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Notice of Appeal.

In Chancery of New Jersey.

120-336

*On Petition to Rescind Contracts and for the Return of Securities, Real Property and Building and Loan Shares, Fraudulently Taken from Petitioner.*

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Between  
DAVID T. WILENTZ, Attorney  
General of the State of New  
Jersey,

Complainant,

and

HICKOX FINANCE CORPORATION OF  
NEW JERSEY, a corporation of  
the State of New Jersey,  
Defendant.

Sat Below:  
V. C. STEIN

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The petitioner in this matter, Daniel A. DeVries, hereby appeals from an interlocutory order made in the above entitled cause on June 28th, 1938, and from the whole and every part thereof to the Court of Errors and Appeals in the Last Resort in All Causes. 30

JOSEPH J. WEINBERGER,  
Solicitor for and of Counsel  
with Petitioner.

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

JOSEPH J. WEINBERGER,  
Of Counsel with Petitioner. 40

**Affidavit of Service.**NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10	Between DAVID T. WILENTZ, Attorney General of the State of New Jersey,  Complainant,  and  HICKOX FINANCE CORPORATION OF NEW JERSEY, a corporation of New Jersey,  Defendant.	On Appeal from the Court of Chancery.
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20 State of New Jersey }  
 County of Essex } ss.:

Edward L. Whelan, Jr., of full age, being duly sworn on his oath according to law, deposes and says:

1. On Friday, July 8, 1938, I served Petition of Appeal and Notice of Appeal by leaving the same with the person in charge of the office of James L. McKenna, solicitor of defendant, at 17  
 30 Academy Street, Newark, New Jersey.

EDWARD L. WHELAN, JR.

Sworn and subscribed before me  
 this 8th day of July, 1938.

Joseph H. Stamler,  
 Attorney at Law  
 of New Jersey.

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**Petition of Appeal.**

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

Between

DAVID T. WILENTZ, Attorney  
General of the State of New  
Jersey,

Complainant,

and

HICKOX FINANCE CORPORATION OF  
NEW JERSEY, a corporation of  
New Jersey,

Defendant.

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On Appeal  
from the  
Court of  
Chancery.

DANIEL A. DEVRIES,  
Petitioner-Appellant,

vs.

JAMES L. MCKENNA, Receiver of  
The Hickox Finance Corpora-  
tion of New Jersey, a corpora-  
tion of New Jersey,  
Defendant-Appellee.

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On Appeal  
from the  
Court of  
Chancery.

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*To the Honorable the Court of Errors and Ap-  
peals in the Last Resort in All Causes:*

The petition of Daniel A. DeVries, the petition-  
er-appellant in the above entitled cause, respect-  
fully shows that:

1. Petitioner finds himself aggrieved by an in-  
terlocutory order, made in the Court of Chancery  
by his Honor, Luther A. Campbell, Chancellor of  
the State of New Jersey, on the advice of Vice 10

*Petition of Appeal.*

Chancellor Alfred A. Stein, bearing date the 28th day of June, 1938, in a certain cause in said Court of Chancery, wherein your appellant was a petitioner in the cause therein pending and the Hickox Finance Corporation of New Jersey, a corporation of the State of New Jersey, was defendant, in this respect, to wit, that the said order adjudges that the petition of the appellant should be discharged and dismissed.

And petitioner appeals from the said order of the Chancellor which decrees that the petition be discharged and dismissed upon the ground that the same is erroneous, in that:

1. The court should have decreed that the petitioner was entitled to a return of the securities in the possession of the Receiver for the Hickox Finance Corporation, which securities were not mingled or intermingled with other assets of the defendant company, and which said securities were still intact held by the Receiver for the Hickox Finance Corporation. The said securities being as following:

(a) A first mortgage and bond in the sum of Seventy-five Hundred (\$7500.00) Dollars, on property known as No. 86 Boulevard, Passaic, New Jersey.

(b) Deed to property at No. 292 Governor Street, Paterson, New Jersey.

2. The said decree is erroneous in that the court should have decreed that the petitioner was entitled to a return of said securities for the reason that the said securities were received by reason of false and fraudulent representations and the said petitioner was illegally deprived of the use of said securities.

*Petition of Appeal.*

Petitioner therefore prays that the said order of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper.

DANIEL A. DEVRIES,  
Petitioner-Appellant. 10

JOSEPH J. WEINBERGER,  
Solicitor for and of Counsel  
with Petitioner-Appellant.

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**Order to Show Cause.**

IN CHANCERY OF NEW JERSEY.

120-336

*On Petition to Rescind Contracts and for the Return of Securities, Real Property and Building and Loan Shares, Fraudulently Taken from Petitioner.*

10	Between	}
	DAVID T. WILENTZ, Attorney General of the State of New Jersey,	
	Complainant,	
	and	
20	HICKOX FINANCE CORPORATION OF NEW JERSEY, a corporation of the State of New Jersey,	}
	Defendant.	

