

## INDEX.

---

	PAGE
Writ of Replevin.....	1
State of Demand.....	2
Order for Possession.....	3
Notice of Appeal (Filed July 23, 1925).....	4

### PLAINTIFF'S WITNESSES.

Louis R. Radin—	
Direct .....	5
Cross .....	8
Recalled:	
Direct .....	29
Oliver Werkheiser—	
Direct .....	12
Cross .....	12
Alfred C. Walker—	
Direct .....	14
Cross .....	15
Samuel W. Berlow—	
Direct .....	16
Cross .....	16

### DEFENDANT'S WITNESSES.

William L. Greenbaum—	
Direct .....	18
Cross .....	22
Recalled:	
Direct .....	29
Louis Stein—	
Direct .....	26
Cross .....	27

II

EXHIBITS FOR PLAINTIFF-APPELLANT:

	Offered page	Printed page
P-1—Stock book entries.....	6	33
P-2—Transfer ledger entries.....	7	34
P-3—Sheriff's bill of sale.....	8	35
P-4—Notice of sale, etc.....	15	37
P-5—Demand .....	16	46

EXHIBITS FOR DEFENDANT-APPELLEE:

D-1—Certificate No. 2.....	25	47
D-2—Certificate No. 5.....	25	48
D-3—Reassignment of stock.....	26, 30	49
D-4—Assignment for twenty-five shares .....	27	50
D-5—Assignment for One Hun- dred shares .....	27	51
D-6—Affidavit of title.....	27	52

	PAGE
Rule to Show Cause.....	53
Order Extending Time to File State of Case.	54
Specifications of error.....	55
Opinion of Supreme Court (decided May 4, 1926). .....	56
Notice of Appeal (Filed August 31, 1926) ..	59
Grounds of Appeal (Filed August 31, 1926) .	60

**Writ of Replevin.**

Filed May 18/25

10

ESSEX COUNTY, SS.—The State of New Jersey, to any Constable of said County, GREETING: We command you that if Sol J. Wallach shall make you secure, you cause to be replevined and delivered to SOL J. WALLACH, stock certificate No. 2 of Lafayette & Broad Realty Corporation for 100 shares of preferred stock, and stock certificate No. 5 for 25 20 shares of common stock of Lafayette & Broad Realty Corporation, which LOUIS STEIN took and unjustly detained, as is said; and, that you summon the said Louis Stein to appear before the Second District Court of the City of Newark, to be held at the City Hall, Broad and Green Streets, in said City, on the 27th day of May, 1925, at ten o'clock in the forenoon, to answer the said Sol J. Wallach of a plea of taking and unjustly detaining 30 said stock certificates aforesaid; and have you then there this writ, with your proceedings thereon.

Witness, LOUIS R. FREUND, Esq., Judge of said Court, at Newark aforesaid, the 18th day of May, nineteen hundred and twenty-five.

JAMES E. GARRIGAN  
Clerk

DAVID BOBKER  
Attorney

40

**State of Demand.**

Filed May 18/25.

SECOND DISTRICT COURT OF THE  
CITY OF NEWARK.

10

SOL J. WALLACH,  
Plaintiff,

vs.

LOUIS STEIN,  
Defendant.In Replevin  
State of Demand

Plaintiff demands possession of certificate No. 2  
for 100 shares of preferred stock of Lafayette &  
20 Broad Realty Corporation, and certificate No. 5 for  
25 shares of common stock of Lafayette & Broad  
Realty Corporation, upon the following facts:—

1. On or about September 23rd, 1924, plaintiff  
became the owner of the aforesaid stock certifi-  
cates.

2. On or about September 23rd, 1924, plaintiff  
became owner, as aforesaid, by virtue of a bill of  
30 sale delivered to him by the sheriff of the County  
of Essex.

3. Plaintiff received said bill of sale prior to  
the time that the defendant came into possession  
of said stock certificates.

Plaintiff demands judgment for possession of  
the said certificates.

DAVID BOBKER

Attorney for Plaintiff.

40

**Order for Possession.**

Filed July 20, 1925.

SECOND DISTRICT COURT OF THE  
CITY OF NEWARK.SOL J. WALLACH,  
Plaintiff

VS.

LOUIS STEIN,  
Defendant.In Replevin  
Order

10

Judgment for possession in plaintiff having been entered in this action on the 22nd day of June, 1925, and application having been made by the defendant to have the said judgment vacated and a judgment for possession in favor of the defendant entered in lieu thereof, and a rule to show cause having been granted on the 22nd day of June, 1925,<sup>20</sup> directing the plaintiff to show cause on the 26th day of June, 1925, why the judgment rendered in his favor should not be vacated, and a judgment rendered in favor of the defendant in lieu thereof, and argument on said rule having been regularly adjourned to the 8th day of July, 1925, and being then argued by Philip J. Schotland, Attorney for defendant, in the presence of David Bobker, Attorney for the Plaintiff, and it appearing to the Court that the judgment in favor of the plaintiff should<sup>30</sup> be vacated, and a judgment entered in the above entitled cause in favor of the defendant:

It is on the 8th day of July, ORDERED that said judgment heretofore entered for possession in plaintiff be vacated, and for nothing holden and a judgment for possession in the defendant be entered in the above entitled cause.

(Signed) LOUIS R. FREUND  
Judge. 40

**Notice of Appeal.**

Filed July 23, 1925.

SECOND DISTRICT COURT OF THE CITY OF  
NEWARK.

10

SOL J. WALLACH,  
Plaintiff

vs.

LOUIS STEIN,  
DefendantIn Replevin  
Notice of Appeal

To LOUIS STEIN, or

PHILIP J. SCHOTLAND, Attorney of Louis Stein.

20

SIR:—

TAKE NOTICE that plaintiff hereby appeals to the New Jersey Supreme Court from the judgment of the District Court rendered in the above stated action on the eighth day of July, 1925.

DAVID BOBKER  
Attorney for Plaintiff

Dated July 15, 1925.

30

Service of a copy of the within notice of appeal is hereby acknowledged this 15th day of July, 1925.

P. J. SCHOTLAND  
Attorney for Defendant.

40

Dr. Louis R. Radin—Direct.

SECOND DISTRICT COURT OF THE CITY OF  
NEWARK, NEW JERSEY.

SOL J. WALLACH,  
Plaintiff,

AGAINST

LEO STEIN,  
Defendant.

In Replevin

10

Transcript of shorthand notes of testimony taken in the above entitled matter on Monday, June 22nd, 1925, at the Second District Court, City Hall, Newark, N. J., before his Honor, Louis R. Freund, Judge of said Court.

APPEARANCES: DAVID BOBKER, Esq., on behalf of the <sup>20</sup>  
plaintiff.

PHILIP J. SCHOTLAND, Esq., on behalf of the defendant.

(Louis Winarsky, stenographer, sworn.)

Mr. Bobker: It is admitted that prior to the institution of the replevin suit a written demand was served upon Leo Stein personally. <sup>30</sup>

Mr. Schotland: No; at the same time.

The Court: As what?

Mr. Schotland: The demand and the writ.

DR. LOUIS R. RADIN, sworn on behalf of the plaintiff.

DIRECT-EXAMINATION BY MR. BOBKER:

Q. You are the secretary of the Lafayette & Broad Realty Corporation? A. I am. <sup>40</sup>

Dr. Louis R. Radin—Direct.

---

Q. You have always had and now have control and custody of the books and records of this corporation? A. I have.

Q. Did you always have control of the stock book and transfer ledger? A. I have.

Q. I show you this book and ask you what it is. A. The stock book of the realty corporation.

10 Q. And that book is kept by you? A. Yes, sir.

Q. And that is the only stock record of the corporation? A. The only one.

Q. Does that book contain the entries pertaining to stock held by Mr. William L. Greenbaum? A. It does.

Mr. Bobker: I offer it in evidence.

Mr. Schotland: No objection.

(Received in evidence and marked Exhibit  
20 P-1.)

Q. Calling your attention to the stock certificate book which is in evidence, who was the owner on September 3rd, 1924, of certificate Number 2, twenty-five shares of stock, and certificate Number 5, one hundred shares of stock?

Mr. Schotland: I object. The stock certificate book speaks for itself.

The Court: Objection sustained.

30 Q. Did you make note in your stock certificate book of a levy made by the sheriff? A. I did.

Q. Could you refer to the levy and give me the date?

Mr. Schotland: I object.

The Court: Objection sustained.

Q. Do you know who is now in possession of the certificates Number 2 and Number 5? A. I do.

40 Q. Who? A. Stein.

Dr. Louis R. Radin—Direct.

---

Q. How do you know that? A. He testified and admitted in front of me that he bought that stock on November 20th, 1924.

Q. From whom did he say he bought that? A. From Greenbaum.

Q. William L. Greenbaum? A. William L. Greenbaum.

Q. Did you ever receive any notification of transfer of that stock? A. Not at all. 10

Q. Either by Stein or by anybody in his behalf? A. No.

Q. I show you this book and ask you what this record is? A. A record of stock issued and to whom.

Q. That is the transfer ledger? A. That is the transfer ledger.

Q. That is the original ledger kept by you? A. That is the original ledger. 20

Mr. Bobker: I offer that in evidence.

Mr. Schotland: I have no objection to the book, but I can't conceive that that proves anything.

The Court: It goes in as the stock transfer ledger of the corporation.

(Received in evidence and marked Exhibit P-2.)

Q. Did you ever receive any notification from Sol<sup>30</sup> J. Wallach in relation to the transfer of certificates 2 and 5? A. I did.

Q. Did Mr. Wallach produce any papers? A. He produced the sheriff's bill of sale.

Q. What did you do? A. Acted accordingly and transferred the stock to his name.

Q. I refer you to Exhibit P-2, to page number "G". Are those entries in your handwriting? A. They are. 40

Dr. Louis R. Radin—Cross.

Q. Under what date? A. For certificate Number 2 for 100 shares of stock, and certificate Number 5 for 25 shares of stock.

The Court: Were they transferred from Greenbaum to Wallach.

The Witness: Well, they were transferred by the bill of sale of the sheriff from Greenbaum to Wallach.

The Court: Did you receive the bill of sale?

10 The Witness: No.

The Court: Have you got the certificates of stock with you?

The Witness: Nobody knew where it was at the time.

The Court: When was the transfer made?

The Witness: October 23rd, 1924. The bill of sale read September 26th, 1924. That was when I transferred it.

20 Q. I show you a bill of sale signed by the sheriff. Was that the paper that was produced and turned over to you? A. Yes.

(Bill of sale marked P. 3 for identification.)

Q. I now show you Exhibit P-1, Doctor, and ask you to state who on September 2nd, and 3rd, 1924, according to those records, owned certificates Number 2 and 5.

30 Mr. Schotland: I object. That speaks for itself. That is in evidence.

The Court: Sustained.

Q. You never received any notification from either Greenbaum or Stein as to the transfer or sale of the stock? A. No.

CROSS-EXAMINATION BY MR. SCHOTLAND:

Q. What relation are you to Sol Wallach? A.  
40 I am his son-in-law.

## Dr. Louis R. Radin—Cross.

Q. And you and he and Greenbaum were the three that were in this corporation? A. Yes.

Q. He invested five thousand dollars? A. Who?

Q. Wallach? A. Yes, Wallach.

Q. And you invested five thousand dollars?

Mr. Bobker: Objected to upon the ground that it is not proper cross-examination. It is immaterial. 10

The Court: Sustained.

(Argument.)

The Court: I will allow you an exception.

Q. Did Mr. Greenbaum ever present his certificates of stock to you or to the company for transfer? A. No.

Q. He never did? A. No, sir.

Q. You made the entry in your books transferring Mr. Greenbaum's stock purely and simply at the request of Mr. Wallach? A. I did not. 20

Q. At whose request did you make that entry? A. I had a bill of sale from the sheriff directing me.

Q. At whose request did you make that entry? A. By advice of counsel.

Q. Who advised you to transfer it? A. My attorney, Mr. Bobker.

Q. Was there a meeting of the corporation when you transferred it? A. Yes, sir. 30

Q. When and where? A. I don't remember the exact date. It was previous to October. I think it was October 23rd.

Q. Who requested you to transfer it? A. He presented the bill of sale. He had the right to do that—

Mr. Schotland: I ask that that be stricken out.

The Court: That will be stricken out. 40

Q. Who asked you to transfer that stock? A. Mr. Wallach.

Q. And you transferred it on the strength of a paper which you call a bill of sale? A. I did.

Q. Not signed by Greenbaum? A. No.

Mr. Bobker: I offer in evidence this bill of sale.

10 Mr. Schotland: I object. I don't object technically because of the subscribing witness; I object to it until it is shown that there was a proper levy made and a proper execution made, to give it some competency.

The Court: I think the production of an instrument executed by an officer carries with it the presumption that the instrument was properly issued.

20 Mr. Schotland: If your Honor please, I don't believe that there is any presumption following the execution of a bill of sale, that all the proceedings were regular simply because the bill of sale was signed by the sheriff.

Mr. Bobker: That, I submit, is a matter of defence.

The Court: If you waive proof of the proper execution of the bill of sale,—

30 Mr. Schotland: I waive the proof by the subscribing witness. As a matter of fact he does not even have to call upon me to waive it because it is acknowledged. But I was ready to waive that anyhow. I object to it as not being proven.

The Court: You admit that the bill was signed by the sheriff of the county of Essex?

Mr. Schotland: Yes.

40 The Court: The objection is made that it does not prove the authority of the sheriff to give the bill of sale.

Dr. Louis R. Radin—Cross.

---

Mr. Schotland: No, sir. In order to prove the authority of the sheriff to give a bill of sale, he has got to produce a properly issued fi. fa. by virtue of which he acted, and he has got to prove that in the execution of that writ he followed the statute, and then the bill of sale becomes competent and gets legal voice, and not until then.

Mr. Bobker: I have here the original file of the court of Chancery. Mr. Mullin, sergeant of arms left the file with Mr. Garrigan. I have here the original fi. fa. issued by the clerk of the court, the levy, the statement of the secretary of the corporation, pursuant with the Act, and notice of sale, and a record of the entire proceeding, and I, at this time, offer in evidence these original papers.

(Argument.)

The Court: It is admitted that there was an execution. A writ of fi. fa. was issued; that in pursuance of a writ of fi. fa. the sheriff applied to the secretary of the company for a certificate, and received from the secretary of the said company certificates denoting the holding of 100 shares on certificate No. 2 and 25 shares on certificate No. 5 of William Greenbaum of the Lafayette & Broad Realty Company. And that after receiving that certificate, notice of sale was posted.

Mr. Schotland: No, sir.

Mr. Bobker: Mr. Werkheiser is here to prove that.

Oliver Werkheiser—Direct—Cross.

---

OLIVER WERKHEISER, sworn on behalf of the plaintiff.

DIRECT-EXAMINATION BY MR. BOBKER:

Q. You are connected with the office of the sheriff of Essex County? A. I am.

Q. In what capacity? A. Special deputy sheriff. That is, I am a court attendant, doing the work of a special court attendant.

10 Q. Did you have charge of the sale of certain stock certificates issued by the Lafayette & Broad Realty Corporation in the present suit? A. I had charge of the sale, I think.

Q. Did you post the notices of the sale? A. I posted the notices.

Q. I show you this paper entitled "Sheriff's Sale", which is attached to the original record of the Court of Chancery, and ask you whether that  
20 notice of sale, disregarding the sheriff's return of the sale, is a copy of the notice that was posted by you? A. They were posted by me, yes.

