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BILL OF COMPLAINT.

(Filed June 4, 1930.)

IN CHANCERY OF NEW JERSEY.

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

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The complainant, William A. Stevens, Attorney General of the State of New Jersey, respectfully shows that:

1. He brings and prosecutes this suit pursuant to the authority contained in an Act of the Legislature of the State of New Jersey known as the "New Jersey Securities Act," approved March 19, 1927, the amendments thereof and supplements thereto.

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2. Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle, president of both corporations, and Charles R. Doyle and divers other persons, acting in aid or assistance of them or some of them, have engaged in, are engaging in and are about to engage in the act and employment of deception, misrepresentation, concealment, suppression, fraud, false pretense, false promise and fictitious or pretended purchase and sale in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within and from this State and within and from the County of Essex, of securities as defined by said Securities Act and particu-

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larly the capital stock of defendants, Washington Loan Company and Washington Loan Company of Atlantic City, in the respects hereinafter particularly set forth, to wit:

3. Complainant charges that on or about the 11th day of February, 1928, Marvin Loan Company was organized under the laws of the State of New Jersey with an authorized capitalization of 40,000 shares of stock without par value. On or about 10 April 14th, 1928, the certificate of incorporation of the Marvin Loan Company was amended to change the name of the corporation to Washington Loan Company. Still later, by an amendment to the certificate of incorporation, filed April 28th, 1928, the authorized capitalization of the corporation was decreased to 10,000 shares of no par value. On or about May 10th, 1928, the incorporators of this organization transferred and assigned the stock issued to them to the present officers and directors. Com- 20 plainant charges that although this was the first occasion on which the present officers appeared to be associated with the enterprise, they had in fact caused the corporation to be organized and had completely and arbitrarily dominated its affairs from its very inception. Following the transfer and assignment of the stock of the incorporators, John W. R. Doyle became president of the corporation; Edward W. Yeutter, vice-president and William Bater, 2nd, secretary and treasurer. These three men were 30 also elected directors of the corporation.

4. At or about this time, the corporation authorized the issuance of \$2,500,000.00, 8% twenty year debenture bonds. John W. R. Doyle, on or about May 10th, 1928, subscribed for 5,000 shares of the

no par value capital stock of the corporation at the following rates: 3,500 shares at \$1.00 per share, 750 shares at \$2.50 per share, 750 shares at \$5.00 per share, which subscription was to become due and payable within three years. On or about May 10th, 1928, the directors of the corporation at a formal meeting agreed among themselves to sell the remaining 5,000 shares of capital stock of the corporation at the following rates: 1,000 shares at \$10.00 per share, three shares to be sold with each \$100.00 bond; the next 1,000 shares to be sold at \$12.50 per share, three shares to be sold with each \$100.00 bond; the next 1,000 shares to be sold at \$15.00 per share, two shares to be sold with each \$100.00 bond; the next 1,000 shares to be sold at \$17.50 per share, two shares to be sold with each \$100.00 bond; the next 1,000 shares to be sold at \$20.00 per share, two shares to be sold with each \$100.00 bond. 10

5. On or about May 19th, 1928, Charles R. Doyle, son of the president of the corporation, entered into contract with the corporation to act as its sole representative in the sale of its securities for a period of ten years on a basis of 20% commission on all stock and/or bond subscriptions. Under the terms of this contract, Charles R. Doyle was permitted to assign the agreement to any other person or corporation with the approval of the board of directors of the corporation. It was furthermore agreed by and between the corporation and Charles R. Doyle that in the event of a cancellation of the agreement by the corporation, Charles R. Doyle was to be paid 5% of the subscription price of all securities sold and issued by the corporation to the end of the term of the contract, deemed to expire on June 1st, 1938. 20 30

6. At or about this time, defendants, John W. R. Doyle and Charles R. Doyle, caused to be organized under the laws of the State of New Jersey, a corporation known as Washington Loan Company of Atlantic City whose ostensible purpose was to engage in the business of industrial lending. The authorized capitalization of this corporation was fixed at 500 shares of a par value of \$100.00. Shortly after its organization, Washington Loan Company of Atlantic City made application to the Department of Banking & Insurance of New Jersey for a license to operate as a small loan broker. This application was refused and the corporation has been unable at all times since then to procure a license so as to enable it to engage in the activities for which it was organized.

7. On or about June 12th, 1929, John W. R. Doyle contracted to purchase for \$7,500.00, 17 first mortgages on 17 properties, located in Bass River Township, Burlington County, New Jersey, totaling \$99,600.00, from one Harry Bogatin, who has since been adjudged and decreed by this Honorable Court to have been guilty of fraud in connection with the sale of securities, and/or more particularly in connection with the sale of the mortgages herein referred to. Defendant, John W. R. Doyle, thereafter instructed his son, Charles R. Doyle, to make offer to Washington Loan Company of these mortgages in consideration of the sum of \$20,000.00, which offer was subsequently made in writing in the following manner: "I hereby offer your company 17 first mortgages on 17 properties, located in the County of Monmouth, State of New Jersey, amounting to \$99,600.00, together with a title insurance policy providing your company assumes thereof, for and in

consideration of the sum of \$20,000.00. I hereby further agree to accept \$30,000.00 of the 8% debenture gold bonds of the Washington Loan Company as security for the payment of this amount. Your company to agree to redeem these bonds on demand or order by me. Yours truly, Charles R. Doyle." According to the minute books of a directors' meeting of Washington Loan Company, held on June 19th, 1929, this offer purporting to come from Charles R. Doyle, as it apparently did, was accepted and authorization given the officers to take such action as would be necessary to consummate the transaction. 10

8. On or about October 31st, 1929, Washington Loan Company subscribed for 490 shares of the capital stock of Washington Loan Company of Atlantic City, having a par value of \$100.00 per share, at the rate of \$300.00 per share, and in consideration of such subscription, Washington Loan Company executed an assignment of the seventeen bonds and mortgages amounting to \$99,600 above referred to, to Washington Loan Company of Atlantic City, in payment of 334 shares of the Washington Loan Company of Atlantic City and agreed to pay for the remaining 156 shares within five years' time. Such transaction gave the Washington Loan Company of Atlantic City an apparent paid-in surplus of \$69,600. This transaction constituted the only subscription to the capital stock of Washington Loan Company of Atlantic City, and no money nor consideration of any sort whatsoever has been received by Washington Loan Company of Atlantic City since that time with which to conduct its business. Washington Loan Company thereafter listed among its assets the 334 shares of capital stock of the Washington Loan Company of Atlantic City at a figure of \$100,200. 20 30

9. Complainant charges that defendant at all times during the promotion, negotiation, sale, offer for sale, advertisement of the securities of the defendant corporations herein named, suppressed and concealed the fact that the controlling stock of the corporation had been issued to John W. R. Doyle at prices ranging from \$1.00 to \$5.00. Complainant charges the fact to be that 1,388 shares of stock of Washington Loan Company have been issued to its
10 president, John W. R. Doyle in consideration of the payment of \$1,670.00. It is also charged that 1,387 shares of the capital stock of Washington Loan Company have been issued to Charles R. Doyle in consideration of the payment of \$1,667.50, and that various amounts of the capital stock in addition thereto have been issued to the Doyles at prices ranging from \$1.00 to \$5.00, which have in turn been transferred and assigned by the Doyles to their friends and intimates. Complainant charges the
20 fact to be that as a result of these transactions there are now outstanding in the names of the Doyles and their transferees and assignees, 3,966 shares of the capital stock of Washington Loan Company, for which \$12,727.50 has been subscribed and/or paid in. Complainant charges that defendants at all times in their negotiation, promotion, offer for sale and sale at prices ranging between \$10.00 and \$20.00 of the capital stock of Washington Loan Company have concealed and suppressed the fact that these quanti-
30 ties of capital stock were issued to the Doyles and their friends, associates and intimates at prices greatly less than the prices at which the stock was then being offered to the general public. Such suppression and concealment is contrary to the provisions of the New Jersey Securities Act.

10. Defendants, in their negotiation and promotion of the sale of the capital stock of Washington Loan Company suppressed and concealed the fact that the corporation was obligated to pay Charles R. Doyle, the son of the president, a commission of 20% on all stock and/or bond subscription. Such commission was so large and exorbitant as to be unconscionable and unreasonable. The statutes of New Jersey are specific in defining the attempt to gain such a commission as a fraud upon the purchasers of stock. It is furthermore the fact that it has been the practice of the corporation to make payment of commissions on stock and/or bond subscriptions as, if and when 25% of the subscription had been paid in. As a result of this policy, the corporation has actually paid out more than 60% of the amount of money received from stock and/or bond subscriptions. Of total receipts of \$71,392.09 received up to and until February 28th, 1930, \$46,716.43 has been paid out for commissions and/or selling expenses. In addition thereto salaries of \$8,513.00 have been paid. Organization expenses and other commitments made have been charged off, so that there was remaining on the date aforementioned a balance of \$1,289.84 from total receipts of \$71,392.09 with which to operate the business. Complainant charges the fact to be that defendants at all times in their promotion, negotiation and sale of the capital stock of Washington Loan Company concealed and suppressed these facts.

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11. Complainant further charges that in the promotion and negotiation of the sale of the capital stock of Washington Loan Company, defendant concealed and suppressed the fact that John W. R. Doyle was to make a profit of \$22,500.00 on the mort-

gage transaction referred to in paragraph 7 hereof. Complainant charges that John W. R. Doyle has dominated the affairs of Washington Loan Company since its inception and that he has employed his son as his agent to consummate certain transactions and to perform certain duties wherein he was to receive the entire beneficial results and a private and undisclosed personal profit. The 1,387 shares of capital stock which now stand in the name of

10 Charles R. Doyle were issued originally to his father, John W. R. Doyle, and later transferred and assigned to Charles R. Doyle. Both men had been engaged together in security-selling activities as partners for a considerable time prior to their organization of defendant corporations. The intimacy of their relations may well be demonstrated by the terms of the contract entered into between Charles R. Doyle and the corporation wherein

20 Charles R. Doyle was permitted to sell the securities of the corporation over a ten-year period and to receive a commission of 5% of all subscriptions, even after the contract between himself and the corporation had been cancelled. John W. R. Doyle has voted at all directors' meeting of the corporation on contracts proposed and offered by his son, Charles R. Doyle, although it is a fact that such contracts have at all times inured to the financial benefit of John W. R. Doyle. Complainant charges that the mortgage transactions referred to in paragraph 7

30 hereof were conceived illegitimately and consummated fraudulently in that Charles R. Doyle appeared, according to the written offer tendered Washington Loan Company as the owner of 17 first mortgages on 17 properties when such, in fact, was not the case. He had been instructed to tender this offer to the corporation by his father, who had al-

ready agreed to purchase said first mortgages and bonds at an agreed cash price of \$7500.00. John W. R. Doyle had agreed to hold the seller harmless and to deposit with the seller thereof \$20,000 worth of 8% debenture bonds of Washington Loan Company as additional collateral security for the payment of the purchase price of these bonds and mortgages. Notwithstanding the fact that he had been the principal in the transaction, the offer was made to the corporation by his son, who had no interest nor equity of any sort whatsoever in the mortgages and/or property. The meeting at which the offer of Charles R. Doyle was accepted was attended by John W. R. Doyle who voted as a director of the corporation to accept such offer. John W. R. Doyle agreed on behalf of the corporation to pay Charles R. Doyle \$20,000.00 in cash and to pledge \$30,000 worth of 8% debenture bonds against the payment of such purchase price. He concealed and suppressed from his fellow directors, however, that he had personally agreed to purchase the bonds and mortgages at \$7,500.00 and that he would receive a private profit of \$12,500.00 on the cash transaction and/or \$22,500.00 if he purchased for cash and permitted his son to collect the purchase price from the corporation through a sale of the pledged collateral security. Subsequent to these transactions the corporations and John W. R. Doyle, Charles R. Doyle and Harry Bogatin, from whom the mortgages were purchased, negotiated, promoted and sold within and from this State the capital stock of defendant, Washington Loan Company, but concealed and suppressed the fact that John W. R. Doyle was to receive the private undisclosed profit aforementioned. Such suppression and concealment was fraudulent.

12. Complainant charges that notwithstanding the fact that John W. R. Doyle was fully acquainted with all details surrounding the aforementioned mortgage transactions and the value of the property upon which the mortgages had been placed, he transferred and assigned said mortgages on behalf of Washington Loan Company to Washington Loan Company of Atlantic City at their face value, and thereafter listed as an asset of Washington Loan
10 Company its ownership of stock in subsidiary corporation totaling \$100,200.00. The value of such stock in subsidiary corporation; to wit: Washington Loan Company of Atlantic City, was based upon the face value of the mortgages which had been assigned to it by Washington Loan Company which value was well known to John W. R. Doyle to be worthless. The financial statement of Washington
20 Loan Company which was thereafter prepared so as to enable it to dispose of its securities at public sale revealed a very healthy financial condition with a substantial paid-in surplus. Defendants, in their promotion and negotiation of the sale of the capital stock of Washington Loan Company demonstrated a certain financial statement of Washington Loan Company attached hereto and made a part hereof, wherein was included as an asset stock ownership in subsidiaries listed at \$100,200.00, and which gave credence to a substantial paid-in surplus. Defendants suppressed and concealed, however, that this
30 apparent surplus was not in existence, and that the true condition of the corporation was one of insolvency.

13. Ever since the organization of Washington Loan Company and Washington Loan Company of Atlantic City, these corporations have been beset

with financial difficulties and have at all times been insolvent. Notwithstanding this fact, defendants have promoted and solicited the purchase and sale of the capital stock of Washington Loan Company without revealing to the purchaser of stock that such financial condition existed. Such suppression and concealment was illegal.

14. Defendants have at all times concealed and suppressed the fact that the corporations are not permitted to operate in the manner for which they were organized, and that no license has ever been procured from the Department of Banking and Insurance with which to conduct its affairs as a small loan broker, and that in fact, an application for such a license has been refused by the aforesaid department. Such suppression and concealment was necessary so as to effect ready sales of the corporation's securities. 10

Complainant charges that the defendants herein have issued, sold, offered for sale, promoted, negotiated, advertised and distributed within and from this State the capital stock of defendants Washington Loan Company and Washington Loan Company of Atlantic City through the medium of high pressure selling tactics, coercion, flamboyant promises, glittering statements of prospective profits entirely unwarranted and without any basis in fact, and that for purposes of effecting sales of the capital stock and/or bonds of defendant corporations, employed high pressure salesmen, expert technicians in the art of selling by fraud and false pretense. Defendants have engaged in a state-wide sale of the securities of Washington Loan Company and Washington Loan Company of Atlantic City and have sold and offered for sale in every county of the State so 20 30

as to develop the aforementioned state-wide organization, the securities of defendant corporations herein named, by the use and employment of deception, misrepresentation, concealment, fraud and false promise. Complainant charges that approximately \$230,000.00 worth of the securities of Washington Loan Company have been sold to the general public through such means. Complainant further charges that various amounts of the securities of

- 10 Washington Loan Company have been sold to residents of different counties in the State of New Jersey and that in the County of Essex approximately \$3,842.50 worth of Washington Loan Company have been purchased and/or subscribed for. These sales were consummated at prices ranging from \$10.00 per share to as high as \$20.00 per share.

- 20 Complainant charges that bonds and mortgages purchased by defendant John W. R. Doyle referred to herein were, at the time of the sale, and are, today completely and utterly worthless. The property on which these mortgages have been placed was originally purchased by Mabel D. Bogatin for \$50.00. This woman, the wife of the seller of the mortgages to the Doyles was unable to procure any deed other than an agreement to refrain from grantor's acts and it has been impossible at all times since to procure a clear title to the tract mortgage. This property, six miles from any State highway, may be reached by a narrow, winding, sandy trail in the
- 30 heart of the South Jersey pine belt. Such land has sold in the past for approximately \$6.00 per acre. Shortly after Mabel D. Bogatin was deeded the property, she conveyed it, together with her husband, Harry Bogatin, to William Evanson, who in turn deeded it to Abraham Bronfman. Bronfman delivered a purchase money mortgage to William

Evanson to secure an amount totalling \$375,000.00. These were the mortgages which were later assigned to Atlantic City Gateway, Inc., a corporation of New Jersey, who were the owners at the time of the purchase by John W. R. Doyle. Complainant charges that the aforementioned facts were well known to John W. R. Doyle at the time of this purchase of the mortgages above mentioned and that defendant John W. R. Doyle was fully cognizant of the fact that such mortgages were worthless and that neither their interest nor principal could ever be realized. 10

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey corporation, John W. R. Doyle, president of both corporations, and Charles R. Doyle and divers other persons acting in aid or assistance of them or any of them, they being the defendants herein, may answer this bill of complaint and each allegation herein made. 20

2. That the defendants and each of them, their officers, agents, servants and employes, individually and as such officers, agents, servants and employes and all of the persons acting in aid or assistance of them directly or indirectly be forthwith, pending the final hearing and disposition of this cause, and thereupon, permanently restrained and enjoined from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within this State any securities whatsoever and particularly the securities of the defendants, Washington Loan Company and Washington 30

Loan Company of Atlantic City, from removing from this State any other money, property, or assets of every description derived by the defendants herein by means of said alleged illegal practices, including also all property with which such property has been mingled if such property cannot be identified in kind because of such commingling.

10 3. That an order be made directing the defendants hereinbefore named to show cause before this Court, by a short date to be fixed, why they and each of them, their several representatives and all other persons acting in aid or assistance of them, as before mentioned, should not be jointly and severally restrained pending the final hearing of this cause in the manner and respects hereinbefore set forth.

20 4. That a receiver be appointed to take charge of the assets of the defendants and dispose thereof under the direction of this Court in accordance with the provisions of the New Jersey Securities Act.

5. That the complainant may have such further and other relief as to this Honorable Court may seem equitable and meet.

WM. A. STEVENS,
*Attorney General of the State
of New Jersey, Complain-
ant.*

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RICHARD C. PLUMER,
*Assistant Attorney General,
Counsel with Complainant.*

PHILIP L. COFFIN, JR.,
*Spec. Asst. Attorney Gen-
eral, Solicitor of Complain-
ant.*

FINANCIAL STATEMENT.

WASHINGTON LOAN CO.
ATLANTIC CITY, N. J.
DECEMBER 31, 1929.

ASSETS

CURRENT

Cash on Hand and in Bank \$488.23

OTHER

Stock and Bond Subscriptions Receivable 10

Stocks Owned - Subsidiary Company \$147,037.47

Notes Receivable 100,200.00

Washington Loan Company of Atlantic City 1,618.00

—Advances 1,538.10

250,393.57

PERMANENT

Furniture & Fixtures 2,399.31 20

Less Reserve for Depreciation 384.92

2,014.39

DEFERRED

Organization & Development 1,562.57

254,458.76

LIABILITIES

CURRENT

Notes Payable \$200.00

Accounts Payable 202.91

Accrued Interest on Bonds Payable 828.37

1,231.28

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OTHER

Bonds Payable—

August 1, 1948 44,400.00

Bond Subscrip-
tions

130,400.00

174,800.00

NOMINAL—NET WORTH

Capital Stock Is-
sued

11,520.00

10 Capital Stock

Subscriptions 45,207.50

56,727.50

Surplus

21,699.98

78,427.48

254,458.76

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STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss.

PHILIP L. COFFIN, JR., being of full age, duly sworn according to law upon his oath deposes and says:

1. I am a special assistant of the Attorney General of New Jersey, assigned to aid the enforcement
30 of an Act of the Legislature of the State of New Jersey, known as the "New Jersey Securities Act," approved March 19th, 1927, the amendments thereof and supplements thereto.

2. In pursuance of the authority in me vested, I have investigated personally the securities selling

activities within this State of the defendants in these proceedings, and this affidavit sets forth facts so obtained by this investigation.

3. I have read the foregoing bill of complaint and the allegations therein contained are true to the best of my information, knowledge and belief. The facts contained and alleged in said bill of complaint were obtained by me from the sworn testimony of the defendants therein named, given before me in my official capacity of special assistant general, as well as other sources which I will disclose to the Court when occasion may require. 10

4. Washington Loan Company, a New Jersey corporation, Washington Loan Company of Atlantic City, a New Jersey corporation, John W. R. Doyle, president of both corporations, and Charles R. Doyle and divers other persons, acting in aid or assistance of them or some of them, have engaged in, are engaging in and are about to engage in the act and employment of deception, misrepresentation, concealment, suppression, fraud, false pretense, false promise and fictitious or pretended purchase and sale in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution with and from this State and within and from the County of Essex, of securities as defined by said Securities Act and particularly the capital stock of defendants, Washington Loan Company and Washington Loan Company of Atlantic City, in the respects hereinafter particularly set forth, to wit: 20 30

5. Deponent charges that on or about the 11th day of February, 1928, Marvin Loan Company was

organized under the laws of the State of New Jersey with an authorized capitalization of 40,000 shares of stock without par value. On or about April 14th, 1928, the certificate of incorporation of the Marvin Loan Company was amended to change the name of the corporation to Washington Loan Company. Still later, by an amendment to the certificate of incorporation, filed April 28th, 1928, the authorized capitalization of the corporation was decreased to 10,000 shares of no par value. On or about May 10th, 1928, the incorporators of this organization transferred and assigned the stock issued to them to the present officers and directors. Depo-
10 nent charges that although this was the first occasion on which the present officers appeared to be associated with the enterprise, they had in fact caused the corporation to be organized and had completely and arbitrarily dominated its affairs from its very inception.

20 Following the transfer and assignment of the stock of the incorporators, John W. R. Doyle became president of the corporation; Edward W. Yeutter, vice-president and William Bater, 2nd, secretary and treasurer. These three men were also elected directors of the corporation.

6. At or about this time, the corporation authorized the issuance of \$2,500,000.00, 8% twenty-year debenture bonds. John W. R. Doyle, on or about May 10th, 1928, subscribed for 5,000 shares of the
30 no par value capital stock of the corporation at the following rates: 3,500 shares at \$1.00 per share, 750 shares at \$2.50 per share, 750 shares at \$5.00 per share, which subscription was to become due and payable within three years. On or about May 10th, 1928, the directors of the corporation at a for-

mal meeting agreed among themselves to sell the remaining 5,000 shares of capital stock of the corporation at the following rates: 1,000 shares at \$10.00 per share, three shares to be sold with each \$100.00 bond; the next 1,000 shares to be sold at \$12.50 per share, three shares to be sold with each \$100.00 bond; the next 1,000 shares to be sold at \$15.00 per share, two shares to be sold with each \$100.00 bond; the next 1,000 shares to be sold at \$17.50 per share, two shares to be sold with each \$100.00 bond; the next 1,000 shares to be sold at \$20.00 per share, two shares to be sold with each \$100.00 bond. 10

7. On or about May 19th, 1928, Charles R. Doyle, son of the president of the corporation, entered into contract with the corporation to act as its sole representative in the sale of its securities for a period of ten years on a basis of 20% commission on all stock subscriptions and/or bonds. Under the terms of this contract, Charles R. Doyle was permitted to assign the agreement to any other person or corporation with the approval of the board of directors of the corporation. It was furthermore agreed by and between the corporation and Charles R. Doyle that in the event of a cancellation of the agreement by the corporation, Charles R. Doyle was to be paid 5% of the subscription price of all securities sold and issued by the corporation to the end of the term of the contract, deemed to expire on June 1st, 1938. 20 30

8. At or about this time, defendants, John W. R. Doyle and Charles R. Doyle, caused to be organized under the laws of the State of New Jersey a corporation known as Washington Loan Company of Atlantic City, whose ostensible purpose was to en-

gage in the business of industrial lending. The authorized capitalization of this corporation was fixed at 500 shares of a par value of \$100.00. Shortly after its organization, Washington Loan Company of Atlantic City made application to the Department of Banking and Insurance of New Jersey for a license to operate as a small loan broker. This application was refused and the corporation has been unable at all times since then to procure a license
10 so as to enable it to engage in the activities for which it was organized.

9. On or about June 12th, 1929, John W. R. Doyle contracted to purchase for \$7,500.00 seventeen first mortgages on seventeen properties, located in Bass River Township, Burlington County, New Jersey, totaling \$99,600.00, from one Harry Bogatin, who has since been adjudged and decreed by this Honorable Court to have been guilty of fraud in connection with the sale of securities, and/or more particularly in connection with the sale of the mortgages herein referred to. Defendant, John W. R. Doyle, thereafter, instructed his son Charles R. Doyle to make offer to Washington Loan Company of these mortgages in consideration of the sum of \$20,000.00, which offer was subsequently made in writing in the following manner: "I hereby offer your company 17 first mortgages on 17 properties, located in the County of Monmouth, State of New
20 Jersey, amounting to \$99,600.00, together with a title insurance policy providing your company assumes thereof, for and in consideration of the sum of \$20,000.00. I hereby further agree to accept \$30,000.00 of the 8% debenture gold bonds of the Washington Loan Company as securities for the payment of this amount. Your company to agree to redeem these
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bonds on demand or order by me. Yours truly, Charles R. Doyle." According to the minute books of a directors' meeting of Washington Loan Company, held on June 19th, 1929, this offer purporting to come from Charles R. Doyle, as it apparently did, was accepted and authorization given the officers to take such action as would be necessary to consummate the transaction.

9. On or about October 31st, 1929, Washington Loan Company subscribed for 490 shares of the capital stock of Washington Loan Company of Atlantic City, at the rate of \$300 per share, and in consideration of such subscription, Washington Loan Company executed an assignment of the seventeen bonds and mortgages amounting to \$99,600.00 above referred to, to Washington Loan Company of Atlantic City, in payment of 334 shares of the Washington Loan Company of Atlantic City and agreed to pay for the remaining 156 shares within five years time. Such transaction gave the Washington Loan Company of Atlantic City an apparent paid-in surplus of \$69,600.00. This transaction constituted the only subscription to the capital stock of Washington Loan Company of Atlantic City, and no money nor considerations of any sort whatsoever has been received by Washington Loan Company of Atlantic City since that time with which to conduct its business. Washington Loan Company thereafter listed among its assets the 334 shares of capital stock of the Washington Loan Company of Atlantic City at a figure of \$100,200.00.

10. Deponent charges that defendant at all times during the promotion, negotiation, sale, offer for sale, advertisement of the securities of the defen-

- dant corporations herein named, suppressed and concealed the fact that the controlling stock of the corporation had been issued to John W. R. Doyle at prices ranging from \$1 to \$5. Deponent charges the fact to be that 1,388 shares of stock of Washington Loan Company have been issued to its president, John W. R. Doyle, in consideration of the payment of \$1,670.00. It is also charged that 1,387 shares of the capital stock of Washington Loan
- 10 Company have been issued to Charles R. Doyle in consideration of the payment of \$1,667.50, and that various amounts of the capital stock in addition thereto have been issued to the Doyles at prices ranging from \$1 to \$5, which have in turn been transferred and assigned by the Doyles to their friends and intimates. Deponent charges the fact to be that as a result of these transactions there are now outstanding in the names of the Doyles and their transferees and assignees 3,966 shares of the
- 20 capital stock of Washington Loan Company, for which \$12,727.50 has been subscribed and/or paid in. Deponent charges that defendants at all times in their negotiations, promotion, offer for sale and sale at prices ranging between \$10.00 and \$20.00 of the capital stock of Washington Loan Company, have concealed and suppressed the fact that these quantities of capital stock were issued to the Doyles and their friends, associates and intimates at prices greatly less than the prices at which the stock was
- 30 then being offered to the general public. Such suppression and concealment is contrary to the provisions of the New Jersey Securities Act.