This matter coming on to be heard on the application of Joseph J. Weinberger, Esq., of counsel for the petitioner and sufficient reason appearing, it is, on this 28th day of December, 1937,

30 ORDERED, that James L. McKenna, the Receiver of the defendant company, show cause before this Honorable Court on the 4th day of January, 1938, or as soon thereafter as counsel can be heard, at the Chancery Chambers, Newark, New Jersey, why an order should not be made directing the Receiver to return, reconvey and reassign the following property of your petitioner, or, in the event any of the said securities were sold, the net cash realized on the same and turned in to the

40 said company, to wit:

*Order to Show Cause.*

Certificate No. 116, Series B, of Citizens Title Insurance and Mortgage Company, in the sum of \$2500.00.

Certificate No. 144, Series B, of Citizens Title Insurance and Mortgage Company, in the sum of \$2,000.00.

Union Loan and Building Association Book No. 1155 in which there was an equity of \$1013.03. 10

First Mortgage & Bond in the sum of \$7500.00 on property at 86 Boulevard, Passaic, N. J.

Deed to property at 292 Governor Street, Paterson, N. J., worth \$5,000.00.

It is further ORDERED, that in the meantime until the return of the argument on said order to show cause and the disposition of same, the Receiver be and hereby is, restrained from selling, assigning, transferring and disposing of the said securities or the cash therein, until the further order of this court; and 20

It is further ORDERED, that a true copy of this order which may be certified to be a true copy by the Solicitors for the Petitioner, be served upon the Receiver of the defendant company, Hickox Finance Corporation of New Jersey, a corporation of the State of New Jersey, James L. McKenna, by ordinary mail or by personal service within 3 days from the date hereof. 30

LUTHER A. CAMPBELL,  
C.

Respectfully advised,  
ALFRED A. STEIN,  
V. C.

**Petition.**

IN CHANCERY OF NEW JERSEY.

120-336.

*On Petition to Rescind Contracts and for the  
Return of Securities, Real Property and  
Building and Loan Shares, Fraudu-  
lently Taken from Petitioner.*

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Between  
DAVID T. WILENTZ, Attorney  
General of the State of New  
Jersey,

Complainant,

and

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HICKOX FINANCE CORPORATION OF  
NEW JERSEY, a corporation of  
the State of New Jersey,  
Defendant.

The petition of Daniel A. DeVries respectfully shows that:

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1. I am, and have been, a resident of Carlton Hill, Borough of East Rutherford, County of Bergen and State of New Jersey, for the last past sixty-two years during which time, for a period of thirty-four years, up until March 4th, 1933, I was the Post Master representing the United States Government for said town.

2. In or about the month of March, 1937, the Hickox Finance Corporation advertised in the Newark Evening News, a publication of the State of New Jersey, which advertisement was shown to me by my wife, Emma DeVries, as follows:

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“If you would like to receive immediate-

*Petition.*

ly monthly cash payments on your B. & L. Certificates investigate our plan.

Call, 'phone or write for information.

Hickox Finance Corporation,  
Industrial Office Building,  
1060 Broad Street, Newark, N. J.  
Market 3-1280."

3. That one evening in the month of April, 1937, Mr. S. F. Buxbaum, one of the representatives of the Hickox Finance Corporation of New Jersey, called at my home at 99 Carlton Avenue, Carlton Hill, New Jersey, with one Mr. Dawson who also introduced himself as a representative of the Hickox Finance Corporation, and Mr. Dawson told me, in the presence of Mr. Buxbaum and my wife, that my wife had informed him that I might be interested in the Hickox Finance Corporation's plan of purchasing securities, mortgages and real estate in building and loans and mortgage companies which I owned. Negotiations were had a month prior thereto between the Hickox Finance Corporation and my wife.

4. On April 10, 1937, in the presence of my wife and Mr. Buxbaum, Mr. Dawson represented to me that the Hickox Finance Corporation was a company organized under the Department of Banking and Insurance and that David T. Wilentz, Attorney General of New Jersey, was associated with this corporation and that they had a license to do business issued to them by the Department of Banking and Insurance of the State of New Jersey, and that the Hickox Finance Corporation of New Jersey had offices in the Industrial Building in Newark, New Jersey, and that their books were open to inspection and were being inspected regularly by the Banking Department. Mr. Dawson, who did most of the talking,

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*Petition.*

said that the Hickox Finance Corporation had a tremendous cash surplus and were paying quarterly dividends regularly and that they turned over their money at least twelve times a year and that the corporation was making a great deal of money.

- 10 Mr. Dawson asked me what I had for sale and I showed him a building and loan book No. 1155 of the Union Loan and Building Association of Passaic, N. J., in which I had Ten Hundred Thirteen and 3/100 Dollars (\$1013.03) equity. I told him I owned two first mortgage certificates in the Citizens Title Insurance and Mortgage Company aggregating Forty-five Hundred Dollars (\$4500.00), and had a first mortgage in the sum of Seventy-five Hundred Dollars (\$7500.00) on a piece of property at 86 Boulevard, Passaic, N. J., and owned some property in Paterson, known as 292  
20 Governor Street, Paterson, N. J., free and clear. Messrs. Buxbaum and Dawson told me that the Hickox Finance Corporation would purchase everything from me, including my home and some other real estate I owned, which would give me an income for life which they figured would be about Five Hundred Dollars (\$500.00) per month. This included my store which they also wanted to buy.  
30 They told me that the plan of the Hickox Finance Corporation was to issue a series of checks payable monthly, covering a period of five years, and, in addition to give me a certificate for a certain number of shares of liquidating debenture stock upon which dividends would be paid out of surplus. I told them I had about Twenty thousand dollars (\$20,000) worth of securities consisting of real estate, two first mortgage certificates, and a first mortgage on some real estate and some building and loan shares. Mr. Buxbaum and Mr. Daw-  
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*Petition.*