Q. In how many different places did you post that notice? A. Five.

Q. Was that notice posted on the sixteenth of September, 1924, the date appearing on that notice? A. Well, I wouldn't swear that they were posted on the sixteenth.

30 The Court: How many days prior to the sale did you post the notices?

The Witness: At least five.

The Court: Do you know whether you posted these notices at least five days prior?

The Witness: I know that.

CROSS-EXAMINATION BY MR. SCHOTLAND:

Q. Do you remember when you posted the no-  
40 tices? A. I have no record of it.

Oliver Werkheiser—Direct.

Q. Do you remember that you actually posted those particular notices? A. I remember that I actually posted these particular notices.

Q. Do you remember where you posted them? A. I know that I posted two of them at the Court House. I am not certain whether I posted one on Broad Street or not. I remember posting them down at the place because I remember going into the paint store, that big paint store, Hockenjos, and asking them for a string, because I could not use any tacks; I tied it around an iron pole; otherwise I wouldn't remember the incident. 10

The Court: Does your report show the places you posted them?

The Witness: No, sir.

Q. What part of the Court House did you post two of them on? A. One on the billboard and also on the telephone pole at Thirteenth Avenue. 20

Q. And you posted one near Hockenjos on Broad Street? A. I am not certain whether I posted two or one there. One I posted on Bergen Street.

Q. Where? A. At Clinton Avenue.

Q. Did you post any anywhere else? A. I don't know whether I posted two on Broad Street or not. I can't remember the fifth one.

Q. And you haven't any recollection of the exact date when you did this? A. No, I couldn't swear that that was the sixteenth. 30

Mr. Bobker: I now offer in evidence the original fi. fa. issued by the clerk of the Court of Chancery, levying on the stock, a written statement by the secretary of the Lafayette & Broad Realty Company, copy of the sheriff's notice of sale, the report of the sheriff as to the sale.

Alfred C. Walker—Direct.

---

Mr. Schotland: I object to the report of the sheriff as to the sale.

The Court: The one in charge of the record can prove the regularity of the records; the records were taken by him.

Mr. Schotland: He actually failed to prove the proper kind of a notice.

10 The Court: I will hold the testimony of the witness as sufficient, that he posted five notices and five publications. He is somewhat indefinite as to where he posted them.

Mr. Schotland: My recollection seems to be that one of these five places where notice of sale is required to be put is at or near the residence of the defendant.

20 The Court: I doubt it very much. The posting of notices at five different places is sufficient. The record of the Court of Chancery, are you admitting that they are properly offered?

Mr. Schotland: That part of it, yes, but I object to everything beyond the copy of the notice of sale.

Mr. Bobker: We offer the fi. fa., the levy, the secretary's certificate, notice of sale, report of the sale, all papers, except the—

30 The Court: I think that should be proven; the sale should be proven.

Mr. Bobker: We can prove that.

ALFRED C. WALKER, sworn on behalf of the plaintiff.

DIRECT-EXAMINATION BY MR. BOBKER:

Q. You are connected with the sheriff's office?

A. Yes, sir.

40 Q. Have you the original records covering the sale conducted by your office on September 23rd,

Alfred C. Walker—Cross.

---

1924, at 2:30 p. m., covering 100 shares of preferred stock certificate No. 2, and 25 shares of common stock, certificate No. 5, of the Lafayette & Broad Realty Corporation? A. They are filed in the Court of Chancery.

Q. I show you paper entitled "Sheriff's Sale" and direct your attention to the report of the sale on the bottom. Did you conduct that sale? A. I conducted the sale, yes, sir.

Q. Does that report represent what took place? <sup>10</sup>  
A. Yes, sir.

Q. Did you sell 100 shares of preferred stock, certificate No. 2— A. Yes, sir.

Q. —and certificate No. 5 of common stock, 25 shares to Sol J. Wallach? A. Yes, sir.

Q. And thereafter a bill of sale was issued by the sheriff? A. Yes, sir. I drew that bill of sale.

Q. Is that it (showing witness paper)? A. Yes, sir. 20

Mr. Bobker: I offer the bill of sale in evidence.

The Court: The notice of sale, fi. fa., the secretary's certificate, report of the sale, the levy, will all be accepted as one exhibit and will be marked Plaintiff's Exhibit No. 4. The bill of sale by the sheriff will be marked P-3. The bill of sale marked P-3 for identification will be marked P-3 at this time. 30

Mr. Schotland: I object to them as entirely immaterial because they have no reference to this subject of replevin.

The Court: I will grant you an exception.

CROSS-EXAMINATION BY MR. SCHOTLAND:

Q. Did you make any announcement before conducting this sale? A. I only sold the right, title and interest. 40

Samuel W. Berlow—Direct—Cross.

---

Q. Of William Greenbaum, in and to that stock?

A. Whatever is on that notice, yes, sir.

Q. You have no personal recollection, but from the notice? A. No, sir.

Q. You haven't any recollection aside from what appears on the notice. A. No.

By Mr. Bobker:

Q. You do that in every sale? A. Every sale,  
10 yes.

SAMUEL W. BERLOW, sworn on behalf of the plaintiff.

DIRECT-EXAMINATION BY MR. BOBKER:

Q. Did you at my request serve a written demand for stock certificates upon Leo Stein? A. Yes, sir.

Q. Where did you serve it? A. At his place of  
20 business, I believe.

Q. Where is his place of business? A. At Springfield Avenue.

Q. Whereabouts? A. Rich's hock shop.

Q. I show you this demand; is this the paper you served on him? A. Yes, sir.

Q. What time of the day did you serve that paper? A. About eleven o'clock in the morning.

Mr. Bobker: I offer it in evidence.

30

(Received and marked P-5 in evidence.)

CROSS-EXAMINATION BY MR. SCHOTLAND:

Q. Did you serve a summons, too? A. Yes, sir.

Q. Issued on the same day, was it not? A. I don't know.

The Court: At the time you served him the demand, did you have a written notice?

40

The Witness: No, sir, I didn't.

Samuel W. Berlow—Cross.

---

By Mr. Bobker:

Q. When did you serve this writ of replevin; what time of the day? A. Three or four o'clock in the afternoon.

Q. You got the writ of replevin after the demand was served? A. Correct.

PLAINTIFF RESTS.

10

Mr. Schotland: If your Honor please, I move for a nonsuit. The plaintiff has not shown any right to possession of the pieces of paper, as we call it in this case, by virtue of any title whatever. He has not shown the proper demand either before the issuance of the summons starting this suit or after.

The Court: The matter so far reveals the fact that one Greenbaum was the holder of 125 shares of stock of the Lafayette & Broad Realty Company, evidenced by two certificates, one No. 2 for 100 shares of stock, and one No. 5 for 25 shares of stock. That on October 23rd, 1924, that stock according to the records of the corporation, stood in his name, and that on that day, by virtue of a fi. fa. issued therefrom, the right, title and interest of the holder of that stock, so far as the records of the company are concerned, was sold by the sheriff to Sol Wallach. I find that the right, title and interest so sold carries with it both the interest insofar as the monetary interest of the holder of the stock is concerned, and those certificates, which are evidence of such interest, and that a sale of such interest will carry with it the evidence of such interest. And I will deny your motion and allow you an exception.

Mr. Schotland: I forgot to mention, if your

20

40

William L. Greenbaum—Direct.

---

Honor please, because I thought it was really included, the fact that the execution is not regular to show title.

The Court: You hold that the sale to him by the sheriff is not regular. I will deny your motion upon that ground.

10 WILLIAM L. GREENBAUM, sworn on behalf of the defendant.

DIRECT-EXAMINATION BY MR. SCHOTLAND:

Q. You were the complainant in a cause in Chancery wherein the Lafayette & Broad Realty Corporation was the defendant? A. Yes, sir.

Q. And in that case there was judgment against you for costs? A. Yes, sir.

20 Q. On September 3rd, 1924, were you the owner of two certificates representing 125 shares of stock in this Lafayette & Broad Realty Company? A. Yes, sir.

The Court: What date?

The Witness: September 3rd.

The Court: 1924?

The Witness: 1924.

30 The Court: On May 18th, 1925, were you in possession of the two certificates of stock?

The Witness: No, sir.

The Court: After all that is the very gist of this action. It is the rule that replevin cannot lie unless he was in possession on the 18th of May. Of course, the presumption of possession exists because under the natural circumstances, he would be the person in possession. The entire thing will be resolved on whether or not he was in actual possession on May  
40 18th.

William L. Greenbaum—Direct.

---

Q. On the 20th of June, 1924, were you in possession of the certificates of stock representing 125 shares in the Broad & Lafayette Company? A. No, sir.

Q. Did you own the stock at that time? A. No, sir.

Q. Who did own it at that time?

Mr. Bobker: I object to any further questioning along this line on the ground that the corporation's records which are in evidence speak for themselves. <sup>10</sup>

The Court: I deny the motion. I think the corporation's records as far as they are concerned are merely for the protection of the corporation, and, of course, it is a question of fact as to whether or not the corporation records are in dispute. I will deny the motion and allow an exception. <sup>20</sup>

Q. Who do you say was the owner? A. Walter Goldsmith.

Q. And when did Mr. Goldsmith become the owner? A. In April, 1924.

Q. Did you ever get the stock out of Mr. Goldsmith's hands? A. Yes, sir.

Q. When? A. I believe it was October 2nd.

Q. What year? A. 1924.

Q. Did you own it or have possession of it at any time during September of 1924? A. No, sir. <sup>30</sup>

Q. Any part of September, 1924? A. No, sir.

Q. What did you afterwards do with the stock?  
A. After I got it back from Mr. Goldsmith in October, I understood Mr. Stein——

Q. What did you do with it? A. I sold it to Leo Stein.

Q. For how much? A. \$2500.

Q. When? A. On November 20th, 1924. <sup>40</sup>

William L. Greenbaum—Direct.

---

Q. What does that stock represent? A. I don't know what you mean.

Q. These 125 shares, what does it represent?

Mr. Bobker: Objected to; immaterial.

The Court: I don't understand what you mean. They represent an interest in the corporation.

Mr. Schotland: I want to get at the actual value.

10 The Court: Of the stock or of the interest it represents?

Mr. Schotland: Now, your Honor has refused to separate the certificates from the interest—

The Court: Oh yes, I do. I say the certificates carry with it the right, title and interest; it carries the right, title and interest in the company, plus the evidence of it.

20 Mr. Schotland: My defence is that he had no right, title or interest in the stock at that time; then I have a right to go further and show, he, not having any right, title and interest in it at that time when the levy is supposed to have been made and when the sale was supposed to have taken place, and subsequently having gotten it and then having sold it, I have the right to put in the value.

30 Q. How much did you pay for that stock when it was originally issued to you?

Mr. Bobker: Objected to.

The Court: Objection sustained.

Q. What was the entire capital paid into this company?

Mr. Bobker: Objected to.

The Court: Sustained.

40 Mr. Schotland: I ask for an exception.

William L. Greenbaum—Direct.

---

Q. What is the business of the company? A. The business of that company was to buy that building there—

Q. Where? A. 36 and 40 Lafayette Street—as a speculative proposition.

Q. As an investment? A. Yes, sir.

Q. And did it buy that building? A. Yes, sir.

Q. And does it still own that building? A. Yes, sir. 10

Q. It has not sold it? A. No, sir.

Q. Is there any change then in the value of the investment from the time it was made until now?

Mr. Bobker: Objected to.

The Court: Objection sustained.

Q. Now Mr. Greenbaum, did you ever receive notice that your interest in the 125 shares of stock in this corporation was levied on by the sheriff? 20

Mr. Bobker: Objected to.

The Court: Sustained.

Q. Did you ever receive notice that your interest in the 125 shares of stock in this company was advertised for sale or ever sold?

Mr. Bobker: Objected to.

A. (No answer.)

Q. Did you have any knowledge that any sale of 30 that stock, or your interest in it was to take place?

Mr. Bobker: Objected to.

The Court: I sustain the objection.

Mr. Schotland: Exception.

Q. Did you know that there was a sale?

Mr. Bobker: Objected to.

The Court: Objection sustained.

Mr. Schotland: Exception. 40

William L. Greenbaum—Cross.

---

Q. At the time when you sold this stock and certificates to Mr. Stein for \$2500, did you know that there had been a supposed levy on your right, title and interest in that stock and a sale of that right, title and interest on September 23rd?

Mr. Bobker: Objected to.

The Court: Objection sustained.

Mr. Schotland: Exception.

10

CROSS-EXAMINATION BY MR. BOBKER:

Q. When did you turn over your stock to Goldsmith? A. In April, 1924.

Q. How did you fix October 2nd, 1924, as the day upon which you received this stock back from Goldsmith? A. It was sent to me by Mr. Goldsmith's attorney, I believe Jacob L. Newman.

20 Q. Have you got the letter that accompanied that certificate? A. I haven't it.

Q. Do you recall testifying before Richard Stockton, a Master in Chancery, on May 9th, 1925, at 11 A. M.? A. Yes, sir.

30 Q. Do you recall the following questions and answers? I am now reading from the original record covering the examination taken before Richard Stockton, wherein it was stipulated by counsel for Mr. Greenbaum, Mr. Lionel Cristeller, that signature to the testimony will be waived:

Q. When did you get that back? A. I had a loan on that about a year ago.

Q. Who gave you a loan on that? A. Walter Goldsmith.

Q. Where does he live? A. I don't know, I believe Riviera Hotel, at that time.

Q. How much did he loan you? A. \$850.

Q. When? A. Last April.

40

Q. 1924? A. Yes.

William L. Greenbaum—Cross.

---

Q. Cash or check? A. Cash.

Q. Where was that loan closed? A. Jacob L. Newman's office.

Q. And did you turn over the certificates to him on April, 1924? A. Yes.

Q. And did you repay the \$850 to Goldsmith? A. Sometime in August.

Q. August, 1924? A. Yes.

Q. Do you remember that? A. No, sir.

Q. Didn't you testify that this money was repaid by you to Goldsmith in August, 1924? A. No, sir. 10

Q. What did you say on May 9th, 1925 at this examination? A. I said it was paid in October, 1924.

Q. After you received these certificates back from Goldsmith you retained them until November, 1924? They were always in your possession? A. Yes, sir. 20

Q. Where is Mr. Goldsmith now? A. I don't know.

Q. Do you know where he lived? A. No, sir.

Q. Have you subpoenaed him? A. No, sir.

Q. Don't you know that he is connected with Cronheim's office? A. He was at the time when I got the loan from him.

Q. Did you testify on May 9th, 1925, that you received these certificates back on October 2nd, 30 1924? A. Yes, sir.

Q. Did you know at the time when you testified before Richard Stockton that these certificates had been sold by the sheriff? A. No, sir.

Q. You found that out after the examination before Stockton? A. Yes, sir.

Mr. Schotland: I would like to have the last question corrected to agree with the facts.

The Court: What was the question? 40

## William L. Greenbaum—Cross.

(Last question read as follows: Did you know at the time when you testified before Richard Stockton that these certificates had been sold by the sheriff?)

The Court: The question may be remolded:  
Did you know at the time that your interest  
10 in that stock had been sold.

Q. Did you sell that stock to Goldsmith for \$850.

A. I took a loan on them.

Q. He held it as security? A. I sold, transferred it to him. I believe he had title to them. He had the right, title and interest.

Q. Didn't you just turn the stock over to him as security for repayment of that loan? A. No; I sold the stock and he was to give it to me back after I  
20 paid him the loan.