11. Defendants, in their negotiation and promotion of the sale of the capital stock of Washington Loan Company suppressed and concealed the fact

that the corporation was obligated to pay Charles R. Doyle, the son of the president, a commission of 20% on all stock and/or bond subscription. Such commission was so large and exorbitant as to be unconscionable and unreasonable. The Statutes of New Jersey are specific in defining the attempt to gain such a commission as a fraud, upon the purchasers of stock. It is furthermore the fact that it has been the practice of the corporation to make payment of commissions on stock and/or bond subscriptions as, if and when 25% of the subscription has been paid in. As a result of this policy, the corporation has actually paid out more than 60% of the amount of money received from stock and/or bond subscriptions. Of total receipts of \$71,392.09 received up and until February 28th, 1930, \$46,716.43 has been paid out for commissions and/or selling expenses. In addition thereto salaries of \$8,513.00 have been paid. Organization expenses and other commitments made have been charged off, so that there was remaining on the date aforementioned a balance of \$1,289.84 from total receipts of \$71,392.09, with which to operate the business. Deponent charges the fact to be that defendants at all times in their promotion, negotiation and sale of the capital stock of Washington Loan Company concealed and suppressed these facts. 10 20

12. Deponent further charges that in the promotion and negotiation of the sale of the capital stock of Washington Loan Company, defendants concealed and suppressed the fact that John W. R. Doyle was to make a profit of \$22,500.00 on the mortgage transaction referred to in paragraph hereof. Deponent charges that John W. R. Doyle has dominated the affairs of Washington Loan Comany since its in- 30

- ception and that he has employed his son as his agent to consummate certain transactions and to perform certain duties wherein he was to receive the entire beneficial results and a private and undisclosed personal profit. The 1,387 shares of capital stock which now stand in the name of Charles R. Doyle were issued originally to his father, John W. R. Doyle, and later transferred and assigned to Charles R. Doyle. Both men had been engaged together in securities-
- 10 selling activities as partners for a considerable time prior to their organization of defendant corporations. The intimacy of their relations may well be demonstrated by the terms of the contract entered into between Charles R. Doyle and the corporation wherein Charles R. Doyle was permitted to sell the securities of the corporation over a ten-year period and to receive a commission of 5% of all subscriptions, even after the contract between himself and the corporation had been cancelled. John W. R.
- 20 Doyle has voted at all directors' meetings of the corporation on contracts proposed and offered by his son, Charles R. Doyle, although it is a fact that such contracts have at all times inured to the financial benefit of John W. R. Doyle. Deponent charges that the mortgage transactions referred to in paragraph
- hereof were conceived illegitimately and consummated fraudulently in that Charles R. Doyle appeared, according to the written offer tendered Washington Loan Company as the owner of 17 first
- 30 mortgages on 17 properties when such, in fact, was not the case. He had been instructed to tender this offer to the corporation by his father, who had already agreed to purchase said first mortgages and bonds at an agreed cash price of \$7500.00. John W. R. Doyle had agreed to hold the seller harmless and to deposit with the seller thereof \$20,000.00 worth

of 8% debenture bonds of Washington Loan Company as additional collateral security for the payment of the purchase price of these bonds and mortgages. Notwithstanding the fact that he had been the principal in the transaction, the offer was made to the corporation by his son, who had no interest nor equity of any sort whatsoever in the mortgages and/or property. The meeting at which the offer of Charles R. Doyle was accepted was attended by John W. R. Doyle who voted as a director of the corporation to accept such offer. John W. R. Doyle agreed on behalf of the corporation to pay Charles R. Doyle \$20,000.00 in cash and to pledge \$30,000.00 worth of 8% debenture bonds against the payment of such purchase price. He concealed and suppressed from his fellow directors, however that he had personally agreed to purchase the bonds and mortgages at \$7,500.00 and that he would receive a private profit of \$12,500.00 on the cash transaction and/or \$22,500.00 if he purchased for cash and permitted his son to collect the purchase price from the corporation through a sale of the pledged collateral security. Subsequent to these transactions the corporations and John W. R. Doyle, Charles R. Doyle and Harry Bogatin, from whom the mortgages were purchased, negotiated, promoted and sold within and from this State the capital stock of defendant, Washington Loan Company, but concealed and suppressed the fact that John W. R. Doyle was to receive the private undisclosed profit aforementioned. Such suppression and concealment was fraudulent.

Several hearings were conducted by deponent pursuant to the authority vested in him as Special Assistant Attorney General wherein the following questions and answers were made at a hearing held on May 16th, 1930, wherein Harry Bogatin, the seller of the mortgages replied as follows:

"A. There was \$99,600.00 assigned to them (Washington Loan Co.)

Q. Who negotiated these transactions?

A. I did.

Q. With whom?

A. With Mr. Doyle—I think it is J. W. R. Doyle.

Q. Was he thoroughly familiar with the type of mortgage securities you were selling him?

A. Yes, sir.

10 Q. Has he any defense against the collection of the purchase price of these mortgages?

A. No, sir.

Q. What did the Washington Loan Company agree to pay?

A. \$7500.00.

Q. Has Doyle ever denied his liability on this agreement?

A. No, sir."

20 At a hearing held on May 17th, 1930, by me in my official capacity of Special Assistant Attorney General, Charles R. Doyle made the following replies to the following questions:

"Q. Did you contract to buy these mortgages from Bogatin before you had the authorization from the company to do that?

A. Well, he talked to father first and then he talked to me. Father talked to me first.

30 Q. What did you agree to pay Bogatin for these mortgages?

A. I agreed to pay him \$7500.00.

Q. In cash?

A. Yes.

Q. Did you own the mortgages when you made an offer to the corporation to buy them for \$20,000.00?

A. No, not in my own name.

Q. Who did own them?

A. Bogatin.

Q. Were you acting as the agent of Bogatin?

A. He was going to sell them to me. He and I would sell them to the company. That is what it means.

Q. Who was to receive the difference between \$7,500 and \$20,000?

A. I was, but it wasn't put through.

Q. What were you going to do with \$30,000 worth of bonds that you were to receive as collateral security for the payment of the \$20,000? 10

A. They were only held as security for the payment of the \$20,000.

Q. Did you believe that the mortgages were worth \$99,600.00?

A. I don't know.

Q. Did you advise purchasers of stock that you were to make \$12,500 on the mortgage transaction?

A. No, but if the thing was to go I imagine they would be darn glad I had made it. 20

Q. Did you advise purchasers of stock that the corporation did not have sufficient money to protect itself by securing a title policy on these mortgages?

A. It was never talked about.

Q. Did you advise purchasers of stock that you acted as agent for Bogatin, as appears in letter marked B3 in the sale of these mortgages?

A. I haven't talked to anybody.

Q. Did you advise purchasers of stock that the price which was to be received by Bogatin was \$7,500? 30

A. I haven't sold any stock."

At a hearing conducted by me by virtue of the authority vested in me as Special Assistant Attor-

ney General, John W. R. Doyle testified on May 17th, 1930, as follows:

“Q. Did you ever discuss the valuation of this property with Bogatin?

A. No, sir.

Q. Did you know the terms of the contract to purchase between Bogatin and your son?

A. Yes.

Q. What did he agree to pay Bogatin?

10 A. Well, there was to be \$7500 in cash or rather \$20,000 bond, and the thought was that we would sell the bonds and he was to get his money out of it.

Q. Was he to remit the difference between \$20,000 and \$7500 to your son?

A. That arrangement must have been made between he and my son.

Q. Did you endeavor to offer these mortgages owned by your son to the Washington Loan Com-
20 pany?

A. My son offered them to the Washington Loan Company.

Q. At the time that this deal was made were you present at a meeting at which the purchase of these mortgages was considered?

A. Yes.

Q. Did you vote at that meeting that the reassignment from your son to the company be accepted?

30 A. It wasn't a reassignment. They had never been assigned to Charles R. Doyle. The assignment of the mortgages when they were made was made from Atlantic City Gateway owners apparently to Washington Loan Company.

Q. Your son was merely acting as the agent of Washington Loan Company?

A. Of Bogatin and the Washington Loan Company.

Q. Were you familiar with the property in Bass River Township at the time this transaction was made?

A. At the present time or boom time? Well, figuring it up if we could have gotten the land for \$7.00 a lot it would amount to \$20,000.

Q. Why did you, in view of all that you have told us, carry the value of these mortgages at \$99,600.00 in the statement of Washington Loan Company of Atlantic City? 10

A. Following out the statements of banks and trust companies they put their total face value in their statements.

Q. Did you sell stock after the procurement of these mortgages in Washington Loan Company?

A. Yes.

Q. Did you advise purchasers of stock of the financial condition of the company? 20

A. There wasn't any financial statement at that time."

Deponent charges that notwithstanding the fact that John W. R. Doyle was fully acquainted with all details surrounding the aforementioned mortgage transactions and the value of the property upon which the mortgages had been placed, he transferred and assigned said mortgages on behalf of Washington Loan Company to Washington Loan Company of Atlantic City at their face value, and thereafter listed as an asset of Washington Loan Company its ownership of stock in subsidiary corporations totaling \$100,200.00. The value of such stock in subsidiary corporation; to wit: Washington Loan Company of Atlantic City was based upon the face value 30

of the mortgages which had been assigned to it by Washington Loan Company which value was well known to John W. R. Doyle to be worthless. The financial statement of Washington Loan Company which was thereafter prepared so as to enable it to dispose of its securities at public sale revealed a very healthy financial condition with a substantial paid-in surplus. Defendants, in their promotion and negotiation of the sale of the capital stock of Washington Loan Company demonstrated certain financial statement of Washington Loan Company wherein was included as an asset stock ownership in subsidiaries listed at \$100,200.00, and which gave credence to a substantial paid-in surplus. Defendants suppressed and concealed, however, that this apparent surplus was not in existence, and that the true condition of the corporation was one of insolvency.

20 14. Ever since the organization of Washington Loan Company and Washington Loan Company of Atlantic City, these corporations have been beset with financial difficulties and have at all times been insolvent. Notwithstanding this fact, defendants have promoted and solicited the purchase and sale of the capital stock of Washington Loan Company without revealing to the purchaser of stock that such financial condition existed. Such suppression and concealment was illegal.

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15. Defendants have at all times concealed and suppressed the fact that the corporations are not permitted to operate in the manner for which they were organized, and that no license has ever been procured from the Department of Banking and Insurance with which to conduct its affairs as a small

loan broker, and that in fact, an application for such a license has been refused by the aforesaid department. Such suppression and concealment was necessary so as to effect ready sales of the corporation's securities.

16. Deponent charges that the defendants herein have issued, sold, offered for sale, promoted, negotiated, advertised and distributed within and from this State the capital stock of defendants Washington Loan Company and Washington Loan Company of Atlantic City through the medium of high pressure selling tactics, coercion, flamboyant promises, glittering statements of prospective profits entirely unwarranted and without any basis in fact, and that for purposes of effecting sales of the capital stock and/or bonds of defendant corporations, employed high pressure salesmen, expert technicians in the art of selling by fraud and false pretense. Defendants have engaged in a State-wide sale of the securities of Washington Loan Company and Washington Loan Company of Atlantic City and have sold and offered for sale in every county of the State so as to develop the aforementioned State-wide organization. The securities of defendant corporations herein named, by the use and employment of deception, misrepresentation, concealment, fraud and false promise. Deponent charges that approximately \$230,000.00 worth of the securities of Washington Loan Company have been sold to the general public through such means. Deponent further charges that various amounts of the securities of Washington Loan Company have been sold to residents of different counties in the State of New Jersey and that in the County of Essex approximately \$3,842.50 worth of Washington Loan Company have been purchased

and/or subscribed for. These sales were consummated at prices ranging from \$10.00 per share to as high as \$20.00 per share.

Deponent charges that bonds and mortgages purchased by defendant, John W. R. Doyle, referred to herein, were at the time of the sale, and are today, completely and utterly worthless. The property on which these mortgages have been placed was originally purchased by Mabel D. Bogatin for \$50.00.

- 10 This woman, the wife of the seller of the mortgages to the Doyles was unable to procure any deed other than an agreement to refrain from grantor's acts and it has been impossible at all times since to procure a clear title to the tract mortgage. This property, six miles from any State highway, may be reached by a narrow, winding, sandy trail in the heart of the South Jersey pine belt. Such land was sold in the past for approximately \$6.00 per acre.

- 20 Shortly after Mabel D. Bogatin was deeded the property, she conveyed it, together with her husband, Harry Bogatin, to William Evanson, who in turn deeded it to Abraham Bronfman. Bronfman delivered a purchase money mortgage to William Evanson to secure an amount totalling \$375,000.00. These were the mortgages which were later assigned to Atlantic City Gateway, Inc., a corporation of New Jersey, who were the owners at the time of the purchase by John W. R. Doyle. Complainant charges that the aforementioned facts were well known to
- 30 John W. R. Doyle at the time of this purchase of the mortgages above mentioned and that defendant John W. R. Doyle was fully cognizant of the fact that such mortgages were worthless and that neither their interest nor principal could ever be realized.

PHILIP L. COFFIN, JR.

Sworn and subscribed to before me this 4 day of June, 1930.

J. BRANTON WALLACE,
Notary Public of New Jersey.

A true copy.

PHILIP L. COFFIN, JR.,
*Special Assistant Attorney
General of New Jersey
Solicitor and Counsel of
Complainant.*

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ORDER TO SHOW CAUSE.

(Filed June 4, 1930.)

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This matter being opened to the Court by Philip L. Coffin, Jr., Esq., Special Assistant Attorney General of the State of New Jersey, solicitor of complainant and the Court having read and considered the bill of complaint filed in this cause and the affidavit of the said Philip L. Coffin, Jr., Esq., thereunto annexed, it is on this 4th day of June, 1930, ordered that: Washington Loan Company, a corporation of New Jersey; Washington Loan Company of Atlantic City, a corporation of New Jersey; John W. R. Doyle and Charles R. Doyle, show cause before the Chancellor at the Chancery Chambers, 1060 Broad Street, Newark, New Jersey, on Tuesday, the 10th day of June, 1930, at the hour of 10 o'clock in the forenoon, or as soon thereafter as the matter can be heard, why an order should not be

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made restraining and enjoining the said defendants and each of them, their several officers, directors, trustees, stockholders, brokers, agents, employes, banks, depositories and all other persons acting in aid or assistance of them or any of them as the case may be, directly or indirectly, jointly and severally, from issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising or distributing within or from this State any securities whatsoever, the word securities being used
10 in the sense and as defined by the New Jersey Securities Act and particularly the securities and/or capital stock and/or bonds of the defendants of the Washington Loan Company, a corporation of New Jersey, and Washington Loan Company of Atlantic City, a corporation of New Jersey, pending the final hearing of this cause and permanently thereafter.

It is further ordered that said defendants and each of them show cause before the Chancellor at the time and place hereinbefore mentioned why a receiver should not be appointed by this Court to take
20 into his possession all the goods and chattels, rights and credits and other property of every nature and description of said defendants and each of them derived by them or any of them by means of any practices declared to be illegal and prohibited by the New Jersey Securities Act, in connection with the promotion and sale of the securities and/or capital stock and/or bonds of the defendants Washington Loan Company, a New Jersey corporation, and
30 Washington Loan Company of Atlantic City, a New Jersey corporation, including also all property with which said property has been mingled if such property cannot be identified in kind because of such commingling, and dispose of the property so taken over by said receiver under the direction of this Court; and

It is further ordered that in the meantime and pending the further order of this Court, the defendants herein named, their several officers, directors, trustees, stockholders, agents, servants, banks and depositories as the case may be, as well as all other persons acting in aid or assistance of them or any of them, be and they are hereby restrained and enjoined, jointly and severally, from collecting or receiving or disbursing any monies or property actually or nominally belonging to said defendants or any of them within this State, and the said defendants and each of them are hereby enjoined and restrained from removing any of their property whether the same be jointly or severally owned by them from the State of New Jersey pending the further order of this Court; and 10

It is further ordered that said defendants and each of them show cause at the time and place hereinbefore designated why complainant should not be granted relief prayed for in the bill of complaint filed by him in this cause; and 20

It is further ordered, that a copy of this order, which may be certified by solicitor of complainant, be served upon the defendants, either personally or by leaving the same at their or any of their respective places of business, residence or abode, or upon their or any of their solicitors by mailing the same by registered mail to their last known place of business, residence or abode, within or without this State; and in the case of the corporate defendants, by leaving the same with any officer, agent, employe or solicitor thereof within two days from the date hereof. 30

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

A true copy.

PHILIP L. COFFIN, JR.,
*Special Assistant Attorney
General of New Jersey
Solicitor and Counsel of
Complainant.*

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ORDER OF CONTINUANCE.

(Filed June 17, 1930.)

It is on this 17 day of June, nineteen hundred and thirty, on motion of Harvey F. Carr, solicitor for the above named defendants, ordered, that the hearing on the order to show cause heretofore, to wit; on the 4th day of June, 1930, entered herein, be and the same is hereby continued until Tuesday, June 20 24, nineteen hundred and thirty, at the hour of ten o'clock in the forenoon (Daylight Saving Time), or as soon thereafter as the matter can be heard; and meantime, the restraint imposed in and by said order is hereby continued and in force.

E. R. WALKER,
C.

JOHN H. BACKES,
V. C.

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I consent to the entering of the foregoing order.

PHILIP L. COFFIN, JR.,
*Solicitor for William A. Stevens,
Attorney General of
State of New Jersey.*

ORDER OF CONTINUANCE.

(Filed June 24, 1930.)

It is, on this 22nd day of June, 1930, on motion of Harvey F. Carr, solicitor for the above-named defendants, ordered that the hearing on the order to show cause heretofore, to wit, on the fourth day of June, 1930, entered herein, be, and the same hereby is continued until 1st day of July, 1930, at the hour of ten o'clock in the forenoon (Daylight Saving Time), or as soon thereafter as the matter can be heard; and that meantime the restraint imposed in and by said order be, and the same hereby is, continued and in force. 10

Respectfully advised, 20

MAJA LEON BERRY,
V. C.

I consent to the entering of the foregoing order.

PHILIP L. COFFIN, JR.,
Solicitor for William A. Stevens, Attorney General of State of New Jersey. 30

ANSWERING AFFIDAVIT OF JOHN W. R.
DOYLE.

(Filed July 1, 1930.)

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

10 JOHN W. R. DOYLE, of full age, being duly sworn,
on his oath says:

1. I am one of the above-named defendants, and I am president and a member of the board of directors of both the Washington Loan Company and the Washington Loan Company of Atlantic City, and I make this affidavit on my own behalf as well as on behalf of the said corporations.

20 2. I have read a true copy of the bill of complaint and of the affidavit thereto annexed. I deny that the Washington Loan Co., the Washington Loan Company of Atlantic City, myself and Charles R. Doyle, or any of them, or any other person acting for or on behalf of the said corporations, or of myself, or the said Charles R. Doyle have engaged in, are engaging in, and are about to engage in any act or employment of deception, misrepresentation, concealment, suppression, fraud, false pretense, false
30 promise, and fictitious or pretended purchase and sale in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within and from this State, and within and from the County of Essex, of securities as defined by the Securities Act

of New Jersey, and particularly the capital stock of the defendants, Washington Loan Company and Washington Loan Company of Atlantic City, in any respect whatever, and this denial is intended to be in the disjunctive as well as in the conjunctive form.

3. I admit the averments of paragraph 3 of the bill, except that I deny that I have completely and arbitrarily dominated the affairs of the said corporation from its inception. The affairs of the corporation were controlled by its board of directors and executive officers. 10

4. Referring to paragraph 4 of the bill of complaint, the certificate of incorporation of Washington Loan Company, as amended, contained the following provision:

“This corporation may issue and may sell the authorized shares without par value for such consideration as from time to time may be fixed by the board of directors.” 20

Pursuant to such provision, and pursuant to P. L. 1921, Ch. 833, at a meeting of the board of directors held on the tenth day of May, 1928, the following resolution was passed:

“RESOLVED that the stock of this company be issued at the following rates: The first 3500 shares subscribed for to be sold at the rate of one (\$1.00) dollar per share; the next 750 shares to be sold at the rate of two dollars and fifty cents (\$2.50) per share; the next 750 shares to be sold at the rate of five (\$5.00) dollars per share; the next 1000 shares to be sold at the rate of ten (\$10.00) dollars per share; the next 1000 shares to be sold at the rate of twelve dol- 30

lars and fifty cents (\$12.50) per share; the next 1000 shares to be sold at the rate of fifteen (\$15.00) dollars per share; the next 1000 shares to be sold at the rate of seventeen dollars and fifty cents (\$17.50) per share; the next 1000 shares to be sold at the rate of twenty (\$20.) dollars per share.”

10 At the same meeting the board of directors authorized the issuance of the company’s 20 year eight per cent. debenture bonds in the aggregate sum of \$2,500,000, and provided for the sale of the said bonds in units together with either two or three shares of stock as stated in the bill of complaint.

20 At this time there were no shareholders of the company except the shares of stock owned by the assignees of the original incorporators, so that all directors voting in favor of the said resolutions constituted at that time all of the stockholders of the company, and at a meeting of the stockholders held on the eleventh day of May, 1928, at which all stockholders were present, the minutes of all previous meetings of the stockholders and directors were read and the following resolution was passed:

“RESOLVED that the action of the stockholders and the directors at all of the said meetings be and the same hereby ratified and approved.”

30 so that the fixing of the consideration for the various shares of stock was approved by all of the then stockholders of the company, said resolution being adopted pursuant to the terms of the certificate of incorporation, and also the following provision of the statute:

“Such corporation may issue and may sell

its shares without nominal or par value, from time to time, for such consideration as may be prescribed in the certificate of incorporation, or any amendment thereof, or, if so provided in the certificate of incorporation, as from time to time may be fixed by the board of directors."

P. L. 1921, Ch. 833.

In fixing the several rates of stock it was believed to be fair and just that those who purchased stock during the early stages of the company, and before its success was assured, should have the right to purchase at a lower rate than those who came in later when the company's affairs would assume a more stable basis, and the element of risk would be lessened and the probabilities of gain increased. 10

As the executive head of the company, I knew that a large amount of work would be entailed upon me during the formative period of the company's business, and while I proposed to devote my exclusive time to the affairs of the company, I did not intend to ask for any salary or compensation, nor have I since asked for or received any salary or compensation for my services extending over a period of two years. 20

Of the shares subscribed to by me, 1100 have been issued not "to my friends and intimates," but have been issued to responsible and important men in the community comprising 16 in number and amounting to 1100 shares. Of the remaining stock there has been issued to me and is outstanding in my name 1388 shares, for which I have paid the sum of \$1670, and there is outstanding and issued to Charles R. Doyle 1387 shares, for which he has paid the sum of \$1667.50, and, as before stated, 1100 shares to 30

others in aid of the enterprise for the sum of \$1100. Included among those who purchased at that rate were men prominent in the business and governmental affairs of their respective communities. Some of those who purchased at the rate of \$1.00 purchased later at the rate of \$10.00 a share. There was no intentional concealment or suppression of these facts.

10 Among instances of this character is the case of Francis J. Waldmeyer, Night Police Court Judge and Acting Recorder of the City of Atlantic City, who originally subscribed to 100 shares at \$1.00 a share, and paid for the same, and afterwards subscribed to 100 shares, and paid at the rate of \$10 a share, equaling the sum of \$1000.

20 5. Referring to paragraph 5, I admit that a contract was made between the Washington Loan Company and Charles R. Doyle for the sale of its stock and bonds on the basis of a twenty per cent. commission. I know from my own knowledge that it is usual to pay a commission as high as twenty-five per cent. for the sale of a new issue of securities unknown to the public; and, in fact, I have understood from former dealings with the Securities Division of the Attorney General's Office, that a rate as high as twenty-five per cent. had the approval of that division. In fact, I reported to the division in answer to a questionnaire that commissions of
30 twenty per cent. were being paid, and said report has been on file for over twenty months in the office of the Attorney General, and no objection was made on the part of that office before the filing of this bill of complaint.

I know that a commission of from twenty to twenty-five per cent. is the usual commission paid for services of this character.

Out of the commissions paid to Charles R. Doyle he was obliged to pay salesmen acting under him at the rate of fifteen per cent., and was required to defray all of his traveling, living and other expenses incident to the sale of the company's securities, so that the net result to the said Charles R. Doyle was in the neighborhood of from two to three per cent.

I know that the services of competent salesmen in this line cannot be secured for less than fifteen per cent. 10

Referring to paragraph 6, the Washington Loan Company of Atlantic City was incorporated, not only to engage in the business of industrial loaning, but also to carry on generally the business of buying and selling negotiable or transferable securities, including debentures, bonds, notes and bills of exchange, and to buy and sell and deal in shares, stocks, bonds, obligations or securities of any public or private corporation, and to deal in evidences of indebtedness created by any other corporation or corporations, and to form, promote and assist financially or otherwise, companies, syndicates, partnerships, and associations of all kinds, and to give any guarantee in connection therewith or otherwise for the payment of money, or for the performance of any obligation or undertaking, and to acquire, improve, manage, work, develop, exercise all rights in respect of, lease, mortgage, sell, dispose of, turn to account and otherwise deal with property of all kinds, and in particular business concerns and undertakings. 20 30

It is true that application was made to the Department of Banking and Insurance of New Jersey to operate as a small loan broker. This application was refused on or about October 30, 1929. The Department had required that notwithstanding the fact

that the statute provided for a capital of \$5000, that a small loan company must have a paid-in capital of at least \$50,000. Believing this departmental regulation in excess of the powers of the Commissioner of Banking and Insurance, I employed counsel for the purpose of seeing whether the department would waive this requirement, and also for the purpose of contesting the right of the Commissioner of Banking and Insurance to refuse the application. However, the New Jersey Legislature passed an Act, effective February 15, 1930, reducing the legal rate of interest for small loan companies from three per cent. to one and one-half per cent. a month, and it was then my view, as well as of a large number of persons operating such companies, that the business could not be profitably conducted at the new rate of interest fixed by the Legislature. It was then concluded by the officers of the two corporations that other and more profitable fields of operation should be selected.

Previous to this time the Washington Loan Company had written to over 300 operating loan companies with a view of acquiring ownership of some of the said companies, and had gone so far as to have its accountants examine and check the records and accounts of two of the companies. The change in the legal rate of interest, however, resulted in the Washington Loan Company and the Washington Loan Company of Atlantic City deciding to abandon this field, and to turn their attention to the purchase of accounts receivable, installment accounts in various trades, and to the financing of building construction and repairs and improvements to existing buildings, and with that purpose in mind the Washington Loan Co. caused to be incorporated the Consolidated Construction Company of New Jersey.

7. Referring to paragraph 7, I deny that on June 12, 1929, or at any other time, I contracted to purchase for \$7500, or for any other sum, the mortgages referred to in the said bill, and I deny that I ever instructed my son, Charles R. Doyle, to offer these mortgages to the Washington Loan Company for the sum of \$20,000. I am advised, and believe it to be true, that Charles R. Doyle had made a verbal agreement with Harry Bogatin to purchase these mortgages, and that this verbal agreement was effective when the said Charles R. Doyle made the offer in writing referred to in the said paragraph. 10

8. Referring to paragraph 8, it was never intended that the Washington Loan Company of Atlantic City should offer its stock to the general public, and, in fact, not one share has been so offered. It was intended that at all times the Washington Loan Company of Atlantic City should be a subsidiary company, and that the Washington Loan Company should be a holding company. 20

I admit that the Washington Loan Company subscribed for 490 shares of the capital stock of the Washington Loan Company of Atlantic City, having a par value of \$100 per share, and that, in consideration of such subscription, Washington Loan Company executed an assignment of the 17 bonds and mortgages amounting to \$99,600 above referred to in payment of the 334 shares of the Washington Loan Company of Atlantic City.

I am advised by Charles R. Doyle, and believe it to be true, that the said Bogatin pointed out as the property covered by these mortgages property closely adjoining the main New York to Atlantic City shore road, and that while passing the "White Oak Inn" about a mile north of New Gretna indicated the property as right back of the White Oak 30

Inn and within a stone's throw of the road. I was satisfied that property so closely adjacent to the main New York highway was easily worth a sum in excess of the consideration of \$20,000, which the Washington Loan Company agreed to pay therefor, and it was not until the latter part of April or the early part of May that I had any knowledge that the property covered by the mortgages was located at a point six or seven miles remote from the point indicated by the said Harry Bogatin. My first intimation was derived by the service upon me of a copy of certain proceedings instituted by William A. Stevens, Attorney General, against the Quaker Bond & Mortgage Company, Inc., et als.

I had caused plans to be made for the erection of bungalows upon the mortgaged premises in case title was acquired by the Washington Loan Company or the Washington Loan Company of Atlantic City, and as a result of these calculations I figured that the lots could be put in at a cost of \$300, and that after paying for the material, labor, brokerage commissions and overhead expenses, and putting in the lots at \$300 each, on the first 50 bungalows the price of \$300 per lot could be realized, together with a profit of \$35 above the cost of the lot, and that this profit could be increased on the second 50 bungalows, so as to provide for a cost of \$300 per lot and a net profit of \$115 per lot in excess of the cost thereof at the rate of \$300 per lot. It was upon this basis that the mortgages were carried on the books of the Washington Loan Company of Atlantic City at the face value thereof.