son both stated and represented that I would have at least Five Hundred dollars (\$500.00) a month income for life, if I sold the stocks, and bond and mortgages and assigned everything to the Hickox Finance Corporation. This was nearly all my life's earnings as well as my wife's. They wanted me to turn in my store and my home in which I lived with my wife, but when it came to the store and my home, my wife refused and told me, in their presence, not to do so and I listened and took her advice. 10

5. Relying on each of these representations which I have now learned were false and untrue and which were part and parcel of a conspiracy to defraud me out of my shares of stock, mortgages and real estate which I will enumerate in this petition, I accepted a book of post-dated checks payable monthly and covering a period of five years and which were drawn by the Hickox Finance Corporation, for which I turned over to Mr. Buxbaum, representing the Hickox Finance Corporation, my building and loan share book and, thereafter, Mr. Buxbaum and Mr. Dawson called again and I turned over to them two first mortgage certificates in the Citizens Title Insurance and Mortgage Company, amounting to Forty-five hundred dollars (\$4500.00) at which time they turned over another book of post-dated checks. 20 30

6. That on or about April 15th, 1937, I received a letter dated April 15th, signed by Stanley B. Gilson in behalf of the Hickox Finance Corporation, on their stationery, a true copy of which is hereto attached and made a part hereof. In that letter, receipt was acknowledged of Certificate No. 144 in the amount of Two thousand dollars (\$2,000) being a first mortgage certificate of the Citizens Title Insurance and Mortgage Company, and 40

*Petition.*

Certificate No. 116 in the amount of Twenty-five hundred dollars (\$2500.00) of the same series, of the Citizens Title Insurance and Mortgage Company. I was advised that Messrs. Dawson and Buxbaum to whom I delivered the securities and certificates, had turned them in to the company. I was also advised that Mr. Dawson would be with me on Friday evening.

10 7. Subsequently, I received a receipt dated the 20th day of April, 1937, for Union Loan and Building Association Book No. 1155, together with the receipt for the two certificates of the Citizens Title Insurance and Mortgage Company, Series B, Certificate No. 116 and 144, signed by S. F. Buxbaum.

20 On April 20th, 1937, I received a confirmation signed by S. L. Stein, one of the Vice-presidents of the Hickox Finance Corporation of New Jersey, wherein my application to participate in the liquidating plan for twenty-five (25) shares of liquidating debenture stock of a total value of Fifteen Hundred Dollars (\$1500.00) was confirmed.

30 8. Thereafter, Mr. Stein called at my home and again repeated these false and fraudulent statements that the Hickox Finance Corporation had a main office in Cleveland, Ohio, was making all kinds of money, and that Attorney General Wilentz was connected with the company, and that they had a large surplus and were paying dividends regularly. In the month of April, 1937, Mr. S. L. Stein, one of the Vice-presidents of the Hickox Finance Corporation, finally persuaded me to turn over to him a first mortgage and bond which I held on property at 86 Boulevard, Passaic, N. J., known as the Hayward property, amounting to Seventy-five Hundred Dollars (\$7,500.00) which mortgage is recorded in Book T17, Page 342, Passaic County Register's Office. I re-

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*Petition.*

ceived a receipt from the Hickox Finance Corporation, signed by S. F. Buxbaum, for this first mortgage, bond and assignment.

9. Thereafter, I was asked to sign a subscription requesting the Hickox Finance Corporation to liquidate for me the Hayward first mortgage which covered 86 Boulevard, Passaic, N. J., and apply the proceeds thereof against my participation in the Hickox plan, and my subscription to sixty-five (65) liquidating debenture shares of the Hickox Finance Corporation of New Jersey, of a total liquidating value of Thirty-nine Hundred Dollars (\$3900.00). 10

10. Thereafter, I cashed several of these post-dated checks which became due, and which amounted to the sum of Five Hundred Twenty-five Dollars (\$525.00). Subsequent thereto, a letter was written to me dated May 18th, 1937, a true copy of which is hereto attached and made a part hereof. After this letter was received, Messrs. Potts and Stein continuously called and bothered me and pleaded with me to return the checks and the blue liquidating stock certificate which was left with me, upon which I was to receive dividends, and they told me that they would substitute and give me Class A Common Stock which would pay me dividends for life, quarterly, equivalent to the amounts I was receiving monthly. I told them I did not want to do it, but they kept annoying me. I finally returned the checks relying on these representations which I now find out were false, and took Class A, Hickox Finance Corporation Common Stock. 20 30

11. Some time about April 28th, 1937, I executed an assignment of mortgage to a Mr. Gilson. He made my wife join in the assignment although she had no interest in it. At that time, Mr. Gilson 40