The Court: Did you endorse the assignment of the stock to him in blank?

The Witness: No. It was filled in in Mr. Newman's office.

The Court: The name of the assignee was filled in?

The Witness: Yes, sir.

The Court: Is Mr. Stein in court now?

30 The Witness: Yes, sir.

The Court: You said that at the time you made your assignment to Mr. Goldsmith, that the body of the stock certificates contained the name of the assignee?

The Witness: Yes, sir.

Q. When you repaid this with \$850 he gave you back the certificates did he not? A. I had the certificates mailed. Mr. Newman mailed them to me  
40 for Mr. Goldsmith on October 2nd.

William L. Greenbaum—Cross.

---

Q. Do you remember testifying before Richard Stockton on May 9th, 1925, as follows:

Q. When did you get them back (referring to the certificates)? A. I had a loan on them about a year ago.

Q. Who gave you the loan on them? A. Walter Goldsmith.

Q. Did you so testify on May 9th, 1925? A. I<sup>10</sup> sold them to Walter Goldsmith.

Q. Then you didn't testify on May 9th, 1925, that he loaned you the money? A. I did testify but I don't recall.

Q. Well, if he loaned you the money, you turned the certificates over to him as security? A. No, sir. I sold it to Walter Goldsmith and there was a paper drawn up; his name was on the stock, and he gave me the money. 20

Q. Why did you testify on May 9th, 1925 that he gave you a loan on the stock? Why didn't you say that you sold the stock and he bought the stock? A. Well, I thought he bought them by the way the stock was sold.

By Mr. Schotland:

Q. Is this the original stock? Is your signature there? A. Yes. 30

Q. Who filled out the "paid" here on the transfer to Walter Goldsmith on April 24th, 1924? A. Sol Zucker.

Q. He signed here? A. He filled in his name.

Q. And is that the date when the transfer took place, April 14th, 1924? A. Yes, sir.

(Certificate No. 2 for 100 shares marked Exhibit D-1, and certificate No. 5 marked Exhibit D-2.) 40

## Louis Stein—Direct.

Q. When you got the stock back, is this the certificate you received with it? A. Yes, sir.

Mr. Schotland: I offer it in evidence.

Mr. Bobker: I object. Even though it be properly proven, it is not binding upon us.

The Court: It is offered in corroboration of the defendant's story.

Mr. Bobker: Goldsmith is available.

10 The Court: He does not have to put on Goldsmith.

Q. When you say that the stock was transferred back to you from Goldsmith on October 2nd, did you refresh your recollection by referring to any paper you received at the time? A. Yes.

Q. Is this the paper? A. Yes, sir.

(Marked D-3 for identification.)

20 By Mr. Bobker:

Q. At the hearing before Richard Stockton on May 9th, 1925, do you recall being served with a subpoena directing you to produce any and all papers pertaining to this transaction? A. No, sir.

Mr. Schotland: How is that recross?

30 Q. Did you have that paper in your possession at the time before your examination before Mr. Stockton? A. No, sir.

Q. Who had that paper? A. Mr. Stein.

LOUIS STEIN, sworn on his own behalf.

DIRECT-EXAMINATION BY MR. SCHOTLAND:

Q. You are the defendant in this case? A. Yes, sir.

40 Q. What is your business? A. Manager of Rich's pawn shop, loan broker.

## Louis Stein—Cross.

Q. Do you know William L. Greenbaum? A. Yes, sir.

Q. Did you buy any stock from Mr. Greenbaum? A. Yes, sir.

Q. I show you Exhibits D-1 and D-2. Did you buy these two certificates of stock from Mr. Greenbaum? A. Yes, sir.

Q. How much did you pay for them? A. \$2,500. 10

Q. At the time when you bought them did you receive a bill of sale for them? A. I did.

Q. I show you three papers, two transfers and one affidavit. Did you receive these papers in connection with the certificates of stock at the time when you purchased them? A. Yes, sir.

The Court: When did you buy that stock?

The Witness: November 24th, 1924. 20

(Three papers offered in evidence, received and marked as follows: assignment for 25 shares, D-4; assignment for 100 shares, D-5; and affidavit of title, D-6.)

Q. Did you know of any question affecting the title of the stock that were represented by these certificates D-1 and D-2, at the time when you purchased them? A. No. 30

## CROSS-EXAMINATION BY MR. BOBKER:

Q. But you did know at the time of this purchase that the affairs of the Lafayette & Broad Realty Corporation were still in the court and that a receiver had been appointed for this corporation, and had been dismissed? A. Yes, sir.

Q. How did you pay him by cash or check? A. Cash. 40

Q. Where did you get the cash from? A. The office.

Q. From Rich's loan office? A. My personal, that I keep up there in the vault.

Q. Have you got a bank account? A. Yes, sir.

Q. Why didn't you pay him by check? A. I gave him cash.

10 Q. How long did it take you to close this transaction? How long did you and Greenbaum talk it over before you decided to give him money for these certificates? A. About a week.

Q. Did you go down and look at the building? A. Yes, sir.

Q. Did you talk to any officers to find out what the affairs of the corporation were? A. No, sir.

20 Q. Did you make any request to transfer the stock on the books of the company? A. No, sir.

Q. Why not? A. Because I didn't think it was necessary and didn't know about it.

Q. How long have you been in Rich's loan office? A. Fourteen years.

Q. So that you sold stock before? A. No, sir.

Q. This was your first transaction? A. Absolutely.

30 Q. Who drew up this bill of sale that you offered in evidence? A. Mr. Rudinsky.

Q. Where were they drawn up? A. On Springfield Avenue.

Q. Where on Springfield Avenue? What part of Springfield Avenue? A. That is was signed?

Q. Yes. A. Right in Rich's it was signed, in the store.

Q. You testified before Richard Stockton on May 16th, 1925, did you not? A. Yes, sir.

William L. Greenbaum—Direct.  
 Dr. Louis Radin—Direct.

---

WILLIAM L. GREENBAUM, recalled.

EXAMINATION BY MR. BOBKER:

Q. Did Walter G. Goldsmith give you a note at the time? A. No, sir. When he bought the stock?

Q. Didn't he give you a note for four months? A. No, sir.

Q. Didn't you give Goldsmith a note payable in 10 four months? A. Did I give him a note?

Q. Yes. A. Yes.

Q. That note was for the amount of this so called loan? A. That note was when I purchased back the stock from him.

Q. Was that the note that you promised to pay him back in four months, \$850? A. Yes, sir.

Mr. Bobker: I offer at this time the original testimony bearing the signature of Richard 20 Stockton and stipulation that the signatures of witnesses be waived, and particularly directing the Court's attention to——

Mr. Schotland: I object. I have no objection to those particular questions and answers.

DR. LOUIS RADIN, recalled.

By Mr. Bobker:

Q. Were you present at an examination conducted before Richard Stockton at which examination Mr. Greenbaum testified on May 9th, 1925, at ten o'clock? A. Yes, sir, I was. 30

Q. Did you hear——

Mr. Schotland: I object to that. That is not the proper way to prove that testimony. I have no objection to the particular questions and answers being offered. 40

Dr. Louis Radin—Direct.

---

Mr. Bobker (Reading): Q. When did you get that back? A. I had a loan on that about a year ago.

Q. Who gave you a loan on them? A. Walter Goldsmith.

10 Q. Where does he live? A. I don't know, I believe Riviera Hotel, at that time.

Q. How much did he loan you? A. \$850.

Q. When? A. Last April.

Q. 1924? A. 1924.

Q. Cash or check? A. Cash.

Q. Where was that loan closed? A. Jacob L. Newman's office.

Q. And did you turn over the certificates to him on April, 1924? A. Yes.

20 Q. When did you repay the \$850 to Goldsmith? A. Some time in August.

Q. August, 1924? A. Yes.

Q. How did you repay him, cash or check? A. I paid him cash.

Q. Did you deposit the \$850 in your bank? A. No, I paid off some obligations I had.

(D-3 for identification marked in evidence as Exhibit D-3.)

30 The Court: I find first that the assignment by Greenbaum to Goldsmith was an assignment of stock as security for a loan. I also find that the testimony taken under oath, that he purchased it in August, or, rather, repurchased it in August, as a fact in preference to the assignment of October. I find that the sale by the sheriff sold the interest that Greenbaum had, an interest on the date of the sale.

40 I further find that that interest carried with

Dr. Louis Radin—Direct.

---

it his interest in the corporation together with his rightful possession of the evidence. I will find, therefore, that the sale in November of the assignment, in November, by him to Stein was not a valid assignment; that he was not the owner of the stock, that he merely held it for the benefit of he who rightfully purchased it. Therefore Stein got no title to it. I will enter judgment for the plaintiff. 10

Mr. Schotland: Exception.

### **Supplemental State of Case.**

Filed December 8, 1925.

On June 22, 1925, the defendant obtained a rule to show cause why judgment entered in favor of the plaintiff should not be vacated, and judgment for possession, in favor of defendants, entered in lieu thereof. 20

On argument of the rule, July 8, 1925, attorney for defendant directed the Court's attention to an act entitled "An act to make uniform the transfer of stock in corporations" P. L. 1916, page 398.

The Court held that this Act superseded the provisions of the Execution Act, 2 Compiled Statutes, page 2243, with respect to levy on corporate stock; that the sheriff did not proceed with the sale in accordance with the Uniform Transfer of Stock Act, and that therefore, the sale was not regular. Accordingly, judgment for possession, in favor of the defendant, was entered. Exception to this ruling was asked by the attorney for plaintiff, and was granted by the Court. 30

LOUIS R. FREUND

Judge of the Second District Court  
of the City of Newark.

Attest: JAMES E. GARRIGAN,

Clerk.

40

SECOND DISTRICT COURT OF THE CITY OF  
NEWARK,  
NEW JERSEY.

10 SOL J. WALLACH,  
Plaintiff,  
AGAINST  
LEO STEIN,  
Defendant.

I, LOUIS R. FREUND, Judge of the Second District Court of the city of Newark, N. J., do hereby certify that the plaintiff in the aforesaid action applied to me for the appointment of a stenographer to transcribe the proceedings at the trial of the aforesaid action and taken down the testimony therein.

I certify that Louis Winarsky was designated as stenographer to act as aforesaid in the said case and was duly sworn. I do further certify that this transcript of the said proceedings and said testimony made by the said stenographer is a correct state of the case upon appeal.

LOUIS R. FREUND  
Judge.

Dated, Sept. 14, 1925

**EXHIBITS FOR PLAINTIFF-  
APPELLANT.**

**“P-1”.**

**Stock Book Entries.**

Preferred Stock

CERTIFICATE

No. 2

10

For One Hundred Shares

Issued to

William L. Greenbaum  
Newark, N. J.

Dated June 28, 1923.

Received Certificate No. 2 for one hundred shares  
this day of July, 1923.

(Signed) WILLIAM L. GREENBAUM.

20

---

Common Stock

CERTIFICATE

No. 5

For Twenty-five Shares

Issued to

William L. Greenbaum  
Newark, N. J.

30

Dated June 28, 1923.

Received Certificate No. 5 for Twenty-five shares  
this day of July, 1923.

(Signed) WILLIAM L. GREENBAUM.

Both certificates levied on September 3, 1924 by  
the sheriff.

40

**"P-2".****Transfer Ledger Entries.**

Certificate No. 2 for one hundred shares of preferred stock issued to William L. Greenbaum, 22 Conklin Avenue, on June 28, 1923, transferred on October 23, 1924 to Sol J. Wallach.

10

---

Certificate No. 5 for twenty-five shares of common stock issued to William L. Greenbaum, 22 Conklin Avenue, on June 28, 1923, transferred on October 23, 1924 to Sol J. Wallach.

20

Both stock certificates were transferred on presentation of bill of sale from sheriff's office.

30

40

“P-3”.

**Sheriff's Bill of Sale.**

KNOW ALL MEN BY THESE PRESENTS, that I, HARRY B. O'CONNELL, Sheriff, of the County of Essex, party of the first part, for and in consideration of the sum of TWO HUNDRED DOLLARS (\$200.00) lawful money of the United States, to me in hand paid, at or before the ensembling and delivery of these presents, by SOL J. WALLACH, of the City of Newark, in the County of Essex, and State of New Jersey, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, his executors, administrators and assigns, all the right, title and interest of William L. Greenbaum in and to One Hundred Shares of Preferred Stock, Certificate # 2, and Twenty-five Shares of Common Stock Certificate # 5, in the Lafayette and Broad Realty Corporation, said stock having been levied upon by virtue of an execution issued out of the Court of Chancery of New Jersey, directed to the Sheriff of Essex County, a case wherein William L. Greenbaum was Complainant, and the Lafayette and Broad Realty Corporation, was defendant, and after due advertisement of sale according to law, having been sold at Public Sale on September 23, 1924 at 2:30 o'clock in the afternoon, at the Sheriff's Sales Room, Court House, in the City of Newark, County of Essex and State of New Jersey, to SOL J. WALLACH, for the sum of Two Hundred Dollars, he being the highest bidder therefor.

TO HAVE AND TO HOLD the same unto the said party of the second part, his executors, administrators and assigns forever.

Sheriff's Bill of Sale "P-3".

---

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of October, in the year of Our Lord One Thousand Nine Hundred and Twenty-four.

(Signed)

HARRY B. O'CONNELL (SEAL)  
Sheriff

10 Signed, Sealed and Delivered }  
in the presence of }  
HARVEY W. KEOUGH  
Notary Public of New Jersey

STATE OF NEW JERSEY }  
County of Essex } ss

BE IT REMEMBERED, that on this 23rd day of October, in the year of Our Lord One Thousand Nine  
20 Hundred and Twenty-four, before me, the subscriber, a Notary Public of New Jersey, personally appeared HARRY B. O'CONNELL, SHERIFF of the County of Essex, who, I am satisfied is the grantor mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

30 (Signed) HARVEY W. KEOUGH  
Notary Public of New Jersey.

"P-4".

**Notice of Sale, Etc.**

## SHERIFF'S SALE

IN CHANCERY OF NEW JERSEY.

Between

Chancery A-171.

William L. Greenbaum,

Compl't. FI FA. 10

—and—

Lafayette and Broad Realty Corporation,

Def't.

BY VIRTUE OF THE ABOVE STATED WRIT OF FIERI FACIAS, TO ME DIRECTED, I SHALL EXPOSE FOR SALE BY PUBLIC VENDUE, at Sheriff's Sales Room, Court House, Newark, N. J., on Tuesday, September 2nd, 1924, at 2:30 P. M., the following:

Property of William L. Greenbaum (Complainant)

100 shares of Preferred Stock, Certificate #2, and

25 shares of Common Stock, Certificate #5 in the Lafayette and Broad Realty Corporation.

Newark, N. J., September 16th, 1924.

HARRY B. O'CONNELL, Sheriff.

DAVID BOBKER, Sol'r.

Newark, N. J., September 23d, 1924 at 2:30 P. M.  
Sold the right, title and interest of William L. Greenbaum (Complainant), of in and to 100 shares of Preferred Stock, Certificate #2, 25 shares of Common Stock, Certificate #5, in the Lafayette and Broad Realty Corporation, to SOL J. WALLACH for the sum of Two Hundred Dollars (\$200.00).<sup>30</sup>

HARRY B. O'CONNELL, Sheriff,

By HARVEY W. KEOUGH,

Executive Clerk.

(INDORSED)

Ch A #171 Sale

Sept 23/1924 2 P. M.

at Sheriff's office.

