honorable Court of Errors and Appeals  
in the last resort in all causes:*

The petition of Arthur Frame, the appellant  
in the above entitled cause, respectfully shows  
that:

1. The petitioner finds himself aggrieved by  
a certain final decree made in the Court of Chan-

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*Petition of Appeal.*

cery by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey on the advice of the Honorable Henry T. Kays, a Vice-Chancellor, bearing date June 14th, 1944, in a certain cause wherein Georgina Fox, Cecelia Fox, Frances A. Fox, individually, and Frances A. Fox as co-executrix of the last will and testament of Peter J. Fox, deceased, were complainants, and Anna T. Fox, individually and as co-executrix under the last will and testament of Peter J. Fox, deceased, James Raymond McBride, Edward M. Salley, receiver of the Phox Bus Company, a corporation of New Jersey, and Arthur Frame, defendant-appellant, were the defendants in these respects, to wit:

(a) Said decree adjudicated that Peter J. Fox was at all times the actual owner of 10 shares of stock of the Phox Bus Company, a corporation of New Jersey, which was the total number of issued and outstanding shares of capital stock of said company;

(b) Said decree further adjudicated that the consideration for the issuance of said 10 shares of stock of the Phox Bus Company was paid by Peter J. Fox alone;

(c) Said decree further adjudicated that none of the issued and outstanding shares of stock had been issued to, or belonged to, the defendant, Arthur Frame;

(d) Said decree further adjudicated that the title to the aforesaid issued and outstanding 10 shares of stock of the Phox Bus Company vested in Anna T. Fox and Frances A. Fox as co-executrices to be distributed by them under the terms of the aforesaid last will and testament

*Petition of Appeal.*

of Peter J. Fox, deceased, in which his residu-  
 ary estate, which included the aforesaid 10  
 shares of stock, was bequeathed to the defend-  
 ant Anna T. Fox and the complainants Georgina  
 Fox, Cecelia Fox and Frances A. Fox, share and  
 10 share alike.

2. Petitioner appeals from the aforesaid de-  
 cree of the Chancellor, and from those portions  
 thereof which adjudicated as aforesaid on the  
 grounds that the same is erroneous in that:

(a) One of the said ten shares of the capital  
 stock of the Phox Bus Company was issued to  
 and was outstanding in the name of the peti-  
 tioner, Arthur Frame, and he was at all times  
 20 after the issuance thereof, the actual owner of  
 the said one share of stock;

(b) The title to the said one share of capital  
 stock of the Phox Bus Company was not vested  
 in the decedent Peter J. Fox on the date of his  
 death, and was at no time vested in, or owned  
 by Anna T. Fox and Frances A. Fox as co-  
 executrices under the last will and testament of  
 Peter J. Fox, deceased, nor was the said share  
 30 of stock held by them in any other capacity, or  
 by anyone else other than the petitioner, Arthur  
 Frame.

PETITIONER THEREFORE PRAYS, that the afore-  
 said decree of the Chancellor in the respect  
 hereinabove stated may be reversed, set aside  
 and for nothing holden, and that the petitioner  
 may have such other relief in the premises as  
 to this court shall seem proper.

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WALTER E. COOPER,  
 Solicitor for, and of Counsel with,  
 Petitioner-Appellant.

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**New Jersey Court of Errors and Appeals.**

Between

GEORGINA FOX, CECELIA FOX,  
FRANCES A. FOX, individu-  
ally, and FRANCES A. FOX,  
as co-executrix of the Last  
Will and Testament of Peter  
J. Fox, deceased,  
*Complainants-Respondents,*

and

ANNA T. FOX, individually  
and as co-executrix under  
the Last Will and Testament  
of Peter J. Fox, deceased,  
JAMES RAYMOND McBRIDE,  
EDWARD M. SALLEY, JR., re-  
ceiver of the Phox Bus Co.,  
a corporation of New Jersey,  
*Defendants-Respondents,*

and

ARTHUR FRAME,  
*Defendant-Appellant.*

On Appeal from the  
Court of Chancery.

Sat Below:

Hon. Luther A.  
Campbell, C.  
Hon. Henry T.  
Kays, V. C.

**APPELLANT'S BRIEF.**

This appeal is from a final decree entered on June 14th, 1944, in the above entitled proceeding, by the Chancellor, on the advice of Kays, V.C. The sole ultimate question to be reviewed is as to whether the appellant, Arthur Frame, is the owner of one share of capital stock of the Phox Bus Company.