*Petition.*

came into my home representing himself as a lawyer, and had some kind of legal documents which he said he wanted me to sign. I think it was a bond and mortgage and an assignment thereof, of the Hayward mortgage which was in the sum of Seventy-five hundred dollars (\$7500.00). I signed some documents and gave him the papers after  
 10 he had represented to me that this was an excellent plan and that I would receive every nickel I invested in building and loan shares, in my first mortgage, in the real estate and other shares which I owned. Later on, he prevailed on me to give him a deed to a piece of property which I owned in the City of Paterson, known as 292 Governor Street, which was worth Five thousand dollars (\$5,000.00). He told me the liquidating value was One thousand dollars (\$1,000.00). Subsequently, a deed was prepared and brought to my  
 20 home which I signed, transferring the property at 292 Governor Street, Paterson, N. J. This was the property which Mr. Gilson told me to go ahead and sell, and which is still, as well as the first mortgage and shares of stock, in the custody of the Receiver.

12. I have never received the dividends which were represented to me would be paid on October  
 30 1st and every three months thereafter. I do know that Mr. Dawson and Mr. Buxbaum kept at me very hard and gave me two books one entitled "Not to Worry" and the other "The Good Shepherd", in order to try to convince me that they were good living men and believed in the Bible. I told Mr. Buxbaum that I did not believe in their honesty in Newark, but he said not to worry, everything was all right and the company was as represented, in good, sound financial condition.

40 13. I went to the office where they had moved,

*Petition.*

at 850 Broad Street, Newark, N. J., to complain about not having received the dividends. I told the man behind the desk whose name I now know as Morris Rosenthal, that I was promised by Messrs. Potts and Stein that I could borrow Two thousand dollars (\$2,000) and would like to have it, that I wanted to fix up my store. I was only told to come back again and again which I did, and each time another excuse was offered. I told the gentleman whose name is Rosenthal, that I was going to court and make trouble. He told me to get out. They never came to my home after that, nor did I ever hear from them since. They promised me that they would write me and give me an answer. 10

14. I next heard of them when I received by mail a final decree restraining the Hickox Finance Corporation of New Jersey, a corporation of the State of New Jersey, from doing any further business in the State of New Jersey, because of illegal and fraudulent practices and appointing James L. McKenna, 17 Academy Street, Newark, New Jersey, as Receiver for the company. 20

15. I immediately went to the Receiver, Mr. McKenna, and told him the story of how I had been defrauded by the Hickox Finance Corporation and their representatives, Messrs. Buxbaum, Dawson, Gilson, Potts and Stein, and offered to give back the stock and demanded my securities or the money that had been realized from the sale of my securities. 30

16. I thereafter consulted counsel and told him the story and had a warrant sworn out for the arrest of Messrs. Buxbaum, Dawson, Gilson, Potts and Stein, which is pending.

Your petitioner avers that the first mortgage, the real estate, the building and loan shares here- 40

*Petition.*

10 tofore enumerated taken from him, together with  
the house at 292 Governor Street, Paterson, New  
Jersey, are worth approximately Twenty Thou-  
sand Dollars (\$20,000.00), and respectfully prays  
that as to the first mortgage which is now in the  
hands of the Receiver as well as the property at  
292 Governor Street, Paterson, New Jersey, which  
is also in the hands of the Receiver, shall forth-  
with be returned to your petitioner and the Citi-  
zens Title Insurance and Mortgage guaranteed  
certificates, together with the building and loan  
shares, if they are still in the custody of the Re-  
ceiver, also be directed to be returned or the funds  
realized from the sale of said certificates, all of  
which were obtained through false and fraudu-  
lent representations and which were hereinbefore  
20 set forth.

And your petitioner will ever pray, etc.

WEINBERGER & WEINBERGER,  
Solicitors for Petitioner.

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*Affidavit of Daniel A. DeVries.*

of New Jersey, which advertisement was shown to me by my wife, Emma DeVries, as follows:

“If you would like to receive immediately monthly cash payments on your B. & L. Certificates investigate our plan.

Call, 'phone or write for information.

10           Hickox Finance Corporation,  
              Industrial Office Building,  
              1060 Broad Street, Newark, N. J.  
              Market 3-1280.”

3. That one evening in the month of April, 1937, Mr. S. F. Buxbaum, one of the representatives of the Hickox Finance Corporation of New Jersey, called at my home at 99 Carlton Avenue, Carlton Hill, New Jersey, with one Mr. Dawson who also introduced himself as a representative of the Hickox Finance Corporation, and Mr. Dawson told me, in the presence of Mr. Buxbaum and my wife, that my wife had informed him that I might be interested in the Hickox Finance Corporation's plan of purchasing my securities, mortgages and real estate in building and loans and mortgage companies which I owned. Negotiations were had a month prior thereto between the Hickox Finance Corporation and my wife.