While I believed that the ultimate transaction would absorb the entire par value of the said mortgages, I am informed, and now believe, that it was improper to show a profit not yet realized in the above matter. But there was no one to be injured

whatsoever as a result of this transaction. No stockholders of the Washington Loan Company of Atlantic City could be injured or defrauded. All of the stock was owned by the Washington Loan Company. It was never intended to offer the stock of the Washington Loan Company of Atlantic City to the public, and hence there was no intent to deceive the public into purchasing stock of the Washington Loan Company of Atlantic City. No representations whatever were made to any prospective stockholder of the Washington Loan Company with relation to this transaction. As a matter of fact, the financial statement of the Washington Loan Company under date of December 21, 1929, annexed to the bill of complaint, was not forwarded to any one except existing stockholders of the Washington Loan Company, to whom it was mailed on January 22, 1930. 10

Prior to this time the total securities of this company sold were as follows:

Number of shares 7,573, Total.....	\$57,357.50	20
Bonds sold	156,600.00	
Total	\$213,957.50	
Number of shares sold after issuance of statement, 62, total	1,130.00	
Bonds sold after statement	3,400.00	
Total	\$4,530.00	30

Expressed in percentage:

Total number of shares sold before statement	.9919
After statement	.0081
Bonds sold before statement	.97875
Bonds sold after statement	.02125

In view of the misrepresentations made by the said Bogatin which formed the basis of the sale of the said bonds and mortgages to the Washington Loan Company, it is my purpose, if the business of the company is permitted to continue, to recommend to the board of directors that the purchase thereof, and all transactions relating thereto, including the issuance of stock of the Washington Loan Company of Atlantic City therefor, be rescinded, 10 and that an appropriate entry covering the same be placed in the company's books of account. I have conferred with other directors of the company unofficially, and I believe that such action will be taken by the board of directors.

The \$30,000 of debenture bonds referred to in the offer of Charles R. Doyle have never been delivered, and as a consequence the Washington Loan Company has sustained no loss, and no injury has resulted or will result to the stockholders of either 20 company.

9. Referring to paragraph 9, I deny that I suppressed and concealed any facts with relation to the issuance of stock of the corporation to myself, in fact, in an answer to the questionnaire filed in the Securities Division of the Attorney General's Department some twenty months ago, all the facts with relation to the issuance of the stock and the subscription thereto by myself were fully stated, and 30 no complaint was made by the department until the filing of this bill of complaint. I deny that I and my son have the controlling stock interest in the company. As a matter of fact, I and my son own a total of 2775 shares of stock out of 7635 shares of stock sold and subscribed to.

With regard to the issuance of stock at different

rates, this fact was personally known to at least 75 stockholders who in each case purchased at different rates, some having purchased at the rate of \$1.00 per share and later purchased at the rate of \$10.00 per share; others at the rate of \$10.00 per share and later purchased at \$15.00 a share; still others purchased at \$12.50 a share and later purchased at \$17.50 per share; others purchased at \$10.00 per share and later purchased at \$17.50 per share; still others purchased at \$12.50 per share and later at \$15.00 per share; others purchased at \$12.50 per share and later at \$17.50 per share. 10

10. Referring to paragraph 10, I deny that I suppressed and concealed the fact that the corporation was obliged to pay Charles R. Doyle a commission of twenty per cent on all stock and on bond subscriptions. I deny that such commission was so large and exorbitant as to be unconscionable and unreasonable. I aver the fact to be that the Attorney General's Office was advised more than twenty months ago of the contract for the payment of these commissions, and made no objection thereto until the filing of the bill of complaint. I aver that the usual rate of commission on sales of this character ranges from twenty to twenty-five per cent, and I aver from my own knowledge that sales of securities of new corporations cannot be effected at a commission rate of less than twenty per cent, and often a commission of twenty-five per cent is paid, and I aver from my own knowledge that the proportion of commissions paid out as to the proportion of collections is the usual proportion paid to brokers and salesmen for this class of securities, and it is not usual to require the brokers and sales to await the full payment to the company before the full payment of commis- 20 30

sions is made to the brokers in cases where the subscribers are financially responsible; in fact, it is quite customary to advance to salesmen moneys to defray their living and traveling expenses in anticipation of earned commissions. This has been found necessary to keep the selling organization together.

10 This company has 361 subscribers to its stock and debentures, of whom 307 are directors and officers of banks, trust companies and building associations of the State of New Jersey. Only 54 stockholders and bondholders are not in the above class; in fact, it was the policy of the company to select only men who were prominent in their respective communities and who were officers and directors of banks and trust companies, and building associations and conversant with the credit conditions of their neighborhood; and it was intended that before the company engaged actively in the business for which it was incorporated to invite from among its stockholders
20 prominent bankers to form its board of directors, and to accept executive positions with the company.

Referring to the salaries referred to in paragraph 10, these salaries were the usual salaries paid to office help, stenographers and bookkeepers. No salary whatever has been paid either to me or to my son, Charles R. Doyle, and I deny that I concealed any of the facts referred to in this paragraph. The commissions, salaries and expenses were the usual and ordinary ones, and such as I had a right to believe would be within the contemplation of any possible purchaser of the company's securities without
30 being specifically advised of the sundry items referred to in this paragraph.

11. Referring to paragraph 11, I deny that either the Washington Loan Company or myself concealed

and suppressed the fact that John W. R. Doyle was to make a profit of \$22,500 on the mortgage transaction referred to in paragraph 7. I deny that I was to make any profit whatsoever out of this transaction. I deny that I dominated the affairs of the Washington Loan Company since its inception, the affairs of the company being controlled in all instances by the board of directors thereof, and I deny that I employed my son as my agent to consummate any transaction or to perform duties wherein I was to receive the entire financial results and a private and undisclosed personal profit, or that I was to derive any private or undisclosed profit whatever. 10

While I admit the sale of 1387 shares of capital stock to Charles R. Doyle, this stock was paid for by Charles R. Doyle at the rate fixed by the board of directors covering this particular stock, and I deny that in any contract proposed or offered by my son, Charles R. Doyle, I have in any way shared in the profits or benefits thereof. 20

I deny that I ever agreed personally to purchase the 17 mortgages referred to in this paragraph, or that I was to make any personal profit out of the transaction whatever. I deny that my son had any interest or equity in the mortgages, and I am informed, and believe it to be true, that my son entered into an oral agreement with the said Bogatin for the purchase of the said mortgages.

12. Referring to paragraph 12, this I have particularly answered in paragraph 8. I deny specifically that the financial statement of the Washington Loan Company dated December 31, 1929, was forwarded or disclosed to any one except existing subscribers to the stock and debentures of the Washington Loan Company, and I further deny that the defendants in 30

the promotion and negotiation of the sale of the capital stock of Washington Loan Company disclosed or exhibited this statement to any one, and I deny that any stock or securities were sold or offered for sale upon such representation, and I call attention to the statements contained in paragraph 8 hereof showing that 7573 shares of stock had been subscribed for prior to the mailing of the financial statement of the stockholders, and that but 62 shares
10 had been subscribed for thereafter.

I deny that on December 31, 1929, or at the present time, the condition of this company was one of insolvency. On the contrary its current liabilities as of that date to creditors approximated the sum of \$1200, all of which debts were paid when due, and there was owing to the company in stock and bond subscriptions receivable from financially responsible subscribers the sum of \$147,037.47, and at that time
20 there were only \$24,000 of bonds of the company issued and outstanding, the principal of which was payable on August 1, 1948.

13. Referring to paragraph 13, I deny that ever since the organization of the Washington Loan Company and the Washington Loan Company of Atlantic City these corporations or either of them have been beset with financial difficulties, and have at all times been insolvent. The uniform rule of the company was to pay its debts on the day when the same
30 respectively became due, and that as of December 31, 1929, there was due the Washington Loan Company from financially responsible subscribers to its securities a sum in excess of \$147,000.

14. Referring to paragraph 14, the Washington Loan Company was incorporated under the General

Corporation Act of the State of New Jersey, and was authorized, among other things, by its charter, to hold, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, and to invest, trade in and deal in any goods, wares, merchandise and property of every class and description, including bills, notes, negotiable paper, book accounts, evidences of indebtedness, leases, chattel mortgages, choses in action of every nature, kind and description, book debts and claims, and any interest in real or personal property, together with the right to acquire and hold shares of stock or securities of other corporations, together with many other powers. 10

It never was the intention of the Washington Loan Co. to operate as a small loan company, although it was originally contemplated that the company should either acquire by purchase, or cause to be incorporated as subsidiary companies, companies to operate under the Small Loan Act. 20

It was not until approximately October 30, 1929, that the Washington Loan Company of Atlantic City was advised of the refusal of the Department of Banking and Insurance to issue its license authorizing that company to do business, by which time more than ninety-five per cent of the subscriptions to the securities of the Washington Loan Co. had been secured, after which time no representations whatever were made to prospective purchasers that either the Washington Loan Co. or the Washington Loan Company of Atlantic City was to operate as a small loan company, but on the contrary prospective purchasers were informed that the Washington Loan Company of Atlantic City intended the purchase of accounts receivable, installment accounts arising out of the sale of automobiles, automobile 30

tires, radios, Frigidaires, oil burners, &c. The Washington Loan Company of Atlantic City had prepared forms of contracts covering the purchase of various classes of installment accounts above referred to, and took up with tire dealers and radio dealers the matter of the purchase of such accounts. Until these plans were wholly perfected the company was not in need of any funds, and it was deemed wiser not to make any special effort to collect on the company's subscriptions nor to sell additional stock or bonds, the result of which would have been an increased interest charge on the bonds and money which would otherwise have laid idle in the company's treasury.

I deny that the defendants or either of them have issued, sold, offered for sale, promoted, negotiated, advertised and distributed within and from this State the capital stock of either of the said companies "through the medium of high-pressure selling tactics, coercion, flamboyant promises, glittering statements of prospective profits entirely unwarranted and without any basis in fact, and that for purposes of effecting sales of the capital stock and/or bonds of the defendant corporations, employed high-pressure salesmen, expert technicians in the art of selling by fraud and false pretense," and I make this denial both in the conjunctive and disjunctive sense; and I further deny that securities of the defendant companies, or of either of them, have been sold or offered for sale by the use and employment of deception, misrepresentation, concealment, fraud and false promise, and this denial is intended to be both conjunctive and disjunctive.

I call attention to the fact that the above accusations are general in character, lacking in definiteness, and represent only conclusions, and do not set forth the matters of fact upon which the same are based.

With regard to the purchase of the 17 bonds and mortgages referred to in this paragraph, the purchase was based on a misrepresentation of fact made by the said Harry Bogatin as above set forth, and in the belief that the property was closely adjacent to the New York and Atlantic City State Highway, and in the further belief that the mortgages were worth at least the amount paid therefor, and probably had a greater value.

I further show that the Washington Loan Co. is 10
possessed of a valuable asset not only in the moneys due to it under contract for the purchase of its securities which amount to approximately the sum of \$150,000, and that all of the expenses of securing said subscriptions have been paid or incurred, and that the expense of incorporation has likewise been paid for, all of which moneys have been legitimately expended; and also that its stockholders number approximately 361, a vast majority of whom are 20
bankers and prominent men throughout the State, and who are ready and willing to render valuable aid to the corporation when it is in a position actively to function, and that the appointment of a receiver would result in a loss and sacrifice to all of the 350 stockholders of the company, and would destroy the value of more than two years of pioneering work.

The names of over 300 prospective purchasers of stock had been furnished to the company by bankers who were stockholders of the Washington Loan Co. 30
None of these prospective purchasers have been solicited to subscribe, nor was it proposed to solicit further subscriptions until the companies were functioning effectively, it being intended first to secure as stockholders a high class personnel of bank directors from whom the board of directors was to be

selected, and to invite the board of directors to make an independent selection of executive officers, and not until these things were done was it contemplated to approach or solicit the 300 or more prospective purchasers whose names had been thus submitted; and, in fact, there has been no solicitation of such prospective purchasers. The above mentioned 300 bankers are located in practically every city and town in the State, which fact in itself resulted in an
10 increase in the cost of selling securities of the Washington Loan Co.

JOHN W. R. DOYLE.

Sworn to and subscribed before me this 26th day of June, A. D. 1930.

(N. S.) MORRIS LEONARD,
Notary Public of New Jersey.
My commission expires Sept. 6, 1932.

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ANSWERING AFFIDAVIT OF CHARLES
R. DOYLE.

(Filed July 1, 1930.)

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

30 CHARLES R. DOYLE, of full age, being duly sworn,
on his oath says:

1. I am one of the above-named defendants, and am also the General Sales Agent of the Washington Loan Co. in the sale of its securities, by virtue of a written offer previously made by me under date of

May 10, 1928, and accepted at a meeting of the board of directors of that company held on the same day, and I make this affidavit on my own behalf as well as on behalf of the other defendants.

2. I have read a true copy of the bill of complaint and of the affidavit thereto annexed. I deny that the Washington Loan Co., the Washington Loan Company of Atlantic City and myself, or any other person acting for or on behalf of the said corporations or of myself, have engaged in, are engaging in, and are about to engage in any act or employment of deception, misrepresentation, concealment, suppression, fraud, false pretense, false promise, and fictitious or pretended purchase and sale in connection with the issuance and sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within and from this State, and within and from the County of Essex, of securities as defined by the Securities Act of New Jersey, and particularly the capital stock of the defendants, Washington Loan Co. and Washington Loan Company of Atlantic City, in any respect whatever, and this denial is intended to be in the disjunctive as well as in the conjunctive form.

3. As to the allegations of paragraph 3, I have no direct knowledge, but I have read the affidavit of John W. R. Doyle, and believe the statements contained in his answer to said paragraph to be true.

4. I am informed, and believe it to be true, that the Washington Loan Co., through its board of directors, authorized the sale of its stock at the rates stated in paragraph 4, and at the same meeting the board of directors authorized the issuance of the de-

benture bonds therein referred to, and provided for the sale thereof in units, together with two or three shares of stock, as stated in the bill of complaint.

10 I have examined the minute book and records of the Washington Loan Co., from which sources I am informed that at the time of the adoption of the said resolution there were no shareholders of the company except the holders of shares of stock owned by the assignees of the original incorporators, and that the directors voting in favor of said resolution constituted at that time all of the stockholders of the company, and that at a meeting of the stockholders held on the eleventh day of May, 1928, at which all stockholders were present, the action of the directors was ratified and approved.

20 I am informed and believe that in the fixing of the several rates for the company's stock it was believed to fair and just that those who purchased stock during the early stages of the company, and before its success was assured, should have the right to purchase at a lower rate than those who came in later when the company's affairs would assume a more stable basis, and the element of risk would be lessened, and the probabilities of gain increased.

30 Of the shares subscribed to by John W. R. Doyle, 1100 have been issued to responsible and important men in the community, comprising 16 in number, which shares were sold at the rate of \$1.00 each; and that of the remaining stock subscribed to by John W. R. Doyle there has been issued to me, and is outstanding in my name, 1387 shares, for which I have paid the sum of \$1667.50. Included among those who purchased at that rate were men prominent in the business and governmental affairs of their respective communities. Some of those who purchased at the rate of \$1.00 per share later pur-

chased at the rate of \$10.00 a share. There was no intentional concealment or suppression of this fact.

With regard to the issuance of stock at different rates, this fact was personally known to at least 75 stockholders who in each case purchased at different rates, some having purchased at the rate of \$1.00 per share and later purchased at the rate of \$10.00 per share; others at the rate of \$10.00 per share and later purchased at \$15.00 per share; still others purchased at \$12.50 a share and later purchased at \$17.50 per share; others purchased at \$10.00 per share and later purchased at \$17.50 per share; still others purchased at \$12.50 per share and later purchased at \$15.00 per share; others purchased at \$12.50 per share and later at \$17.50 per share. 10

5. I admit that a contract was made between the Washington Loan Co. and myself dated May 10, 1928 (instead of May 19, 1928), for the sale of its stock and bonds on the basis of a twenty per cent commission. I have been engaged in the sale of corporate securities for eleven years last past, and I know from my own knowledge and experience that it is usual to pay a commission of from twenty to twenty-five per cent for the sale of an issue of securities unknown to the public; in fact, I have understood from dealings with the Securities Division of the Attorney General's Office that a rate as high as twenty-five per cent has had the approval of that division. 20 30

I am informed from having seen a reply to a questionnaire submitted by that division to the Washington Loan Company, that that company reported to such division that commissions of twenty per cent were being paid on sales of this stock, which reply to said questionnaire was forwarded to the office of

the Attorney General some twenty months ago, and I never heard of any objection made on the part of that office until the filing of the bill of complaint in this cause.

10 Out of the commissions paid to me I have been obliged to pay salesmen acting under me at the rate of fifteen per cent, and have been required to defray out of my commissions all of my traveling, living and other expenses incident to the sale of the company's securities, so that the net result to me has been a profit in the neighborhood of from two to three per cent. I know from my own experience that the services of competent securities salesmen cannot be secured for less than fifteen per cent.

20 In no cases in offering these securities for sale did I represent to any prospective or actual purchaser that the company's business or operations had been commenced. On the other hand, I advised such persons that the company had not yet commenced active business operations.

6. I am informed, and believe it to be true, that the Washington Loan Company of Atlantic City was incorporated, not only to engage in the business of industrial loaning, but to carry on generally the business of buying and selling negotiable securities, and to aid in the financing of other corporations, to purchase book accounts, and for a number of other objects.

30 I am informed, and believe it to be true, that the application made to the Department of Banking and Insurance of New Jersey was not refused until on or about October 30, 1929, and that the department had required that, notwithstanding the statute required a capital of \$5000, a small loan company must have a paid-in capital of at least \$50,000. I am informed

and believe that counsel was employed for the purpose of seeing whether the department would waive this requirement, and also for the purpose of contesting the right of the Commissioner of Banking and Insurance to refuse the application. However, the New Jersey Legislature having, by Chapter 293 of the Pamphlet Laws of 1929, approved May 6, 1929, reduced the rate of interest for small loan companies from three per cent to one and one-half per cent a month, effective as of February 15, 1930, 10 it was the belief of the executive officers of both companies, as well as of a large number of persons operating such small loan companies, that the business could not be profitably conducted at the reduced rate of interest fixed by the Legislature, and that it was then concluded by the officers of the two corporations that other and more profitable fields of operation should be selected.

I am informed by having seen the correspondence in the office of the Washington Loan Company that 20 it had written to over 300 operating loan companies with a view of acquiring ownership of some of the said companies, and had gone so far as to have its accountants examine the records and accounts of two of the companies, but that on account of the reduction of the legal rate of interest the officers and directors of the two companies deemed it advisable to abandon this field and to turn their attention to the purchase of accounts receivable, installment accounts in various trade, and to the financing of build- 30 ing construction, repairs and improvements to existing buildings, and with that purpose in mind the Washington Loan Company caused to be incorporated the Consolidated Construction Company of New Jersey.

7. I deny that John W. R. Doyle contracted to

purchase the bonds and mortgages referred to in paragraph 7 for \$7500, or for any other sum, and I deny that I was instructed by John W. R. Doyle to offer these mortgages to the Washington Loan Company for the sum of \$20,000. On the contrary, I entered into a verbal agreement with Harry Bogatin to purchase these bonds and mortgages, which verbal agreement was effective at the time I made the offer in writing referred to in paragraph 7.

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8. I deny that it was ever intended the Washington Loan Company of Atlantic City should offer its stock to the general public, and I have not offered one share of the stock of the Washington Loan Company of Atlantic City to the general public. It was intended that at all times the Washington Loan Company of Atlantic City should be a subsidiary company, and that all of its stock should be owned by the Washington Loan Company as a holding company.

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Before I agreed to purchase the bonds and mortgages I had been approached by one Harry Bogatin who purchased the same, and, while riding in an automobile on the main State road from Atlantic City to New York, said Bogatin pointed out as the property covered by these mortgages lands closely adjoining the main New York to Atlantic City shore road, and while passing the "White Oak Inn" about a mile north of New Gretna he indicated the property "as right back of the White Oak Inn within a stone's throw of the road." I believed that property so closely adjacent to the main New York highway was easily worth a sum in excess of the consideration of \$20,000, which the Washington Loan Company agreed to pay therefor, and it was not until the latter part of April or the early part of May

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that I had any knowledge that the property covered by the mortgages was located at a point six or seven miles remote from the point indicated by the said Harry Bogatin, My first intimation of this fact was derived from having seen a copy of certain proceedings in the New Jersey Court of Chancery instituted by William A. Stevens, Attorney General, against the Quaker Bond & Mortgage Co., Inc., *et als*.

I had discussed with John W. R. Doyle the use 10
that could be made of the mortgaged premises in
case title thereto was acquired by the Washington
Loan Company or the Washington Loan Company
of Atlantic City, and it was contemplated that these
lots could be used for the erection of bungalows.
Figures were obtained as to the cost of labor, ma-
terial, brokerage commissions, and overhead ex-
penses, and on the basis of putting in the lots at
\$300 each, on the first 50 bungalows to be erected
a price of \$300 per lot could be realized, together 20
with a profit of \$35.00 above the cost of the lot,
which profit could be increased on the second 50
bungalows, so as to provide for a cost of \$300 a
lot, and a net profit of \$115 per lot in excess of the
cost thereof at the rate of \$300 per lot.

It never was intended to offer the stock of the
Washington Loan Company of Atlantic City to the
public, and hence there was no intent to deceive the
public into purchasing stock of the Washington Loan
Company of Atlantic City. No representations 30
whatever were made to any prospective stockholder
of the Washington Loan Company with relation to
this transaction.

I am informed and believe, as a result of exami-
ning the office records of the Washington Loan Com-
pany, that the financial statement of the Washington

Loan Company under date of December 31, 1929, annexed to the bill of complaint was not forwarded to any one except existing stockholders of the Washington Loan Company, to whom it was mailed on January 22, 1930.

Prior to this time the total securities of this company sold were as follows:

	Number of shares 7,573, total	\$57,357.50
	Bonds sold	156,600.00
10	Total	\$213,957.50
	Number of shares sold after issuance of statement, 62, total	1,130.00
	Bonds sold after statement.	3,400.00
	Total	4,530.00

Expressed in percentage:

20	Total number of shares sold before statement	.9919
	After statement	.0081
	Amount of shares sold before state- ment	.9807
	Amount of shares sold after state- ment	.0193
	Bonds sold before statement.	.97875
	Bonds sold after statement.	.02125

30 In view of the misrepresentations made by the said Harry Bogatin which formed the basis of the sale of the said bonds and mortgages to the Washington Loan Company, it is my purpose, if the business of the company is permitted to continue, to offer to the Washington Loan Company a rescission of the agreement. No moneys or securities have been delivered to me as a consequence of this trans-

action, and no injury has resulted or will result to the stockholders of either company therefrom.

9. I deny that I suppressed or concealed any facts with relation to the issuance of the securities of either of the said corporations. As previously stated, I am informed and believe that the Securities Division of the Attorney General's Office was informed some twenty months ago of all of the facts with relation to the issuance of the stock and the subscription thereto by John W. R. Doyle. I deny that John W. R. Doyle and myself have a controlling stock interest in the company. As a matter of fact, John W. R. Doyle and myself own a total of 2775 shares of stock out of 7635 shares of stock sold and subscribed to, and, as previously stated in this affidavit, stock was sold to at least 75 stockholders who each bought at rates different from the rate paid on the stock originally subscribed to by them.

10. I deny that I suppressed and concealed the fact that the corporation was obliged to pay me a commission of twenty per cent on all stock and bond subscriptions. I deny that such commission was so large and exorbitant as to be unconscionable and unreasonable. I aver the fact to be that the Attorney General's Office was advised more than twenty months ago of the contract for the payment of these commissions, and made no objection thereto until the filing of the bill of complaint, and I aver, as previously stated, that the usual rate of commission on sales of this character ranges from twenty to twenty-five per cent. I aver from my own knowledge that the proportion of commissions paid out as to the proportion of collections is the usual proportion paid to brokers and salesmen for this class of securities,

and it is not usual to require the brokers and salesmen to await the full payment to the company before full payment of commissions is made to the broker in cases where the subscribers are financially responsible. In fact, it is quite customary to advance to salesmen money to defray their living and traveling expenses in anticipation of earned commissions. This has been found necessary to keep the selling organization together.

- 10 The stock offered for sale was of no par value, and was expressed not in terms of dollars, but in terms of interest. Each purchaser, therefore, knew that he was buying such an interest in the corporation as was represented by the proportionate number of shares subscribed to the total amount authorized or issued as the case might be.

20 In seeking subscriptions to the securities of the Washington Loan Company, it was the policy of that company to select only men who were prominent in their respective communities, and who were officers and directors of banks and trust companies and building associations, and conversant with the credit conditions of their neighborhood, and it was intended that before the company engaged actively in the business for which it was incorporated, to invite from among its stockholders prominent bankers to form its board of directors, and to accept executive positions with the company.

- 30 The number of subscribers to its stock and debentures is 361, of whom 307 are bankers or officers of building and loan associations.

No salaries whatever have been paid either to me or to John W. R. Doyle. The salaries referred to in paragraph 10, I am informed and believe, are the usual salaries paid to office help, stenographers and bookkeepers, and as such I had the right to believe

would be within the contemplation of any possible purchaser of the company's securities without being specifically advised of the sundry items referred to in this paragraph.

11. I deny that there was any concealment with reference to any profit to be made on the sale of the bonds and mortgages referred to in paragraph 7. I deny that John W. R. Doyle was to make any profit whatever out of this transaction, and I deny that I 10 was employed by the said John W. R. Doyle as his agent to consummate this transaction, or any transaction in which John W. R. Doyle was to receive the financial results and a private and undisclosed profit, and I deny that the said John W. R. Doyle derived any private or any undisclosed personal profit whatever out of the said transaction, or out of any transaction in which I was interested, and I specifically deny that John W. R. Doyle had any interest or any equity whatever in the said mortgages. 20

I deny specifically that the statement of the Washington Loan Company dated December 31, 1929, was forwarded or disclosed to any one except existing subscribers to the stock and debentures of the Washington Loan Company, and I further deny that in the promotion and negotiations of the sale of the capital stock of the Washington Loan Company this statement was disclosed or exhibited to any one, and I deny that any stock or securities were sold or offered for sale upon any representation with ref- 30 erence thereto, and I call attention to the statement contained in paragraph 8 hereof showing that 7573 shares of stock had been subscribed to prior to the mailing of the financial statement to the stockholders, and that but 62 shares had been subscribed to thereafter.

I am informed from an examination of the company's books and records, and from statements made to me by the company's accountant, that the condition of the company on December 31, 1929, or at any time prior to that date, was not one of insolvency, or that the company is now insolvent. On the contrary, its current obligations to its creditors approximated the sum of \$1200, all of which debts were paid when due, and there was owing to the company in stock and bond subscriptions receivable from financially responsible subscribers, a sum in excess of \$147,000, and at that time there were only \$24,000 of bonds of the company issued and outstanding, the principal of which was payable on August 1, 1948.

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20 13. Based on the same character of information referred to in paragraph 12, I deny that ever since the organization of the Washington Loan Company and the Washington Loan Company of Atlantic City, these companies, or either of them, have been beset with financial difficulties, and have at all times been insolvent. The uniform rule of the companies was to pay their debts when the same respectively became due, and that as of December 31, 1929, there was due the Washington Loan Company from financially responsible subscribers to its securities a sum in excess of \$147,000.

30 14. I deny that there was any concealment or suppression of the fact that the corporations are not permitted to operate in the manner for which they were organized, and that no license has been procured from the Department of Banking and Insurance by the Washington Loan Company of Atlantic City with which to conduct its affairs as a small loan broker, and that, in fact, an application for such license has been refused by the department, and

I aver the fact to be there was no such refusal until on or about October 30, 1929, prior to which time by far the greater part of the subscriptions to the securities of the Washington Loan Company had been received, and I aver that the two corporations are authorized by their respective charters to conduct various classes of business, including the purchase and sales of bills, notes, negotiable paper, book accounts, evidences of indebtedness, etc.

I am informed by an examination of the charter 10
of the Washington Loan Company that it was never organized to operate as a small loan company, and I am informed and believe that it was originally contemplated that that company should either acquire by purchase, or cause to be incorporated as subsidiary companies, companies to operate under the Small Loan Act.