Notice of Sale, etc. "P-4".

---

## Fi Fa for Costs

NEW JERSEY, to wit: THE STATE OF NEW JERSEY to  
the Sheriff of the County of Essex

(L. S.) GREETING:

WHEREAS, by a certain final decree  
of our Chancellor in our Court of  
10 Chancery at Trenton in a certain cause therein de-  
pending, wherein William L. Greenbaum is Com-  
plainant and Lafayette & Broad Realty Corpora-  
tion, *et als* are defendants wherein it was decreed  
among other things that the costs be paid by the  
Complainant to the defendants and whereas, the  
said costs have been duly taxed at the sum of three  
hundred and twelve dollars and ninety-nine cents.

Therefore, we command you, that without delay,  
20 you do cause to be made of the goods and chattels  
of the said William L. Greenbaum in your baili-  
wick, the said sum of three hundred and twelve  
dollars and ninety-nine cents for the costs afore-  
said, together with the costs of this writ; and if  
sufficient goods and chattels of the said William  
L. Greenbaum in your bailiwick you cannot find  
whereof to make the said sum of money, together  
with the costs of this writ, then and in that case  
30 we command you that of the lands and tenements,  
hereditaments and real estate of the said William  
I. Greenbaum in your bailiwick whereof he was  
seized on the twentieth day of June nineteen hun-  
dred and twenty-four the date of the decree afore-  
said, or at any time afterwards, in whosoever hands  
the same may be, you do cause to be made the  
whole, or the residue, as the case may require, of  
the aforesaid sum of three hundred and twelve  
dollars and ninety-nine cents together with the  
40 costs of this writ, and that you do pay the said

Notice of Sale, etc. "P-4".

---

moneys so by you to be levied and made to the said defendants or to their Solicitor in the said cause, and have you this writ with your proceedings thereon, before our Chancellor, in our Court of Chancery at Trenton, on the Twenty-eighth day of November next.

WITNESS, EDWIN ROBERT WALKER, our Chancellor at Trenton aforesaid, the twenty-eighth day 10  
of August, nineteen hundred and twenty-four.

DAVID BOBKER,  
Sol'r.

THOMAS BARBER,  
Clerk.

20

30

40

Notice of Sale, etc. "P-4".

---

The following represents return, etc. of the Fi  
Fa:—

54-407

In Chancery of New Jersey

Chan. A 171

Between

10

William L. Greenbaum

Compl'ts

and

Lafayette and Broad  
Realty Corporation, *et als*

Def'ts.

Fi Fa for costs

Ret'ble November twenty-eighth

A. D. 1924

20

David Bobker, Sol'r.

Levy:

Decree for Defts.....312.99

Int. from June 20/24

Costs of this writ..... 8.81

Int. from July 10/24

RECEIVED Sept. 2nd 1924

9.30 A. M.

HARRY B. O'CONNELL, Sheriff

30 Besides She'ff's Ex'n Fees 5.00

Pd 9/3/24

Paid 8/16/24 Deposit \$30.00

THE EXECUTION OF THIS WRIT  
WILL APPEAR BY THE LEVY  
AND RETURN HERETO ANNEXED.

HARRY B. O'CONNELL,  
Sheriff

Filed Apr. 24, 1925.

40

Thomas Barber, Clerk.

Notice of Sale, etc. "P-4".

---

I hereby appoint and depute Albert H. Freeman to serve the within writ.

Witness my hand and seal this 2nd day of Sept. 1924.

HARRY B. O'CONNELL  
Sheriff (LS)

By Alfred C. Walker  
Under Sheriff. 10

Sheriff Fees .....\$19.50

I served the within writ in the manner required by law, September 3rd, 1924 at 1:00 P. M., in the presence of Oliver Werkheiser, (a credible person), as will appear by schedule hereto annexed.

HARRY B. O'CONNELL, Sheriff  
By ALBERT H. FREEMAN 20  
Special Deputy.

---

Recorded in the Clerk's Office of the Court of Chancery of the State of New Jersey, at Trenton, in Book B 11 of Executions, page 249 &c., and examined by me.

THOMAS BARBER, 30  
Clerk.

Notice of Sale, etc. "P-4".

---

Levied on the Right, title & interest of William L. Greenbaum in the following at 10.30 A. M. in presence of Oliver Werkheiser :

- 1 Player Piano (Newton) at residence  
 1 Glass top table of defendants  
 3 Pc leather living room suit 22 Conklin Ave.  
 2 floor lamps Newark  
 10 2 table lamps N. J.  
 4 small stands  
 7 Pc Reed suit  
 3 Krex rugs  
 11 pc dining room suit  
 1 iron cot  
 1 electric fan  
 1 ice box  
 1 telephone stand  
 20 4 pc mahogany bed room suit  
 1 brass bed  
 1 dresser and chair (Sold Tuesday  
 1 kitchen table Sept. 23, 1924  
 3 kitchen chairs 2.30 P. M.)  
 16 pieces cut glass  
 16 engraved goblets  
 1 copper coffee ern Harry B. O'Connell  
 1 iron bed Sheriff  
 30 1 dresser (oak) By Albert H. Freeman  
 1 sewing machine Sp. Deputy Sheriff  
 1 cloths tree

Notice of Sale, etc. "P-4".

IN CHANCERY OF NEW JERSEY

Between

WILLIAM L. GREENBAUM,  
Complainant,

and

LAFAYETTE AND BROAD REALTY  
CORPORATION,  
Defendant.

Fi Fa. for Costs  
Returnable Nov.  
28th, 1924.  
DAVID BOBKER, Sol'r.

10

By virtue of the above stated and hereto annexed Writ to me directed, I did on the Third day of September, 1924, at 1:00 P. M., at the suit of the Complainant above named, in the presence of OLIVER WERKHEISER, (a credible person), attach the rights and credits, moneys, effects, goods, chattels and tenements of the said Complainant and particularly all his right, title and interest of, in and to the hereafter described: One Hundred Shares of Preferred Stock, Certificate # 2, and Twenty-five shares of Common Stock, Certificate # 5, in the Lafayette and Broad Realty Corporation, by notifying Mr. Louis L. Radin, Secretary and Treasurer of the Lafayette and Broad Realty Corporation. 20

No other rights or credits, moneys or effects, goods or chattels, lands or tenements of the said Complainant being found in my County.

HARRY B. O'CONNELL, Sheriff

By ALBERT H. FREEMAN, 30  
Special Deputy

We, the undersigned, ALBERT H. FREEMAN, Special Deputy Sheriff, and OLIVER WERKHEISER, Freeholder, of the County of Essex hereby value and appraise the rights and tenements of the said Complainant at the sum of unknown.

ALBERT H. FREEMAN

Special Deputy Sheriff

OLIVER WERKHEISER

Freeholder.

40

Notice of Sale, etc. "P-4".

---

IN CHANCERY OF NEW JERSEY.

10	Between <p style="text-align: center;">WILLIAM L. GREENBAUM Complainant</p> <p style="text-align: center;">and</p> <p style="text-align: center;">LAFAYETTE &amp; BROAD REALTY CORPORATION, <i>et als.</i> Defendant.</p>	} Fi Fa. for Sale of Mortgaged Prem- ises } Returnable Nov. 28th Term, 1924 DAVID BOBKER, Sol'r.
----	--	---

	Decree for Compl't.....	\$312.99
	Costs of Writ.....	8.81
20	Costs, Taxed at.....	\$321.80
	Interest from.....Realized	180.50
	Bal due.....	\$141.30

Decree for  
Interest from  
Decree for  
Interest from

30

---

By virtue of the above stated writ of *feri facias* to me directed, I did sell at public vendue, at the Court House, in Newark, on the 23rd day of Sept. 1924 (pursuant to advertisement) all Personal

Notice of Sale, etc. "P-4".

---

Property described in said writ, to Sol J. Wallach being the highest bidder for the same.

Property sold for.....	\$200.00	
Days' interest on purchase money		
Sheriff's fees, Bill of sale.....	\$7.50	
Advertising .....	3.50	
Copy of advertisement for printer.	1.50	
Adjournment .....		10
Selling .....	1.00	
Statement .....	1.00	
Commissions .....	5.00	19.50
		180.50

This is to certify, that the above statement is correct; that I did duly advertise and sell the property described in the above stated execution, as required by law, and the proceeds of said sale, after deducting therefrom Sheriff's Fees, amount to the sum of \$180.50.

Receipt from Solr for Compl. \$180.50

Newark, N. J.  
April 23rd, 1925.

HARRY B. O'CONNELL  
Sheriff.

Lafayette & Broad Realty Corp.    SEPT. 3, 1924.    30

This is to Certify that William L. Greenbaum is the holder of 100 shares of preferred stock Certificate #2 and 25 shares of Common Stock Certificate #5.

LOUIS L. RADIN  
Secty & Treas.

**"P-5".**

**Demand.**

To LOUIS STEIN :

I herewith require and demand of you to deliver  
up to me the possession of stock certificate No. 2  
10 of Lafayette & Broad Realty Corporation, for 100  
shares of preferred stock, and stock certificate No. 5  
of Lafayette & Broad Realty Corporation, for 25  
shares of common stock of said corporation, now  
in your possession and belonging to me.

Yours respectfully,

SOL J. WALLACH

By DAVID BOBKER

Attorney.

Dated May 18th, 1925.

20

30

40

**EXHIBITS FOR DEFENDANT-  
APPELLEE.**

**"D-1".**

**Certificate No. 2.**

Incorporated Under the Laws of New Jersey 10  
Number 2 Shares 100

CAPITAL STOCK \$15,000

PREFERRED STOCK 600 SHARES    COMMON STOCK 150 SHARES

Full paid and Non Assessable

LAFAYETTE & BROAD REALTY CORPORATION

This certifies that WILLIAM L. GREENBAUM is the owner of One Hundred Shares (100) of the Capital 20  
Stock of LAFAYETTE & BROAD REALTY CORPORATION transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation

This 28th day of June 1923.

SOL J. WALLACH  
President.

LOUIS R. RADIN  
Treasurer

30

“D-2”.

**Certificate No. 5.**

Incorporated under the laws of New Jersey

Number 5

Shares 25

CAPITAL STOCK \$15,000

10 PREFERRED STOCK 600 SHARES    COMMON STOCK 150 SHARES

Full Paid and Non Assessable

LAFAYETTE & BROAD REALTY CORPORATION

This certifies that WILLIAM L. GREENBAUM is the owner of Twenty Five Shares of the Capital Stock of LAFAYETTE & BROAD REALTY CORPORATION, transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon  
20 surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation

This 28th day of June, 1923.

LOUIS R. RADIN  
Treasurer.

SOL J. WALLACH  
Pres.

30

SHARES \$20. EACH.

40

**"D-3".****Reassignment of Stock.**

FOR VALUE RECEIVED, I do hereby sell, assign, transfer and set over unto one hundred and twenty-five (125) shares of the capital stock of the LAFAYETTE & BROAD REALTY CORPORATION, represented by certificates No. 2 and No. 5 (No. 2 representing 100 shares, and No. 5 representing twenty-five shares), and do hereby irrevocably constitute and appoint

to transfer the said stock on the books of the within named corporation, with full power of substitution in the premises.

Dated: October 2, 1924.

WALTER GEO. GOLDSMITH 20

In the presence of:

SAUL J. ZUCKER

**"D-4".**

**Assignment for 25 Shares.**

FOR VALUE RECEIVED, I do hereby sell, assign,  
transfer and set over unto LOUIS STEIN  
Twenty-five (25) shares of the capital stock of the  
Lafayette & Broad Realty Corporation, represented  
10 by Certificate #5 and do hereby irrevocably consti-  
tute and appoint to transfer  
the said stock on the books of the within named  
corporation, with full power of substitution in the  
premises.

Dated:—November 20, 1924.

WM. L. GREENBAUM

20 In the presence of  
HARRY S. RUDENSEY  
Notary Public of N. J.

30

40

**“D-5”.**

**Assignment for One Hundred Shares.**

FOR VALUE RECEIVED, I do hereby sell, assign, transfer and set over unto LOUIS STEIN one hundred (100) shares of the capital stock of the LAFAYETTE & BROAD REALTY CORPORATION, represented by Certificate #2 and do hereby irrevocably constitute and appoint to transfer the said stock on the books of the within named corporation, with full power of substitution in the premises.

Dated :—November 20, 1924.

WM. L. GREENBAUM

In the presence of

HARRY S. RUDENSEY

Notary Public of New Jersey

20

30

40

"D-6".

**Affidavit of Title.**

STATE OF NEW JERSEY }  
County of Essex } SS

10 WILLIAM L. GREENBAUM, being duly sworn on his oath, according to law, deposes and says:

I am the owner of one hundred and twenty-five shares (125) of the capital stock of the LAFAYETTE & BROAD REALTY CORPORATION, represented by certificate #2 of one hundred shares, and certificate #5 of 25 shares. That I am the absolute owner of said stock; that the same has not been pledged or transferred or assigned, and is absolutely free and clear of any liability.

20 That I am making this affidavit for the purpose of inducing Louis Stein to purchase same for the sum of Twenty Five Hundred Dollars, \$2500.

Subscribed and sworn to }  
before me this 20th day }  
of November, 1924. }

Dated November 20th, 1924

in presence of

WM. L. GREENBAUM

HARRY S. RUDENSEY

30 Notary Public of N. J.

**Rule to Show Cause.**

Filed June 23/25.

SECOND DISTRICT COURT OF THE  
CITY OF NEWARKSOL J. WALLACH,  
Plaintiff

vs.

LOUIS STEIN,  
Defendant.In Replevin  
Rule to Show Cause 10

This matter being opened to the Court by Philip J. Schotland, Attorney for Defendant, upon an application for a Rule to Show Cause, why the Judgment entered in favor of the Plaintiff in the above entitled cause should not be vacated, and Judgment entered in favor of the Defendant, and sufficient reason appearing: 20

It is on this 22nd day of June, 1925, ORDERED, that the Plaintiff show cause before this Court, at Newark, on the 26th day of June, 1925, at ten o'clock in the forenoon, or as soon thereafter as the matter may be heard, why the Judgment rendered in favor of the Plaintiff in the above entitled cause should not be vacated and a Judgment rendered in favor of the Defendant.

And it is further ORDERED, that a copy of this Order be served upon the Attorney for the said 30 Plaintiff, within one day from the date hereof.

And it is further ORDERED, that in the meantime, and until the further order of this Court, all proceedings in said cause be and the same are hereby stayed.

And it is further ORDERED, that the granting of the within Rule to Show Cause shall not be a waiver of any grounds for appeal existing in favor of the Defendant.

LOUIS R. FREUND

Judge 40

**Order Extending Time to File State of  
Case.**

Filed Nov. 12, 1925.

SECOND DISTRICT COURT,

CITY OF NEWARK.

10

SOL J. WALLACH,  
Plaintiff

vs.

LOUIS STEIN,  
Defendant.

In Replevin  
Order

20 The attorneys for respective parties consenting  
to this order, it is, on this 5th day of October, 1925

ORDERED, that time for filing state of case be and  
the same is hereby extended until December 15,  
1925.

LOUIS R. FREUND  
Judge of the Second District Court.

Entry of the above order consented to.

30

DAVID BOBKER  
Attorney for Plaintiff.

PHILIP J. SCHOTLAND  
Attorney for Defendant.

40

**Specifications of Error.**

NEW JERSEY SUPREME COURT

SOL J. WALLACH,  
Plaintiff-Appellant,

vs.