30           4. On April 10, 1937, in the presence of my wife and Mr. Buxbaum, Mr. Dawson represented to me that the Hickox Finance Corporation was a company organized under the Department of Banking and Insurance and that David T. Wilentz, Attorney General of New Jersey, was associated with this corporation; that they had a license to do business issued to them by the Department of Banking and Insurance of the State of New Jersey; that the Hickox Finance Corporation  
40           of New Jersey had offices in the Industrial

*Affidavit of Daniel A. DeVries.*

Building in Newark, New Jersey, and that their books were open to inspection and were being inspected regularly by the Banking Department. Mr. Dawson, who did most of the talking, said that the Hickox Finance Corporation had a tremendous cash surplus, were paying quarterly dividends regularly, and that they turned over their money at least twelve times a year and that the corporation was making a great deal of money.

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5. Mr. Dawson asked me what I had for sale. I showed him a building and loan book No. 1155 of the Union Loan and Building Association of Passaic, N. J., in which I had Ten Hundred Thirteen and 3/100 Dollars (\$1013.03) equity. I told him I owned two first mortgage certificates in the Citizens Title Insurance and Mortgage Company aggregating Forty-five Hundred Dollars (\$4500.00), and a first mortgage in the sum of Seventy-five Hundred Dollars (\$7500.00) on a piece of property at 86 Boulevard, Passaic, N. J., and owned some property in Paterson, known as 292 Governor Street, Paterson, N. J., free and clear. Messrs. Buxbaum and Dawson told me that the Hickox Finance Corporation would purchase everything from me, including my home and some other real estate I owned, which would give me an income for life which they figured would be about Five Hundred Dollars (\$500.00) per month. This included my store which they also wanted to buy. They told me that the plan of the Hickox Finance Corporation was to issue a series of checks payable monthly, covering a period of five years, and, in addition to give me a certificate for a certain number of shares of liquidating debenture stock upon which dividends would be paid out of surplus. I told them I had about Twenty Thousand Dollars (\$20,000) worth of securities consisting

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*Affidavit of Daniel A. DeVries.*

of real estate, two first mortgage certificates, and a first mortgage on some real estate and some building and loan shares. Mr. Buxbaum and Mr. Dawson both stated and represented that I would have at least Five Hundred Dollars (\$500.00) a month income for life, if I sold the stocks, and bond and mortgages and assigned everything to the Hickox Finance Corporation. This was nearly all my life's earnings as well as my wife's. They wanted me to turn in my store and my home in which I lived with my wife, but when it came to the store and my home, my wife refused and told me, in their presence, not to do so, and I listened and took her advice.

6. Relying on each of these representations which I have now learned were false and untrue and which were part and parcel of a conspiracy to defraud me out of my shares of stock, mortgages and real estate which I will enumerate in this affidavit, I accepted a book of post-dated checks payable monthly and covering a period of five years and which were drawn by the Hickox Finance Corporation, for which I turned over to Mr. Buxbaum, representing the Hickox Finance Corporation, my building and loan share book and, thereafter, Mr. Buxbaum and Mr. Dawson called again and I turned over to them two first mortgage certificates in the Citizens Title Insurance and Mortgage Company, amounting to Forty-five Hundred Dollars (\$4500.00) at which time they turned over another book of post-dated checks.

7. That on or about April 15th, 1937, I received a letter dated April 15th, signed by Stanley B. Gilson in behalf of the Hickox Finance Corporation, on their stationery, a true copy of which is hereto attached and made a part hereof. In

*Affidavit of Daniel A. DeVries.*

that letter, receipt was acknowledged of Certificate No. 144 in the amount of Two Thousand Dollars (\$2,000) being a first mortgage certificate of the Citizens Title Insurance and Mortgage Company, and Certificate No. 116 in the amount of Twenty-five Hundred Dollars (\$2500.00) of the same series, of the Citizens Title Insurance and Mortgage Company. I was advised that Messrs. Dawson and Buxbaum to whom I delivered the securities and certificates, had turned them in to the company. I was also advised that Mr. Dawson would be with me on Friday evening. 10

8. Subsequently, I received a receipt dated the 20th day of April, 1937, for Union Loan and Building Association Book No. 1155, together with the receipt for the two certificates of the Citizens Title Insurance and Mortgage Company, Series B. Certificate No. 116 and 144, signed by S. F. Buxbaum. 20

9. On April 20th, 1937, I received a confirmation signed by S. L. Stein, one of the Vice-presidents of the Hickox Finance Corporation of New Jersey, wherein my application to participate in the liquidating plan for twenty-five (25) shares of liquidating debenture stock of a total value of Fifteen Hundred Dollars (\$1500.00) was confirmed. 30

10. Thereafter, Mr. Stein called at my home and again repeated these false and fraudulent statements that the Hickox Finance Corporation had a main office in Cleveland, Ohio, was making all kinds of money, and that Attorney General Wilentz was connected with the company and that they had a large surplus and were paying dividends regularly. In the month of April, 1937, Mr. S. L. Stein, one of the Vice-presidents of the Hickox Finance Corporation, finally persuaded 40

*Affidavit of Daniel A. DeVries.*

me to turn over to him a first mortgage and bond which I held on property at 86 Boulevard, Passaic, N. J., known as the Hayward property, amounting to Seventy-five Hundred Dollars (\$7,500.00) which mortgage is recorded in Book T17, Page 342, Passaic County Register's Office. I received a receipt from the Hickox Finance Corporation, signed by S. F. Buxbaum, for this first mortgage, bond and assignment.