At the time of the refusal of the Department of Banking and Insurance to authorize the Washington Loan Company of Atlantic City to do business more 20
than ninety-five per cent of the subscriptions to the securities of the Washington Loan Company had been secured, after which time no representations whatever were made to prospective purchasers that either the Washington Loan Company or the Washington Loan Company of Atlantic City was to operate as a small loan company, but, on the contrary, prospective purchasers were informed that the Washington Loan Company of Atlantic City intended to purchase accounts receivable, installment 30
accounts arising out of the sale of automobiles, automobile tires, radios, Frigidaires, oil burners, etc. The Washington Loan Company of Atlantic City had prepared forms of contracts covering the purchase of various classes of installment accounts above referred to, and had taken up with radio

dealers and tire dealers the matter of the purchase of such accounts.

I am informed, and believe it to be true, that until these plans were wholly perfected the company was not in need of any additional funds, and that it was deemed wiser not to make any special effort to collect on the company's subscriptions nor to sell additional stock or bonds, the result of which would have an increased interest charge on the bonds and money which would otherwise have laid idle in the company's treasury.

I deny that the defendants or either of them have issued, sold, offered for sale, promoted, negotiated, advertised and distributed within and from this State the capital stock of either of the said companies "through the medium of high-pressure selling tactics, coercion, flamboyant promises, glittering statements of prospective profits entirely unwarranted and without any basis in fact, and that for purposes of effecting sales of the capital stock and/or bonds of the defendant corporation, employed high-pressure salesmen, expert technicians in the art of selling by fraud and false pretense," and I make this denial both in the conjunctive and disjunctive sense; and I further deny that securities of the defendant companies, or of either of them, have been sold or offered for sale by the use and employment of deception, misrepresentation, concealment, fraud and false promise, and this denial is intended to be both conjunctive and disjunctive.

I call attention to the fact that the above accusations are general in character, lacking in definiteness, and represent only conclusions, and do not set forth the matters of fact upon which the same are based.

With regard to the purchase of the 17 bonds and

mortgages referred to in this paragraph, the purchase was based on a misrepresentation of fact made by the said Harry Bogatin as above set forth, and in the belief that the property was closely adjacent to the New York and Atlantic City State Highway, and in the further belief that the mortgages were worth at least the amount for which I sold the same, and probably had a greater value.

The names of over 300 prospective purchasers of stock had been furnished to the company by bankers 10 who were stockholders of the Washington Loan Company. None of these prospective purchasers have been solicited to subscribe, nor was it proposed to solicit further subscriptions until the companies were functioning effectively, it being intended first to secure as stockholders a high class personnel of bank directors from whom the board of directors was to be selected, and to invite the board of directors to make an independent selection of executive officers, and not until these things were done 20 was it contemplated to approach or solicit the 300 or more prospective purchasers whose names had been thus submitted; and, in fact, there has been no solicitation of such prospective purchasers. The above mentioned 300 bankers are located in practically every city and town in the State, which fact in itself resulted in an increase in the cost of selling securities of the Washington Loan Company.

CHARLES R. DOYLE.

Sworn to and subscribed before me this 26th day of June, A. D. 1930.

(N. S.) MORRIS LEONARD,
Notary Public of New Jersey.
My commission expires Sept. 6, 1932.

OPINION.

IN CHANCERY OF NEW JERSEY.

Between
 10 WILLIAM A. STEVENS, At-
 torney General of the
 State of New Jersey,
Complainant,
 and
 WASHINGTON LOAN COM-
 PANY, a New Jersey
 corporation; WASHING-
 TON LOAN COMPANY OF
 ATLANTIC CITY, a New
 20 Jersey corporation,
 JOHN W. DOYLE and
 CHARLES R. DOYLE, *et*
als.,
Defendants.

Opinion.

On final hearing.

30 All who participate in the practice of selling se-
 curities defined by the Securities Act (Blue Sky
 Law) as illegal and who are guilty of its violation,
 may be enjoined from dealing in this State in any
 securities.

For the State, MR. WILLIAM A. STEVENS, Attorney
 General; MR. RICHARD C. PLUMER, Assistant

Attorney General and Mr. PHILIP L. COFFIN,
Jr., Special Assistant Attorney General.
For defendants, MESSRS. CARR & CARROLL (Mr.
CARR).

BACKES, Vice-Chancellor:

After a summary hearing an injunction issued
against the Washington Loan Company and the 10
Washington Loan Company of *Atlantic City*, John
W. R. Doyle and his son, Charles R. Doyle, forbid-
ding them from selling securities in this State and
especially the securities and capital stock of the
two companies and receivers were appointed for the
companies, for having violated the New Jersey Se-
curities Act, Laws 1927, Chapter 79, as amended in
1929 by Chapter 344 and in 1930 by Chapter 57 and
supplemented by Chapter 51.

Section 2 of the Act provides:

20

"2. The use or employment by any person,
partnership, corporation, company or associa-
tion of any deception, misrepresentation, con-
cealment, suppression, fraud, false pretense,
false promise or fictitious or pretended purchase
or sale, in connection with the issuance, sale,
offer for sale, purchase, offer to purchase, pro-
motion, negotiation, advertisement or distribu-
tion within or from this State of any stocks,
bonds, notes, debentures, evidences of indebted- 30
ness, certificates of interest or participation, in-
terim certificates or receipts, foreign currency
orders or calls or options therefore, or other
instruments commonly known as securities, here-
inafter called securities, are hereby declared to
be illegal practices and are hereby prohibited.

The term 'fraud' as used in this act, in addition to the usual construction placed on it and accepted in courts of law and equity, shall include the following:

(a) Any misrepresentation by word, conduct or in any manner of any material fact, either present or past, and any omission to disclose any such fact;

10 (b) Any promise or representation as to the future which is beyond reasonable expectation or is unwarranted by existing circumstances;

(c) The gaining of, or attempt to gain, directly or indirectly, through a trade in any security, a commission fee or gross profit so large and exorbitant as to be unconscionable and unreasonable;

20 (d) Generally any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser of any security as to the nature of any transaction or as to the value of such security;

(e) Any artifice, agreement, device or scheme to obtain money, profit or property by any of the means hereinbefore set forth or otherwise prohibited by this act."

Section 6 and 7 read:

30 "6. Whenever it shall appear to the Attorney General from any report or statement filed, from any examination made as provided for in this act, or from any other source, that any person, partnership, corporation, company, or association has engaged in, is engaging in, or is about to engage in, any practice declared to be illegal and prohibited by this act, he may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to

the Court of Chancery for a writ of injunction, or the appointment of a receiver, or both, and the court being satisfied by affidavit or otherwise of the sufficiency of said application and the truth of the allegations contained in the petition or bill, and upon such notice as the court may by order direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall 10 appear to the court that any such person, partnership, corporation, company or association has engaged in, or is engaging in, or is about to engage in any practice declared to be illegal and prohibited by this act, the court may issue an injunction restraining such person, partnership, corporation, company or association, and any agents, employes, brokers, partners, officers, directors and stockholders thereof, from continuing such practices or engaging therein or 20 doing any acts in furtherance thereof, and the court may also issue an injunction restraining the issuance, sale, offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement or distribution within or from this State of any securities by such person, partnership, corporation, company, or association and any agents, employees, brokers, partners, officers, directors or stockholders thereof until the court shall otherwise order. In any action or 30 proceeding brought under the provisions of this act, the Attorney-General shall be entitled to recover costs and the Court of Chancery may also award to the Attorney-General a counsel fee, said costs and counsel fee to be paid by the defendant or defendants for the use of the State of New Jersey.

7. (a) Whenever the Court of Chancery shall issue any injunction provided for in section six, against a person, partnership, company, or association, it may appoint a receiver with power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this act, including also all property with which such property has been mingled, if such property cannot be identified in kind because of such commingling, and sell, convey and assign the same, and hold and dispose of the proceeds thereof under the direction of the Court of Chancery for the equal benefit of all who establish an interest therein by reason of the use and employment by the defendant of any practices herein declared to be illegal and prohibited; and the court shall have jurisdiction of all questions arising in said proceedings and may make such orders and decrees therein as justice and equity shall require."

These facts are established by the proofs annexed to the bill, and by the answering affidavits.

The Washington Loan Company was organized early in 1928 by John W. R. Doyle and his associates, through dummies, to deal in securities. The authorized capitalization at the filing of the bill was 10,000 shares of no par value. Of this John W. R. Doyle subscribed for 5,000 shares, payable within three years, at one dollar per share for 3500 shares, two dollars and fifty cents for 750 shares and five dollars for the remaining 750 shares and the directors re-

solved to sell the remaining 5,000 shares to the public for ten dollars per share for the first 1,000, twelve dollars and fifty cents for the second, fifteen dollars for the third, seventeen dollars and fifty cents for the fourth and twenty dollars per share for the last thousand shares. Shares were sold for as high as \$17.50 per share. Doyle paid one dollar per share for 3500 shares and issued 1100 of his shares, at that rate, to sixteen, as he says, "responsible and important men in the community," where they would do the most good. He and his son now hold 2775 shares for which they paid \$3,337.50. The total issue of stock was 7635 shares; the public holds the balance at fancy prices. The company also created a two and a half million dollar 8% debenture bond issue of which \$160,000 has been sold to the public. The bond and stock issues are payable in installments. The cash receipts from stock and bond sales to February 28, 1930, were \$71,392.09 and all but \$1,289.84 had been spent in commissions, salaries and organization and other expenses. That is what was left of the stock and bondholders' money, and it was the company's only working capital remaining. This depletion was brought about to the extent of \$46,716.43 by the payment of 20% commission on sales of bonds and stocks as soon as 25% of the subscription to stocks and bonds was paid in, and son, Charles, had the commission contract.

The Doyles formed the Washington Loan Company of *Atlantic City* ostensibly to engage in industrial (\$300) loans. Its authorized capital stock was 500 shares at \$100 per share. It had no capital; the banking department had refused it a license and it never functioned, but the Doyles used it to advantage in fostering their Washington Loan Company scheme. The Doyles, or one of them, it matters not which, agreed to purchase seventeen mort-

gages aggregating \$99,600, face value, for \$7,500 and agreed to sell them to the Washington Loan Company for \$20,000—a profit of \$12,500. After the Washington Loan Company acquired the mortgages it assigned them to the Washington Loan Company of *Atlantic City* for 334 shares of its stock at \$300 a share, \$100,200, and thereafter the Washington Loan Company, on its books and in statements, carried the worthless stock as an asset

10 of \$100,200 and the Washington Loan Company of *Atlantic City* carried the mortgages on its books as an asset of \$99,600. The bogus mortgages did double service. The seventeen parcels of mortgaged land are in the Jersey pine belt, six miles from a State highway and accessible only by a narrow sand trail. The Doyles negotiated for the mortgages with one, Bogatin, now under restraint for stock

20 Bogatin; that while passing the White Oak Inn, about a mile north of New Gretna, he pointed out the property to Charles, as closely adjoining the main New York and Atlantic City highway and as right back of the Inn, within a stone's throw of the highway. And Doyle, Sr., explains: That he regarded the mortgages on the represented land worth the \$20,000, the Washington Loan Company agreed to pay for them, (although just bought for \$7500), for he contemplated putting bungalows on the land

30 and selling the lots, if either of his companies had to buy in the land at foreclosure sale; that he had calculated he could in this manner realize the face value of the mortgages and that it was on this basis that the mortgages were carried on the books of the Washington Loan Company of *Atlantic City* at \$99,600. This romancing is not denied, nor is it believed. It is typical of stock selling roguery.

The Doyles' attempt to justify the issuing of fifty per cent of the capital stock of the Washington Loan Company to Doyle, Sr., at \$1.00 per share for 3500 shares and at \$2.50 and \$5.00 per share respectively for the two remaining blocks of 750 shares each, and sales of like shares to the public for as high as \$20.00 per share, because the Doyle controlled board of directors, by resolution, solemnly authorized it, and authorized it at a time when the Doyles and their associates alone were stockholders; that they believed it just to those who invested in the formative period as against those who came in later, when the risk would be less, and that Doyle, Sr.'s services in the early stages were worthy of consideration. It is open to question whether a sale to promoters of the control of a company at a nominal figure does not violate both the letter and spirit of the Corporation Act relating to non par stock (C. S. C. S. 686), and thus a fraud upon the statute, but that point is not presently involved. 10

The gravamen of the bill, under the statute, is that the scheme was suppressed and the purchasing public deceived, or is intended to be misled. That is was rank fraud to take from the uninformed as high as \$17.50 per share, for a share worth no more than the dollar the Doyles paid is not debatable and that that was done is admitted by the Doyles. They say, there was no *intentional* concealment or suppression of the facts, and that "men prominent in the business and governmental affairs of their respective communities," like the Night Police Court Judge of Atlantic City, were original one dollar purchasers and later paid \$10 per share, and that of the 361 subscribers of stock and debenture, 307 are directors and officers of banks, trust companies and building (and loan) associations of the State. The Doyles say it was their policy to select local financiers. As 20 30

victims, or as bait or lure—these bankers who sent in the names of over 300 prospects? They say that at least seventy-five stockholders knew of the different rates at which the stock was sold, but what of the other 286? And as to the seventy-five, some of whom purchased at lower rates, as low as one dollar a share, and later paid \$17.50, what was the inducement? And what was held out to those of the 286 who bought at high rates? Surely it was not the company's financial condition, for it had no assets. It had a paper surplus of \$20,000 by including among its assets the worthless stock of the Washington Loan Company of Atlantic City at \$100,200. This item omitted, it was short \$80,000, used up in commissions, salaries and organization expenses as already told. Its only other prominent paper asset was the installment payments due on stocks and bonds purchased by the public. "\$147,037.47," against which there was a fixed liability to the purchasers of \$231,527.50; again demonstrating the \$80,000 shortage.

The Doyles circulated a financial statement of the Washington Loan Company which carried as an asset the worthless 334 shares of the Washington Loan Company of *Atlantic City* (face value \$33,400) at \$100,200. That it was false is conceded. That it was innocently issued, as they plead, is not true. They say it was not sent to *prospective* purchasers, but only to those who had previously purchased stock. They were prospects for more. The misrepresentation of this false asset, by the statement or previously in some other form may account for sales of shares to them at top prices. The Washington Loan Company was a swindle and the Washington Loan Company of *Atlantic City* was used to further its fraudulent impositions.

It is was that the Washington Loan Company of

Atlantic City was not culpable because none of its stock was sold or offered for sale to the public; that its total issue of 334 shares was to the Washington Loan Company, which knew of the fraud and was not deceived. To give this sanction would open the way wide to every crooked company to escape the statute. Notice of a fraudulent issue of stock, available to a co-swindler for sale, pledge or to obtain a false credit, as in the present case, would furnish immunity from prosecution. The loop hole is not in the statute. The act is comprehensive in its reach for the evil it strikes at and it pertinently denounces as illegal any fraud, any false pretense or any fictitious or pretended purchases or sale in connection with the issuance * * * negotiation or distribution * * * of any stocks; and any corporation which has engaged in, is engaging in or is about to engage in any of the practices declared to be illegal is subject to restraint. The fraudulent issue of the 334 shares for the spurious mortgages, without more, falls directly within the letter and spirit of the practices denounced by the act as illegal and alone justifies an injunction. 10 20

The Washington Loan Company of *Atlantic City* was also guilty of participating in the fraudulent sale of stock by the Washington Loan Company, by giving the latter's stock a false credit standing by means of which purchasers were deceived. The mischief aimed at by the statute is the vicious practice of cheating in securities, and the statutory sweep includes all who participate in the deception. The relief under the statute is not only an injunction restraining the particular practices complained of, but the court "may also issue an injunction restraining the issuance, sale, offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement or distribution within or from this State of 30

any securities by such person, partnership, corporation, company, or association and any agents, employees, brokers, partners, officers, directors or stockholders thereof until the court shall otherwise order.” The legislature intended that the court should not only stop the fraudulent practices under investigation, but as well suppress the swindlers and swindling companies by enjoining them from further
10 dealing in any securities in this State. A less drastic injunction—one directed against fraud in a definite stock would simply mean to these dextrous operators a shift to another company and as easily accomplished as changing their hats.

The Washington Loan Company of *Atlantic City*, the Washington Loan Company and the two Doyles formed the crew of violators of the Securities Act and alike come under the ban of the statute.

20

FINAL DECREE AND ORDER APPOINTING
RECEIVER.

(Filed July 1, 1930.)

This matter being opened to the Court by Philip L. Coffin, Jr., Special Assistant Attorney General of New Jersey, solicitor of and counsel with complainant, and the Court having read and considered
30 the bill of complaint filed in this cause and the affidavits thereunto annexed, and it appearing that by an order made in this cause on the 4th day of June, 1930, the defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation;

John W. R. Doyle and Charles R. Doyle, were ordered to show cause on the 10th day of June, 1930 (which date was extended to July 1st, 1930), why the relief prayed for in said bill of complaint should not be granted; that true copies of said order to show cause were served upon said defendants as therein directed; and the Court having heard the argument of counsel and it appearing that the complainant is entitled to the relief prayed for in his 10 said bill of complaint:

It is, on this 1st day of July, 1930, ordered, adjudged and decreed that:

1. The defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, have been and are hereby adjudged to be guilty of having violated an Act of the Legislature of the State of New 20 Jersey, entitled "New Jersey Securities Act," approved March 19, 1927, as amended and supplemented, in that they and each of them, jointly and severally, individually and acting in aid and assistance of each other, have used and employed concealment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within this State of securities as defined by said New Jersey Securities Act, and particularly the capital stock of the defendants, Wash- 30 ington Loan Company, a New Jersey corporation, and Washington Loan Company of Atlantic City, a New Jersey corporation.

2. Said defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Com-

pany of Atlantic City, a New Jersey corporation;
John W. R. Doyle and Charles R. Doyle, their joint
and several attorneys, agents, officers, directors and
servants, as the case may be, as well as all other
persons acting in aid or assistance of them or any
of them, directly or indirectly, be and they are
hereby, jointly and severally, permanently enjoined
and restrained from the issuance, sale, offer for
10 sale, purchase, offer to purchase, promotion, negoti-
ation, advertisement and/or distribution within or
from this State of any securities whatsoever, the
word "securities" being used in the sense and as
defined by the New Jersey Securities Act, and par-
ticularly the securities and capital stock of the de-
fendants, Washington Loan Company, a New Jer-
sey corporation, and Washington Loan Company
of Atlantic City, a New Jersey corporation, until
this Court shall otherwise order.

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3. Said defendants, Washington Loan Company,
a New Jersey corporation; Washington Loan Com-
pany of Atlantic City, a New Jersey corporation;
John R. Doyle and Charles R. Doyle, their respec-
tive officers and agents, be and they hereby are en-
joined and restrained from exercising any of the
privileges or franchises of either of said corpora-
tions within this State and from collecting or re-
ceiving any debts or paying out, selling, assigning
30 or transferring any of the estate, monies, funds,
lands, tenements or effects of either of said cor-
porations in this State except to the receiver here-
inafter appointed by this Court until the Court shall
otherwise order.

4. That Clarence L. Cole, Jr., of Atlantic City,
New Jersey, be and he hereby is appointed receiver

of defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, with all the powers conferred upon him as such receiver by said New Jersey Securities Act, as amended and supplemented; and he is hereby ordered to furnish a bond in the sum of \$5,000 for the faithful performance of his trust, in accordance with the usual practice of this Court, which bond is to be approved by Esq., one of the special Masters of this court. 10

5. That the defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation, their officers, directors, attorneys, agents and servants, do forthwith turn over and deliver unto the receiver herein appointed, all of their real and personal property of every nature and description within this State, and the remaining defendants, namely, John W. R. Doyle and Charles R. Doyle, are hereby ordered to forthwith turn over and deliver unto said receiver all of the personal or real property of every nature or description, whatsoever, within this State, derived by them or any of them by means of practices within this State declared to be illegal and prohibited by said New Jersey Securities Act; also all property with which such property has been mingled, if such property cannot be identified in kind because of such co-mingling; and the receiver hereinbefore named shall sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of this Court for the actual benefit of all who establish an in- 20 30

terest therein, as provided for by the New Jersey Securities Act as amended and supplemented.

6. Any bank or other depository or stake holder who may have in its possession any property aforesaid belonging to the defendants, Washington Loan Company, a New Jersey corporation, and Washington Loan Company of Atlantic City, a New Jersey
10 corporation, shall forthwith turn over and deliver the same unto said receiver.

7. Copies of this decree, which may be certified as true copies by complainant's counsel, be served on the defendants, Washington Loan Company and Washington Loan Company of Atlantic City, by leaving the same with an officer thereof or by leaving the same at their respective registered offices with the person in charge thereof, either within or
20 without this State; copies of this decree, which may be certified as true copies by complainant's counsel, may be served on the defendants, John W. R. Doyle and Charles R. Doyle, either personally or by leaving the same at their respective last known places or business or abode, either within or without this State, or by sending the same by registered mail.

E. R. WALKER,
C.

Respectfully advised,
30 JOHN H. BACKES,
V. C.

A true copy.

PHILIP L. COFFIN, JR.,
*Special Assistant Attorney
General of New Jersey,
Solicitor and Counsel of
Complainant.*

ORDER APPOINTING AUGUST B. REPETTO
RECEIVER, IN PLACE OF CLARENCE
L. COLE, JR.

(Filed July 21, 1930.)

This matter being opened to the Court by Philip L. Coffin, Jr., Special Assistant Attorney General of New Jersey, solicitor of and counsel with complainant, and it appearing that by an order made in this cause on the first day of July, 1930, the defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, were jointly and severally permanently enjoined and restrained from the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and/or distribution within or from this State of any securities whatsoever, the word "securities" being used in the sense and as defined by the New Jersey Securities Act, and that Clarence L. Cole, Jr., of Atlantic City, New Jersey, was appointed receiver of the defendants, and it further appearing that because of ill health, the said Clarence L. Cole, Jr., is unable to assume the duties and responsibilities of said receivership, and has requested the Court to excuse him from the duties such receivership would entail, it is, on this 15th day of July, 1930, ordered:

1. That August B. Repetto, of New Jersey, be and he hereby is appointed receiver of defendants,

88 *Order Appointing August B. Repetto*
 Receiver, in Place of Clarence
 L. Cole, Jr.

Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, with all the powers conferred upon him as such receiver by said New Jersey Securities Act as amended and supplemented; and he is hereby ordered to furnish a bond in the sum of
10 \$1,000 for the faithful performance of his trust, in accordance with the usual practice of this Court, which bond is to be approved by
Esq., one of the special Masters of this court.

20 2. That the defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation, their officers, directors, attorneys, agents and servants, do forthwith turn over and deliver unto the receiver herein appointed, all of their real and personal property of every nature and description within this State, and the remaining defendants, namely, John W. R. Doyle and Charles R. Doyle, are hereby ordered to forthwith turn over and deliver unto said receiver all of the personal or real property of every nature or description, whatsoever, within this State, derived by them or any of them by means of practices within this State declared to be illegal and prohibited by said New Jersey Securities Act; also all property with which such prop-
30 erty has been mingled, if such property cannot be identified in kind because of such co-mingling; and the receiver hereinbefore named shall sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of this Court for the actual benefit of all who establish an interest therein, as provided for by the New Jersey Securities Act as amended and supplemented.

Order Appointing August B. Repetto 89
Receiver, in Place of Clarence
L. Cole, Jr.

3. Any bank or other depository or stake holder who may have in its possession any property aforesaid belonging to the defendants, Washington Loan Company, a New Jersey corporation, and Washington Loan Company of Atlantic City, a New Jersey corporation, shall forthwith turn over and deliver the same unto said receiver.

4. Copies of this order, which may be certified as true copies by complainant's counsel, be served on the defendants, Washington Loan Company and Washington Loan Company of Atlantic City, by leaving the same with an officer thereof or by leaving the same at their respective registered offices with the person in charge thereof, either within or without this State; copies of this order, which may be certified as true copies by complainant's counsel, may be served on the defendants, John W. R. Doyle and Charles R. Doyle, either personally or by leaving the same at their respective last known places of business or abode, either within or without this State, or by sending the same by registered mail.

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

A true copy.

PHILIP L. COFFIN, JR.,
Special Assistant Attorney
General of New Jersey,
Solicitor and Counsel of
Complainant.

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NOTICE OF APPEAL OF WASHINGTON
LOAN CO.

(Filed August 8, 1930.)

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The defendant, Washington Loan Co., a corporation of New Jersey, hereby appeals from the final decree entered herein on the first day of July, 1930, by the Honorable Edwin Robert Walker, Chancellor, on the advice of Vice-Chancellor John H. Backes, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

20

CARR & CARROLL,
Solicitors of Defendant.
HARVEY F. CARR,
Of Counsel.

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

30

HARVEY F. CARR,
*Of Counsel with Deft.,
Washington Loan Co.*

*Acknowledgment of Service of Notice of
Appeal of Washington Loan Com-
pany—Notice of Appeal of
Washington Loan Com-
pany of Atlantic City*

91

ACKNOWLEDGMENT OF SERVICE OF
NOTICE OF APPEAL OF WASH-
INGTON LOAN COMPANY.

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(Filed September 6, 1930.)

Service is hereby acknowledged this 14th day of August, 1930, of a true copy of the notice of appeal of defendant, Washington Loan Co., in the above-entitled cause.

PHILIP L. COFFIN, JR.,
Solicitor for Complainant.

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NOTICE OF APPEAL OF WASHINGTON
LOAN COMPANY OF ATLANTIC CITY.

(Filed August 8, 1930.)

The defendant, Washington Loan Company of Atlantic City, a corporation of New Jersey, hereby appeals from the final decree entered herein on the first day of July, 1930, by the Honorable Edwin Robert Walker, Chancellor, on the advice of Vice Chancellor John H. Backes, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

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CARR & CARROLL,
Solicitors.
HARVEY F. CARR,
Of Counsel.

92 *Acknowledgment of Service of Notice of
Appeal of Washington Loan Company
of Atlantic City—Notice of Appeal
of John W. R. Doyle*

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

HARVEY F. CARR,
*Of Counsel with Defendant,
Washington Loan Com-
pany of Atlantic City.*

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ACKNOWLEDGMENT OF SERVICE OF
NOTICE OF APPEAL OF WASHING-
TON LOAN COMPANY OF
ATLANTIC CITY.

(Filed Sept. 6, 1930.)

20 Service is hereby acknowledged this 14th day of
August, 1930, of a true copy of the notice of appeal
of defendant, Washington Loan Company of Atlan-
tic City, in the above-entitled cause.

PHILIP L. COFFIN, JR.,
Solicitor of Complainant.

NOTICE OF APPEAL OF JOHN W. R. DOYLE.

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(Filed August 8, 1930.)

The defendant, John W. R. Doyle, hereby appeals
from the final decree entered herein on the first day
of July, 1930, by the Honorable Edwin Robert
Walker, Chancellor, on the advice of Vice-Chancellor

Acknowledgment of Service of Notice of 93
Appeal of John W. R. Doyle—
Notice of Appeal of Charles
R. Doyle

John H. Backes, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

CARR & CARROLL,
Solicitors.
HARVEY F. CARR,
Of Counsel.

10

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

HARVEY F. CARR,
Of Counsel with Defendant,
John W. R. Doyle.

ACKNOWLEDGMENT OF SERVICE OF
NOTICE OF APPEAL OF JOHN
W. R. DOYLE.

20

(Filed September 6, 1930.)

Service is hereby acknowledged this 14th day of August, 1930, of a true copy of the notice of appeal of defendant John W. R. Doyle in the above-entitled cause.

PHILIP L. COFFIN, JR.,
Solicitor for Complainant.

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NOTICE OF APPEAL OF CHARLES R. DOYLE.

(Filed August 8, 1930.)

The defendant, Charles R. Doyle, hereby appeals from the final decree entered herein on the first day

94 *Acknowledgment of Service of Notice of
Appeal of Charles R. Doyle*

of July, 1930, by the Honorable Edwin Robert Walker, Chancellor, on the advice of Vice-Chancellor John H. Backes, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

CARR & CARROLL,
Solicitors.

HARVEY F. CARR,
Of Counsel.

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

HARVEY F. CARR,
*Of Counsel with Defendant,
Charles R. Doyle.*

20

ACKNOWLEDGMENT OF SERVICE OF
NOTICE OF APPEAL.

(Filed September 6, 1930.)

30

Service is hereby acknowledged this 14th day of August, 1930, of a true copy of notice of appeal of defendant, Charles R. Doyle, in the above-entitled cause.