### Statement of Facts.

The bill was filed by three of the residuary legatees of, who included one of the executors of, the last Will and Testament of Peter J. Fox, late of Hudson County, and sought a determination of the actual owners of the capital stock of the Phox Bus Company. It also prayed for a decree, declaring that the ownership of the capital stock would include one share for Arthur Frame, the appellant (pp. 5, 10).\* The bill further alleged in paragraph 16th thereof that the one share was given to the appellant by the said Peter J. Fox, by way of gift *inter vivos* (p. 5). Other admissions in the bill that Arthur Frame was entitled to one such share, or its equivalent, are found in paragraphs 7th, 10th and 17th (pp. 2, 4, 5).

Answers were filed by the four defendants, in two of which it was admitted that one share of such stock was transferred to the appellant (pp. 13, 17); the other two answers did not deny that one share of such stock had been transferred to him or was owned by him, but merely put the complainants to their proof (pp. 12, 21). There was no denial in any of the pleadings of the appellant's ownership of the one share of capital stock of said company.

The company was organized under the laws of New Jersey, in March, 1931, to take over and operate in Jersey City a bus theretofore owned by the deceased, Peter J. Fox (p. 60). Ten shares of stock were originally issued on March 18, 1931, eight shares to Peter J. Fox and one each to the other incorporators, Anna T. Fox and Frances A. Fox (pp. 36, 37, 60). There-

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\* Page references to State of Case.

after, Peter J. Fox transferred one of his eight shares (p. 39) to James Raymond McBride and another to Arthur Frame, the appellant, and, as the Federal revenue stamps attached thereto were cancelled on March 19, 1931 (p. 39) it can be assumed that they were issued on that date. After these transfers, a new certificate for six shares was issued to Peter J. Fox (p. 40) and the ownership, according to the stock book, then appeared as follows: Peter J. Fox—six shares; Anna T. Fox—one share; Frances A. Fox—one share; James Raymond McBride\*—one share; and Arthur Frame—one share.

Later two attempts, neither productive of any results, were made by corporate action to deal with the character of the stock. The first, in September, 1935, sought to change the shares from par \$100 each to shares of no par value (pp. 4, 62). The second, in 1937, sought the approval of the Board of Public Utilities Commissioners, for the issuance of fifteen shares of capital stock, of no par value, but with a stated value of \$100 (pp. 4, 55, 62). The first of these was not completed because of the failure to issue new certificates (p. 62). As to the second, the opinion and the decree below found and determined that the stock ownership was not dependent on any action of such Board, and that only ten shares had been issued and constituted the outstanding shares of the corporation (pp. 63, 64).

The Secretary and Treasurer of the corporation, Frances A. Fox (p. 36) testified that one share represented by Certificate #5 was issued to the appellant, and there appeared thereon the

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(\* Note: James Raymond McBride, who is a nephew of the decedent's wife, has not appealed from the decree below, which found that he has no interest in the corporation.)

signature of Peter J. Fox as President and Frances A. Fox as Treasurer (p. 38). The necessary revenue stamps were affixed and cancelled (p. 39). The appellant, also known as L. Arthur Frame (his answer, p. 17) signed a receipt for the certificate, and it was left in the stock book, although not attached to it. This was true as to all of the certificates which were issued, including those of Peter J. Fox (pp. 27, 36, 37, 60). The Treasurer could not ascribe any reason for leaving the certificates in the stock book (p. 37).

The appellant is a blood nephew of Peter J. Fox, being a child of his oldest sister (p. 33). After some delay, because of his absence as a member of the Naval Forces of the United States, he appeared, while on leave, and testified several months after the original hearing. He stated that he had had the certificate for his one share in his possession, the said Peter J. Fox having written it out in front of him and having handed it to him (p. 50). He did not take the certificate away with him because his uncle suggested holding it until his nephew was of age (p. 50). He testified that he had rendered services in connection with the operation and maintenance of the bus and the keeping of accounts for his uncle (p. 49) and that his uncle wanted him to develop an interest in the bus business (p. 50). These circumstances had influenced the transfer of the one share from the holdings of Peter J. Fox to the appellant (p. 50).

The appellant was required to attend the 1935 corporate meeting, which sought to change the par value of the stock, and he appeared and signed a paper as stockholder, in the office of counsel for the corporation (p. 51). His testimony was not impeached or challenged in any particulars, and there was no cross examination (p. 51).