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11. Thereafter, I was asked to sign a subscription requesting the Hickox Finance Corporation to liquidate for me the Hayward first mortgage which covered 86 Boulevard, Passaic, N. J., and apply the proceeds thereof against my participation in the Hickox plan, and my subscription to sixty-five (65) liquidating debenture shares of the Hickox Finance Corporation of New Jersey, of a total liquidating value of Thirty-nine Hundred Dollars (\$3900.00).

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12. Thereafter, I cashed several of these post-dated checks which became due, and which amounted to the sum of Five Hundred Twenty-five Dollars (\$525.00).

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13. Subsequent thereto, a letter was written to me dated May 18th, 1937, a true copy of which is hereto attached and made a part hereof. After this letter was received, Messrs. Potts and Stein continuously called and bothered me and pleaded with me to return the checks and the blue liquidating stock certificate which was left with me, upon which I was to receive dividends, and they told me that they would substitute and give me Class A Common Stock which would pay me dividends for life, quarterly, equivalent to the amounts which I was receiving monthly. I told them I did not want to do it, but they kept annoy-  
40 ing me. I finally returned the checks relying on

*Affidavit of Daniel A. DeVries.*

these representations which I now find out were false, and took Class A, Hickox Finance Corporation Common Stock.

14. Some time about April 28th, 1937, I executed an assignment of mortgage to a Mr. Gilson. He made my wife join in the assignment although she had no interest in it. At that time, Mr. Gilson came into my home representing himself as a lawyer. He had some kind of legal documents which he said he wanted me to sign. I think it was a bond and mortgage and an assignment thereof, of the Hayward mortgage which was in the sum of Seventy-five hundred dollars (\$7500.00). I signed some documents and gave him the papers after he had represented to me that this was an excellent plan and that I would receive every nickle I invested in building and loan shares, in my first mortgage, in the real estate and other shares which I owned. Later on, he prevailed on me to give him a deed to a piece of property which I owned in the City of Paterson, known as 292 Governor Street, which was worth Five Thousand Dollars (\$5,000.00). He told me the liquidating value was One Thousand Dollars (\$1,000.00). Subsequently, a deed was prepared and brought to my home which I signed, transferring the property at 292 Governor Street, Paterson, N. J. This was the property which Mr. Gilson told me to go ahead and sell, and which is still, as well as the first mortgage and shares of stock, in the custody of the Receiver.

15. I have never received the dividends which were represented to me would be paid on October 1st, and every three months thereafter. I do know that Mr. Dawson and Mr. Buxbaum kept at me very hard and gave me two books one entitled "Not to Worry" and the other "The Good Shep-

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*Affidavit of Daniel A. DeVries.*

hard", in order to try to convince me that they were good living men and believed in the Bible. I told Mr. Buxbaum that I did not believe in their honesty in Newark, but he said not to worry, everything was all right and the company was as represented, in good, sound financial condition.

10 16. I went to the office where they had moved, at 850 Broad Street, Newark, N. J., to complain about not having received the dividends. I told the man behind the desk whose name I now know as Morris Rosenthal, that I was promised by Messrs. Potts and Stein that I could borrow Two Thousand Dollars (\$2,000) and would like to have it, that I wanted to fix up my store. I was only told to come back again and again which I did and, each time, another excuse was offered. I told the gentleman whose name is Rosenthal,  
20 that I was going to court and make trouble. He told me to get out. They never came to my home after that, nor did I ever hear from them since. They promised me that they would write me and give me an answer.

30 17. I next heard of them when I received by mail, a final decree restraining the Hickox Finance Corporation of New Jersey, a corporation of the State of New Jersey, from doing any further business in the State of New Jersey, because of illegal and fraudulent practices and appointing James L. McKenna, 17 Academy Street, Newark, N. J., as receiver for the company.

18. I immediately went to the Receiver, Mr. McKenna, and told him the story of how I had been defrauded by the Hickox Finance Corporation and their representatives, Messrs. Buxbaum, Dawson, Gilson, Potts and Stein, and offered to give back the stock and demanded my securities

*Affidavit of Daniel A. DeVries.*

or the money that had been realized from the sale of my securities.

19. I thereafter consulted counsel and told him the story and had a warrant sworn out for the arrest of Messrs. Buxbaum, Dawson, Gilson, Potts and Stein, which is pending.

DANIEL A. DEVRIES. 10

Subscribed and sworn to before me  
this 7th day of December, 1937.

Michael Andrus,  
An Attorney at Law  
of N. J.

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THE HICKOX FINANCE CORPORATION  
of New Jersey

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Industrial Office Building Newark, New Jersey  
April 15th, 1937.

Mr. Daniel DeVries  
99 Carlton Avenue  
Carlton Hill, New Jersey

Dear Sir:

We wish to acknowledge receipt of Certificate No. 144 in the amount of \$2000.00 being first mortgage certificate of the Citizens Title Insurance and Mortgage Company of Passaic, New Jersey and Certificate No. 116 in the amount of \$4500.00 of the same series, brought in this morning by our Messrs. Dorson and Buxbaum. 30

We will attempt to find a market for these securities and will advise you immediately upon receipt of any information by us.