PHILIP L. COFFIN, JR.,
Solicitor for Complainant.

STIPULATION RE DEPOSIT FOR COSTS.

(Filed September 6, 1930.)

It is stipulated by and between the respective parties hereto, by their respective solicitors, that one deposit of one hundred (\$100) dollars to answer the costs of appeal for the four separate appeals in the above-stated matter, shall be sufficient, and shall be deemed to be a compliance with Rule No. 21 of the Court of Errors and Appeals.

Dated, September 3, 1930.

PHILIP L. COFFIN, JR.,
Solicitor for William A. Stevens, Attorney General,
Complainant.

CARR & CARROLL,
Solicitors for Washington Loan Company, Washington Loan Company of Atlantic City, John W. R. Doyle and Charles R. Doyle,
Defendants.

2. Said defendants, Washington Loan Company, a New Jersey corporation, Washington Loan Company of Atlantic City, a New Jersey corporation, John W. R. Doyle and Charles R. Doyle, their joint and several attorneys, agents, officers, directors and servants, as the case may be, as well as all other persons acting in aid or assistance of them or any of them, directly or indirectly, be and they are hereby, jointly and severally, permanently enjoined and restrained from the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and/or distribution within or from this State of any securities, whatsoever, the word "securities" being used in the sense and as defined by the New Jersey Securities Act and particularly the securities and capital stock of the defendants, Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey corporation, until this Court shall otherwise order.

30. Said defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John R. Doyle and Charles R. Doyle, their respective officers and agents, be and they hereby are enjoined and restrained from exercising any of the privileges or franchises of either of said corporations within this State and from collecting or receiving any debts or paying out, selling, assigning or transferring any of the estate, monies, funds, lands, tenements or effects of either of said corporations in this State except to the receiver hereinafter appointed by this Court until the Court shall otherwise order.

4. That Clarence L. Cole, Jr., of Atlantic City,

New Jersey, be and he hereby is appointed receiver of defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, with all the powers conferred upon him as such receiver by said New Jersey Securities Act as amended and supplemented; and he is hereby ORDERED to furnish a bond in the sum of \$5000 for the faithful performance of his trust, in accordance with the usual practice of this Court, which bond is to be approved by ——— Esq., one of the Special Masters of the Court; 10

5. That the defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation, their officers, directors, attorneys, agents and servants do forthwith turn over and deliver unto the receiver herein appointed, all of their real and personal property of every nature and description within this State and the remaining defendants; namely, John W. R. Doyle and Charles R. Doyle, are hereby ORDERED to forthwith turn over and deliver unto said receiver all of the personal or real property of every nature or description, whatsoever, within this State, derived by them or any of them by means of practices within this State declared to be illegal and prohibited by said New Jersey Securities Act; also all property with which such property has been mingled, if such property cannot be identified in kind because of such co-mingling; and the receiver hereinbefore named shall sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of this Court for the actual benefit of all who established an 20 30

100 *Petition of Appeal of Washington Loan
Company*

interest therein, as provided for by the New Jersey Securities Act as amended and supplemented.

6. Any bank or other depository or stake holder who may have in its possession any property aforesaid belonging to the defendants, Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey
10 corporation, shall forthwith turn over and deliver the same unto said receiver.

And your petitioner humbly appeals from the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous for that (II) neither this defendant nor any of the other defendants named had been guilty of having violated the provisions of an Act of the Legislature of the State of New Jersey, entitled New Jersey Securities Act, approved March 19, 1927, as amended and sup-
20 plemented, nor did this defendant nor any of said defendants jointly and severally, individually and acting in aid and assistance of each other, nor by any means whatsoever, use and employ concealment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within this State of securities, as defined by the New Jersey Securities Act, and particularly the capital stock of the defendants, Washington Loan Company,
30 a New Jersey corporation, and Washington Loan Company of Atlantic City, a New Jersey corporation, and this denial is intended to be in the disjunctive as well as in the conjunctive.

(III) The charges in the bill are based upon hearsay, general allegations, characterizations and conclusions, unsupported by the affidavit of any person

or persons claimed to have been defrauded, nor is there any proof whatever of any representations or concealment within the provisions of the Securities Act in the sale or the offer for sale of any of the securities of the two corporate defendants. Both the bill and supporting affidavit rest upon characterizations, hearsay, conclusions and argumentative statements and the source of the information and belief of the affiant in the affidavit in support of the bill 10 are not stated.

(IV) That the material averments of the bill of complaint and of the affidavits thereto were contradicted by the affidavits filed on behalf of defendants, and there was no legal proof sufficient to justify said adjudication nor the issuance of a restraining order or injunction thereunder.

(V) That the alleged fraudulent representations referred to in the bill of complaint and the supporting affidavits bore no relation to the sale or offer to sell any of the securities of this appellant and were not made to any prospective purchaser of the securities of this appellant, nor until January 22, 1930, prior to which time there had been issued or subscribed to a total of 7,573 shares of the capital stock of this company for a total consideration of \$57,357.50; there had been sold bonds of this appellant aggregating \$156,600.00, making a total of securities sold, prior to said alleged misrepresentation, of 30 \$213,957.50; and that subsequently to the issuance of the said statement the securities of this appellant were sold as follows:

No. of shares: 62	Total	\$1,130.00
Bonds sold		3,400.00
Total		\$4,530.00

That consequently more than 99% of these shares were sold previous to the issuance of said statement, and approximately 98% of the bonds were so sold prior to the issuance of said statement, and that it is inequitable and unjust that property belonging to bona fide purchasers of the securities of the company should be placed in the hands of the receiver, even though it be proved that misrepresentations
10 were made with reference to the small number of securities sold after the issuance of such statement, and that it is inequitable and unjust that the property of bona fide purchasers should be destroyed by reason of statements unauthorized by them or by the corporation for the benefit of the inconsiderable number of subscribers thereto after the making of the said statement. The remedy of any person or persons so deceived, if any, would be by way of
20 rescission of their respective contracts and the return of any monies paid by them on account of such subscriptions.

Your petitioner, therefore, prays that the said decree of the Chancellor, as amended, may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

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CARR & CARROLL,
Solicitors of Appellant,
HARVEY F. CARR,
Of Counsel with appellant.

Petition of Appeal of Washington Loan 103
Company of Atlantic City

PETITION OF APPEAL OF WASHINGTON
LOAN COMPANY OF ATLANTIC CITY.

(Filed August 28, 1930.)

*To the Honorable Court of Errors and Appeals of
the State of New Jersey:* 10

The petition of Washington Loan Company of Atlantic City, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, advised by the Hon. John H. Backes, Vice-Chancellor bearing date the first day of July, A. D. 1930, wherein the said William A. Stevens, Attorney General of the State of New Jersey was complainant and the Washington Loan Company, a New Jersey corporation, Washington Loan Company of Atlantic City, a New Jersey corporation, John W. R. Doyle and Charles R. Doyle were defendants, and by a certain order entered in the said cause on the twenty-first day of July, A. D. 1930, amending the said decree by the appointment of Augustine B. Repetto, receiver in the place and stead of Clarence L. Cole, Jr., in this respect, to wit: 20 30

(I) That the said decree, as amended, adjudged as follows:

1. The defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation;

104 *Petition of Appeal of Washington Loan
Company of Atlantic City*

John W. R. Doyle and Charles R. Doyle, have been and are hereby adjudged to be guilty of having violated an Act of the Legislature of the State of New Jersey entitled "New Jersey Securities Act," approved March 19, 1927, as amended and supplemented in that they and each of them, jointly and severally, individually and acting in aid and assistance of each other, have used and employed conceal-
10 ment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within this State of securities as defined by said New Jersey Securities Act and particularly the capital stock of the defendants, Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey corporation.

20 2. Said defendants, Washington Loan Company, a New Jersey corporation, Washington Loan Company of Atlantic City, a New Jersey corporation, John W. R. Doyle and Charles R. Doyle, their joint and several attorneys, agents, officers, directors and servants, as the case may be, as well as all other persons acting in aid or assistance of them or any of them, directly or indirectly, be and they are hereby jointly and severally, permanently enjoined and
30 restrained from the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and/or distribution within or from this State of any securities, whatsoever, the word "securities" being used in the sense and as defined by the New Jersey Securities Act and particularly the securities and capital stock of the defendants, Washington Loan Company, a New Jersey corpora-

Petition of Appeal of Washington Loan 105
Company of Atlantic City

tion and Washington Loan Company of Atlantic City, a New Jersey corporation, until this Court shall otherwise order.

3. Said defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John R. Doyle and Charles R. Doyle, their respective officers and agents, be and they hereby are enjoined and restrained from exercising any of the privileges or franchises of either of said corporations within this State and from collecting or receiving any debts or paying out, selling, assigning or transferring any of the estate, monies, funds, lands, tenements or effects of either of said corporations in this State except to the receiver hereinafter appointed by this Court until the Court shall otherwise order. 10

4. That Clarence L. Cole, Jr., of Atlantic City, New Jersey, be and he hereby is appointed receiver of defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, with all the powers conferred upon him as such receiver by said New Jersey Securities Act as amended and supplemented; and he is hereby ORDERED to furnish a bond in the sum of \$5000. for the faithful performance of his trust, in accordance with the usual practice of this Court, which bond is to be approved by ——— Esq., one of the Special Masters of this Court; 20 30

5. That the defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corpora-

106 *Petition of Appeal of Washington Loan
Company of Atlantic City*

tion, their officers, directors, attorneys, agents and servants do forthwith turn over and deliver unto the receiver herein appointed, all of their real and personal property of every nature and description within this State and the remaining defendants; namely, John W. R. Doyle and Charles R. Doyle, are hereby ORDERED to forthwith turn over and deliver unto
10 every nature or description, whatsoever, within this State, derived by them or any of them by means of practices within this State declared to be illegal and prohibited by said New Jersey Securities Act; also all property with which such property has been mingled; if such property cannot be identified in kind because of such co-mingling; and the receiver hereinbefore named shall sell, convey and assign the same and hold and dispose of the proceeds thereof
20 under the direction of this Court for the actual benefit of all who establish an interest therein, as provided for by the New Jersey Securities Act as amended and supplemented.

6. Any bank or other depository or stakeholder who may have in its possession any property aforesaid belonging to the defendants, Washington Loan Company, a New Jersey corporation, and Washington Loan Company of Atlantic City, a New Jersey corporation, shall forthwith turn over and deliver
30 the same unto said receiver.

And your petitioner humbly appeals from the decree of the Chancellor, which decrees as aforesaid upon the ground that the same is erroneous for that (II) neither this defendant nor any of the other defendants named had been guilty of

Petition of Appeal of Washington Loan 107
Company of Atlantic City

having violated the provisions of an Act of the Legislature of the State of New Jersey, entitled New Jersey Securities Act, approved March 19, 1927, as amended and supplemented, nor did this defendant nor any of said defendants jointly and severally, individually and acting in aid and assistance of each other, nor by any means whatsoever, use and employ concealment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer 10 to purchase, promotion, negotiation, advertisement and distribution within this State of securities, as defined by the New Jersey Securities Act, and particularly the capital stock of the defendants, Washington Loan Company, a New Jersey corporation, and Washington Loan Company of Atlantic City, a New Jersey corporation, and this denial is intended to be in the disjunctive as well as in the conjunctive.

(III) The charges in the bill are based upon hear- 20 say, general allegations, characterizations and conclusions, unsupported by the affidavit of any person or persons claimed to have been defrauded, nor is there any proof whatever of any representations or concealment within the provisions of the Securities Act in the sale or the offer for sale of any of the securities of the two corporate defendants. Both the bill and supporting affidavit rest upon characteriza- tions, hearsay, conclusions and argumentative state- 30 ments, and the source of the information and belief of the affiant in the affidavit in support of the bill is not stated.

(IV) That the material averments of the bill of complaint and of the affidavits thereto were contradicted by the affidavits filed on behalf of defendants,

108 *Petition of Appeal of Washington Loan
Company of Atlantic City*

and there was no legal proof sufficient to justify said adjudication nor the issuance of a restraining order or injunction thereunder.

(V) That the alleged fraudulent representations referred to in the bill of complaint and the supporting affidavits bore no relation to the sale or offer to sell any of the securities of this appellant, and were
10 not made to any prospective purchaser of the securities of this appellant, nor until January 22, 1930, prior to which time there had been issued or subscribed to a total of 7,573 shares of the capital stock of the Washington Loan Company for a total consideration of \$57,357.50; there had been sold bonds of that company aggregating \$156,600.00, making a total of securities sold, prior to said alleged misrepresentation, of \$213,957.50; and that subsequently to the issuance of the said statement, the securities
20 of the said company were sold as follows:

Number of shares, 62.

Total,	\$1,130.00
Bonds sold,	3,400.00
Total,	\$4,530.00

That consequently more than 99 per cent of these shares were sold previous to the issuance of said statement, and approximately 98% of the bonds were
30 so sold prior to the issuance of said statement, and that it is inequitable and unjust that property belonging to bona fide purchasers of the securities of the company should be placed in the hands of the receiver, even though it be proved that misrepresentations were made with reference to the small number of securities sold after the issuance of such

Petition of Appeal of Washington Loan 109
Company of Atlantic City

statement, and that it is inequitable and unjust that the property of bona fide purchasers should be destroyed by reason of statements unauthorized by them or by the corporation for the benefit of the inconsiderable number of subscribers thereto after the making of the said statement. The remedy of any person or persons so deceived, if any, would be by way of rescission of their respective contracts and the return of any monies paid by them on 10 account of such subscriptions.

(VI) The Washington Loan Company of Atlantic City never sold or offered to sell a single share of its stock or of its securities, except to the Washington Loan Company as a holding company. There is no proof that any misrepresentation whatever was made in the sale or offer for sale of its securities.

(VII) The Washington Loan Company of Atlantic 20 City was at all times solvent and paid all of its debts as the same accrued, prior to the issuance of the preliminary restraint in this matter.

Your petitioner, therefore, prays that the said decree of the Chancellor, as amended, may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

CARR & CARROLL, 30
Solicitors of Appellant,
HARVEY F. CARR,
Of Counsel with Appellant.

PETITION OF APPEAL OF JOHN W. R.
DOYLE.

(Filed August 28, 1930.)

*To the Honorable Court of Errors and Appeals of
the State of New Jersey:*

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The petition of John W. R. Doyle, the appellant in the above stated cause, respectfully shows that your petitioner finds himself agrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, advised by the Honorable John H. Backes, Vice-Chancellor bearing date the first day of July, A. D. 1930, wherein the said William A. Stevens, Attorney General of the State of New Jersey was complainant and the Washington Loan Company, a New Jersey corporation, Washington Loan Company of Atlantic City, a New Jersey corporation, John W. R. Doyle and Charles R. Doyle were defendants, and by a certain order entered in the said cause on the twenty-first day of July, A. D. 1930, amending the said decree by the appointment of Augustine B. Repetto received in the place and stead of Clarence L. Cole, Jr., in this respect, to wit:

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(I) That the said decree, as amended, adjudged as follows:

1. The defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, have been

and are hereby adjudged to be guilty of having violated an Act of the Legislature of the State of New Jersey entitled "New Jersey Securities Act," approved March 19, 1927, as amended and supplemented in that they and each of them, jointly and severally, individually and acting in aid and assistance of each other, have used and employed concealment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within this State of securities as defined by said New Jersey Securities Act and particularly the capital stock of the defendants, Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey corporation. 10

2. Said defendants, Washington Loan Company, a New Jersey corporation, Washington Loan Company of Atlantic City, a New Jersey corporation, John W. R. Doyle and Charles R. Doyle, their joint and several attorneys, agents, officers, directors and servants, as the case may be, as well as all other persons acting in aid or assistance of them or any of them, directly or indirectly, be and they are hereby, jointly and severally, permanently enjoined and restrained from the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and/or distribution within or from this State of any securities, whatsoever, the word "securities" being used in the sense and as defined by the New Jersey Securities Act and particularly the securities and capital stock of the defendants, Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey corporation, until this Court shall otherwise order. 20 30

3. Said defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John R. Doyle and Charles R. Doyle, their respective officers and agents, be and they hereby are enjoined and restrained from exercising any of the privileges or franchises of either of said corporations within this State and from collecting or receiving any debts or paying out, selling, assigning
10 or transferring any of the estate, monies, funds, lands, tenements or effects of either of said corporations in this State except to the receiver hereinafter appointed by this Court until the Court shall otherwise order.

4. That Clarence L. Cole, Jr., of Atlantic City, New Jersey, be and he hereby is appointed receiver of defendants, Washington Loan Company, a New
20 Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, with all the powers conferred upon him as such receiver by said New Jersey Securities Act as amended and supplemented; and he is hereby ordered to furnish a bond in the sum of \$5000 for the faithful performance of his trust, in accordance with the usual practice of this Court, which bond is to be approved by Esq., one of the Special Masters of this Court.

30 5. That the defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation, their officers, directors, attorneys, agents and servants do forthwith turn over and deliver unto the receiver herein appointed, all of their real and personal property of every nature and description with-

in this State and the remaining defendants; namely, John W. R. Doyle and Charles R. Doyle, are hereby ordered to forthwith turn over and deliver unto said receiver all of the personal or real property of every nature and description, whatsoever, within this State, derived by them or any of them by means of practices within this State declared to be illegal and prohibited by said New Jersey Securities Act; also all property with which such property has been mingled, if such property cannot be identified in 10
kind because of such co-mingling; and the receiver hereinbefore named shall sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of this Court for the actual benefit of all who establish an interest therein, as provided for by the New Jersey Securities Act as amended and supplemented.

6. Any bank or other depository or stake holder who may have in its possession any property afore- 20
said belonging to the defendants, Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey corporation, shall forthwith turn over and deliver the same unto said receiver.

And your petitioner humbly appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous for that (II) neither this defendant nor any of the other 30
defendants named had been guilty of having violated the provisions of an Act of the Legislature of the State of New Jersey, entitled New Jersey Securities Act, approval March 19, 1927, as amended and supplemented, nor did this defendant nor any of said defendants jointly and severally, individually and acting in aid and assistance of each other, nor

by any means whatsoever, use and employ concealment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within this State of securities, as defined by the New Jersey Securities Act, and particularly the capital stock of the defendants, Washington Loan Company, a New Jersey corporation, and Washington Loan Company of Atlantic City, a New

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Jersey corporation, and this denial is intended to be in the disjunctive as well as in the conjunctive.

(III) The charges in the bill are based upon hearsay, general allegations, characterizations, and conclusions, unsupported by the affidavit of any person or persons claimed to have been defrauded, nor is there any proof whatever of any representations or concealment within the provisions of the Securities Act in the sale or the offer for sale of any of the securities of the two corporate defendants. Both the bill and supporting affidavit rest upon characterizations, hearsay, conclusions and argumentative statements and the source of the information and belief of the affiant in the affidavit in support of the bill are not stated.

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(IV) That the material averments of the bill of complaint and of the affidavits thereto were contradicted by the affidavits filed on behalf of defendants, and there was no legal proof sufficient to justify said adjudication nor the issuance of a restraining order or injunction thereunder.

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(V) That the alleged fraudulent representations referred to in the bill of complaint and the supporting affidavits bore no relation to the sale or offer

to sell any of the securities of this appellant and were not made to any prospective purchaser of the securities of this appellant, nor until January 22, 1930, prior to which time there had been issued or subscribed to a total of 7,573 shares of the capital stock of this company for a total consideration of \$57,357.50; there had been sold bonds of this appellant aggregating \$156,600.00, making a total of securities sold, prior to said alleged misrepresentation, of \$213,957.50; and that subsequently to the issuance of the said statement the securities of this appellant were sold as follows: 10

No. of shares: 62	Total	\$1,130.00
Bonds sold		3,400.00
Total		\$4,530.00

That consequently more than 99% of these shares were sold previous to the issuance of said statement, and approximately 98% of the bonds were so sold prior to the issuance of said statement, and that it is inequitable and unjust that property belonging to bona fide purchasers of the securities of the company should be placed in the hands of the receiver, even though it be proved that misrepresentations were made with reference to the small number of securities sold after the issuance of such statement, and that it is inequitable and unjust that the property of bona fide purchasers should be destroyed by reason of statements unauthorized by them or by the corporation for the benefit of the inconsiderable number of subscribers thereto after the making of the said statement. The remedy of any person or persons so deceived, if any, would be by way of rescission of their respective contracts and the return of any monies paid by them on account of such subscriptions. 20 30

(VI) There is no proof whatever of any sales or offer to sell any securities made by this defendant. There was no proof that this defendant in any way derived any personal profit or personal income whatever from the sale of the securities of the Washington Loan Company nor, in fact, did this defendant even receive a salary from said corporation, and the appointment of a receiver for this defendant and the issuance of a restraining order or injunction
10 against this defendant was wholly unwarranted in law and in fact.

Your petitioner, therefore, prays that the said decree of the Chancellor, as amended, may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

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CARR & CARROLL,
Solicitors of Appellant.
HARVEY F. CARR,
Of Counsel with Appellant.

PETITION OF APPEAL OF CHARLES R.
DOYLE.

(Filed August 28, 1930.)

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*To the Honorable Court of Errors and Appeals of
the State of New Jersey:*

The petition of Charles R. Doyle, the appellant, in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final

decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, advised by the Honorable John H. Backes, Vice-Chancellor, bearing date the first day of July, A. D. 1930, wherein the said William A. Stevens, Attorney General of the State of New Jersey was complainant and the Washington Loan Company, a New Jersey corporation, Washington Loan Company of Atlantic City, a New Jersey corporation, John W. R. Doyle and Charles R. Doyle were defendants, and by a certain order entered in the said cause on the twenty-first day of July, A. D. 1930, amending the said decree by the appointment of Augustine B. Repetto, receiver, in the place and stead of Clarence L. Cole, Jr., in this respect, to wit: 10

(I) That the said decree, as amended, adjudged as follows:

1. The defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, have been and are hereby adjudged to be guilty of having violated an Act of the Legislature of the State of New Jersey entitled "New Jersey Securities Act," approved March 19, 1927, as amended and supplemented in that they and each of them, jointly and severally, individually and acting in aid and assistance of each other, have used and employed concealment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within this State of securities as defined by said New Jersey Securities Act and particularly the capital stock of the defendants, Wash- 20 30

ington Loan Company, a New Jersey corporation, and Washington Loan Company of Atlantic City, a New Jersey corporation.

2. Said defendants, Washington Loan Company, a New Jersey corporation, Washington Loan Company of Atlantic City, a New Jersey corporation, John W. R. Doyle and Charles R. Doyle, their joint and several attorneys, agents, officers, directors and
10 servants, as the case may be, as well as all other persons acting in aid or assistance of them or any of them, directly or indirectly, be and they are hereby jointly and severally permanently enjoined and restrained from the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and/or distribution within or from
20 this State of any securities, whatsoever, the word "securities" being used in the sense and as defined by the New Jersey Securities Act and particularly the securities and capital stock of the defendants, Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey corporation, until this Court shall otherwise order.

3. Said defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John R. Doyle and Charles R. Doyle, their respective
30 officers and agents, be and they hereby are enjoined and restrained from exercising any of the privileges or franchises of either of said corporations within this State and from collecting or receiving any debts or paying out, selling, assigning or transferring any of the estate, monies, funds, lands, tenements or effects of either of said corporations in

this State except to the receiver hereinafter appointed by this Court until the Court shall otherwise order.

4. That Clarence L. Cole, Jr., of Atlantic City, New Jersey, be and he hereby is appointed receiver of defendants, Washington Loan Company, a New Jersey corporation; Washington Loan Company of Atlantic City, a New Jersey corporation; John W. R. Doyle and Charles R. Doyle, with all the powers 10 conferred upon him as such receiver by said New Jersey Securities Act as amended and supplemented; and he is hereby ordered to furnish a bond in the sum of \$5000 for the faithful performance of his trust, in accordance with the usual practice of this Court, which bond is to be approved by Esq., one of the Special Masters of this Court.

5. That the defendants, Washington Loan Company, a New Jersey corporation; Washington Loan 20 Company of Atlantic City, a New Jersey corporation, their officers, directors, attorneys, agents and servants do forthwith turn over and deliver unto the receiver herein appointed, all of their real and personal property of every nature and description within this State and the remaining defendants; namely, John W. R. Doyle and Charles R. Doyle, are hereby ordered to forthwith turn over and deliver unto said receiver all of the personal or real property of every nature or description, whatsoever, within this 30 State, derived by them or any of them by means of practices within this State declared to be illegal and prohibited by said New Jersey Securities Act; also all property with which such property has been mingled, if such property cannot be identified in kind because of such co-mingling; and the receiver

hereinbefore named shall sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of this Court for the actual benefit of all who establish an interest therein, as provided for by the New Jersey Securities Act as amended and supplemented.

6. Any bank or other depository or stake holder who may have in its possession any property afore-
10 said belonging to the defendants, Washington Loan Company, a New Jersey corporation and Washington Loan Company of Atlantic City, a New Jersey corporation, shall forthwith turn over and deliver the same unto said receiver.

And your petitioner humbly appeals from the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous for that
20 (II) neither this defendant nor any of the other defendants named had been guilty of having violated the provisions of an Act of the Legislature of the State of New Jersey, entitled New Jersey Securities Act, approved March 19, 1927, as amended and supplemented, nor did this defendant nor any of said defendants jointly and severally, individually and acting in aid and assistance of each other, nor by any means whatsoever, use and employ concealment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer to purchase,
30 promotion, negotiation, advertisement and distribution within this State of securities, as defined by the New Jersey Securities Act, and particularly the capital stock of the defendants, Washington Loan Company, a New Jersey corporation, and Washington Loan Company of Atlantic City, a New Jersey corporation, and this denial is intended to be in the disjunctive as well as in the conjunctive.

(III) The charges in the bill are based upon hearsay, general allegations, characterizations and conclusions, unsupported by the affidavit of any person or persons claimed to have been defrauded, nor is there any proof whatever of any representations or concealment within the provisions of the Securities Act in the sale or the offer for sale of any of the securities of the two corporate defendants. Both the bill and supporting affidavit rest upon characterizations, hearsay, conclusions and argumentative statements and the source of the information and belief of the affiant in the affidavit in support of the bill are not stated. 10

(IV) That the material averments of the bill of complaint and of the affidavits thereto were contradicted by the affidavits filed on behalf of defendants, and there was no legal proof sufficient to justify said adjudication nor the issuance of a restraining order or injunction thereunder. 20

(V) That the alleged fraudulent representations referred to in the bill of complaint and the supporting affidavits bore no relation to the sale or offer to sell any of the securities of this appellant and were not made to any prospective purchaser of the securities of this appellant, nor until January 22, 1930, prior to which time there had been issued or subscribed to a total of 7,573 shares of the capital stock of this company for a total consideration of \$57,357.50; there had been sold bonds of this appellant aggregating \$156,600.00, making a total of securities sold, prior to said alleged misrepresentation, of \$213,957.50; and that subsequently to the issuance of the said statement the securities of this appellant were sold as follows: 30

122 *Petition of Appeal of Charles R. Doyle*

Number of shares, 62	
Total	\$1,130.00
Bonds sold,	3,400.00
Total,	\$4,530.00

That consequently more than 99% of these shares were sold previous to the issuance of said statement, and approximately 98% of the bonds were so sold prior to the issuance of said statement, and that it is inequitable and unjust that property belonging to bona fide purchasers of the securities of the company should be placed in the hands of the receiver, even though it be proved that misrepresentations were made with reference to the small number of securities sold after the issuance of such statement, and that it is inequitable and unjust that the property of bona fide purchasers should be destroyed by reason of statements unauthorized by them or by the corporation for the benefit of the inconsiderable number of subscribers thereto after the making of the said statement. The remedy of any person or persons so deceived, if any, would be by way of rescission of their respective contracts and the return of any monies paid by them on account of such subscriptions.

(VI) There is no proof whatever of any fraudulent representations or suppressions made by this defendant in connection with any sales or offer to sell any of the said securities.

(VII) No property of any kind of the said corporations, or of either of them, was received by the defendant other than the usual commission of 20 per cent on the sale of their securities, which the

Acknowledgment of Service of Copies of 123
Petitions of Appeal

evidence shows to be the fair and usual commission for such services, and out of which commission this defendant paid salesmen and other expenses, so as to receive net out of such commission only about 3 per cent.