Peter J. Fox died testate, leaving his residuary estate, in equal shares, to his three sisters, Georgina, Cecelia and Frances, and his wife, Anna, appointing a sister, Frances, and his wife as executrices (pp. 32, 63). The three sisters individually and the one as executrix alleged facts in the bill in support of the ownership of one share by the appellant (p. 2, par. 7; p. 4 par. 10; p. 5, pars. 16-17; p. 10, par. 4); while Anna T. Fox, the fourth party in interest under the will, both individually and as executrix, did not, by her answer, deny ownership by the appellant, but put the complainants to their proof (p. 12). Thus, there was no real challenge; by way of denial, to Arthur Frame's ownership of the one share.

The testimony shows seven acts and statements of Peter J. Fox in support of the appellant's ownership, none of which have been disputed, as follows:

He signed, as President, Certificate #5, for one share in the name of L. Arthur Frame (p. 38).

After he had caused one share each to be transferred to McBride and the appellant, he signed, as President, Certificate #6, to issue to himself the remaining six shares out of the eight shares originally represented by Certificate #1 (p. 40). The trial counsel started to show that the original eight-share certificate then had been cancelled, but the Court said that "That is all in evidence" (p. 40).

In his conversation with the appellant, Fox said he would give the appellant the share because he wanted him to take an interest in the business, and that when the appellant were old enough to drive the bus, he (Fox) wanted to take a vacation and possibly expand the business; that he would give the share of stock to

the appellant for the work he had done and partly to maintain his interest in the business (p. 50).

At the hearing before the Board of Public Utilities Commissioners on October 14, 1937, Fox stated that the owners of the stock "are", among others, "Arthur Frame, my nephew" (p. 56).

The Treasurer of the Company, Frances A. Fox, testified that after the hearing before the Board of Public Utilities Commissioners, Fox had told her the approval was issued, "and that the stockholders were himself, his wife, Anna Fox, my nephew, Arthur Frame, and myself" (pp. 44, 45). In this regard the witness testified against her own interest in that she is an executrix and a residuary legatee under the will of Peter J. Fox, and would take an interest in the one share were it an asset of his estate.

He handed the stock certificate to Frame (p. 50).

He requested the appellant, in 1935, to go to the office of Mr. Doyle, the company's counsel, to attend a corporation meeting (p. 51).

The opinion was filed almost eighteen months after the original hearing, and over eleven months after Frame's testimony had been taken. It found that a one-share certificate had been issued on March 18, 1931, designated as Certificate #5, to L. Arthur Frame (p. 60) but it disposed of his claim for ownership in two short references as follows:

"Subsequently he transferred one share to each of his nephews, McBride and Frame. Why he did this, does not appear (p. 60, l. 20).

\* \* \* \*

"It is contended by Frame that the one

share he held was by way of gift. This contention is not supported by the proofs" (p. 63, l. 7).

The reason for the transfer of one share to Frame does appear in his undisputed testimony (p. 50); and it would appear from the whole record that there is ample proof of a gift of this share by the decedent to the appellant. The opinion notes that when Fox appeared in 1937 before the Board of Public Utilities Commissioners, (Ex. C. 10, p. 52) he testified that "no stock had ever actually been issued" (p. 62). It is obvious that this was an erroneous statement, for the Treasurer gave proof that ten shares had been issued on March 18, 1931, and that they had been signed by herself in her capacity and by her brother, as President (pp. 36-40). These certificates were in Court at the hearing, and the opinion found that they had been issued (p. 60). Apparently Fox was confused by the presentation at that time of certain unsigned certificates, Nos. 1 to 6, which may have been the proposed no par certificates never issued (p. 57, l. 33; p. 62). Certainly, certificates Nos. 1 to 6 of the Phox Bus Company, issued in 1931, were signed by both the president and treasurer (pp. 36-40; pp. 60-61). Moreover, Fox, at that hearing, did actually testify that Frame was an owner of stock (p. 56, l. 10).

That the Court attached some weight to this statement of Fox that "no stock had ever actually been issued" is evidenced by his inclusion of this phrase in the opinion (p. 62). In the light of the testimony adduced at the chancery hearing, we submit it should have been disregarded.

Thus the record discloses, by proof of un-denied and unimpeached facts and of circum-

stances not inherently improbable, a transaction, by way of gift, of one share of stock to the appellant. The Court below however concluded that the contention was "not supported by the proofs" (p. 63). In this posture the reviewing powers of this Court are plenary. *Cartan v. Phelps* (E. & A.) 91 N. J. Eq. 312; *Rains v. Rains* (E. & A.) 127 N. J. Eq. 328. There it was held that the weight given to a vice-chancellor's finding upon a question of fact, will not restrain this Court in its power to ascertain by full investigation and analysis of the evidence, what the facts are, and whether the general finding is consistent therewith.