We also wish to advise that Mr. Dorson will be 40

*Affidavit of Daniel A. DeVries.*

with you Friday evening as per his arrangements with you.

Thanking you for the business and courtesy extended to our representatives, we remain

Very truly yours,

10 SBG:K The Hickox Finance Corporation  
By STANLEY B. GILSON.

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THE HICKOX FINANCE CORPORATION  
of New Jersey

Industrial Office Building Newark, New Jersey

May 18th, 1937.

20 Daniel A. or Emma DeVries,  
99 Carlton Ave.  
Carlton Hills, N. J.

Dear Sir or Madam:

I take pleasure in advising you that I have been instructed by the Board of Directors to call a meeting of all of the holders of our Liquidating Debenture Stock, to be held at the office of our corporation, 1060 Broad Street, Newark, N. J., on  
30 Friday, May 28th, 1937, at 10:30 a. m.

At this meeting we propose to change our articles of incorporation for the purpose of simplifying our capital structure. We find that the problem of participation tends, in some instances, to complicate matters both for you and us. We have, therefore, decided upon a much fairer course of action. We want to separate the participation feature from the Liquidating Debenture Stock by the issuance to you of a number of our Class A  
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*Affidavit of Daniel A. DeVries.*

Common Shares which are to participate in the profits of our corporation *on exactly the same basis* as originally intended for the Liquidating Debenture stockholders; except that by owning these Class A Common Shares you will participate *permanently* in our profits instead of only temporarily as contemplated in our original set-up.

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You need not come in person to this meeting if it is inconvenient for you. In that case fill out and sign the enclosed proxy and have it properly witnessed. Then put it into the enclosed self-addressed envelope and return it to us at your earliest convenience.

With best wishes, I am

Sincerely yours,

STANLEY B. GILSON,

Secretary.

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**Answering Affidavit of James L. McKenna.**

120-336

## IN CHANCERY OF NEW JERSEY.

*On Petition to Rescind Contracts and for the  
Return of Securities, Real Estate and  
Building and Loan Shares, Fraudu-  
lently Taken from Petitioner.*

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Between  
DAVID T. WILENTZ, Attorney  
General of the State of New  
Jersey,  
Complainant,

and

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HICKOX FINANCE CORPORATION OF  
NEW JERSEY, a corporation of  
the State of New Jersey,  
Defendant.

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State of New Jersey }  
County of Essex } ss.:

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James L. McKenna, of full age, being duly  
sworn according to law upon his oath deposes and  
says:

1. I am the receiver for the defendant corpor-  
ation, having been appointed as such on October  
28, 1937. I subscribed to the oath of office, en-  
tered into a bond as directed by the court, and  
have been engaged ever since in administering  
the defendant estate.

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2. Hickox Finance Corporation of New Jersey,  
by final decree dated October 28, 1937, and duly  
consented to by defendant corporation, on bill of

*Answering Affidavit of James L. McKenna.*

complaint filed by David T. Wilentz, Attorney General of the State of New Jersey, was adjudged to be guilty of violating an Act of the Legislature of the State of New Jersey entitled the "New Jersey Securities Act", approved March 19, 1927, as amended and supplemented, in that it used and employed deception, misrepresentation, concealment, suppression, fraud, false pretense, false promise and fictitious and pretended purchase and sale in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within and from the State of New Jersey of Securities as defined by the New Jersey Securities Act. 10

3. Under the terms of said decree dated October 28, 1937 Hickox Finance Corporation of New Jersey, its officers and agents, were enjoined and restrained from exercising any of the privileges or franchises of said corporation in this State and from collecting or receiving any debts or paying out, selling, assigning or transferring any of the estate, monies, funds, lands, tenements or effects of said Hickox Finance Corporation of New Jersey within the State of New Jersey, except to the receiver, until the Court should otherwise order. 20

4. I have read the petition filed by Daniel DeVries. It is true that Daniel DeVries turned over to Hickox Finance Corporation of New Jersey the securities and real estate set forth in the petition. As to what representations or misrepresentations were made deponent only has the affidavit of DeVries on which to rely. The parties that he says made misstatements to him and induced him to purchase the stock of Hickox Finance Corporation of New Jersey, namely, S. F. Buxbaum, Mr. Daw- 30

*Answering Affidavit of James L. McKenna.*

son, Stanley Gilson, Sidney Stein and Mr. Potts, are all fugitives from justice.

5. I have in my possession the mortgage covering property at 86 Boulevard, Passaic, N. J. in the amount of \$7500.00, on which considerable is due for taxes in arrears. I have deed to property at No. 292 Governor St., Paterson, N. J. The  
10 Building and Loan shares and mortgage company certificates mentioned in the petition are not in my possession, having been disposed of prior to my appointment.

6. It is true that I, as receiver, refused to return to petitioner the deed and mortgage to property at Paterson and Passaic, N. J., although demand was made on me by petitioner's solicitor. However, De Vries, never offered to reimburse me  
20 for the amount of the checks cashed by him that had been given to him in connection with liquidating debenture stock.