(VIII) This defendant was not an officer or a director of either of the defendant companies, and there is no proof that the statement mailed to the stockholders on January 22, 1930, was issued with the knowledge, consent or approval of this defendant. There is no basis in law or in fact for appointing a receiver of this defendant, nor of issuing a restraining order or injunction against this defendant. 10

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

CARR & CARROLL,
Solicitors of Appellant.
HARVEY F. CARR,
Of Counsel with Appellant.

ACKNOWLEDGMENT OF SERVICE OF 30
COPIES OF PETITIONS OF APPEAL.

(Filed September 23, 1930.)

Due and legal service is hereby acknowledged this 20th day of September, 1930, of copies of the peti-

124 *Stipulation that the Four Appeals Shall be
Consolidated and Argued Together*

tions of appeal (four appeals) in the above stated
cause.

PHILIP L. COFFIN, JR.,
*Solicitor of Complainant-
Respondent.*

10 STIPULATION THAT THE FOUR APPEALS
SHALL BE CONSOLIDATED AND
ARGUED TOGETHER.

(Filed September 6, 1930.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

20 WILLIAM A. STEVENS, At-
torney General of the
State of New Jersey,
Complainant-Respondent,
and

WASHINGTON LOAN COM-
PANY, a New Jersey cor-
poration; WASHINGTON
LOAN COMPANY OF AT-
LANTIC CITY, a New Jer-
sey corporation, JOHN W.
30 R. DOYLE and CHARLES R.
DOYLE, *et als.,*
Defendants-Appellants.

On Appeal, &c.
(Four Appeals.)
Stipulation.

It is hereby stipulated by and between the respec-
tive parties hereto, by their respective solicitors,

Stipulation that the Four Appeals Shall be 125
Consolidated and Argued Together

that the separate appeals taken by Washington Loan Company, Washington Loan Company of Atlantic City, John W. R. Doyle and Charles R. Doyle shall be consolidated; that but one record be required to be printed for the consolidated appeals, and that the said appeals be argued together.

Dated, September 3, 1930.

PHILIP L. COFFIN, JR.,
Solicitor for William A. Stevens, Attorney General of 10
Jersey, Respondent.

CARR & CARROLL,
Solicitors for Washington Loan
Company, Washington Loan
Company of Atlantic City,
John W. R. Doyle and Charles
R. Doyle, Appellants.

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100

NEW JERSEY COURT OF ERRORS
AND APPEALS.

WILLIAM A. STEVENS, Attorney-General of the State
of New Jersey,

Complainant-Respondent,

v.

WASHINGTON LOAN COMPANY, a New Jersey Corpora-
tion; WASHINGTON LOAN COMPANY OF ATLANTIC
CITY, a New Jersey Corporation; JOHN W. R.
DOYLE and CHARLES R. DOYLE, *et als.*,

Defendants-Appellants.

ON APPEAL FROM CHANCERY.

BRIEF OF DEFENDANTS-APPELLANTS.

This is an appeal from a final decree advised by
Vice-Chancellor Backes on July 1, 1930, adjudging
that all four of the defendants, and each of them,
“have used and employed concealment, suppres-
sion and fraud in connection with the issuance,
sale, offer for sale, purchase, offer to purchase,
promotion, negotiation, advertisement and dis-

tribution within this State of securities as defined by the said New Jersey Securities Act, and particularly the capital stock of the defendants, Washington Loan Company, a New Jersey corporation, and Washington Loan Company of Atlantic City, a New Jersey corporation.”

This decree included a permanent injunction against the two corporate defendants from issuing, selling, etc., any of their securities. The corporate defendants were also enjoined from exercising any of the privileges or franchises of either of the corporations, and a receiver was appointed for both of the corporate defendants.

The decree also permanently enjoined the individual defendants from selling, offering to sell, etc., within or from this State *any* securities whatsoever, and provided for the appointment of a receiver for all four of the defendants.

The matter was heard in a summary way upon *ex parte* affidavits. No notice of any kind was given to any of the stockholders as such of the two corporate defendants prior to the entry of the decree, which completely destroyed their property represented by stockholdings in the corporate defendants.

While the bill of complaint and the *ex parte* affidavits of the Special Assistant Attorney-General set forth a large number of acts of so-called fraudulent concealment, suppression and fraud, the opinion of the learned Vice-Chancellor dealt only with the following:

(a) The subscription by John W. R. Doyle for 5000 shares of stock of the company at rates varying

from \$1.00 per share to \$5.00 per share, and the sale of stock of the same class at rates varying from \$10.00 per share to \$20.00 per share to the general public.

(b) The sale by the "Doyles or one of them, *it matters not which*," of seventeen mortgages aggregating \$99,600 to the Washington Loan Company for \$20,000, where the same had been purchased for \$7500, and hence making a profit of \$12,500 from the Washington Loan Company.

(c) The sale by the Washington Loan Company of the said bonds and mortgages on the basis of the face value thereof, and the acceptance in payment therefor of 334 shares of stock of the Washington Loan Company of Atlantic City. As to the latter company all of its stock was owned by the Washington Loan Company. None of its stock had been or was intended to be offered to the general public.

(d) The Vice-Chancellor found that the mortgages were valueless, and disregarded the affidavit of Charles R. Doyle that he had been deceived by the vendor of the mortgages as to the location of the mortgaged property; that no moneys had actually been paid to the vendor of the mortgages, and that the Washington Loan Company, having discovered the fraud proposed to rescind the transaction, and to cover the same by an appropriate entry in its books.

(e) That in the statement dated December 31, 1929, and forwarded to no one except existing stock-

holders of the Washington Loan Company, to whom it was mailed on January 22, 1930, that by carrying these mortgages on the books of the Washington Loan Company of Atlantic City at face value under item "Stock owned subsidiary companies, \$100,-200.00" an apparent surplus was shown among the assets of the Washington Loan Company of \$21,699.98.

There is no allegation in the bill, nor in the affidavit of the Special Assistant Attorney-General, that any stockholders or security-holders of the Washington Loan Company or the Washington Loan Company of Atlantic City, other than the two Doyles, in any way, actively or passively, participated or acquiesced in any of the acts of fraud charged in the bill. Indeed, the corporate stockholders were represented to be the exploited victims of a fraudulent scheme.

Prior to the mailing of the financial statement of the Washington Loan Company on January 22, 1930, total securities of that company had been sold as follows:

Number of shares,	7573,	
Total,		\$57,357.50
Bonds sold,		156,600.00
Total,		\$213,957.50
Number of shares sold after statement 62		
Total,		\$1,130.00
Bonds sold after statement,		3,400.00
Total,		\$4,530.00

Expressed in percentage:

Total shares sold before statement,	.9919
After statement,	.0081
Bonds sold before statement,	.97875
Bonds sold after statement,	.02125

(Page 47)

Therefore, we have the following situation:

If we deduct 2775 shares owned by the Doyles, for which they paid \$3,337.50, from the total securities issued prior to the statement, we have securities in the hands of *bona fide* purchasers to the amount of \$210,000, which are absolutely destroyed by this decree without their ever having had an opportunity as stockholders to be heard upon the question as to whether they desire to proceed with the corporation, or to have its affairs liquidated. This, too, in view of the statement in the affidavit of John W. R. Doyle that from its 361 stockholders, a vast majority of whom are bankers and prominent men throughout the State, it was intended to secure a board of directors, and to invite the board of directors to make an independent selection of executive officers (pages 55, 56).

It is to be noted that the Doyles were the owners of but 2775 shares out of 7573 shares, and, therefore, the voting control was not in their hands.

It is true that the learned Vice-Chancellor considers that the company was wholly insolvent, which result is obtained by charging off salesmen's commissions, salaries, etc., during the pioneering period. The item of salesmen's commissions of 20 per cent equals the sum of \$46,716.43.

The affidavits of the two Doyles show that 20 per cent commission is a customary commission on sales of this kind, and the fact that such commission was being paid had been made known to the Securities Division some twenty months previously to the filing of the bill (page 60), and that no objection had been made thereto by the Attorney-General's office previously to the filing of the bill of complaint. These commissions having been paid, the balances due upon the securities sold would have been available without the payment of further commissions.

The subscribers were responsible persons, 307 of whom were directors and officers of banks, trust companies and building associations of the State of New Jersey, so that there was due the Washington Loan Company, without further financing cost to it, the sum of approximately \$150,000 from stock and bond subscriptions and notes receivable, and as of December 31, 1929, there were only \$24,000 of the bonds issued and outstanding, the principal of which was due on August 1, 1948 (page 52).

Certainly, insolvency is not produced by paying out the customary cost of financing, and the customary organization charges and clerical expenses. Expenditures and obligations of this kind are inevitably created before the active business of a corporation begins, and if no credit is to be allowed for the necessary and inevitable expenses of incorporation, organization and financing, then every corporation must be insolvent immediately upon, and for some time after, its organization, and before it can engage profitably in business. Indeed, very

few corporations even expect to operate during the first year or two except at a loss.

However this may be, certainly *bona fide* purchasers for value should have the right to determine whether or not their property is to be destroyed by an injunction and a receiver. In a matter of this character the judgment or discretion of the Court cannot well take the place of the discretion of the stockholders and the board of directors.

In this particular case the parties to be protected by this paternalistic statute are 307 directors and officers of banks and trust companies and building associations of this State, out of 361 subscribers to the stock of the Washington Loan Company.

While it is not shown that the financial statement of December 31, 1929, was shown to a single prospective purchaser, and while Charles R. Doyle (page 67) specifically denies "that in the promotion and negotiations of the sale of the capital stock of the Washington Loan Company this statement (that of December 31, 1929) was disclosed or exhibited to anyone, and that any stock or securities were sold or offered for sale upon any representation with reference thereto," assume for a moment that other zealous and dishonest stock salesmen had made false or fraudulent statements in the attempt to sell a few shares of stock (in this case less than 1 per cent of the total stock issue), should the stock of the 99 per cent owned by *bona fide* holders be destroyed by an injunction and a receiver? And if so, to what end?

Such a policy is wholly destructive, and in the case of *bona fide* purchasers entirely free even from the suspicion of fraud, it inflicts upon them an ap-

parently unnecessary and unjustified moral wound for a supposed offense committed by another without their knowledge or privity. It is opposed to all sense of natural justice and equity that any innocent persons should be punished or the property of any innocent person destroyed for the offense of another.

Already the hegira of corporations from New Jersey to Delaware is now in progress, with a decided loss of revenue to this State. The New Jersey "Blue Sky" Law, as interpreted by decisions of the Court of Chancery, has given the business corporations the impression that New Jersey's erstwhile warm hospitality for corporations has been succeeded by cold hostility.

If the rights of *bona fide* stockholders under a New Jersey charter are so insecure that a few or even a single misrepresentation, wholly unauthorized, by a security salesman, may result in the destruction of the corporate property by an injunction and receiver, and without a hearing to the parties to be affected thereby, and in a summary proceeding against the corporation, and upon *ex parte* affidavits, then it would seem that a New Jersey charter is a mere rope of sand, and that stockholders are powerless to protect themselves in such a situation.

While it is true that the "Blue Sky" Law has a laudable purpose, and it is aimed at the prevention of a real evil, still it should not be construed in such a way as to be an engine of injustice against *bona fide* purchasers of stock, nor should it be construed in such a way as to require a course of conduct on the part of corporations, or the sellers of corporate securities, which prescribes a standard

with regard to fraud, concealment and suppression at variance with recognized and established commercial customs and usages.

The real purpose of the statute is doubtless to protect the credulous, the gullible and the incompetent, as well as the fool, from his own folly, and in the zeal to afford such protection there is danger of losing sight of the fact that the strong and courageous, the enterprising, and the men of vision should not be unduly hampered and restrained and discouraged by bureaucrats, and by an undue extension by implication of an exceedingly drastic statute.

Under the provisions of the New Jersey "Blue Sky" Law every weapon in the legal armory is oiled, primed and cocked, and ready for instant use, to be directed at any corporation or any dealer in securities. Upon the merest rumor, or no rumor at all, the Attorney-General may require answers to interrogatories, may examine and interrogate any dealer in securities or corporate officer, require them to produce their books, records, documents and accounts, may bring them from any point in this State to the City of Newark, administer oaths or affirmations, issue subpoenas *duces tecum*, require the production of the company's books and records at Newark, may cause corporate officers, dealers in securities, etc., to be punished for contempt, may procure injunctions, appointment of receiver, writs of *ne exeat*, etc.

While all of the books and records of the two corporations, including the list of stockholders, were submitted to the Special Assistant Attorney-General, that official does not name in his bill or affi-

davits a single person to whom any fraudulent representation has been made. Not a single stockholder has asked that the company be destroyed. On the contrary, counsel has in his possession, ready to be exhibited to the Court, if the Court will so permit, a petition signed by 100 stockholders, whose stock aggregates 1475 shares, asking that the injunction and receivership decree be vacated and the property restored to its stockholders.

The company has an extremely valuable asset in its more than 300 banker shareholders, the cost of procuring which, together with the incidental costs of operation during the formative period of the company, will probably exceed \$50,000. The situation in this regard is the same as though, at a period when excavations were being made and foundations laid for a large structure, the operation was stopped, upon the theory that the foundation work had no value whatever, even though the cost of the balance of the structure had been completely financed.

For the purpose of argument only, but not conceding it to be a fact, we have assumed that the defendants, Doyles, had been guilty of fraudulent acts, concealment or suppression, and we say that even if this were true the two corporations and the property of the stockholders should not be destroyed without their consent, and without a hearing thereon, and not even the judgment of a Court of Chancery based upon *ex parte* affidavits, and with no knowledge of the plans or desires of the stockholders, can take the place of the business judgment of the stockholders and directors of the company. The suggestion of the Doyles, to retire from the situation and have elected absolutely independent offi-

cers and directors, should have been adopted, and would have afforded complete relief both to the stockholders and the public, so far as these two corporations were concerned.

We propose under a separate head to discuss the acts, the duties and responsibility of the two Doyles, a part of which argument will be applicable to the rights of the two corporate defendants. For purpose of brevity, we make this reference to the succeeding argument in order to avoid unnecessary repetition and undue prolixity.

Appeals of John W. R. Doyle and Charles R. Doyle.

This proceeding was instituted under the provisions of an Act, entitled,

“An Act declaring unlawful certain practices in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution of securities within this State, and providing for the investigation and prevention of such practices.”

P. L. 1927, Ch. 79, p. 138, and the Acts amendatory thereof.

It is, therefore, clearly to be perceived that the Act relates to fraud *in the sale or offer to sell corporate securities*, and is not intended to confer upon the Attorney-General, general powers to act or to deal with questions of fraud unconnected with the sale or offer to sell corporate securities, as appears from the title of the Act and the definitions thereunder.

John W. R. Doyle was the president and a director of both of the corporate defendants. Charles R. Doyle was not an officer or a director of either of the said companies. His sole connection with the Washington Loan Company was that of sales manager for its securities. He occupied no fiduciary relationship to the companies unless, indeed, such a relationship arose out of his position as sales manager.

The Washington Loan Company had an authorized capital stock of 10,000 shares of no par value. Of this John W. R. Doyle subscribed for 5,000 shares at the following rates: \$1.00 per share for 3500 shares; \$2.50 for 750 shares; \$5.00 for the remaining 750 shares. The directors fixed a selling price on the remaining shares as follows: \$10.00 for the first 1,000; \$12.50 for the second 1,000; \$15.00 for the third 1,000; \$17.50 for the fourth 1,000; and \$20.00 for the last 1,000 shares. Of the above shares John W. R. Doyle actually owned 1388 shares, and Charles R. Doyle 1387 shares, out of a total issue of 7573 shares.

Shares were sold to the public at prices ranging from \$10.00 per share to \$17.50 per share. At least 75 stockholders knew of the different rates at which the stock was sold, and purchased at varying rates. When the rates were fixed for the stock there were no other stockholders than the Doyles, and the action of the directors was formally ratified and approved by the shareholders.

Vice-Chancellor Backes in his opinion (page 79), says:

“The gravamen of the bill, under the statute, is that the scheme was suppressed and the pur-

chasing public deceived, or is intended to be misled. That it was rank fraud to take from the uninformed as high as \$17.50 per share, for a share worth no more than the dollar the Doyles paid is not debatable, and that this was done is admitted by the Doyles."

We have been unable to find an opinion of an Appellate Court construing a statute of similar import, so far as relates to fraudulent concealment or suppression.

With the exception of New Jersey, the only remaining States, so far as we have been able to discover, that do not require a preliminary approval and consent by a State Department to the issuance of securities, are Connecticut, Massachusetts, and New York.

The Connecticut statute, G. S., Sec. 3461, as amended, P. A. 1929, Ch. 218, provides that before the offering for sale of certain classes of securities to the public, certain statements shall be filed in the State Department.

The Massachusetts statute, Ch. 110a, as amended, contains in its definition of fraud, "An intentional failure to disclose a material fact."

The New York statute does not by its terms include fraudulent concealment or suppression.

Hence we can look for very little aid in the construction of this phrase by the Courts of other States. In fact, we have not been able to find such a construction.

Under the licensing plan where the whole financial set-up and the literature to be employed in advertising the promotion is required, the question

of concealment and suppression can hardly arise. In fact, it is far more hazardous to offer securities for sale under the provisions of the New Jersey Act than in those States requiring preliminary approval by a State Department. What may be considered fraudulent concealment or suppression is left to subsequent judicial determination, and the standard applied by the Attorney-General in his bill of complaint, if adopted by the Court, only emphasizes this danger.

No proof of any affirmative fraudulent representation to any stockholder appears in this case, the opinion of the learned Vice-Chancellor being based upon a supposed fraudulent concealment or suppression by the Doyles, or either of them, in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution of securities within this State.

This raises at the outset the question of whether or not that which is specifically authorized by the statute relating to the issuance of no par value stock (P. L. 1921, Ch. 833), is *per se* fraudulent, and whether in every case where stock is issued and sold for such consideration "as from time to time may be fixed by its board of directors," it is incumbent upon the corporation, or its agent, in the sales of stock to advise the prospective purchasers of the variant rates at which it has been authorized for sale or has actually been sold. It would seem that the existence of such a law on the statute books would in itself be sufficient notice to the public that it was lawful to issue and to sell no par value stock at variant rates.

It was not the view of either counsel or the parties

that the fixing of such rate as authorized by the statute was or could be in itself fraudulent. At the time the success of this or of any such corporation was more or less problematical, and its success would depend upon the energy and enterprise of John W. R. Doyle.

In fixing the several rates for the stock it was believed to be fair and just that those who purchased stock during the early stages of the company, and before its success was assured, should have the right to purchase at a lower rate than those who came in later when the company's affairs should assume a more stable basis, and the element of loss would be lessened and the probabilities of gain increased.

It was also evident that John W. R. Doyle as the executive head of the company knew that a large amount of work would be entailed upon himself during the formative period of the company's business, and he proposed to, and did, devote his exclusive time to the affairs of the company without salary or compensation for a period of two years.

Out of the stock subscribed for by John W. R. Doyle there was sold at the same rate 1100 shares to responsible and important men in the community, and thereafter sales were made at the various rates in 75 instances, where earlier sales had been made at lower rates and later sales at higher rates.

It is well known that during the pioneering period in any enterprise special inducements are made in the form of lower prices to those who first purchase, and such practice has never, so far as we know, been condemned, nor do we believe that condemna-

tion should be visited upon a long established economic practice.

It is not claimed that any affirmative misrepresentation whatever was made with relation to the rates at which the various shares of stock were sold, and no stockholder is complaining of any injustice or inequity arising out of the transaction.

It is not a fair assumption that the stock purchased at \$17.50 a share was "worth no more than the dollar the Doyles paid." This company at the time of the filing of the bill of complaint had sold securities to the amount of \$213,957.50, out of which there was due as subscriptions from financially responsible persons a sum in excess of \$147,000, and there was only outstanding \$24,000 of bonds of the company, the principal of which was payable August 1, 1948, so that it is self-evident that the stock sold at the later period was far greater in value than the stock subscribed for by John W. R. Doyle at a time when the company was without any assets other than the amount due upon his subscription.

Fraudulent suppression and concealment.

The material inquiry here is whether the bill, as supported by the affidavit, discloses by legal evidence any transactions condemned by the Securities Act, P. L. 1927, Ch. 79, p. 138, as amended. This Act declares "unlawful certain practices in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution of securities within this State."

It is, therefore, to be observed that the affirmative

action of the Attorney-General is justified only by some act of fraud or fraudulent suppression in connection with the issuance, sale, offer for sale, etc., of securities to the public, and that the Attorney-General under the Act is not a general censor of all of the affairs of the corporation, nor is he a regulator of business, nor is he concerned in the business expediency of the plan of financing. This has recently been determined by the Supreme Court of Pennsylvania in the case of *Insuranshares Corp. v. Pennsylvania Securities Commission*, 148 Atl. Rep. 107, where, in construing an Act of similar purport, the Commission disapproved of the plan, and refused to register a corporation as a dealer in securities because the Commission did not approve the company's plan of business, where there was no finding that the securities offered to the public were not offered honestly and in good faith. This was held to be unwarranted. The Commission "did not base its determination on 'whether the securities are being offered to the public, honestly and in good faith without an intent to deceive or defraud'—indeed, a conclusion of dishonesty, bad faith, deception, or fraud could not be reached from the evidence before it, but upon its judgment of the *business expediency of the plan of financing, which we said is not its function*" (Italics ours).

The Court said, *inter alia*, in its opinion, at p. 108:

"The factor which seems to have had the most potency, in the Commission's mind, in reaching its determination not to register appellee, is the 18 shares of Class B certificates which go to the Management Corporation for

each 100 shares of the two classes of certificates sold by appellee. As to this the Commission found, 'That Insuranshares Management Company will receive approximately 15% of the dividends and increase of the value of the securities deposited in the trust fund over and above the 3% paid to the holders upon the par value of Class A certificates by the issuance to it of 18 shares of Class B certificates for each 100 shares of combination Class A and Class B certificates,' and concluded that this was a greater amount than should be paid, and that there was no necessity for the establishment of a separate management company. With this the Commission had nothing to do. It is not a regulator of business. If it had been set up as such, it might be of doubtful constitutional existence. The Commission further determined that the net return of less than 3 per cent on the Class A shares after charges were deducted was an inadequate return. Here again it was trenching upon something with which it had no concern. Every investor knew just what he would receive and was, of course, counting upon a much greater return upon the B shares. The Commission also considered the circumstances that by the provisions of the trust agreements the holders of the certificates are denied voice in the control and management of the trust fund as one militating against appellee's right to registry. This is true of the great majority of trusts of all kinds under wills, by deeds, and by contract; the beneficiaries have no voice in control and management. This is a matter of

business expediency also outside of the Commission's province, as is the circumstance, criticized by it, that the trust agreements do not set forth what stocks have been purchased, with their amounts."

It is to be observed that under the Pennsylvania case the certificate-holders were denied voice in the control and management of the trust fund, and that the Court considered this a matter of business expediency also outside of the Commission's province.

It is significant that although the Attorney-General had in his possession the books and records of the company, including a list of stockholders, the name of no single stockholder claimed to have been defrauded is stated in either the bill or the affidavit, nor is there any affidavit from any stockholder claimed to have been in any way misled or defrauded.

So far as transactions with prospective stockholders or purchasers of securities are concerned, the bill and affidavit make charges only of fraudulent suppression. These relate to charges that the controlling interest in the corporation was sold to John W. R. Doyle at prices ranging from \$1.00 to \$5.00 per share, and that it was not disclosed to such persons that Charles R. Doyle was to be paid a commission of 20 per cent, nor that it was not disclosed that 60% of the receipts had been paid out in commissions; also that there was a non-disclosure as to certain salaries amounting to \$8,513, and further that there was a suppression of an alleged secret profit that John W. R. Doyle was to make out of the sale of certain mortgages, and that there was

a further suppression of the fact that the mortgages were carried on the books of the Washington Loan Company of Atlantic City at par, thus creating an apparent but non-existent surplus.

Dealing with the question of the stock issued to John W. R. Doyle, this stock was issued pursuant to P. L. 1921, Ch. 833, which provides, in part, as follows:

“Every such corporation may issue and may sell its authorized shares without nominal or par value from time to time for such consideration as may be prescribed in the certificate of incorporation or any amendment thereof, or if so provided in the certificate of incorporation as from time to time may be fixed by the board of directors.”

The certificate of incorporation having contained an appropriate provision, the considerations to be established for the various groups of stock were fixed by an appropriate resolution of the board of directors. At that time there were no shareholders, except the directors voting in favor of the proposition, and the action of the board was approved at a meeting of the stockholders, at which every share of stock was represented, so that there could have been no fraud affecting any existing stockholders, and those who came in later came in under the status of the stock that had been established, and subject to such existing status.

This immediately raises the question as to whether or not that which is *expressly authorized by statute is in itself fraudulent*. It was not believed to be so by the directors, nor has counsel been able to find

any case characterizing such a transaction authorized by the Legislature as fraudulent.

In discussing shares of no par value, J. B. R. Smith, in his work on New Jersey Corporation Law, Suppl. 1927, at pages 4 and 5, says:

“It has been observed, among other things, first, that the use of such shares (no par value shares), is forcing a popular recognition of the fundamental fact that corporate capital is separate and distinct, not only from corporate shares, but also from that indefinite thing called ‘capital stock.’ Second, that such shares need not be capital shares at all, that they may have no relation to real capital, that they primarily are *shares of interest, which may be shares of interest in capital or in assets, or in the management, or in the profits, or in all four.* Third, *these shares are indicating the way whereby not only mental energy, but physical energy as well, may acquire share interests without the necessity for capital investment*” (Italics ours).

* * * * *

“Here the membership rights in business corporations are expressed not in terms of dollars, but in terms of interest; if that interest be in the capital it may also be expressed in terms of dollars. If, however, the interest of the member is the result of some contribution of his beside capital, that is, if it is a personal contribution, a contribution of either mental or physical energy, or both, there is an opportunity to express it in an honest, straightforward way without reference to or without affect-

ing the corporate capital. These shares simply represent the interest, whatever its nature may be, which the member has in the corporate contract'' (pages 4 and 5).

* * * * *

''With par value shares there is *prima facie* evidence of the amount of the actual security upon which the vendor reasonably may rely and which the vendee has a right to accept. With shares which have par value, there is no evidence of the security. The investor is immediately put on his guard, and any misrepresentation becomes much easier both to detect and to punish'' (page 7).

As to the purchase of the 17 mortgages referred to in the opinion of the Vice-Chancellor, the uncontradicted affidavit of Charles R. Doyle (page 62) stated that he was deceived in the purchase of the mortgages by one Harry Bogatin, from whom he agreed to purchase the same, by Bogatin, while riding in an automobile on the main State road from Atlantic City to New York, pointing out as the property covered by these mortgages lands closely adjoining the main New York-Atlantic City shore road, and while passing the ''White Oak Inn,'' about a mile north of New Gretna, he indicated the property as ''right back of the White Oak Inn within a stone's throw of the road,'' and that Charles R. Doyle believed that property, so closely adjacent to the main New York Highway, was easily worth a sum in excess of the \$20,000 which the Washington Loan Company agreed to pay therefor, and that it was not until the latter part of April or the early

part of May that he had any knowledge that the property covered by the mortgages was located at a point six or seven miles remote from the point indicated by Bogatin.

As a matter of fact, the transaction was never wholly completed in that no moneys or securities had been delivered to Bogatin at the time of the filing of the bill (page 64), and no injury had or would result to the stockholders of either company therefrom.

John W. R. Doyle, in his affidavit (page 48), says:

“In view of the misrepresentations made by the said Bogatin which formed the basis of the sale of the said bonds and mortgages to the Washington Loan Company, it is my purpose, if the business of the company is permitted to continue, to recommend to the board of directors that the purchase thereof, and all transactions relating thereto, including the issuance of stock of the Washington Loan Company of Atlantic City therefor, be rescinded, and that an appropriate entry covering the same be placed in the company's books of account. I have conferred with other directors of the company unofficially, and I believe that such action will be taken by the board of directors.”

At any rate neither corporation nor any stockholder has been or can be injured by this transaction.

While the learned Vice-Chancellor has reached the conclusion that this transaction gave the Washington Loan Company “a false credit standing by

which purchasers were deceived," it is a fact that no purchaser was deceived or attempted to be deceived by this transaction. All sales of stock were under the management of Charles R. Doyle, who says in his affidavit (page 67):

"I deny specifically that the statement of the Washington Loan Company, dated December 31, 1929, was forwarded or disclosed to any one except existing subscribers to the stock and debentures of the Washington Loan Company, and I further deny that in the promotion and negotiations of the sale of the capital stock of the Washington Loan Company this statement was disclosed or exhibited to any one, and I deny that any stock or securities were sold or offered for sale upon any representation with reference thereto."