LOUIS STEIN,  
Defendant-Appellee.

In Replevin  
On Appeal  
Specification of the 10  
Points Plaintiff-  
Appellant will rely  
upon

The following is a specification of the points plaintiff-appellant will rely upon at the argument:

1. At the entire close of the case and in face of 20  
the Court's findings as to the facts, the Court  
entered a judgment for possession in favor of the  
defendant, whereas, judgment should have been  
entered in favor of the plaintiff.

2. The trial Court erred in its determination,  
and appellant is dissatisfied with same in point of  
law, because the sale conducted by the Sheriff was  
good and sufficient, in compliance with the Execu-  
tion Act of the State of New Jersey, and said sale 30  
was not invalidated by virtue of the provisions of  
Chapter 191 of the Laws of the State of New  
Jersey, "An act to make uniform the law of trans-  
fer of stock in corporations."

DAVID BOBKER  
Attorney for Plaintiff-Appellant.

HARRY UNGER  
Of Counsel with Plaintiff-Appellant. 40

**Opinion of Supreme Court.**

NEW JERSEY SUPREME COURT.

No. 419, January Term, 1926.

	SOL J. WALLACH, Appellant	}
	v.	
10	LOUIS STEIN, Appellee.	

Argued January 20, 1926; decided May 4, 1926.

The "Uniform Stock Transfer Act" of 1916 (P. L. p. 398, C. S. Cum. Suppt. 690) provides, among other things, that "no attachment or levy upon shares of corporate stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined." Held, in the absence of any constitutional question touching the statute being raised, that an attempted levy by serving the execution at the office of the corporation, without a manucaption of the certificate, and without any surrender or injunction as contemplated by the statute, would not suffice to pass title at the execution sale.

30 Appeal from District Court.

Before: Justices PARKER, MINTURN and BLACK.

For the appellant, HARRY UNGER.

For the appellee, PHILIP J. SCHOTLAND.

The opinion of the Court was delivered by PARKER, *J.*

The suit was in replevin, for certain certificates  
40 of corporate stock; but the case was tried below,

## Opinion of Supreme Court.

and is argued here, on the theory that the *res* in dispute is not so much the two printed or engraved certificates, as the interest in the corporation represented by them. The question involved is the validity or otherwise of a levy made by the sheriff under an execution; and in the view of counsel, this turns on the applicability and construction of the "Uniform Stock Transfer" act of 1916 (P. L. p. 398; C. S. Cum. Supp. pp. 690, *et seq.*). Prior to that act, the procedure in levying on corporate stock had been well settled, both by statute and decision, C. S. 2244, secs. 4 *et seq.*; Princeton Bank *v.* Crozer, 22 N. J. Law 386; Voorhis *v.* Terhune, 50 *Id.* 160; Mulock *v.* Ulizio, 131 Atl. 622, 4 Adv. 258. In the last cited case an attack was made on the constitutionality of the act of 1916 which, for reasons stated in the opinion, it was unnecessary to decide. The point was called to the attention of counsel at the argument of the present case, but was not then argued, nor has it since been briefed. Consequently, we have not considered any constitutional phase of the matter, but confine ourselves to the points argued. <sup>20</sup>

The plaintiff appellant was the purchaser at execution sale. The levy was made by the sheriff at the office of the corporation and without seizure of the certificates, *i. e.*, in the manner customary before the act of 1916; and apart from that act no objection is made to the regularity of the procedure. The trial judge, sitting without jury, at first held that plaintiff had acquired a good title to the stock, but later, after act of 1916 had been called to his attention, changed his ruling and gave judgment for defendant. <sup>30</sup>

The language of the pertinent provision of the act of 1916 has already been set forth in Mulock *v.* <sup>40</sup>

Opinion of Supreme Court.

---

Ulizio, *supra*. It seems, plainly enough, to require actual seizure of the certificate as a condition precedent to a valid levy, and in fact we so held in the Mulock case, going so far as to say that a mere momentary seizure followed by a surrender of possession by the officer is not enough. Indeed, the principal argument now made is that the act of  
10 1916 was intended only for the benefit of the corporation and not to apply as between rival claimants; but it should be quite obvious that any such idea is not only logically faulty but would if applied lead to endless confusion in practice; for after all, what should pass under a levy and sale is the right to be recognized as a stockholder on the books of the corporation.

20 Dealing with the statute, therefore, as an act in force and unimpugned, the levy and sale passed no title to the stock. There is no claim that the certificates were surrendered to the corporation, or that there was any injunction as contemplated by the last clause of the section under consideration. On this basis, the judgment for defendant was correct, and should be affirmed.

30

40

**Notice of Appeal.**

Filed August 31, 1926.

## NEW JERSEY SUPREME COURT.

SOL J. WALLACH, Plaintiff-Appellant	}	On Contract	10
vs.		On Appeal	
LOUIS STEIN, Defendant-Appellee		Notice of Appeal	

To PHILIP J. SCHOTLAND, Esquire,  
 Attorney of Defendant-Appellee.

SIR: 20

PLEASE TAKE NOTICE that the plaintiff, Sol J. Wallach hereby appeals from the whole of the judgment in the above case to the New Jersey Court of Errors and Appeals.

Yours respectfully,

DAVID BOBKER  
 Attorney for Plaintiff-Appellant

HARRY UNGER 30  
 Of Counsel with Plaintiff-Appellant.

Dated: Newark, New Jersey  
 August 26, 1926.

“Service of a copy of the within notice acknowledged this 27th day of August, 1926.

P. J. SCHOTLAND  
 Sol'r. of Defendant-Appellee.” 40

**Grounds of Appeal.**

Filed August 31, 1926.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10	<p style="text-align: center;">SOL J. WALLACH, Plaintiff-Appellant</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">LOUIS STEIN, Defendant-Appellee.</p>	<p style="text-align: center;">In Replevin On Appeal from New Jersey Supreme Court Grounds of Appeal</p>
----	---	--

20 Sol J. Wallach, plaintiff-appellant, as and for the grounds of his appeal from the judgment rendered against him in the above case, hereby specifies and assigns the following:

1. At the entire close of the case and in face of the Court's findings as to the facts, the Court entered a judgment for possession in favor of the defendant, whereas, judgment should have been entered in favor of the plaintiff.

30 2. The trial Court erred in its determination, and appellant is dissatisfied with same in point of law, because the sale conducted by the sheriff was good and sufficient, in compliance with the Execution Act of the State of New Jersey, and said sale was not invalidated by virtue of the provisions of Chapter 191 of the Laws of 1916 of the State of New Jersey, "An Act to make uniform the law of transfer of stock in corporations."

40

Grounds of Appeal.

---

3. The Supreme Court erred in confirming the judgment of the Second District Court of the City of Newark, New Jersey.

DAVID BOBKER

Attorney of Plaintiff-Appellant.

HARRY UNGER

Of Counsel with Plaintiff-Appellant.

22

Dated: August 30, 1926.

Service of a copy of the within grounds of appeal is hereby acknowledged this 30th day of August, 1926.

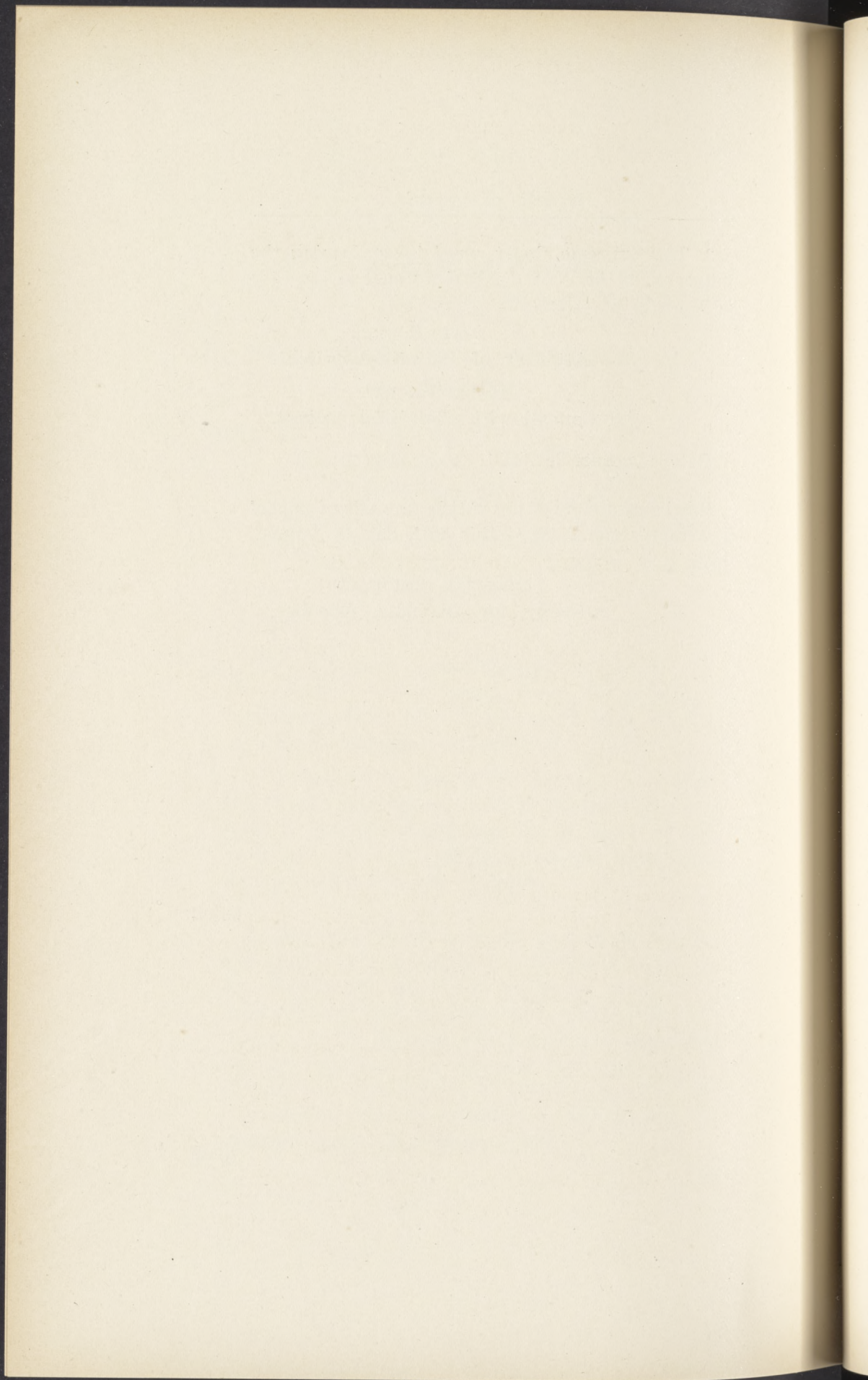
PHILIP J. SCHOTLAND

Attorney for Defendant-Appellee.

20

30

40



## New Jersey Court of Errors and Appeals.

SOL J. WALLACH,  
Plaintiff-Appellant,

VS.

LOUIS STEIN,  
Defendant-Appellee.

In Replevin.

On Appeal from  
New Jersey Su-  
preme Court.

### APPELLANT'S BRIEF.

#### Statement.

The appeal involves an action brought to replevin two stock certificates in the possession of the defendant, one for 100 shares of preferred stock, and the other for 25 shares of common stock in a corporation known as Lafayette & Broad Realty Corporation.

#### Facts.

One William L. Greenbaum was complainant in a certain action brought in the Court of Chancery, and the Lafayette & Broad Realty Corporation was the defendant (p. 38, line 10). The facts of that action are not pertinent here, save insofar as its general purpose was to procure a receiver of the corporation named; the defendant in the instant case was cognizant of the fact that the corporation and its affairs were being made the subject of scrutiny of the Court of Chancery (p. 27, line 30). Greenbaum's action was dismissed, resulting in the taxation of a bill of costs against him, in the sum of \$312.99. Execution on said judgment was issued

to the sheriff of Essex County on August 28, 1924 (pp. 38 and 39); on September 3, 1924, the sheriff levied on all the right, title and interest of the judgment debtor in the two certificates forming the basis of this action (p. 43). On September 23, 1924, after due and legal notice, the sheriff sold the same to Sol J. Wallach, the plaintiff in the replevin suit, and delivered to him his bill of sale therefor bearing date of October 23, 1924 (pp. 35 and 36). On the same day, the bill of sale was turned over to the Lafayette & Broad Realty Corporation, and the secretary duly noted on its proper books the transfer to Sol J. Wallach (p. 9, lines 20 to 40).

On May 16th, 1925, it was learned that the defendant was in the physical possession of the certificates of stock (p. 7, lines 1 to 10); plaintiff demanded the same, was met with a refusal, and the replevin action ensued. Defendant testified that he had purchased the stock from William L. Greenbaum on November 24, 1924 (p. 27, line 18), which was more than a month after the sheriff had sold all of Greenbaum's interest in the stock, and more than a month after the stock had been transferred on the corporate books to the plaintiff. Defendant testified that he gave Greenbaum \$2,500 in cash for the stock and procured said moneys from an alleged personal vault, despite the fact that he had a bank account at the time, and he further testified that the funds for the said alleged purchase did not come from his bank account. (We are therefore dealing with a fund shrouded in obscurity.) (P. 27, line 40; p. 28, lines 1 to 10.)

The suit, the subject of this appeal, was brought by Wallach, purchaser at the sheriff's sale, against Stein, the defendant, alleged purchaser from William L. Greenbaum. At the conclusion of the trial the court found for the plaintiff, rendered judgment in his favor, and held that plaintiff had title to the certificates in question, that Green-

baum was not the owner of the stock when he assumed to transfer it to the defendant, having been divested thereof by the sheriff (p. 30, lines 30-40; p. 31, lines 1-10). After rendering the above verdict, defendant procured a rule to show cause why said verdict should not be vacated and set aside, and after argument, the court reversed its decision, and entered judgment in favor of the defendant, because of the provisions of Section 13 of "An Act to make Uniform the Law of Transfer of Shares of Stock in Corporations", P. L. 1916, page 398. The appeal is from the judgment so entered.

### POINT I.

**The provisions of the Uniform Stock Transfer Act cannot be invoked by the defendant, inasmuch as the section in question is solely for the benefit of the corporation. The levy and sale being otherwise valid and made pursuant to Statute, good title was vested in the plaintiff, and defendant's transferer having been divested of his right to the shares, defendant has no title. The plaintiff is therefore entitled to the possession of the certificates.**

The first proposition to be determined is whether Section 13 of the Uniform Stock Transfer Act can be interposed against this plaintiff by the transferee of a judgment-debtor who has been duly and legally divested of his stock. There can be no question but that in the absence of the particular provisions of the Stock Transfer Act, the levy by the sheriff under the Execution Act (P. L. 1915, p.

182) and the sale pursuant thereto vested a good title in the plaintiff. The pertinent provisions of the Execution Act are as follows (see Compiled Statutes, p. 2242) :

“Sec. 4—That bank notes, bills or other evidence of debt, circulated as money, or any shares or interest in any bank, insurance company or other joint stock company, that is or may be incorporated under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution in the same manner as goods and chattels” (Revision of 1877, p. 389).

“Sec. 5—That the clerk, cashier, or other officer of such company, who has at the time, the custody of the books of the company, shall, upon exhibiting the writ of execution, give to the officer having such a writ, a certificate of the number of shares or amount of the interest held by the defendant, in such company; and if he shall neglect or refuse so to do, or if he shall willfully give a false certificate thereof, he shall be liable to the plaintiff for double the amount of all damages occasioned by such negligence or false certificate, to be recovered by an action in the case against him.”