The appeal is from the general finding that the appellant, Arthur Frame, was not the owner of one share of stock of Phox Bus Company.

### Argument.

#### POINT I.

**The uncontradicted allegations contained in the pleadings are conclusive on the issues involved.**

The complainants herein, against their own interest, alleged that one share of stock of Phox Bus Company had been transferred by *inter vivos* gift, from Peter J. Fox to his nephew, the present appellant, and prayed for a decree determining that he was the owner of one such share. None of the answers specifically denied the allegations of the bill in this particular. Under these circumstances, the Court should have rendered a decision upon the case thus presented, and found and determined that Frame was the owner of the one share involved in the gift. *Pelliterri v. Mancuso* (Ch. Ct.) 136 N. J.

Eq. 323; *Groel v. United Electric Co.*, 69 N. J. Eq. 397. In the first case, the Court, per Jayne, V. C., held (p. 323):

“In a hearing upon a bill and answer the uncontradicted factual allegations of the bill and the averments of the answer are accepted by the court as verities, and the decision is rendered upon the case thus presented.”

In the earlier case, the Court found (p. 407):

“It needs no citation of authority to establish the principle that in a hearing upon a bill and plea the court takes the uncontradicted parts of the bill and the allegations of the plea as verities, and decides according to the right upon the case thus presented.”

## POINT II.

**The proof discloses a valid gift *inter vivos* of one share of stock of the Phox Bus Company by Peter J. Fox to the appellant.**

The law governing the validity of gifts *inter vivos* is set out in the opinion in *Bankers Trust Co. v. Rockville Centre Trust Co.* (E. & A.) 114 N. J. Eq. 391. There, the Court held that: (p. 396).

“The requisites of a valid gift *inter vivos* are: *first*, a donative intent on the part of the donor; *second*, an actual delivery of the subject-matter of the gift unless it be a chose in action, like a certificate of shares of stock or evidence of indebtedness, in which the delivery must be of that variety

of which it is most capable, and, *third*, the donor must strip himself of all ownership and dominion over the subject-matter of the gift."

Thus, with regard to the issue here involved, if it has been shown that (a) there was a donative intent on the part of Fox; (b) a delivery by him of the subject matter, of that variety of which it was most capable; and (c) a stripping by him of all ownership and dominion over the share of stock, a valid gift has been established. We respectfully submit that the tests thus required to determine the matter favorably to the appellant, have been met.

Evidence of donative intent is usually found in declarations of the donor at the time of transaction. *Bankers Trust Co. v. Bank of Rockville Centre*, *supra*, pp. 394, 396; *Long Branch Banking Co. v. Winter (E. & A.)*, 112 N. J. Eq. 218, 219; *Laing v. Durand*, 84 N. J. Eq. 404, 406, 407. The undisputed testimony of Frame discloses statements made by his uncle at the time the share was transferred, as follows:

"He said he wanted me to take an interest in the business and learn all about the business. He said he wanted to take a rest when I was old enough to drive the bus, and after he had had about a year's vacation he thought he might expand the business" (p. 50).

\* \* \* \*

"Yes, he said he would issue this share of stock to me partly for what I had done, and partly to maintain my interest in the business" (p. 50).

The testimony of Frame is clear, plausible and undisputed; and that the members of the family knew of the gift and appreciated its purpose is manifested, not only by the state of the pleadings, but in their refraining from cross examining him.

Other evidence of donative intent is found in the testimony of Fox before the Board of Public Utilities Commissioners, where he said that Frame was a stockholder and in his subsequent conversation with Frances A. Fox, in which he stated that the stockholders were, among others, Arthur Frame. It would also seem that the act of signing, as President, the certificate for one share of stock in the name of Frame was corroborative of a donative intent.

Fox had no children and, in view of this circumstance, it would not be unusual for an uncle to interest a nephew in an expanding business, particularly when the nephew had devoted some attention to it. Gifts which may be considered "natural" are not looked upon with disfavor by the courts. *Farrell v. Passaic Water Co.*, 82 N. J. Eq. 97, 103; *Smith v. Jones*, 89 N. J. Eq. 502, 506; *Bankers Trust Co. v. Bank of Rockville Centre*, *supra*, p. 397. There would be a presumption in favor of a gift from a father to a child. *Bankers Trust Co. v. Bank of Rockville Centre*, *supra*, p. 399. The same motives which would influence a parental gift would lead to donations by a childless uncle to a friendly nephew.