The bill of complaint was filed June 4, 1930, six months after the mailing of the said statement, and it is significant that in this period only 62 shares of stock were sold, aggregating \$1,130, and bonds to the amount of \$3,400, or a total of \$4,530, and none of the subscribers to the stock and bonds last referred to have come forward and claimed any deception, nor has the Attorney General named any of the parties to whom it is claimed such representations were made, although furnished with a complete list of security holders of the company prior to the filing of the bill of complaint.

Charles R. Doyle was not a member of the board of directors of either company, nor was it shown that prior to the filing of the bill of complaint he had any knowledge whatever of the issuance of the

statement of December 31, 1929. Certainly he must be held guiltless of any responsibility in the issuance of such statement, and in view of his positive denial, and in the absence of conflicting proof, he must be held likewise guiltless of making any sales or offerings for sale in reliance upon the said statement.

It is not shown that Charles R. Doyle had anything whatever to do with the sale of the mortgages to the Washington Loan Company of Atlantic City. His sole connection with the matter was to offer the same for sale at the sum of \$20,000 to the Washington Loan Company.

This transaction in itself had nothing whatever to do with the sale or offering for sale of securities. In the absence of a fiduciary relationship he had the right to sell at a profit to the Washington Loan Company, but in any event the statute is concerned in the sale or offering for sale of securities, and not in the determination of all questions of alleged fraud. The general powers of the court of equity are amply sufficient to deal with such problems in a plenary suit.

As to John W. R. Doyle: As a matter of fact, this gentleman made no sale or offering for sale of any of the stock of either of the two companies. He comes within the condemnation of the learned Vice-Chancellor because of the mortgage transaction, and the carrying of these mortgages upon the books of the Washington Loan Company at their face value. While we do not sanction any such method of accounting, we believe that this was not done by John W. R. Doyle with any purpose to defraud. Certainly the Washington Loan Company,

who owned all of the stock of the Washington Loan Company of Atlantic City, could not have been defrauded by the transaction.

In doing this, John W. R. Doyle was apparently attempting to capitalize anticipated profits. However this may be, no one was defrauded and no stock was sold or offered for sale on the basis of the mortgage transaction. We feel that the real test is a fraud in a sale or attempted sale of securities as defined by the Act, and that it is not intended by this Act to take cognizance of all transactions charged to be fraudulent. Indeed, in this case no suit in equity was necessary. The transaction not having been consummated by the payment of the consideration, it was easily the subject of rescission without injury to any stockholder.

The learned Vice-Chancellor in his opinion (page 80) says:

“The Doyles circulated a financial statement of the Washington Loan Company which carried as an asset the worthless 334 shares of the Washington Loan Company of Atlantic City (face value \$33,400) at \$100,200. That it was false is conceded. That it was innocently issued, as they plead, is not true. They say it was not sent to *prospective* purchasers, but only to those who had previously purchased stock. *They were prospects for more.*” (Italics ours.)

This seems to be based solely upon an assumption. Unless they were approached or solicited to purchase the stock upon the faith of the financial statement it matters not that they were *possible* prospects for

more, which is the most that could be said in this connection.

The learned Vice-Chancellor in his opinion (page 81) says:

“The Washington Loan Company of Atlantic City was also guilty of participating in the fraudulent sale of stock by the Washington Loan Company, by giving the latter’s stock a false credit standing *by means of which purchasers were deceived.*” (Italics ours.)

There is no proof whatever that any purchaser was deceived by the false credit standing referred to.

One of the charges is suppression of the fact that Charles R. Doyle was being paid a commission of 20 per cent. The affidavits disclose that a commission of from 20 to 25 per cent is usual upon the sale of the securities of a corporation not well known to the public, and that the fact both of the issuance of the stock at the rates above mentioned, and of the commission arrangement, was reported to the Attorney-General’s office some twenty months ago, with no objection on his part until the filing of the bill of complaint, and that out of the 20 per cent Charles R. Doyle was obliged to pay salesmen acting under him at the rate of 15 per cent, and required to defray all of his traveling and other expenses incident to such sale, with the result that Charles R. Doyle received net in the neighborhood of from two to three per cent. There is no evidence by way of affidavit or otherwise that this commission was exorbitant and unconscionable, and rests solely upon the conclusion of the Attorney-General.

DOES THE DOCTRINE OF CAVEAT EMPTOR
NO LONGER EXIST?

In a more or less unsuccessful attempt to protect the foolish and credulous from their own folly shall the doctrine of *caveat emptor* be abolished? Is it necessary to construe this statute so far as fraudulent suppression or concealment is concerned, to hold that all purchasers of stock are so mentally incompetent and possessing so little acumen, or even common sense, that they shall be relieved of making any inquiry whatever either from the company or the person offering securities for sale, or from outside sources? Has the State intended to classify intending purchasers of securities as mentally incompetent or incapable of conducting their own affairs to such a degree that a person offering securities for sale must disparage his own wares to advise the purchasers of every fact and circumstance tending to depreciate the price or value thereof, and then attempt to sell the disparaged securities?

How far must the person offering securities go in order to escape the imputation of fraudulent concealment or suppression? If the bill of complaint be any criterion of the standard adopted by the Attorney-General's office, then in this case the defendant, Charles R. Doyle, would have been compelled to have stated to prospective purchasers the following facts:

(a) That the corporation had authorized the issuance of no par value stock at variant rates.

(b) That a contract had been entered into whereby Charles R. Doyle was to be paid a commission of 20 per cent. (It is uncontradicted that this is a commission on sales of this character.)

(c) That the Washington Loan Company of Atlantic City had been refused a license to operate as a small loan broker.

(d) That the stock had been sold to John W. R. Doyle at rates ranging from \$1.00 to \$5.00 per share.

(e) That salaries were paid amounting to \$8513.00. (These were usual salaries for clerical help, etc., no salary having been paid to John W. R. Doyle.)

It is quite certain that if statements of this kind were made to an intending purchaser there could be no sale of any stock or securities in this State.

Can it be imagined that it was the duty of Charles R. Doyle to say to a prospective purchaser, among other things, "I am receiving a commission of 20 per cent upon the sale of this stock, and the company has paid salaries amounting to \$8513.00"? Yet, in the view of the Attorney-General's office, the mere payment of the customary commission and the payment of customary salaries, if not disclosed to a prospective purchaser, amounts to a fraudulent suppression.

Would it not be far more in accord with sane and established business and economic custom to require the prospective purchaser to make direct inquiries of the person offering the securities for sale? If the questions were answered truthfully there could

be no fraud. Answered untruthfully there would be a positive affirmative fraud as distinguished from so-called fraudulent concealment or suppression. If the security salesman declined to answer, this would sufficiently put the intending purchaser upon his guard. At any rate if the sale of securities authorized by the no par value statute (P. L. 1921, Ch. 833) is to be deemed *per se* fraudulent if made without disclosure of the variant rates, this will wholly destroy the value of that statute, as a practical matter. Any company proceeding under it, if required to make the disclosure in accordance with the finding of the Vice-Chancellor, and with the standard prescribed by the Attorney-General, would be unable to market its securities. However, if this be the view of the Court, it is hoped that it will clearly and explicitly declare the law in order that the Bar and the business world may know what standard is to be applied to the sale of securities issued under the authority of the Act of 1921.

In the attempt to enforce such a standard are we not imposing an impracticable and unworkable theory and unduly fettering corporate interests in an attempt to obviate the necessity of reasonable inquiry upon the part of prospective purchasers of securities? We have not the slightest objection to the interposition of the State's agencies to suppress actual and positive fraud. We do not think there is grave danger in the extension of the doctrine of fraudulent suppression and concealment, which necessarily assumes as its major premise that no duty of vigilance or inquiry whatever exists on the part of the intending purchaser.

The doctrine of *caveat emptor* still exists.

“In contracts of sale disclosure is not ordinarily incumbent on the seller, the rule being *caveat emptor*, and the mere failure to disclose material facts does not constitute fraud.”

35 Cyc., p. 68.

Even “dealer’s talk” is still permissible. This is defined as:

“Commendatory expressions and extravagant statements, such as men commonly use to puff their wares and induce others to enter into bargains, are not deemed to be representations of fact.”

35 Cyc. at p. 71.

Ex Parte Affidavits.

The bill of complaint is supported only by the *ex parte* affidavit of Mr. Coffin, Special Assistant Attorney-General, based largely upon hearsay information, and do not in themselves afford a basis for relief.

An *ex parte* affidavit, even where it purports to be made upon the direct knowledge of the affiant, is classified by Wigmore as hearsay, and, therefore, inadmissible.

“Theory of the hearsay rule. The fundamental test, shown by experience to be invaluable, is the test of *cross-examination*. The rule, to be sure, calls for two elements, cross-examination proper, and confrontation; but the for-

mer is the essential and indispensable feature, the latter is only subordinate and dispensable.

1. The theory of the hearsay rule is that the many possible deficiencies, suppressions, sources of error and untrustworthiness, which lie underneath the bare untested assertion of a witness, may be best brought to light and exposed by the test of cross-examination. * * * It is here sufficient to note that the hearsay rule, as accepted in our law, signifies *a rule rejecting assertions, offered testimonially, which have not been in some way subjected to the test of cross-examination.*”

3 *Wigmore on Evidence* (2 ed.), p. 3, Sec. 1362.

“History of the rule. Under the name of the hearsay rule, then, will here be understood that rule which prohibits the use of a person’s assertion, as equivalent to testimony to the fact asserted, unless the assertor is brought to testify in Court on the stand, where he may be probed and cross-examined as to the grounds of his assertion and of his qualifications to make it.”

3 *Wigmore on Evidence* (2 ed.), p. 9, Sec. 1364.

“The Court, in considering the sufficiency of a bill in equity, will not accept the conclusion drawn by the pleader, but will determine for itself the legal force of the facts alleged.”

Schuler v. Southern Iron & Steel Co., 77 N. J. Eq. at p. 60, (N. J. Ch. 1910.)

“The rule against characterizations, hearsay, conclusions and argumentative statements in evidence applies as well to *ex parte* affidavits as to testimony given in open Court.”

Bull v. International Power Co., 87 N. J. Eq., p. 1, 2, (N. J. Ch. 1916.)

“When it is permissible to make an affidavit on information and belief, the source of the information and belief must be stated.”

Dorian v. Davis, 147 At. Rep., p. 338, (N. J. Ch. 1929). (Not yet officially reported.)

“Hearsay is equally as incompetent in evidence as in oral testimony.”

O'Neill v. Linowitz, 92 N. J. Eq. 179, (N. J. Ch. 1921.)

“There is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, and which is more dangerous in a doubtful case, than the issuing of an injunction.”

Citizens Coach Co. v. Camden Horse R. R. Co., 29 N. J. Eq. 299, at p. 303, (E. & A. 1878.)

“Also, it is the general rule that when the equity of the complainant is disproved by the answer and affidavits, a preliminary injunction is not proper.”

Citizens Coach Co. v. Camden Horse R. R. Co., 29 N. J. Eq. 299.

The present proceedings are wholly destructive. The work of two years and property of stockholders aggregating 7635 shares would be wholly destroyed, as well as the property of a large number of bondholders, with no compensating advantage.

A receiver appointed on the Attorney-General's allegations could scarcely hope to collect one cent from the subscribers to the company's securities. Certainly, he could not consistently, after charging that the sales had all been procured by fraud, seek to collect anything.

Without a single stockholder asking for such action, the company would be destroyed. It has an extremely valuable asset in its more than 300 banker shareholders, the cost of procuring which, together with the incidental costs of operation during the formative period of the company, would probably exceed \$50,000.

It is interesting to note that in the case of *Stevens, Attorney-General, v. Associate Mortgage Co.*, opinion filed Dec. 5, 1930, Docket No. 80-316 (not yet reported), Chancellor Walker held that in cases of this character the summary hearing is a complete trial of the issues, and no subsequent hearing can be had.

It is respectfully submitted that upon the whole case the four decrees entered in this matter should be reversed.

CARR & CARROLL,
*Solicitors for and of Counsel
with Appellants.*

New Jersey Court of Errors and Appeals

Between

WILLIAM A. STEVENS, Attorney General of the State of New Jersey,

Complainant-Respondent,

and

WASHINGTON LOAN COMPANY, a New Jersey corporation;

WASHINGTON LOAN COMPANY OF ATLANTIC CITY, a New Jersey corporation;

JOHN W. R. DOYLE and

CHARLES R. DOYLE, *et als.*,

Defendants-Appellants.

On Bill, etc.

On Appeal from the Court of Chancery.

BRIEF OF RESPONDENT.

Facts.

The Washington Loan Company was organized February, 1928, under New Jersey laws, as Marvin Loan Company by appellant, John W. R. Doyle. It assumed its present title some time later. At the time of the filing of the bill, its capitalization was 10,000 shares of no par value stock. It had also authorized the issuance of \$2,500,000 8% twenty year debenture bonds. John W. R. Doyle, president of the corporation and its dominant factor throughout its career, subscribed for 5,000 shares of stock, payable within three years, at \$1.00 per share for 3,500 shares, \$2.50 for 750 shares and \$5.00 per share for the remaining 750 shares. At the same time the Board of Directors, the members of which held only a sufficient number of shares to qualify

them as such, resolved that the remaining 5,000 shares of stock be sold to the public at prices ranging from \$10.00 per share to \$20.00 per share.

Several days later, Charles R. Doyle, son of the president of the corporation, who had previously been associated with his father in the sale of securities of Finance Service Corporation of New Jersey, recently enjoined and placed in the hands of a receiver by suit of the Attorney General, entered into contract with the corporation to act as its sole representative in the sale of its securities for a period of ten years on a basis of 20% commission. The intimacy and friendship prevailing between the corporation and Charles R. Doyle is better demonstrated by an agreement between them that even in the event of a cancellation of the foregoing contract, he was to receive 5% of the subscription price of all securities sold and issued by the corporation up to and including June 1, 1938.

At or about this time the Doyles organized Washington Loan Company of Atlantic City under New Jersey laws with an authorized capitalization of 500 shares of \$100 par stock. No consideration of any sort whatsoever was paid in. The ostensible purpose of this company was to engage in the small loan business under the Small Loan Act of 1914 and attempts were made on divers occasions to procure a license from the Department of Banking & Insurance so that it might have authority so to do. No such license was ever forthcoming, however, and the corporation never functioned except as an aid or means through which the Doyles and the Washington Loan Company marketed their securities to the public.

John W. R. Doyle purchased 3500 shares of stock of Washington Loan Company at \$1.00 per share. He has distributed and transferred a number of these shares, but now owns 1388 shares, while his son, Charles R. Doyle, owns 1387 shares. The purchase price of these 2775 shares was \$3,337.50. Bonds and stock of the corporation were thereafter sold to the public in the amount of approximately \$230,000.00. Of receipts from said sales up until February 28, 1930, amounting to \$71,392.09, all but \$1,289.84 was paid out for organization expenses and commissions. The chief reason for this condition was the practice of the corporation of paying to Charles R. Doyle 20% of the subscription price as soon as 25% of said subscription price had been paid in, even though payments were then in default and arrears.

In June, 1929, John W. R. Doyle contracted to purchase for \$7,500.00 seventeen first mortgages on seventeen properties located in Bass River Township, Burlington County, New Jersey, whose face value was \$99,600.00, from one Harry Bogatin, who has since been permanently enjoined from any further dealings in securities within this State. Doyle thereafter instructed his son, Charles, to offer these mortgages to the Washington Loan Company for \$20,000.00, which was done, and the mortgages transferred and assigned. In October of 1929, Washington Loan Company subscribed for 490 shares of the capital stock of Washington Loan Company of Atlantic City, having a par value of \$100.00 per share, at the rate of \$300.00 per share, and in consideration therefor executed an assignment of the seventeen bonds and mortgages, above referred to, in full payment of 334 shares of stock. This transaction constituted the only subscription to

the capital stock of Washington Loan Company of Atlantic City. Its parent company, Washington Loan Company, thereafter listed among its assets the 334 shares of capital stock of the Washington Loan Company of Atlantic City, at a figure of \$100,200.00. The original purchase price of the property, whose mortgages were thus bartered and sold, was \$50.00.

The Washington Loan Company thereafter issued a financial statement which it circulated to the general public and its stockholders. This statement carried, as an asset, stock in subsidiary companies—\$100,200.00. All of the above facts and condition of affairs were suppressed and concealed from and misrepresented to the public to whom the Washington Loan Company, Washington Loan Company of Atlantic City and the two Doyles, promoted, negotiated and sold their stock.

Nature of Proceedings.

Complainant filed a bill against the defendants under the provisions of the New Jersey Securities Act, Chapter 79 of the Laws of 1927, the amendments thereof and supplements thereto, in the manner provided by Section 6 of said Act. On the basis of the verified bill so filed, Vice-Chancellor Backes made an order on the 4th day of June, 1930, directing the defendants to show cause before the Court of Chancery, why the relief prayed for by the complainant should not be granted. The defendants were served as provided for in said order and the matter was subsequently argued by counsel before Vice-Chancellor Backes on the first day of July, 1930, and a decree entered enjoining the defendants

from any further sale of securities, and appointing a receiver.

The bill filed on behalf of the complainant was supported and verified by the affidavit of the Special Assistant Attorney General who investigated the matter. The affidavit of the Special Assistant Attorney General included certain excerpts of testimony of various individuals who had appeared before him and who had testified under oath concerning their participation in the scheme. The affidavit also recounted the general nature of the scheme and alleged certain facts which had been adduced by the affiant at various examinations of the individual defendants to the proceedings, as well as from other sources which complainant was prepared to and offered to reveal to the Court whenever occasion warranted.

Questions Involved.

Nowhere in the appellants' brief is there any statement as to what specific points they are trying to raise or what propositions either of law or fact they intend to establish, and practically no authorities from this or any other jurisdiction are cited. In answering their contentions and attempting to present the respondent's side of the case in a logical manner, we have divided our argument into a discussion of the following questions:

- I. Is the New Jersey Securities Act as interpreted by the Court of Chancery a proper exercise of the police power?
- II. Is the Court of Chancery without power to enjoin violators of the statute except in cases where a victim formally complains or it is shown that someone has been defrauded?

- III. Is the decree of the Court of Chancery in this case under the New Jersey Securities Act inconsistent with the provisions of Chapter 833 of the Laws of 1921 relating to no par value stock?
- IV. Were the pleadings with their supporting affidavits and the facts established thereby sufficient to warrant the Court of Chancery in making the decree?

ARGUMENT.

I. The New Jersey Securities Act is a proper exercise of the police power and it should be so construed as to carry out the legislative intent to protect the public.

The appellants contend that the New Jersey Securities Act as interpreted by the Court of Chancery "is opposed to all sense of natural justice and equity" and they take the liberty of making the following alarming statement in relation to the effect that enforcement of the statute is having:

"Already the hegira of corporations from New Jersey to Delaware is now in progress, with a decided loss of revenue to this State. The New Jersey 'Blue Sky' Law, as interpreted by decisions of the Court of Chancery, has given the business corporations the impression that New Jersey's erstwhile warm hospitality for corporations has been succeeded by cold hostility."

There is nothing in the record of this case to justify such a statement and so far as the appellants are concerned a review of the facts clearly indicates that if they had confined their operations to the State of Delaware or another place even further away some of the citizens of New Jersey would be in a much better financial

position than they are at the present time. Statutes designed to expose, prevent and suppress fraudulent practices in connection with the vending of corporate securities were enacted by the legislatures of neighboring states a number of years ago and the enforcement thereof prior to the passage of our act caused great numbers of persons engaged in such unlawful operations to transfer to New Jersey. Confidence men and swindlers of all kinds were quick to take advantage of the situation and the most fantastic schemes were contrived which operated with great profit and comparative safety to their promoters because existing laws were absolutely inadequate to cope with them. Our state was one of the last to enact effective securities fraud legislation and today Nevada, Delaware and the District of Columbia are the only governmental units which do not have it on their statute books in some form.

Laws designed to curb the activities of fraudulent stock salesmen fall into two general classes, namely, LICENSING OR REGISTRATION acts and FRAUD OR INJUNCTIVE acts. Types of legislation in the former class, which have been adopted by most of the states, are administered by commissions who license stock issues or stock salesmen or both. In some of the other states situated on the Atlantic Seaboard, where there is a tremendous volume of transactions in securities, it has been felt that the administration of such legislation would be impractical because of the burden that it places on legitimate business and varying types of the latter class have been enacted. New Jersey's law like that of New York is in this latter class. Because of the fact that New York's statute has been in force longer than New Jersey's, there are more

decisions relating to it and the attitude of the courts of that state is clearly expressed in the case of *Dunham v. Ottinger, Attorney General*, 154 N. E. 298, wherein Chief Justice Hiscock said:

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

In the foregoing case the constitutionality of the New York statute was upheld by a unanimous opinion of the Court of Appeals of the State of New York and the decision was taken

to the United States Supreme Court by writ of error. This writ of error was dismissed in a *per curiam* decision rendered January 16, 1928. The memorandum thereof will be found in 72 U. S. Sup. Ct. (Lawyers' Edition) at p. 237. The United States Supreme Court has also held that the statutes of other states designed to suppress fraudulent practices in connection with the vending of corporate securities were a proper exercise of the police power:

Hall v. Geiger-Jones Co., (Ohio) 242 U. S. 539.

Caldwell v. Sioux Falls Stock Yards Co., (South Dakota) 242 U. S. 559.

Merrick v. Halsey & Co., (Michigan) 242 U. S. 568.

A case involving the New Jersey Securities Act has been before the Court of Errors and Appeals of New Jersey on only one occasion, and the points there involved, were not the same as in the matter *sub judice*, but the decision of the Chancery Court was affirmed, without comment, on the opinion of Vice-Chancellor Backes. See *Edw. L. Katzenbach, Attorney General v. The Tomadelli Electronic Corporation and Juan J. Tomadelli*, 102 N. J. E. 186, affirmed 144 Atl. 920; 7 A. R. 371.

The following quotation from the opinion of Justice Ernest I. Edgecomb, of the Appellate Division of the Supreme Court, in *Attorney General v. F. H. Smith Company*, decided July 1, 1930, is a most valuable illustration of the attitude of the New York Courts in interpreting their statute:

"The statute is remedial in its nature, and was passed to protect the inexperienced, confiding and credulous investor, and save him from his own foolish cupidity. It should,

therefore, be liberally and sympathetically construed in order that its beneficent purpose may, so far as possible, be attained.

"This statute was before the Court of Appeals in *People v. Federated Radio Corporation*, 244 N. Y. 33, and it was there held that it should be given such a broad construction as would put an end to all visionary and fantastic schemes of promoters in the sale and disposition of securities, whereby the public would be fraudulently exploited, so far as that might be done. The words 'fraud' and 'fraudulent practice' were construed to include all acts which tended to deceive or mislead the purchasing public, even if such acts were done without any actual design to perpetrate fraud or injury upon others. It was said that fraud, as used in the statute, included 'all deceitful practices contrary to the plain rules of common honesty.'

"This record presents a picture, as I view it, of an attempt on the part of these promoters to float a project, which undoubtedly they hoped and probably believed would eventually be successful, by putting over on the public a bond issue large enough to pay for the entire property, and without putting any of their own money in the enterprise. Under such circumstances, they have quite naturally put their best foot forward. But in so doing, they have inflated and exaggerated the value of the security out of all proportion, in the hope that the unsuspecting and long suffering public will be induced to buy the bonds, and put up the requisite money. If the fondest dreams of the promoters are realized, then the interest will be met, and the bonds eventually taken care of; if their hopes do not materialize, the loss will fall not upon them, but on the bondholders. This was one of the situations which the legislature had in mind when it passed the Martin Act, and one which it was sought to make impossible." 243 N. Y. Supp. 446.

We appreciate the fact that the New Jersey Courts are not bound by decisions from other States, but in the absence of cases in our own jurisdiction, the reasoning followed by them in passing on similar statutes is worthy of consideration, and the following quotations are respectfully submitted as an indication of the trend of judicial thought in matters of this kind.

"The purpose of the statute is to protect the public against imposition. It is a new form of regulatory care which, in the course of a few years, has swept over thirty-three states. It has been said that its popular name indicates the evil at which it has been aimed, that is, speculative schemes having no more basis than so many feet of blue sky, (Hall v. Geiger-Jones Co., 242 U. S. 549, and other cases cited) and that it is intended to put a stop to the sale of shares in visionary oil wells, non-existing gold mines, and other 'get rich' schemes calculated to despoil credulous individuals of their savings. *It is a proper and needful exercise of the police power of the state and should not be given a narrow construction.*" *State v. Gopher Tire & Rubber Co.* (1920) Minnesota Supreme Court, 177 N. W. 937, at page 938.

"In short, the evidence shows that a gross fraud was perpetrated by that corporation on the defendant in inducing him to purchase its stock. It was to throttle in their infancy just such schemes as this that our Blue Sky Law was enacted, and it was the imposition being practiced in a confiding public by promoters of such schemes which gave birth to the Blue Sky Law." *Burns v. Bauer*, (Cal.) 174, Pac. 346, 36 Cal. App. 251, at page 348.

"* * * The objects then, are to prevent fraud and unfair dealing in securities, as well as to prevent honest people, free from sinister influences, from investing in uncertain, ephemeral, 'get rich quick' stocks and securities. In other words, it is a statute

designed, in part, to protect credulous persons against their own inherent weakness—a weakness akin to the gambler's hope of winning a prize. We think it is well settled that both of these objects, within constitutional bounds, properly come within regulations prescribed by the police of the state. Clearly, the state has the right to protect its citizens against impositions and frauds." *Hornaday v. State*, (Okla.) 208 Pac. 228.

"* * * The object of the law is to protect the public from the dishonesty, incompetence, ignorance and irresponsibility of persons engaging in the business of disposing of securities of uncertain value, whereby the inexperienced and confiding are likely to suffer loss.

"Sales by unknown and known resident vendors and sleek, peripatetic salesmen, with glib tongues and indurated consciences, of stock or other securities for the purpose of developing wild cat oil fields in distant states, mythical rubber plantations in Guatemala, or imaginary copper mines in Mexico, for extracting gold from sea water and light from cucumbers, and developing power from the rise and fall of the tides, and for the hundreds of visionary schemes, domestic and foreign, designed to secure a great return from a small investment in a short time, fall within the terms of the act." *Stewart v. Brady*, (1921) 300 Ill. 425, 133 N. E. 310.

II. It is not necessary that a victim complain or that anyone shall actually have been defrauded in order to give the Court of Chancery jurisdiction to enjoin violators of the New Jersey Securities Act and impose the other penalties provided in the statute.

The New Jersey Securities Act is intended to be preventive and authorizes the Attorney General to proceed "whenever it shall appear to the

Attorney General from any report or statement filed, from any examination made as provided for in this Act, or from any other source, that any person, partnership, corporation, company or association has engaged in, is engaging in, or is about to engage in any practice declared to be illegal and prohibited by this Act * * *” (Section 6).

The appellants repeatedly advert to the fact that no stockholder or victim has been heard to complain of the appellants’ actions anywhere in this suit, and they say:

“If the rights of *bona fide* stockholders under a New Jersey charter are so insecure that a few or even a single misrepresentation, wholly unauthorized, by a security salesman, may result in the destruction of the corporate property by an injunction and receiver, and without a hearing to the parties to be affected thereby, and in a summary proceeding against the corporation, and upon *ex parte* affidavits, then it would seem that a New Jersey charter is a mere rope of sand, and that stockholders are powerless to protect themselves in such a situation.”

There is no justification for such a statement. This case is not one of “a few or even a single misrepresentation,” but the complete suppression and misrepresentation of a rotten financial set-up from and to every person who parted with his good money in payment for securities. If any of these people had felt that they were being injured by the action of the Attorney General, the Court of Chancery would, without question, have allowed them to become parties to the suit, but not a single one made even the slightest attempt to intervene. Neither did the appellants Doyle bring any of them into the suit, and the solicitude of the Doyles for their victims now can be explained only by saying that it is a desperate

attempt to save themselves by trying to inject something into the case at a time when they well know that they have no right to do so. The lengths to which their desperation has led them is indicated by the statement on page 10 of their brief that they have a petition signed by one hundred stockholders, whose stock aggregates 1,475 shares, asking that the injunction and receivership decrees be vacated. This petition, if it is in existence, is not a part of the record of the case, and should not have been mentioned. If it is in existence, the past performances of the appellants Doyle are more than a sufficient indication as to the methods that must have been used in procuring the signatures.