“Sec. 31—That no sale of any goods or chattels shall be made by virtue of an execution, unless previous notice of the time and place of such intended sale shall have been given by the officer making the levy, by advertisement signed by himself, and put up in three or more of the most public places in the township where they were taken, at least five days before the time appointed for sale.”

Under the above sections the trial judge found for plaintiff and directed the surrender of the certificates of stock. Sections 13 and 14 of the Stock Transfer Act, which were relied upon to vacate the judgment, read as follows :

“Sec. 13—No attachment or levy upon shares of stock for which a certificate is outstanding

shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it."

"Sec. 14—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from Courts of appropriate jurisdiction, by injunction *and otherwise*, in attaching such certificate or in satisfying the claim by means thereof as is allowed *at law* or in equity, in regard to property which cannot be readily attached or levied upon by ordinary legal process."

The question to be determined is whether the sale by the sheriff, declared by the court to have been valid by virtue of the provisions of the Execution Act of the State of New Jersey, is rendered wholly nugatory and void by virtue of the provisions of the Stock Transfer Act. Phrased otherwise, it is whether the judgment-debtor was not divested of his rights in the certificates by the execution, levy and sale, and whether thereafter he was still capable of acting as owner thereof, so that he might transfer title to another.

It is respectfully submitted that the provisions of the Stock Transfer Act are intended for the sole benefit of the corporation whose stock is involved and the protection afforded by said section is not available to the judgment-debtor and his transferee. It is important therefore to read carefully the wording not only of the Stock Transfer Act but of identical statutes enacted for the benefit of other individuals similarly situated. Thus it will be found that the law relating to warehouse receipts provides that when goods are delivered to a common carrier against which a negotiable receipt is issued

a levy against the goods is invalid unless the negotiable receipt is impounded or its negotiation enjoined, and it is stated that the carrier cannot be *compelled* to deliver the actual possession of the merchandise, until the surrender of the receipt (Uniform Warehouse Receipts Law, 4 Compiled Statutes, Par. 25, p. 5781). Likewise, the Sale of Goods Act provides that where one is in possession of goods as bailee and the negotiable document of title is outstanding against the goods, they cannot be levied upon unless the document be surrendered or its negotiation enjoined. Here again the law provides that the bailee cannot be compelled to deliver up the actual possession of the goods until compliance is had with the above mentioned conditions. It is obvious that in these two last mentioned cases the law is aimed at protecting one holding merchandise from being faced by an outstanding title after surrender of the merchandise. If, however, the bailee himself does not seek to invoke the provisions of the statute but delivers up the merchandise, and the owner of the merchandise is himself divested by due process of law both of his interest in the merchandise and in the certificate representing the same, how can such owner, so divested, claim the benefit of the provisions of the statute designed solely for the bailee. The bailee being the party imperilled by the outstanding certificates and the possible claim which might be predicated thereon is the party sought to be protected by the statute. If he will not avail himself of it, no one else can. The Court will remember that all the law states is that the bailee cannot be compelled to deliver up the actual possession of the merchandise. We come then to the analogous provisions of the Stock Transfer Act. Here again the law provides that the Corporation may not be compelled to issue a new certificate unless the old one is surrendered or its negotiation enjoined. The

phrasing of the last sentence of Section 13 indicates clearly that the Section itself was intended to protect corporations in the event of a proceeding to compel the issuance of a new certificate. In the case at bar the Corporation did not avail itself of its rights under the Statute, but accepted the sheriff's bill of sale and transferred the shares represented by the outstanding certificates, to the plaintiff. On the books of the Corporation the plaintiff is now the owner of the certificates. In a proper action brought by the defendant against the corporation he may litigate whatever claim he may have as against the corporation but it is submitted he cannot in this action seize upon the defense that the corporation might have had and assert it for himself. The problem presented becomes clearer if we ignore for the moment the transfer by the judgment-debtor to the defendant. If the defendant's position is correct that the levy and sale by the sheriff was wholly void then the judgment-debtor himself if sued in replevin for the certificate in question could have asserted that despite the judgment against him, the execution thereon, the levy and sale, he was notwithstanding, still the owner of those certificates and could exercise the rights of such owner in the corporate affairs as against the plaintiff. We would then have the anomalous situation of a judgment-debtor who has been duly divested pursuant to the Execution Act of his interest in the stock, still vested with title therein under the Stock Transfer Act. It is contended that this situation should not be contrived unless it is inescapable. If any reasonable construction of the Stock Transfer Act will avail to defeat the interpretation sought by defendant, it should be adopted so as to give proper scope to the law as expressed in the Execution Act. If then, but for the Stock Transfer Act the plaintiff was entitled to recover as it was first adjudged that he was, then

that recovery should not be defeated by a law intended solely to benefit the corporation. The Corporation not seeing fit to avail itself of the protective statute then so far as the defendant is concerned, the law is non-existent, having never been intended for him, in any event. Assuming therefore that the defendant here, the transferee of the certificate, was suing the corporation for the registration of his certificate, and that a proceeding was also brought by the plaintiff under the Sheriff's bill of sale, and an interpleader ensued, it is respectfully submitted that the plaintiff would have to prevail. This would follow from the fact that defendant's transferor when he allegedly sold to the defendant, no longer had any title to pass, having been divested by the levy and sale under the execution against him. This was the view adopted by the trial judge when he first directed judgment for the plaintiff. That judgment should not have been set aside because of the provisions of the Stock Transfer Act. Quite evidently the purpose of the provisions of Section 13 is to prevent some then unknown party from claiming title to the certificate being transferred by the corporation. In the case at bar the question of title to the particular certificates has been squarely raised between the parties. On that issue the Court originally found for the plaintiff. Had the judgment of the Court been carried into effect the certificates would have been surrendered to the plaintiff. The issue of title having been determined adversely to the defendant, he should not have been permitted to defeat the levy and sale by resorting to a defense which was never intended for his benefit.

**POINT II.****The Uniform Stock Transfer Act did not repeal Sections 4 and 5 of the Execution Act of the State of New Jersey.**

A careful reading of the 14th Section of the Uniform Stock Transfer Act gives a creditor the right to attach a certificate of stock "by means thereof as is allowed at law". Sections 4 and 5 of the Execution Act provides the remedy "allowed at law," and the creditor may reach intangible personal property under an ordinary execution, by complying with the provisions of the 4th and 5th Sections of the Execution Act of the State of New Jersey, and the legal remedy afforded by Section 14 clearly indicates that it was not intended to repeal Sections 4 and 5 of the Execution Act. There is no doubt but what Section 14 was included in the Uniform Transfer Act, to cover a situation where litigation was pending between a creditor and a debtor, and where the question involved did not concern the corporation.

The Uniform Stock Transfer Act does not expressly repeal Sections 4 and 5 of the Execution Act, but Section 25 of the Uniform Stock Transfer Act provides "that all acts and parts of acts inconsistent with this act, are hereby repealed." These two acts must be taken into consideration for the purposes of determining whether or not Sections 4 and 5 of the Execution Act are superseded by the Uniform Transfer Act, whether one is so repugnant to the other that both cannot stand, or whether it is impossible to reconcile each of them. It is respectfully submitted that Sections 4 and 5 of the Execution Act, not having been specifically repealed by the Uniform Transfer Act are still in full force and virtue, and apply in the event of litigation between a creditor and debtor, while

the Uniform Transfer Act provisions apply in litigation involving a corporation, where an application is made to compel the corporation to transfer stock upon its books, and Section 19 of the Uniform Act reads as follows:

“Sec. 19.—This act shall be interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.”

The purpose of the Act is very specific, as the title indicates, and as the last sentence of Section 13 indicates. The Act was passed for the purposes of regulating transfer of shares of stock upon the books of the corporation and as the last sentence of Section 13 provides “except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.” It is very apparent that the Legislature intended to protect corporations and the transfer agents in connection with transferring stock on their books.

Looking at the act from its contextual wholeness, and bearing in mind its general purpose, the conclusion is incontrovertible that its purpose was to regulate the transfer between the owner of the stock and the corporation, and passed for the protection of corporations and stockholders who might deal with them, so that an orderly and uniform method of transferring their stock might prevail.

It was never meant to apply to a situation such as in the present case, where there are two claimants to a particular certificate of stock, where there is no question involved as to the transfer of the stock on the books of the corporation, but where in a suit instituted in replevin, counsel for appellant has invoked the act of 1916, an act made to regulate the transfer of stock in corporations, and that only. That act has been considered only once in the State of New Jersey, in the case of *Besson v.*

*Stevens*, 94 Eq. 549, involving the transfer of stock, but the precise question involved in this case has never been raised in this state before. It is, therefore, impossible to aid the court by pointing out previous decisions and previous interpretations of that act, because the question involved here is one of novel impression. It is, however, submitted that the Uniform Transfer Act of 1916 was meant to regulate, between stockholders and corporations, an orderly manner of transferring the stock, and was never meant to apply to a situation involving the determination of legal title to a certificate of stock in a replevin action.

It is contended that there is nothing in the 1916 Act which expressly repeals, modifies or amends the provisions of the Execution Act before stated, and in our opinion, there being nothing inconsistent between the 1916 Act and the Execution Act; and the Execution Act, therefore, still being in full force and effect at the time the execution was issued against the corporate stock, and it not being denied that the procedure as laid down in the Execution Act effecting the levying on corporate stock having been followed, it is submitted that the procedure under the Execution Act effecting the sale of this stock was properly conformed with, and that said sale was good and effectual in the eyes of the law.

In the case of *Cord v. Newlin*, 71 N. J. L. 438, the opinion by Dixon, *J.*, on November 14, 1904, held that under the New Jersey Statute of Attachment, stock in a domestic corporation was subject to an attachment, and this was true, although the certificate of stock was in the possession of the debtor outside the State, and as to the latter, the court, Dixon, *J.*, said:

“The fact that the certificate of stock is outside of the State cannot disturb this conclusion. The certificate is only evidence of title to the right.”

The testimony taken in the lower court indicated that the provisions of the Execution Act, affecting the mode and manner of levying on corporate stock and sale thereof, were properly complied with.

### POINT III.

**To permit defendant, and others similarly situated to invoke the provisions of the Uniform Stock Transfer Act, will encourage fraud and protect dishonest debtors.**

If the provisions of the 13th and 14th Sections of the Uniform Stock Transfer Act may be invoked by the defendant, it is apparent that a dishonest debtor, who happens to own shares of stock in a corporation, may successfully defeat any common law execution and any proceeding instituted in the Court of Chancery, by either informing the sheriff that he is not in the possession of the stock certificate, or by informing the Court of Chancery that he assigned and transferred his stock certificates prior to the institution of the Chancery suit, and prior to the entry of any restraining order. The Uniform Stock Transfer Act was certainly not passed for the purposes of encouraging and protecting dishonest debtors, and in the instant case, had the sheriff demanded that Greenbaum produce the original stock certificates, he would have been informed by Greenbaum that such certificates were not in his possession, and had Wallach instituted an action in Chancery for the purpose of compelling the production of such certificates, the said Greenbaum could have filed an answer to the effect that he assigned said certificates prior to the insti-

tution of the Chancery proceeding. The said Greenbaum was in the position, at any time, to affix his signature to the assignment of the stock certificate, and insert a date prior to the institution of the Chancery suit, prior to the issuance of the execution, and with the aid and assistance of a third party, could very easily defeat any attempt on the part of a creditor to reach said certificates for the purposes of collecting a debt. In the instant case, Stein claims he paid Greenbaum \$2500.00 in cash, and he is endeavoring to cover up this questionable transaction by relying on the Uniform Stock Transfer Law. The Legislature of the State of New Jersey unquestionably had this situation in mind, when the 14th paragraph of the Uniform Act was inserted, giving a creditor the right to satisfy his claim by such means "as is allowed at law." It was for the purpose of discouraging fraud, that the Legislature, by said 14th section, gave any creditor the right to protect himself by a proceeding at law, having in mind the 4th and 5th Sections of the Execution Act.

It is therefore respectfully submitted that the Act of 1916 did not invalidate the sheriff's sale under the Execution Act, and the court having found, as a fact, and as a matter of law, in its first conclusion, that defendant Stein never acquired title to stock, the final judgment should be reversed in accordance with the original position taken by the lower court.

Respectfully submitted,

DAVID BOBKER,  
Attorney for Plaintiff-Appellant.

HARRY UNGER,  
Of Counsel for Plaintiff-Appellant.



# New Jersey Court of Errors and Appeals

SOL. J. WALLACH,  
*Plaintiff-Appellant,*

*vs.*

LOUIS STEIN,  
*Defendant-Appellee.*

*In Replevin.*

*On Appeal  
from New  
Jersey  
Supreme  
Court, Affirm-  
ing the Sec-  
ond District  
Court of the  
City of  
Newark.*

## DEFENDANT-APPELLEE'S BRIEF.

### Facts.

The plaintiff is the president and majority stock owner of a corporation of New Jersey, known as the Lafayette & Broad Realty Corporation. Said corporation procured a judgment for costs against William L. Greenbaum, a stockholder, who owned one hundred shares of preferred stock, and twenty-five shares of common stock, in said corporation, for which he paid \$2,500. All of the capital that was invested by the stockholders in the corporation was used for the purpose of purchasing one piece of real estate on Lafayette street, in the City of Newark, and the sole business of the corporation is the ownership of that piece of real estate.

The sheriff of the County of Essex, in endeavoring to collect said judgment for costs, by virtue of a Writ of *Fi. Fa.* issued out of the Court of Chancery, followed the procedure provided in the Statute on Executions, and at the execution sale conducted by him, sold said stock

without having the physical possession of the certificates, on September 23, 1924, *for the nominal sum of one hundred and fifty dollars*, to the plaintiff. Neither this defendant, nor William L. Greenbaum, had notice of the sale.

The plaintiff, upon the receipt of the Bill of Sale, caused a transfer of the stock on the books of the corporation, which is a closed corporation in which the only stockholders of record are, the plaintiff, his son-in-law, Louis R. Radin, and William L. Greenbaum, the judgment debtor; and, thereupon, the plaintiff brought this action in replevin, to replevin the stock from the possession of the defendant, Louis Stein, who purchased the stock from William L. Greenbaum, on November 24, 1924, for the sum of \$2,500 in cash. At the time when the sheriff made his levy, the stock was not in the possession of William L. Greenbaum, but had been assigned as collateral security for a loan made to him by Walter Goldsmith, in April, 1924, in the sum of \$850, and that loan was not repaid, and the stock was not returned to William L. Greenbaum until October 2, 1924.

The only way that stock can be transferred, either by sale, assignment, or execution, is the manner provided in the Uniform Transfer Stock Law, which was adopted in this State in 1916 (P. L. 1916-398).

## I.

Section 13 of the Uniform Stock Transfer Act provides as follows:

**“NO ATTACHMENT OR LEVY UPON  
SHARES UNLESS CERTIFICATES SUR-  
RENDERED OR TRANSFER ENJOINED.**

No attachment or levy upon shares of stock for which a certificate is outstanding shall be

valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it."

And Section 14, which provides the remedies to reach the certificate, is as follows:

"CREDITOR'S REMEDIES TO REACH  
CERTIFICATE.

A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process."

The sheriff did not follow the provisions of this statute, and as this statute is clearly intended to prescribe the only rule in the case provided for, it repeals all prior acts which regulate the subject. Furthermore, this statute contains an express repealer, repealing all acts and parts of act inconsistent with it.