With regard to delivery, the evidence shows that the certificate was handed to Frame in completed form, made out in his name, so as then to entitle him to one share of capital stock of the company (pp. 38, 50). Frame was thereby invested with full ownership until he endorsed

the certificate to another specified person. R. S. 14: 8-45.

In determining the title to a stock certificate, delivery must be proven "of that variety of which it is most capable." *Bankers Trust Co. v. Bank of Rockville Centre, supra*, p. 396. The most capable way of delivering shares of stock, it would seem, would be to have the certificate representing the same, registered in the name of the donee, as was done in this case. The delivery by recordation of the certificate was subsequently recognized, in that Frame was later required to attend a corporate meeting of stockholders (p. 51). And what is of paramount importance is the fact that the certificate at all times thereafter remained in the donee's name (p. 38).

The donor could have effected his purpose to make a gift by delivering the old certificate to Frame, duly endorsed for transfer, or accompanied by a written assignment or power to assign. *Pattberg v. Gott*, 102 N. J. Eq. 371, where the Court said (p. 379):

"Certificates of stock may be subject of gift, but, in order to effect a gift thereof, there must be delivery and intent to make a gift. 12 R. C. L. 942. Furthermore, the Uniform Stock Transfer Act (P. L. 1916 p. 398) provides (section 1) that title to a stock certificate 'and to the share represented thereby' can be transferred *only by delivery of the certificate*, endorsed or accompanied by a written assignment or power to assign."

Here the method of delivery was of an even higher quality than in the *Pattberg* case, for the

final step, *i. e.*, the recordation of the certificate in the name of the donee, was taken by the donor himself.

It has been shown that the donee actually had possession of the share and there is no reason to doubt that he could have resumed the physical custody of the certificate at any time. It follows that the donor had done everything possible to place the appellant in full ownership of the subject-matter of the gift. Where the donor "has assigned all interest he may have had, and surrendered all *indicia* of ownership—as to third parties, holders for value, he is estopped from asserting ownership [cases]—as to volunteers, the gift is complete and irrevocable if *inter vivos*. *Matthews v. Hoagland*, 48 N. J. Eq. 455, 486.

The certificate thus being recorded in the name of the donee, it follows for every conceivable purpose that the transferor lost complete dominion over and ownership of the same. *Long Branch Banking Co. v. Winter, supra*. In this case, the donor had opened a bank account in the name of herself in trust for her husband, and had delivered the book representative thereof to him. The book was kept in a safe deposit box, to which the wife had, or could have had access, and therefore could have repossessed it at will. She did not do so and the Court held that she "had thereby stripped herself of all control over the fund" (p. 221). And this was so determined, despite the fact that the donor's signature was necessary to draw on the account.

The fact that Frame handed the certificate back to his uncle for safe-keeping, until he was twenty-one, did not change the nature of the

transaction, or nullify the completed gift. *Corle v. Monkhouse*, 50 N. J. Eq. 537, 545. Among other matters, the Court there had to deal with a purported gift of some \$1400 alleged to have been made by a decedent to his wife, *inter vivos*. Her claim was supported by witnesses, who testified to the husband having stated that he had given it to her. She had, however, after receiving the money, placed it back in her husband's desk. In holding that the gift was not thereby invalidated, the Court said (p. 546):

"The act of the wife, in putting the money back into her husband's desk immediately after its delivery to her, was manifestly not done with the intention to decline the gift, nor to revoke it, nor for the purpose of destroying or giving up her right to the money."

In *Matthews v. Hoagland*, *supra*, a portion of the gift consisted of bonds from a father to his two children, who handed them back to the father, he replacing them in his personal box. The Chancery Court held that a valid gift had been effected, in that the bonds were of such character that their actual delivery, accompanied by proper declarations, passed the title thereto as a completed gift. The Court further held (p. 485):

"If the gift is complete, the whole title of the donor has passed from him to the donee, and the subsequent redelivery of the subject-matter of the gift to the donor, to keep for the donee, will not disturb the title of the latter in the thing given."

To the same effect are *Gilkinson v. Third Avenue Railroad Company*, 47 App. Div. (N. Y.) 472; *Hynes v. White* (Cal.) 190 Pac. 836. In *Gilkin-*

*son v. Third Avenue Railroad Company*, the Appellate Division of New York held that "a total exclusion of the power or means of resuming possession by the donor, is not necessary" to the validity of a gift (p. 475); and in the California case the same principle was recognized, the Court adding, "The cases are practically uniform in support of this rule of law" (p. 838).