We wish also to call attention to the repeated reference in the appellants' brief to the three hundred or more "banker" shareholders of the appellant companies. Except for statements made by one of the Doyles there is nothing in the record to indicate that the shareholders are bankers in any sense of the word and just what the appellants consider a "banker" to be does not appear. Evidently the use of the term is supposed to impress the Court with respect to the supposed financial experience of those who have invested their money. Assuming for the sake of argument that more than three hundred shareholders are "bankers," the very fact that they at no time in the proceedings have seen fit to oppose the Attorney General's action is a very clear indication that they do not agree with the Doyles as to the wonderful value represented by shares in the appellant corporations.

Referring again to the appellants' criticism that no stockholder or victim has asked that the appellants be enjoined or liquidated by receivership, attention is respectfully directed to Section

215 of the U. S. Criminal Code which prohibits use of the United States mails for the purpose of executing a scheme to defraud. In that statute, as in the New Jersey Securities Act, it was not intended that anyone should actually have been defrauded before proceedings could be started or that any victim should make a formal complaint. It has been specifically held by the United States courts under that statute that to obtain a conviction it was immaterial as to whether anyone had actually been defrauded. *Foster v. U. S.*, 178 Fed. 165. The courts have even gone so far as to hold that the scheme need not necessarily defraud, if carried out; it may only be reasonably adapted to defraud. *Durland v. U. S.*, 161 U. S. 306; *Rimmerman v. U. S.*, 186 Fed. 307.

In a prosecution for wrongful use of the mails in furtherance of a scheme to defraud by the sale of corporate stocks by false representations, it was not essential that the Government allege or prove that the stock sold was worth less than the price paid for it, and that the purchasers were in fact damaged thereby. Whatever may be the rule in civil cases we are satisfied that damage is not made an essential element of the Federal offense of using the mails in a scheme to defraud. *Wilson v. U. S.*, 190 F. 427; 111 C. C. A. 231. (U. S. C. C. A., N. Y. 1911.)

It is not required that the Government establish that any person was actually defrauded by the scheme. In this the offense differs from that of obtaining money by false pretenses. *Le More v. U. S.*, 253 F. 887 (U. S. C. C. A., La. 1918). Certiorari denied, 39 S. Ct. 184.

In a prosecution for using the mails to defraud, a conviction may be had though the scheme was

unsuccessful. This is a commonplace. *Grant v. U. S.*, 268 F. 443 (U. S. C. C. A., Ky. 1920).

The statute does not make the guilt or innocence of one who devises such a scheme dependent upon its actual success. Such schemes are often devised and carried out by designing men who make representations which seem transparent to many people; yet it is astonishing how many credulous ones are induced to believe in the alluring promises of wealth and part with their money upon the face of the representations. *Byron v. U. S.*, 273 F. 769 (U. S. C. C. A., Wash. 1921). Certiorari denied, 42 S. Ct., 94.

The United States Government or the State, not the victims, is the party interested in stamping out the activities of fraudulent stock salesmen and that either the United States or the State of New Jersey can act on its own initiative under its particular statute is no longer questioned by anyone.

In further defense of their exploitation of the public, the appellants attempt to cast responsibility on the shareholders or victims by invoking the doctrine of *caveat emptor*. In the old days when commodities were practically the only things bought and sold, this maxim became a part of the law and it worked out satisfactorily as a practical rule because a buyer, before closing any transaction, could, if he so desired, actually see and inspect the physical thing he was getting, and was in a position to protect himself by the exercise of reasonable care. But in modern times, particularly in securities markets, a different state of affairs is presented, because the average buyer has to rely almost entirely on the representations of the seller, or on information gleaned from sources which may or

may not be reliable. In practically all transactions involving stocks and bonds, there is no physical object to be seen or inspected and the possibility of protecting himself by the old-time methods has vanished. This is also true to some extent with commodities. For example it cannot be expected that the patrons of restaurants will be obliged to inquire whether they are being served butter or oleomargarine; neither have they any method of ascertaining the fat content of the milk which they order. Realizing this situation, the Government has undertaken to protect the purchaser by the passage of the so-called "Pure Food and Drug Legislation" and its validity is no longer questioned.

Statutes relating to the fraudulent sale of securities constitute an attempt on the part of the states to meet an even more acute situation, and although we have no quarrel with the appellants as to the existence of the doctrine of *caveat emptor*, we respectfully submit that present day conditions make its application and the effect thereof vastly different from when it originally came into existence. One thing is certain. The law never intended and the Courts never have permitted it to be used as a shield for fraud. The citations offered by the appellants on page 31 of their brief have no bearing because they are too general. If they had taken the trouble to look a little further in the same volume, they would have found the following with relation to the application of the doctrine of *caveat emptor* in cases of this kind:

"But it is generally held in this country that the intentional non-disclosure of a latent defect by the seller, when he knows that it is unknown to the buyer, is fraudulent." 35 Cyc. 69.

"Statements in respect to the value of the things sold are generally regarded as expressions of opinion, and not as representations of facts, and this applies to statements as to the market value, but it is otherwise if the seller has special learnings or means of knowledge not open to the buyer." 35 Cyc. 71.

"All Courts agree that if the means of knowledge are not at hand, or the buyer has not equal facilities for ascertaining the truth, he may rely on the seller's representations." 35 Cyc. 74.

It is respectfully submitted that the doctrine of *caveat emptor* in reality has no bearing here because it can be invoked only in suits between private individuals and the State cannot be hampered thereby in its attempt to stamp out a fraudulent operation.

The appellants raised the question as to how far must the person offering securities go in order to escape the imputation of fraudulent concealment or suppression under the New Jersey Securities Act. The answer is simple. Tell the truth, the whole truth and nothing but the truth. They say that if certain things listed by them were disclosed to the public in offering the stock for sale it would be impossible to sell any of it. If there is any material fact relating to an issue of securities, the disclosure of which would make them unsalable, there is no justification for offering them to anyone.

The appellants suppressed and concealed all of the following very material facts in selling their securities:

- A. That the Doyles had purchased their stock at nominal prices and that consequently the subscription by the public to the same class of shares would

result in an increase in value of the Doyle shares.

- B. That the corporations were unable to function in the manner for which they had been organized.
- C. That of an income of over \$70,000.00 from the sale of securities, only a little more than \$1,000.00 was left with which to operate.
- D. That the promoters and organizers of the corporation had purchased a group of first mortgages of a face value of \$99,600.00 for \$7,400.00; that the son of the president had transferred these mortgages to the corporation at a profit of \$12,500.00; that the transferee of the mortgages, the Washington Loan Company, had assigned and transferred them to the Washington Loan Company of Atlantic City at their face value, and that the value of the mortgages was considerably less than their face value; that the purchase price of the mortgaged property had been \$50.00.

The New Jersey Securities Act, in no sense of the word, relieves investors from exercising vigilance in determining the merits of a given venture. All that it requires of a promoter is that he furnish the truth and the whole truth, so that the prospective buyer of stock may fairly determine whether he cares to risk his capital in a given proposition. Neither the Attorney General nor the Court has the power or desire to dictate to anyone as to the wisdom of investing in any particular project, but they have full authority to insist that no misrepresentations be made to the purchasers of securities, and that full and complete disclosure be made to prospective buyers of any facts concerning which they, in

good conscience, ought to be apprised before the purchase is made.

The case from the State of Pennsylvania cited on page 17 of the appellants' brief has no bearing here, because there is absolutely nothing in the records even tending to indicate that either the Attorney General or the Court of Chancery has attempted to set himself up as a "regulator of business," or one who has authority to pass judgment on "the business expediency of the plan of financing." In reading the Pennsylvania case, it is interesting to note that the Court observes "*every investor knew just what he would receive * * **" In the case *sub judice*, on account of gross misrepresentation and suppression of material facts, no one knew what he had received.

It is argued that justice and fair dealings have been disregarded by the respondent in that his proceedings against the corporation have destroyed the equity and interest of 361 subscribers to the capital stock. The appellants, Doyle, are solely to blame so far as the individual defendants are concerned for the situation, and their attempts to place the responsibility on the Attorney General are just as fantastic as their efforts, previously discussed, to bring the shareholders or victims into the situation in another way. Of the \$71,392.09 net receipts from paid-in subscriptions to capital stock, there is in the hands of the receiver the sum of \$1,289.84. The difference between these two amounts has been spent and the corporation has nothing of value to show for it. \$147,037.47 is due on installment payments for stocks and bonds, against which there is a fixed liability to the purchasers thereof amounting to \$231,527.50. The difference between \$71,392.09 and \$1,289.84 would have been

lost to the stockholders and bondholders of the corporation whether the respondent had filed his bill or not. It must also be borne in mind that neither of the appellant corporations has engaged in any profitable commercial enterprise since its organization in 1927. Instead of destroying the equity and interest of the stockholders, the Attorney General has performed a real service to them in preventing them from getting into a worse situation than they already were.

III.

The Decree of the Court of Chancery in this case, under the New Jersey Securities Act, is not inconsistent with the provisions of Chapter 833 of the Laws of 1921 relating to no par value stock.

The appellants point to Chapter 833 of the Laws of 1921 as authority for issuing 50% of the capital stock of the Washington Loan Company to the Doyles at prices much lower than that at which the shares were offered to the public. This is not charged as an offense in the Bill of Complaint, but the failure to disclose it to prospective purchasers of stock constituted a part of the device and scheme to obtain money, profit and property by means of the practices declared to be illegal and prohibited by the New Jersey Securities Act. The situation is most aptly stated in the opinion of the Chancery Court:

“The Doyles’ attempt to justify the issuing of fifty per cent. of the capital stock of the Washington Loan Company to Doyle, Sr., at \$1.00 per share for 3500 shares and at \$2.50 and \$5.00 per share respectively for the two remaining blocks of 750 shares each, and sales of like shares to the public for as high as \$20.00 per share, because the Doyle con-

trolled board of directors, by resolution, solemnly authorized it, and authorized it at a time when the Doyles and their associates alone were stockholders; that they believed it just to those who invested in the formative period as against those who came in later, when the risk would be less, and that Doyle, Sr.'s services in the early stages were worthy of consideration. It is open to question whether a sale to promoters of the control of a company at a nominal figure does not violate both the letter and spirit of the Corporation Act relating to non par stock (C. S. C. S. 686), and thus a fraud upon the statute, but that point is not presently involved. The gravamen of the bill, under the statute, is that the scheme was suppressed and the purchasing public deceived, or is intended to be misled. That it was rank fraud to take from the uninformed as high as \$17.50 per share, for a share worth no more than the dollar the Doyles paid is not debatable and that that was done is admitted by the Doyles."

The appellants have no answer to the charge that their course of conduct was nothing but a scheme and device whereby the shareholdings of the Doyles would become more and more valuable as, if and when the public had invested substantial sums of money in the common stock of the corporation at greatly inflated and unwarranted prices.

So long as no one has an interest in the organization of a corporation, except the promoters and organizers, nothing that they do calls particularly for the intervention of an equity court. But when an enterprise contemplates, as part of the promoters' plan, the speedy sale of securities to the public, the actions and intentions of the organizers should be viewed with scrupulous care. The highest degree of good faith on their part is required and the equitable obligations of

the promoters and organizers to the incoming stockholder must be strictly enforced. *Hayward v. Ledson*, 176 Mass. 310.

The Attorney General does not contend that the promoters or organizers of a corporation are entitled to no remuneration for the time and effort which they put into that work, but the Securities Act prohibits in so many words "the gaining of, attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit, so large and exorbitant as to be unconscionable." New Jersey cases supported this idea even before the Legislature made any declaration in regard to it.

"The secret profits rule and its application to promoters of corporations is a familiar one and must be considered as firmly imbedded in the jurisprudence of our state. The rule is that a promoter stands in a fiduciary relation to the company which he organizes, and his dealings with the company are subject to the same scrutiny as the dealings between trustee and *cestui que* trust generally. The burden is always on the promoter (trustee) to show that his dealings with the company (the *cestui*) are fair and honest, and that no advantage has been taken by him as a result of the trust relation." *Allenhurst Park Estates, Inc. v. Sidney S. Smith, et als.*, 101 N. J. Eq. 581 (at 591).

See also *Bigelow v. Old Dominion Copper, etc. Co.*, 74 N. J. Eq. 457 (at 503). This question is excellently discussed by A. A. Berle, Jr., in an article entitled "Compensation of Bankers and Promoters through Stock Profits" in the April, 1929 number of the Harvard Law Review, Vol. XLII, No. 6, from which we quote as follows:

"The parties dominating a corporation during its promotion and organization are under a duty not to make any agreements

or commitments binding the corporation in their favor except to the extent that such contracts or obligations are equitable and conscionable with respect to the incoming shareholders, or except where the incoming shareholders have assented thereto, or have knowledge thereof enabling them accurately to appraise the situation into which they are buying."

The settled equitable doctrine is that although a thing may be valid when done by itself, nevertheless, if it is done as a part of a preconceived scheme to achieve an inequitable result, it is open to attack by a Court of Equity. *Jones v. Missouri Edison Electric Company*, 144 Federal 765.

The situation here has many elements similar to that in *William A. Stevens, Attorney General v. Adelpia Finance Service, Inc., et als.*, 107 N. J. E. 222 (8 Adv. R.). In that case, the Court of Chancery in granting an injunction and appointing a receiver made the following comments:

"It is quite clear from the entire proofs that the defendants' scheme is a stock-selling scheme, and nothing else. There is a slight attempt made to show that bona fide corporate operation was intended and had been commenced, but the paucity of proofs in this behalf is the best evidence to the contrary.

"The four individual defendants organized the company and sold to themselves at 10c per share, 40,000 shares of common stock, out of the 60,000 authorized. They then proceeded to sell to the public preferred stock at \$25.00 per share, and common stock at \$15.00 a share. They have sold some 180 shares of the company's common stock as against some 432 shares of their own common stock. I am entirely satisfied that they did not make full disclosure to the purchasers

as to the facts of the issuance of the 40,000 shares of common stock to themselves. Some of these purchasers knew nothing about it at all. Others say they were told that 40,000 shares had been issued to the officers at a 'nominal' figure, in lieu of salaries, so as to reduce the company's overhead expense. One, at least, of the purchasers, testified she thought a 'nominal' figure meant \$1.00 per share—which would have meant that the company's treasury had received \$40,000 instead of \$4,000. Assuredly none of the purchasers knew what the actual consideration was—for it has not even yet been explained.

"The defendant's affidavits in no wise set up any contract by the officers as to what services they were to perform without salaries, nor for what period of time; it is evident that no such contract was ever made, or definitely formulated. Their affidavits say that their purpose was to insure continued control of the company by the organizers, and to permit a *comparatively small portion* of their stock to be resold at a figure which would constitute a *partial* compensation to them for their services in *organizing* the company and acting as its officers. Nothing could be more vague or disingenuous. Nothing appears to prevent them from selling *all* of their stock—they had bought it; it was theirs; there was no restriction in the sale to them, nor imposed upon them by themselves. At the price at which they were reselling it to the public, it meant \$600,000.00 received for services entirely undefined. Their affidavits say that the salesmen were all instructed to disclose to purchasers all the facts about this 40,000 shares of stock; and that their counsel had advised them to make such disclosure. The joint affidavit of the four principal salesmen is significant in its language. 'We were instructed that purchasers * * * *making* inquiry were to be told that' &c. 'No sales were made except after all *inquiries*

had been fully answered.' (The italics are mine.)

"The obvious way to inform purchasers would have been to set it forth in their circulars and on their subscription agreements. This they did not do—and it is inescapable that they were guilty of suppression and concealment of these material facts."

On page 15 of the appellants' brief is a statement about the time which the defendant, John W. R. Doyle, devoted to the affairs of the corporation during its formative period. The comment of the Court on such services performed without salary in the foregoing case is equally applicable now under consideration.

IV.

The pleadings with their supporting affidavits and the facts established thereby were sufficient to warrant the Court of Chancery in making the decree.

It is contended by appellants that complainant-respondent failed to prove his case in describing the mortgage transaction above referred to. The Bill of Complaint alleged that John W. R. Doyle contracted to purchase 17 first mortgages, whose face value was \$99,600.00 from Harry Bogatin for \$7,500.00, and that thereafter Charles R. Doyle offered an assignment of these mortgages to Washington Loan Company for \$20,000.00. The Bill is supported by an affidavit of the Special Assistant Attorney General who conducted the inquiry, and who had previously made investigation of the securities selling activities of this same Harry Bogatin. In the affidavit there was set forth at length certain testimony adduced from Harry Bogatin, John W. R. Doyle

and Charles R. Doyle at various hearings under oath, conducted pursuant to the authority contained in said Securities Act. Prior to the filing of the Bill in the matter *sub judice*, Harry Bogatin was enjoined from the further sale of securities by Vice-Chancellor Backes because of his conduct in this irregular and fraudulent mortgage matter.

The facts surrounding the mortgage transaction were argued at length before the Chancery court. The Doyles' affidavits did not deny that the purchase price of the mortgages to Washington Loan Company was \$20,000.00. They admit that Charles R. Doyle had entered into a verbal agreement with Bogatin to purchase these mortgages at a lesser price. The affidavits of the two Doyles, which are identically worded, stated that they had believed the mortgages to be worth the consideration of \$20,000.00. They further state that the \$30,000.00 worth of debenture bonds which the corporation had agreed to deliver to Charles R. Doyle as collateral security for his \$20,000.00 claim had never been delivered, and that consequently the corporation had suffered no loss because no consideration of any sort whatsoever had been paid. They fail to allege that it was their belief that the mortgages were worth the figure at which they were carried in the statement, \$99,600.00. - They further fail to explain why the financial statement did not reveal an indebtedness of \$20,000.00, the purchase price of the mortgages, or did not reveal the issuance of the \$30,000 worth of bonds to which Charles R. Doyle was entitled, and which was a then existent obligation.

In the affidavit of the Special Assistant Attorney General, who verified the allegations in the Bill of Complaint, and who had conducted

the investigation, the following testimony taken by him of Harry Bogatin is set forth:

“A There was \$99,600.00 assigned to them.

Q Who negotiated these transactions?

A I did.

Q With whom?

A With Mr. Doyle—I think it is J. W. R. Doyle.

Q Was he thoroughly familiar with the type of mortgage securities you were selling him?

A Yes, sir.

Q Has he any defense against the collection of the purchase price of these mortgages?

A No, sir.

Q What did the Washington Loan Company agree to pay?

A \$7,500.00

Q Has Doyle ever denied his liability on this agreement?

A No, sir.”

At a hearing held the following day, Charles W. R. Doyle testified as follows:

“Q Did you contract to buy these mortgages from Bogatin before you had the authorization from the company to do so?

A Well, he talked to father first and then he talked to me. Father talked to me first.

Q What did you agree to pay Bogatin for these mortgages?

A I agreed to pay him \$7,500.00

Q In cash?

A Yes.

Q Did you own the mortgages when you made an offer to the corporation to buy them for \$20,000.00?

A No, not in my own name.

Q Who did own them?

A Bogatin.

Q Were you acting as the agent of Bogatin?

A He was going to sell them to me. He and I would sell them to the company. That is what it means.

Q Who was to receive the difference between \$7,500 and \$20,000.00?

A I was, but it wasn't put thru.

* * * * *

Q Did you believe that the mortgages were worth \$99,600?

A I don't know.

Q Did you advise purchasers of stock that you were to make \$12,500 on the mortgage transaction?

A No, but if the thing was to go I imagine they would be darn glad I had made it."

John W. R. Doyle testified later that day as follows:

"Q Did you ever discuss the valuation of this property with Bogatin?

A No, sir.

Q Did you know the terms of the contract to purchase between Bogatin and your son?

A Yes.

Q What did he agree to pay Bogatin?

A Well, there was to be \$7,500 in cash or rather \$20,000 bond, and the thought was that he would sell the bonds and he was to get his money out of it.

Q Was he to remit the difference between \$20,000 and \$7,500 to your son?

A That arrangement must have been made between he and my son?

Appellants now contend that they were deceived by Bogatin. Counsel for respondent made the same plea at the hearing before the Chancery Court, who commented as follows:

"This romancing is not denied nor is it believed. It is typical of stock-selling roguery."

Appellants further contend:

“Neither corporation nor any stockholder has been injured, has been or can be injured by this transaction.”

and then defend their position by stating:

“The transaction not having been consummated by the payment of the consideration, it was easily the subject of rescission without injury to any stockholder.”

Their reasoning is hard to follow. Was payment of the consideration the final indicia of the consummation of the contract? Did not the acceptance of the assignment of the mortgages from Bogatin and the subsequent re-assignment to Washington Loan Company of Atlantic City and the still later listing of the stock of Washington Loan Company of Atlantic City at \$100,200.00 as an asset of Washington Loan Company, take the contract from the category of executory and make it executed? Is it possible that the Doyles, self-advertised financiers, believed that they or anyone else could buy \$99,600.00 worth of Grade “A” first mortgages for \$7,500.00?

On page 24 of the appellants’ brief in italics, an attempt is made to release Charles R. Doyle from responsibility because of the fact that he was not a member of the Board of Directors of either company. And later, on page 25, a further attempt is made to excuse John W. R. Doyle. The uncontroverted fact is that the appellants, Doyle, promoted these companies and everything that was done was done by them. To the defense of lack of knowledge on the part of a promoter that a certain condition of affairs existed, Judge Pound in *People v. The Federated Radio Cor-*

portation, George A. Carden, et als., 244 N. Y. 33, had this to say:

“The appellant states the question to be considered as follows:

“The question immediately arises, in the absence of any clear definition in the statute itself, as to whether this statute is directed to the suppression of equitable fraud, which does not cannote scienter, or whether being a penal statute, as we maintain, and subject to the rule of strict interpretation governing the construction of such statutes, its operation must not be held to be confined to cases of legal or intended fraud, as the term is generally understood.’

“It is practically assumed both on the briefs and by the questions certified to this court that if the statute is directed against all kinds of fraud, facts are sufficiently set forth in the complaint to bring the case under the statutes. The allegations are in effect that the advertising matter of the defendants unduly inflates the value of the stock and conceals certain facts in regard to such value of the stock and conceals certain facts in regard to such values which should in good faith be revealed. The complaint charges specifically that the sale of the stock operates as a fraud on the public within the meaning and intent and in violation of the statute and is within the provisions of the statute. The Penal Law condemns as a fraudulent practice the flotation of worthless securities by untrue, deceptive or misleading advertising. If the intent of the defendants in engaging in the practices complained of is to sell securities which are in fact worthless substantially less than the asking price, intentional misstatements, as in an action at law to recover damages for fraud and deceit (*Rebo v. Bull*, 226 N. Y. 546), need not be alleged. Material misrepresentations intended to influence the bargain, on which an action might be maintained in equity to

rescind a consummated transaction are enough (*Bloomquiet v. Farson*, 222 N. Y. 375). Promoters are under a duty to make reasonable investigation before issuing a prospectus and to the extent that they fail in the performance of their duty, lack of scienter will not relieve them from liability in actions brought under the Martin Act.

"The printed matter complained of herein as deceptive and misleading contains the words: 'Price \$21 per share. This issue is offered as a speculation. Information contained herein has been obtained from sources which we deem reliable, but do not guarantee.' If defendants, on the allegations of the complaint could as a matter of law exempt themselves from the duty of reasonable investigation by making this statement taken as a whole in connection with their offers to the public the law against fraudulent practices would be sadly impaired."

The appellants criticize the fact that the Chancery Court decided the case *sub judice* in what they describe as a summary manner on *ex parte* affidavits. The Chancery rules give the express right to examine witnesses orally if a party cares to do so. In this case, the appellants did not demand any such examination and chose to submit the whole case on the pleadings and affidavits submitted by both sides. They are bound by the selection. The propriety of proceeding in the summary manner provided for by the New Jersey Securities Act was reviewed by the Chancellor in the case of *William A. Stevens, Attorney General, v. Associated Mortgage Company of New Jersey*, 107 N. J. E. 297 (8 Adv. R.):

"The defendant filed no pleading herein up to the return day of the order to show cause, but went to hearing on the bill and affidavit and exhibits annexed to the affidavits of certain of the promoters, officers and employes of the defendant. * * * Upon the

hearing reliance was only had upon the bill, affidavit and exhibits, and the affidavits put in by the defendant. The case was fully argued by both sides upon the theory that it was on final hearing, and submitted to the court for decision. All the questions were fully argued by counsel on both sides; and immediately upon its conclusion the court decided the case, and shortly thereafter signed the final decree."

* * * * *

"These proceedings under the New Jersey Securities Act are akin in a great measure to those against insolvent corporations under Comp. Stat. p. 1640, paragraph 65, which provides among other things that the court may proceed in a summary way to hear the affidavits, proofs and allegations offered on behalf of the parties, and if it shall appear to the court that the corporation has become insolvent, it may issue an injunction; and by paragraph 66, may appoint a receiver."

In *Pierce v. Old Dominion, &c., Smelting Co.*, 67 N. J. Eq. 399, Vice-Chancellor Stevenson said (at p. 410): "On the return day of the order to show cause the statute prescribes a "summary hearing" of the "affidavits, proofs and allegations which may be offered on behalf of the parties." Under our modern practice in the vice-chancellors' courts this summary hearing often is, and always will be, where justice so requires, a complete trial of the issues presented by the pleadings. The defendant-corporation may present an answer or only affidavits, and may, without answer or affidavits, contest the charges contained in the complainant's petition or bill. * * * After the summary final hearing no process of subpoena is issued, or ought to be issued. The entire function of process has been performed by service of the statutory notice under direction of the court. * * * No other subsequent final hearing can be had.'

* * * * *

The New Jersey Securities Act in every section indicates that the suit is one of summary jurisdiction; if anything were wanting to show that the court has summary jurisdiction in these matters as in paragraph 65 of the Corporation Act, it is furnished by the amendatory act of 1930 (P. L. p. 254), approved four months before this bill was filed, which amends paragraph 6 of the original act by providing among other things 'that the court may proceed in a *summary way* to hear affidavits, proofs and allegations which may be offered on behalf of the parties,' &c., having already provided in the original act for the issuance of injunction and appointment of a receiver."

The Chancery Court, pursuant to the power conferred upon it by the New Jersey Securities Act, enjoined the defendants-appellants from issuing, selling, offering for sale, purchasing, or offering to purchase, promoting, negotiating, advertising or distributing any securities and fully justified its action with the following statement:

"The mischief aimed at by the statute is the vicious practice of cheating in securities, and the statutory sweep includes all who participate in the deception. The relief under the statute is not only an injunction restraining the particular practices complained of, but the court 'may also issue an injunction restraining the issuance, sale, offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement or distribution within or from this State of *any* securities by such person, partnership, corporation, company, or association and any agents, employees, brokers, partners, officers, directors or stockholders thereof until the court shall otherwise order.' The legislature intended that the court should not only stop the fraudulent practices under investigation, but as well suppress the swindlers and swindling companies by enjoining them from further

dealing in any securities in this State. A less drastic injunction—one directed against fraud in a definite stock would simply mean to these dextrous operators a shift to another company and as easily accomplished as changing their hats.”

The Court of Chancery has not only an inherent power, but an affirmative duty and *omni present* responsibility to protect the public by checking fraud at once whenever it is found. If the Attorney General of the State of New Jersey, prosecuting officer of the State in such matters, uncovers a scheme and device to defraud, and his judgment and discretion prompt him to institute proceedings to prevent any recurrence of whatever vicious practices he may have disclosed, and if the Court of Chancery, after a consideration of the facts at a hearing and after argument by counsel, decides that the defendants are not worthy of public confidence, there is nothing left to do but advise a decree that will effectively prevent the promoters and instigators of the scheme from defrauding the public and the citizens of the State of New Jersey again. Anything less would be worthless and would render the problem of protecting the public from the guileful promoter insurmountable. Aliases, pseudonyms, dummies and other practices of like nature, make the task of suppressing fraudulent practices in the sale of securities exceedingly difficult and prosecution by the criminal authorities is not sufficient. In the event that an offender is able in the future to convince the Court of Chancery that he is worthy of confidence, the restraint can be lifted.

CONCLUSION.

The judgment appealed from should be sustained.

Respectfully submitted,

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