In *Trenton & Mercer Traction Corp. v. City of Trenton*, 97 N. J. L. 84, Justice Minturn, speaking for the Supreme Court, says:

As was declared by Mr. Justice Van Syckle, speaking for this court in *Roche v. Jersey City*, 40 N. J. L. 257, such an enactment "is decisive evidence of an intention to prescribe the provisions contained in the later act as the only one on that subject which shall be obligatory."

In *Anderson v. Camden*, 58 N. J. L. 515, the present Chief Justice reiterated the same doctrine in the declaration that "it is a settled rule in the construction of statutes that even if the subsequent statute be not repugnant in its provisions to a prior one, yet if it was clearly intended to prescribe the only rule in the case provided for, it repeals all prior acts which regulate the subject."

To the same effect: *Harrington v. Jersey City*, 78 N. J. L. 610; *Eldridge v. Philadelphia and Reading Railroad Co.*, 83 *Id.* 463; 25 R. C. L. 915, and cases cited.

To the same effect are: *O'Neil v. Johnson*, 123 Atl. 538, and *Eigen v. Rosolin*, 85 N. J. L. 515.

Section 25 expressly repeals all Acts and parts of Acts inconsistent with this Act (P. L. 1916, p. 404).

## II.

The Act to make uniform the law of transfer of shares of stock in corporations has been adopted in seventeen States, and in Alaska, and among the States which adopted it are: Connecticut, Illinois, Massachusetts, New York, Ohio, Pennsylvania and Wisconsin, as well as our own State.

The evident purpose of such uniform legislation is clearly to protect buyers of stock by requiring the physical delivery of the stock to the buyer, and making invalid any other manner of transfer. This is proven beyond peradventure of a doubt by the provisions of Sections 1-9 inclusive, of the said Act. This statute gives notice to the investing world, and to anyone purchasing stock, that the delivery of the certificate

itself, by the person appearing on its face to be the owner, accompanied with an assignment either in blank or filled out on the certificate itself, or a separate instrument, gives the assignee, for value, without notice, absolute title, even though the endorsement or delivery of the certificate was procured by fraud, duress, mistake or without authority of the original owner.

Justice Parker, speaking for the Supreme Court, in the opinion affirming the District Court in this action, was, therefore, clearly correct in saying:

“Indeed, the principal argument now made is that the Act of 1916 was intended only for the benefit of the corporation and not to apply as between rival claimants; but it should be quite obvious that any such idea is not only logically faulty but would if applied lead to endless confusion in practice; for, after all, what should pass under a levy and sale is the right to be recognized as a stockholder on the books of the corporation” (see p. 58 of Case).

Appellee, therefore, respectfully submits that the judgment of the Supreme Court, in affirming the judgment of the Second District Court of the City of Newark was right, and should be affirmed.

Respectfully submitted,

PHILIP J. SCHOTLAND,  
Attorney and Counsel with  
Defendant-Appellee.



## New Jersey Court of Errors and Appeals.

<p style="text-align: center;">SOL J. WALLACH, Plaintiff-Appellant,</p> <p style="text-align: center;">VS.</p> <p style="text-align: center;">LOUIS STEIN, Defendant-Appellee.</p>	}	<p>In Replevin.</p> <p>On Appeal from New Jersey Supreme Court.</p>
--	---	---

### REPLY AND SUPPLEMENTAL BRIEF FOR PLAINTIFF-APPELLANT.

In reading the Brief of the defendant-appellee, received by mail on October 13, 1926, by Harry Unger, of counsel with plaintiff-appellant (David Bobker being attorney of record) on page two thereof an important issue is raised, on which not only this pending case can be decided, but on which some case of similar scope must sooner or later be decided.

The UNIFORM STOCK TRANSFER LAW of 1926, as to its constitutionality has been at least twice doubted by the Supreme Court of this State.

In *Mulock v. Ulizio*, 131 Atl. 622, Mr. Justice Parker, in delivering the opinion of the Supreme Court, said, in the third paragraph in the second column on page 623:

“We find it unnecessary to go into the constitutional question \* \* \* assume, however, that its constitutionality cannot be successfully impugned as to which we express no opinion \* \* \*”.

In the pending case in the Supreme Court, Mr. Justice Parker in delivering the opinion of the Court, said:

“In the last cited case (131 Atl. 622) an attack was made on the constitutionality of the Act of 1916, which, for reasons stated in the opinion, it was unnecessary to decide. *The point was called to the attention of counsel at the argument of the present case*, but was not then argued, nor has it since been briefed. Consequently, we have not considered any constitutional phase of the matter, but confine ourselves to the points argued”.

It is apparent, therefore, that if the Act be unconstitutional, as not being within its title, it is *glaring error*.

The Court of Errors and Appeals in the case of *Hintz vs. Roberts*, 98 N. J. L. 771, held:

“As a ground of appeal that is very indefinite. The rule is that causes for reversal must be definitely pointed out in the grounds of appeal with sufficient precision to apprise the court and opposing counsel of the injury complained of. (*Lutlopp vs. Heckman*, 70 N. J. L. 272.)”

“*But in order to see that no injustice was done we have examined the matter with care*”.

In this case of *Hintz v. Roberts* (*supra*) what this court was to consider *glaring error*.

There can be no surprise to the appellee in this case that this question is raised, inasmuch as he himself argued in the Supreme Court to exclude a consideration of the unconstitutionality of the Act as it was never raised in the brief or in the court below. The fact that it was not so previously raised in the case does not prevent the consideration by an appellate court or a court of last resort of *glaring error*.

No one would be heard in any court in the United States to say that the court of last resort of any

State of the Union could not take judicial notice of the unconstitutionality of one of the statutes of its own Legislature, if such court of last resort considered the question of such statute was valid or invalid and to what extent it was valid or invalid.

The Appellant claims that the Uniform Stock Transfer Act of 1916 is unconstitutional, in that it violates the inhibition of the State constitution as containing more than one object and that object not being included within its title.

The corporation act was held constitutional inasmuch as the title read: "An Act concerning Corporations (Revision of 1896)". It is quite apparent that any member of the Legislature before which such act was pending as a legislative bill, by reading these words would be apprised of the fact that what was in that pending bill would concern any corporation in any manner. In other words, *anything about any corporation* could be included within the words: "An Act concerning corporations".

Some of the decisions as to the constitutionality of statutes dealing with the question of title, will be hereinafter enumerated and set forth. Applying the test as to what title is good and what title is not good, to the case now under consideration, it is very apparent that Chapter 191 of the Pamphlet Laws of 1916 at page 398 is not broad enough to include levies made by a Sheriff. The act is limited to making uniform "the transfer" of shares of stock in corporations, viz.:—ordinary commercial and banking transactions; there is nothing in the title that gives notice of an intent that the Act should include a regulation of the process of the several courts of justice in the State of New Jersey.

We feel sure that no legislature in observing the title to the act in question would ever have supposed that it was intended, by the act, to amend the Attachment and the Executions Acts, and substitute

an entirely new method of procedure, when corporate stock is to be either attached or levied upon. It will be observed that no change is made in the manner of the transfer or sale by the sheriff. The thirteenth section is wholly confined to the method of levying writs of attachment and execution upon stock.

Had the Legislature intended to include judicial sales under this proposition of uniform law between the States, it could have made the title to Chapter 191 broader, or on the other hand, it could in the next five minutes have passed in the legislature an accompanying separate bill that would make the same rule of law apply to levies by sheriffs on stocks of corporations under writs of *fi fa*.

Vain repetition can only befog the clarity and distinctness of the issue that is here presented, and counsel feel that this court if it decides that the question involved is of enough importance to the public at large can and may decide the constitutionality of said Chapter 191 of the Laws of 1916.

To prevent mis-understanding, counsel for the appellant must respectfully insist that Chapter 191 of the Laws of 1916, P. L. 1916, page 398, is unconstitutional to an extent not to cover either the control of the process of the courts and levies by sheriffs on stock interests in corporations and judicial sales, inasmuch as to include such would constitute more than one object, and in any event that such objects have not been included within the title of said Chapter 191 of the Laws of 1916.

THE THIRTEENTH SECTION OF CHAPTER 191 OF THE LAWS OF 1916, ABOVE QUOTED IS OF NO AVAIL, BECAUSE IT IS ENTIRELY BEYOND, AND WITHOUT THE SCOPE, OF THE TITLE OF THE ACT.

This title, as we have seen is:

“An Act to make uniform the law of transfer of shares of stock in corporations.”

The nineteenth section of the act provides:

“This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.”

Notwithstanding the beneficent design of legislation to create, so far as possible, a uniform system of laws throughout the several states, and to prevent the confusion that has heretofore arisen by virtue of diversity, nevertheless, the Constitution of New Jersey cannot be ignored in carrying out this design, and when the so-called uniform system is brought to this State, it must be in form, both as to title and other features, to conform to our fundamental requirements. So far as the title of this act is concerned, it is simply to make uniform the law of the transfer of shares of stock in corporations, and this uniformity is, by section nineteen, shown to apply to the law as prevailing throughout the country, and in such states as shall adopt it. The title is not an “act concerning transfers of shares of stock,” or “affecting such transfers.”

Now it will be remembered, that by the express provisions of Sections 4 and 5 of our Executions Act, 2 Compiled Statutes, page 2244, regular formalities are prescribed for a levy by a sheriff upon stock of a corporation. Upon this subject the Court of Errors, through Mr. Justice Knapp, in *Voorhis v. Terhune*, 50 N. J. Law 147-159, said:

“Shares in corporations were not, in this state, the subject of sale under execution before the passage of the act of March 9th, 1842, entitled ‘An act to abolish imprisonment for debt.’ The fifth section provided that any share or interest of any joint stock company, incorporated in this state, belonging to a defendant in execution, may be taken and sold by virtue of such execution, in the same manner

as goods and chattels. The sixth section required the clerk, cashier or other officer of the company, having custody of its books, to certify to the sheriff, on his presenting the execution, the number of shares or amount of interest held by the defendant in the company.

In the Revision of 1846 these sections passed into the act respecting executions, as the seventh and eighth sections of that act.

It was held under this legislation that the delivery of execution to the sheriff did not bind this kind of property; that a levy made by the sheriff by mere inventory, without applying to the company, whose shares the defendant held, was not sufficient to defeat the rights of one purchasing such shares of the defendant. It was also strongly urged that actual notice to the defendant, if within the sheriff's jurisdiction, that his stock was levied upon, was required by considerations of public policy and commercial convenience. And this where the office of the corporation was within the sheriff's bailiwick. *Princeton Bank v. Crozer*, 2 Zab. 383."

So, too, as settled in *Cord v. Newlin*, 71 N. J. Law, 438, certificates of stock in a New Jersey corporation are the subject of attachment, and may be reached in proceedings by attachment in a certain way, under certain circumstances. Now, how can it be claimed that the title of this act is broad enough to permit a repeal of the express provisions of Sections 4 and 5 of our Executions Act, and constitute an entirely new procedure to be adopted by a sheriff in levying upon capital stock? The situation seems to be precisely similar to that which existed in *Hawkins v. American Copper Company*, 69 N. J. Law 126, where the title to the act was

"An Act to provide a uniform procedure for the enforcement of all laws relating to fish, game, and birds, and for the recovery of penalties for violation thereof."

The seventeenth section of the act with that title declared that in all cases where a person shall be convicted a second time, double the penalties prescribed shall be imposed upon such second conviction. Justice Dixon, speaking for this Court, said:

“We think Section 17 is rendered inoperative by article IV, section 7, paragraph 4, of the constitution, because its object is not expressed in the title of the act. The title relates wholly to procedure and gives no intimation of a purpose to impose or increase penalties.”

The similarity between this case and the case at bar is significant.

See also *Jonas Glass Company v. Ross*, 69 N. J. Law 157. Here the sole reliance for support of the proceedings under review was upon Section 107 of

“An Act Concerning District Courts (Revision of 1898)”,

as amended by Chapter 39 of the Laws of 1901. That section purported to authorize the removal of tenants and others holding over in possession of demised premises:

“where such person shall hold over after any default in the payment of the rent pursuant to the agreement under which such premises are held.”

It was held in an opinion by Justice Collins, in which Justices Dixon and Henderson concurred, that the title of the amendment was insufficient to cover the body of the act. Justice Collins said:

“Under an appropriate title, such legislation would apply to every case within its terms, but under a title embracing nothing beyond judicial jurisdiction and procedure, it can only extend to cases where independent of the enactment, a landlord has the right to recover possession of demised premises in default of payment of rent. Under Article IV, Section 7, paragraph 4 of the Constitution, the object of a

law must be expressed in its title, and the title of that cited does not indicate a purpose to declare or change the relative rights of landlords and tenants."

In *Hayes v. Storms*, 64 N. J. Law 514, the title under consideration was

"An Act to increase the jurisdiction of Justices of the Peace."

The third section of this act made it a penal offense for any Justice of the Peace to issue a summons in behalf of any person for whom he is agent. The Court held the third section not to be covered by the title, saying:

"Obviously, this is not an increase in the jurisdiction of the justice—it increases nothing, and it does not concern jurisdiction. It prescribes a decent rule of conduct, but that object is not expressed in the title. No section of an act has any effect beyond the object expressed in its title. *Hendrickson v. Fries*, 16 Vroom 555; *Dobbins v. Northampton*, 21 *Id.* 496."

In *Davison v. Patterson*, 110 Atl. 827, the title of the act in question read:

"An act to amend an act entitled 'An act respecting the employment of honorably discharged Union soldiers, sailors and marines in the public service of the state of New Jersey, relative to removals,' approved March thirty-first, one thousand eight hundred and ninety-seven, and to amend the title of said act."

The Act of 1897 which was sought to be amended by the act whose title has just been given, applied solely to "Honorably discharged Union soldiers, that is veterans of the Civil War who had served on the Union side." The Act of 1919, whose title we have quoted, was broader, extending to hon-

orably discharged soldiers, sailors and marines "who have served in any war in which this country now is, or has been engaged." The Court in vitiating the proposed amendment said:

"It will be observed that no indication is given of what sort of amendment to the title and body of the act of 1897 is intended; and where the proposed amendment involves the inclusion of an entirely new class of persons as beneficiaries of the legislation, it falls within the rule laid down by the Court of Errors and Appeals in *Hedden v. Hand*, 107 Atl. 285, 5 A. L. R. 1463, where the attempt was to subject a new class of objects to the ban of the nuisance abatement act. If the sole object was, for example, to amend the title of the 1897 act so as to include the municipal offices covered by its body, an amendment entitled simply as an act to amend the title, without stating how, might be sustainable under such cases as *Sawter v. Schoenthal*, 87 N. J. Law 499, 83 Atl. 1004, and *Patterson v. Close*, 84 N. J. Law 319, 86 Atl. 430; but, as we have pointed out, this amendment of 1919 attempts to make a broad extension of the scope of the act of 1897 as to persons affected, and this, we think, under *Hedden v. Hand*, cannot be done."

*Sweig v. Tiffany*, District Judge, 111 Atl. 263, is similar to the case of *Jonas Glass Company v. Ross* already quoted, and for the same reason, the act under consideration was held bad. To the same effect is *Strait v. Wood*, 87 N. J. Law 677.

Respectfully submitted,

DAVID BOBKER,  
Attorney for Plaintiff-Appellant.

HARRY UNGER,  
WILLIAM MAYO ATKINSON,  
Of Counsel with Plaintiff-Appellant.