The facts, established by testimony which stands every test of veracity and probability, and which are indeed undenied, clearly indicate that a gift of this share was effected. The appellant was entitled to the benefit of the favorable admissions contained in the pleadings, and of the testimony of the witness, Frances A. Fox, competing against her own interest, and of his own testimony. Nothing he said could be, or was, challenged as untruthful, unreasonable or improbable, nor is there the slightest evidence of over-reaching or improper conduct, either in his associations with the decedent or in court. Had the Court disbelieved him, we may assume that there would have been some such indication in the opinion; and there is none. No fraud in connection with the transfer of the share was alleged or even remotely the subject of proof, no improvident act was involved, and the transaction was not subject to the requirements of a valid gift *causa mortis*.

With the utmost respect, we suggest that when the Court below said with regard to the transfer by Fox of the share to Frame "Why he did this, does not appear," the testimony of Frame was entirely overlooked, as were all of the factors in the record heretofore emphasized, when the conclusion was reached below that the gift was "not supported by the proofs". There is ample proof in the record of a completed gift and no evidence

to the contrary. The certificate was recorded *by the donor* in the name of the donee and it remained in that form, which is a most salient feature of the case.

### Conclusion.

The decree of the Chancery Court entered on June 14th, 1944, in so far as it determined that Arthur Frame was not the owner of one share of capital stock of the Phox Bus Company should be reversed, with a direction to enter a decree, adjudging and determining that he was the owner of, and entitled to the immediate possession of, the certificate representing one share of such stock.

Respectfully submitted,

*Walter E. Cooper*

WALTER E. COOPER,  
*Solicitor for and of Counsel  
with Defendant-Appellant.*

**New Jersey Court of Errors and Appeals.**

Between

GEORGINA FOX, CECELIA FOX,  
FRANCES A. FOX, individu-  
ally, and FRANCES A. FOX,  
as co-executrix of the Last  
Will and Testament of Peter  
J. Fox, deceased,  
*Complainants-Respondents,*

and

ANNA T. Fox, individually  
and as co-executrix under  
the Last Will and Testament  
of Peter J. Fox, deceased,  
JAMES RAYMOND McBRIDE,  
EDWARD M. SALLEY, JR., re-  
ceiver of the Phox Bus Co.,  
a corporation of New Jersey,  
*Defendants-Respondents,*

and

ARTHUR FRAME,  
*Defendant-Appellant.*

On Appeal from the  
Court of Chancery.

Sat Below:

Hon. Luther A.  
Campbell, C.  
Hon. Henry T.  
Kays, V. C.

**BRIEF OF RESPONDENT EDWARD M.  
SALLEY, JR., RECEIVER OF  
PHOX BUS CO.**

This respondent's brief is a mere statement of his position regarding the above appeal.

Since the hearing before Vice Chancellor Kays, the receiver, Edward M. Salley, Jr., has resigned and George P. Byrnes, is now the substituted receiver of the Phox Bus Co. a New Jersey corporation.

Since the institution of this appeal, John G. Flanigan has been substituted as counsel for the receiver in the place and stead of Paul J. Duffy, the original solicitor and counsel to the receiver.

The position of the receiver with respect to the litigation involved in the above appeal is merely that of a stakeholder.

The original receiver, Edward M. Salley, Jr., in the first instance made his finding and determination as to the ownership of the stock of the Phox Bus Co.

The receiver's finding and determination of stock ownership was challenged by certain of the interested parties by appeal filed in the Court of Chancery as a result of which the matter came on to be heard before Vice Chancellor Kays who advised a decree which did not support the findings of the receiver with respect to said stock ownership.

It is from the decree advised by Vice Chancellor Kays that the present appeal is taken.

The present receiver George P. Byrnes has no interest in the appeal except to be guided by the judgment of this Court in making distribution of the assets of the Phox Bus Co.

The receiver conceives his position to be that of a stakeholder; that he has already spoken with respect to the merits of the case and he leaves to the interested parties the issue raised by the appeal in this cause.

Respectfully submitted,

JOHN G. FLANIGAN,  
*Solicitor and of counsel with Edward  
M. Salley, Jr., Receiver of Phox Bus  
Co., George P. Byrnes, substituted  
receiver, Defendants-Respondents.*