## New Jersey Court of Errors and Appeals

SOL. J. WALLACH,  
Plaintiff-Appellant,

vs.

LOUIS STEIN,  
Defendant-Appellee.

*In Replevin.*

*On Appeal  
from New  
Jersey  
Supreme  
Court,  
Affirming  
the Second  
District  
Court of the  
City of  
Newark.*

### REPLY BRIEF OF DEFENDANT-APPELLEE TO SUPPLEMENTAL BRIEF OF PLAINTIFF-APPELLANT.

In the Supplemental Brief, the plaintiff-appellant seeks to raise the constitutional question which the Supreme Court, in its opinion, printed on page 4 of the Supplemental State of the Case, held could not be raised because it had not been raised in the Trial Court. The Supreme Court cites *Borough of Park Ridge v. Reynolds*, 74 N. J. L. 449, where this Court held:

“This was the sole attack with respect to unconstitutionality in the Supreme Court. The objections made in this Court, on that score, are much broader, but evidently they cannot operate to produce a reversal of the judgment of the Supreme Court on other grounds than those presented to that Court.”

It is true that this Court has sometimes considered another objection, in order that no injustice be done. But, is this the kind of a case where this Court should consider the constitu-

tionality of the act, even though the question was not raised at the Trial Court, in order to do justice?

The appellant is trying to have this Court help him get for one hundred and fifty dollars, stock for which the defendant paid \$2,500, in cash, to his predecessor in title, who, in turn, paid \$2,500 into the treasury of the corporation, of which the plaintiff-appellant is the president. Appellant still has his judgment for costs, and can still collect it from his debtor, the defendant's predecessor in title, but he seeks to take advantage of an Execution Sale, of which neither the defendant, nor his predecessor in title, had any knowledge, and thereby get for one hundred and fifty dollars, stock worth twenty-five hundred dollars.

Defendant respectfully submits, that in justice to all parties, the rule stated by Chancellor Walker, speaking for this Court, in the case of *Mahnken v. Meltz*, 97 N. J. L. 159, at page 160, should be followed:

“An examination of the nine reasons filed in the Supreme Court fails to disclose, or even suggest, that the act under which the proceedings were brought is unconstitutional. Where the Supreme Court sits as a reviewing tribunal, as it did in this case, *questions not argued* there will ordinarily not be noticed here, but may be if they involve jurisdiction or public policy. See *State v. Belkota*, 95 N. J. L. 416; *State v. Snell*, 96 *Id.* 299. But, as above remarked, the jurisdictional question of defective title of the act under which these proceedings were instituted, was not even raised in the court of first instance, and consequently, could not have been argued in the court of intermediate appeal, as it was not, and it will not, be noticed here.”

The Statute in question was referred to in *Baumohl v. Goldstein*, 95 N. J. Eq. 597, at page 604, where Vice-Chancellor Bentley says:

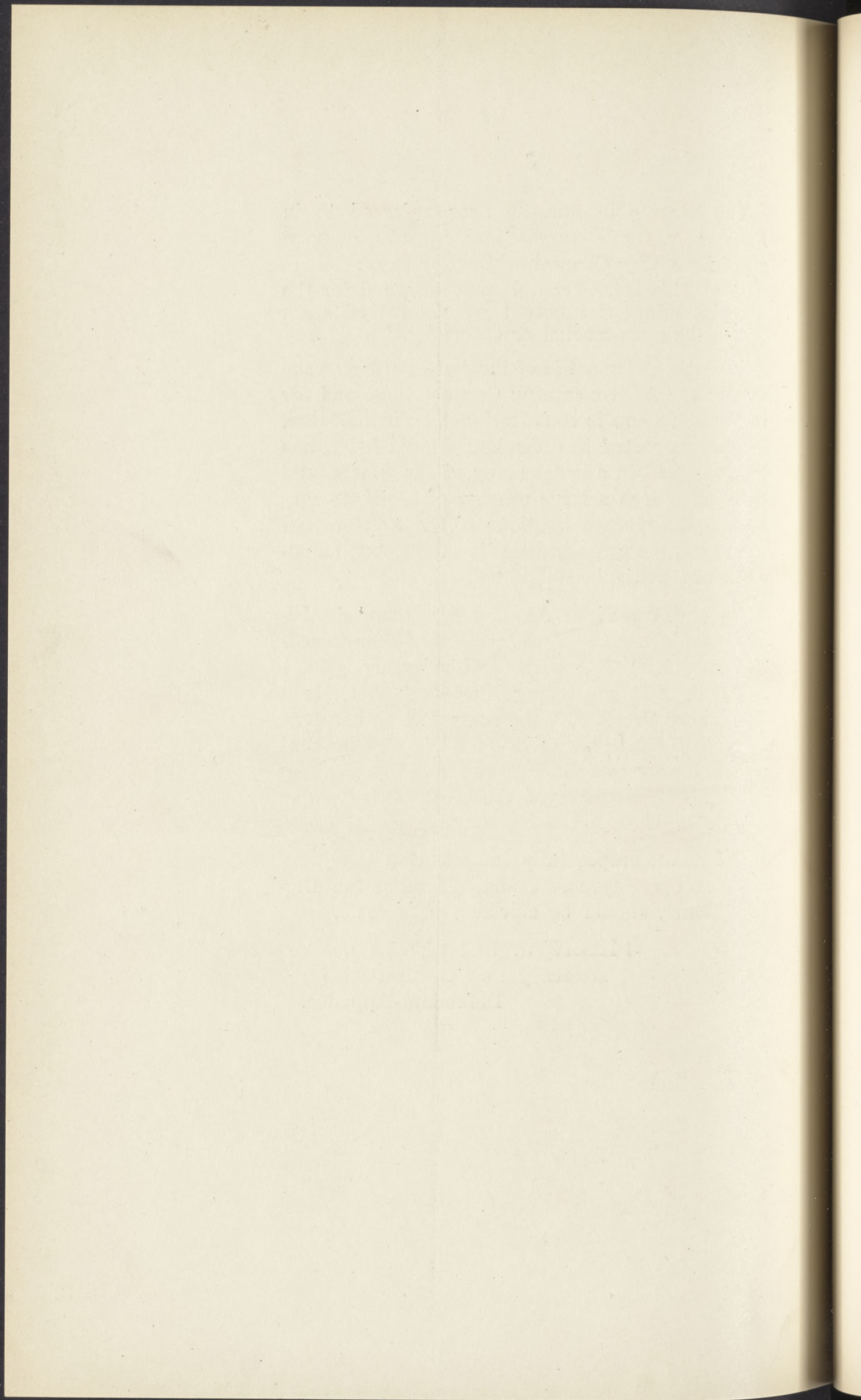
“This act, of course, was designed for the protection of innocent purchasers of stock in the open market *or otherwise*.”

The title of the act is of the same nature as the title of the Act concerning Corporations, and for the same reason is constitutional. Furthermore, the Act as stated in defendant's main brief, has been adopted in a great many of the States, and there have been a large number of decisions construing the various Sections of the Act, but nowhere has the constitutionality of the Act, on account of its title, been doubted.

See Uniform Laws Annotated, Volume 6, *Miller v. Kaliwerke Aschersleben Aktien-Gesellschaft*, (1922) 283 Fed. 746, affirming (1921) 276 Fed. 206 (construing New York Act), is a case where Section 13, the same section involved in the case at bar, was in question, and its constitutionality was not doubted, but the Trading with the Enemy Act of the Federal Law, was held to control.

Defendant respectfully submits that the judgment of the Supreme Court, affirming the District Court, should be affirmed, with costs.

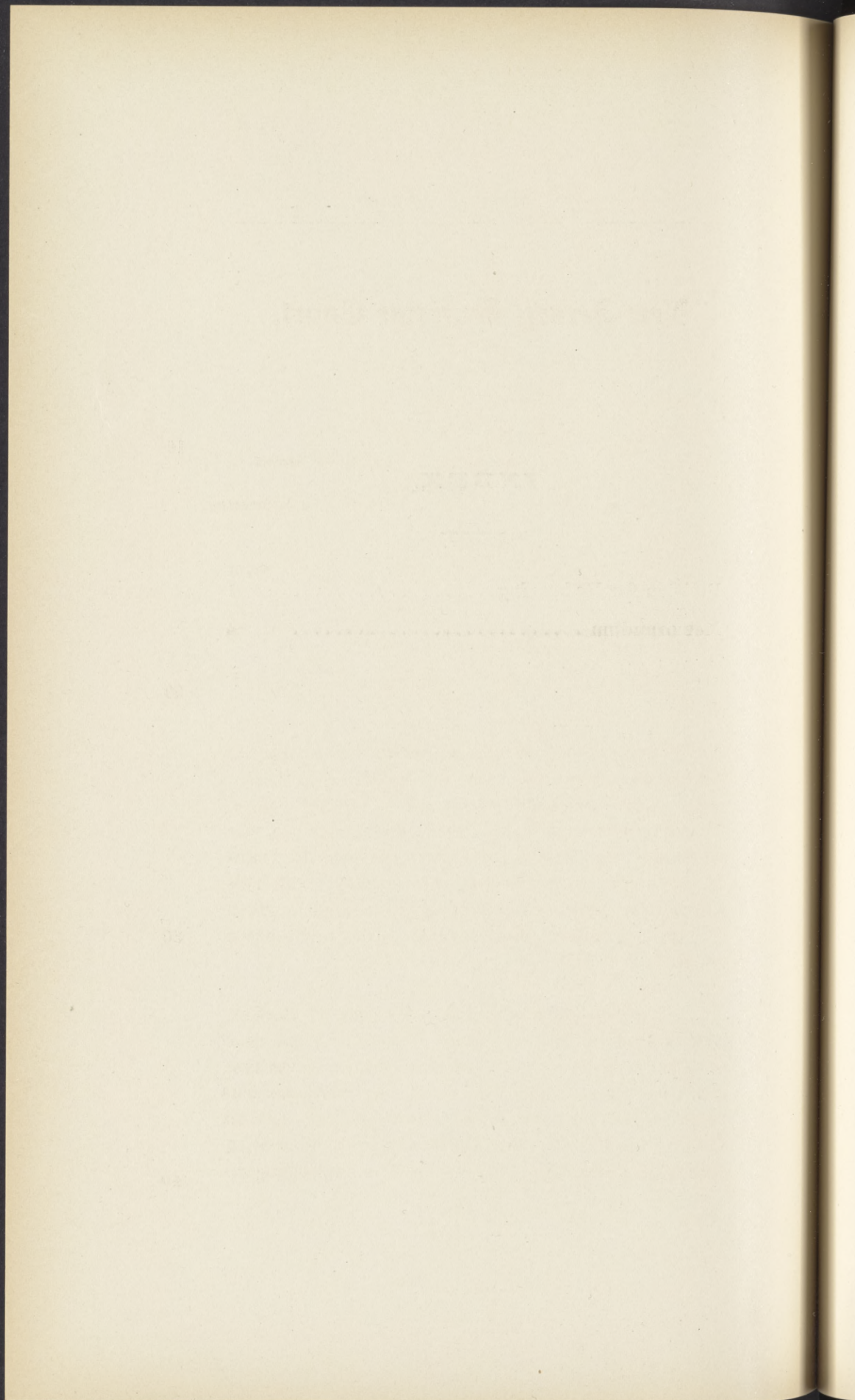
PHILIP J. SCHOTLAND,  
Attorney and Counsel with  
Defendant-Appellee.



## INDEX.

---

	PAGE
Petition for Re-hearing.....	1
Memorandum .....	4



## New Jersey Supreme Court.

Filed May 19, 1926.

SOL J. WALLACH,  
Plaintiff

VS.

LOUIS STEIN,  
Defendant.

On Appeal.

10

Petition for Re-hearing.

TO THE NEW JERSEY SUPREME COURT:

The petition of Sol J. Wallach respectfully  
shows:

20

1.—Your petitioner was appellant in an appeal heretofore taken from the judgment of the trial judge of the Second District Court of the City of Newark, which said judgment was given for the defendant, and said appeal having been duly heard by this court on the 20th day of January, 1926, this court filed an opinion affirming the judgment given by the trial judge. Said opinion was handed down on May 4th, 1926.

30

2.—The opinion was delivered by Justice Parker, and in said opinion reference is made to the case of *Mulock vs. Ulizio*, 139 Atlantic 622, in which last cited case an attack was made on the constitutionality of the Act of 1916, entitled "An Act to Make Uniform the Law of Transfer of Shares of Stock in Corporations"; the opinion, referring to

40

## Petition for Re-hearing.

said constitutional question, states among other things, that "the above was called to the attention of counsel at the argument of the present case, but was not then argued, neither has it since been briefed. Consequently, we have not considered any constitutional phase of the matter, but confine ourselves to the points argued".

10

3. It is respectfully submitted that said constitutional question was not argued, neither was it briefed, because of inadvertence. That during the argument of the present case on January 20th, 1926, one of the justices sitting at said argument, inquired of counsel at the argument whether the constitutionality of said Act had been considered, and counsel replied in the negative. One of the justices then advised counsel that if the court desired to consider the constitutional phase of the matter, that counsel would be notified to brief said question and to argue the same.

20

4. It is respectfully submitted that the reason why said constitutional question has not been briefed was because of the inadvertence, as aforesaid, and because counsel fell into an obvious error in waiting to receive word from the justices to the effect that the constitutional phase of the situation was to be briefed.

30

5. Your petitioner charges that the 13th Section of Chapter 191 of the Laws of 1916, which said section was involved in the consideration of the present case, is of no avail, because it is entirely beyond, and without the scope of the title of the Act. The title of the Act is, "An act to make uniform the law of transfer of shares of stock in cor-

40

Petition for Re-hearing.

---

porations", and the title is not, "Act concerning transfers of shares of stock" or "affecting such transfers", and your petitioner is, therefore, of the opinion that Section 13, as aforesaid, is rendered inoperative by Article 4, Section 7, Paragraph 4, of the constitution, because its object is not expressed in the title of the Act.

6. Your petitioner respectfully urges that said constitutional question is of great importance, and should have been argued and briefed by counsel. 10

7. Your petitioner, therefore, prays that the cause may be re-argued insofar as the constitutional question is concerned, and that he be permitted to brief said constitutional question, to the end that this question may be fully presented and considered by this court. 20

Your petitioner will ever pray, etc.

HARRY UNGER,  
Of Counsel with Plaintiff-Appellant.

30

40

## NEW JERSEY SUPREME COURT.

No. 419, JANUARY TERM, 1926.

10	SOL J. WALLACH, Appellant,  vs.  LOUIS STEIN, Appellee.
----	---

On petition for re-argument.  
 Before Justices PARKER, MINTURN and BLACK.  
 For the Appellant, HARRY UNGER.  
 For the Appellee, PHILIP J. SCHOTLAND.

**Memorandum.**

20 Appellant has asked for a re-argument, on the ground that a constitutional question, which was first called to the attention of counsel at the main argument in this court, was not discussed by them by supplemental brief or otherwise, because they understood the court would advise them in case argument on that point was desired.

30 An insuperable difficulty about hearing counsel on this point is that the matter would not be properly before us, because the constitutional question was not raised in the trial court. The uniform stock transfer act, a section of which it is desired to attack, was relied on by that court, and was not challenged as to its validity in any way. That being the case the question should not be argued here for the first time. *Borough of Park Ridge v. Reynolds*, 74 N. J. L. 449.

40 The application for re-argument will therefore be denied.