7. I believe that petitioner was induced to purchase the Class A stock of Hickox Finance Corporation of New Jersey by reason of false representations made to him by agents of the Hickox Company, as I have found that in almost all of its transactions with shareholders, fraud and deception was practiced.

8. I feel that petitioner should be treated as  
30 other stockholders upon whom fraud and deceit was practiced, and that he is not entitled to be shown a preference over other stockholders by having returned to him property at No. 292 Governor St., Paterson, N. J. and mortgage in the amount of \$7500.00 on property at 86 Boulevard, Passaic, N. J.

*Answering Affidavit of James L. McKenna.*

9. I feel that petitioner should share with other stockholders.

JAMES L. McKENNA.

Subscribed and sworn to before me  
this 8th day of February, 1938.

Eleanor Ramsey,  
Notary Public,  
State of New Jersey.

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My commission expires Oct. 18, 194 .

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## Memorandum.

IN CHANCERY OF NEW JERSEY.

120-336

On Petition to Rescind Contract for the Purchase  
of Stock and for the Return of Securities,  
Real Property and Building and Loan  
Shares, Fraudulently Taken from  
the Petitioner.

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Between  
DAVID T. WILENTZ, Attorney  
General of the State of New  
Jersey,

Complainant,

and

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HICKOX FINANCE CORPORATION OF  
NEW JERSEY, a corporation of  
the State of New Jersey,  
Defendant.

## APPEARANCES:

MESSRS. WEINBERGER & WEINBERGER, So-  
licitors for Petitioner.

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MR. JAMES L. MCKENNA, Receiver, Soli-  
citor *Pro Se*.

STEIN, V. C.

Hickox Finance Corporation of New Jersey on  
complaint filed by the Attorney General was on  
October 28, 1937 adjudged guilty of violating the  
"New Jersey securities law" Revised Statutes  
(1937), 49:1-1, *et seq.* The petitioner, Daniel A.  
DeVries, was one of those defrauded. He parted  
with shares in the Union Loan and Building As-

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*Memorandum.*

sociation of Passaic; two first mortgage certificates in the Citizens Title Insurance and Mortgage Company; a first mortgage on property in Passaic and a property in Paterson, in return for stock of the company and a promise of at least \$500.00 a month income for life. The transactions between petitioner and the company took place in April and May, 1937.

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After the filing of the bill and the appointment of a receiver, petitioner made demand on the receiver to return the building and loan shares, the property in Paterson, the Citizens Title Insurance and Mortgage guaranteed certificates "or the funds realized from the sale of the Securities", in what petitioner terms as a right of rescission. The right of petitioner to recover back the purchase price of the stock, cannot be exercised after the appointment of a receiver to wind up its affairs. *Roe v. Oradell Farms Dairy Co.*, 85 N. J. Eq., 146.

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Moreover, the receiver when appointed takes all the property of every description, derived by means of any practice declared to be illegal and prohibited by the New Jersey securities law, and holds and disposes of the proceeds thereof under the direction of the Court of Chancery for "*the equal benefit of all who establish an interest therein* by reason of the use and employment by the defendant of any practices herein declared to be illegal and prohibited." (Italics mine). There is expressed in the statute a clear and unmistakable legislative purpose, founded upon reason and legal precedent, that all parties who make proof of their claims, arising through such prohibited practices are to share *equally* in the fund so created.

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*Memorandum.*

To grant the prayer of the petitioner would be to give the petitioner a preference over other persons so defrauded. Parties entitled to participate in the funds in the hands of receivers, under the statute, have no preference through proceedings to enforce their claims, since the direct and specific legislative declaration is that such funds shall be "for the equal benefit of all who establish an interest therein \* \* \*." *Stevens v. Wallace* (E. & A.) 111 N. J. Eq., 406; *Wilentz v. A. S. Weston Co.*, 117 N. J. Eq., 142.

The order to show cause is discharged and the petition dismissed.

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**Order.**

IN CHANCERY OF NEW JERSEY.

120/336.

*On Petition to Rescind Contracts and for the  
Return of Securities, Real Property and  
Building and Loan Shares, Fraudu-  
lently Taken from Petitioner.*

10

Between

DAVID T. WILENTZ, Attorney  
General of the State of New  
Jersey,

Complainant,

and

HICKOX FINANCE CORPORATION OF  
NEW JERSEY, a corporation of  
the State of New Jersey,  
Defendant.

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This matter coming on to be heard in the pres-  
ence of Joseph J. Weinberger, Esq., of the firm of  
Weinberger & Weinberger, Esqs., solicitors for  
the petitioner, Daniel A. DeVries, and James L.  
McKenna, Esq., receiver of the defendant corpora-  
tion, on the return of an order to show cause re-  
turnable on the 4th day of January, 1938, and  
continued by stipulation to the 8th day of Febru-  
ary, 1938, and the Court having considered the  
verified petition and the arguments of counsel,  
and having decided in a memorandum that the or-  
der to show cause should be discharged,

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*Order.*

It is, on this 28 day of June, 1938,

ORDERED, that the order to show cause advised on the 28th day of December, 1937, be and the same is hereby discharged and the petition upon which the same was based dismissed.

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LUTHER A. CAMPBELL,  
C.

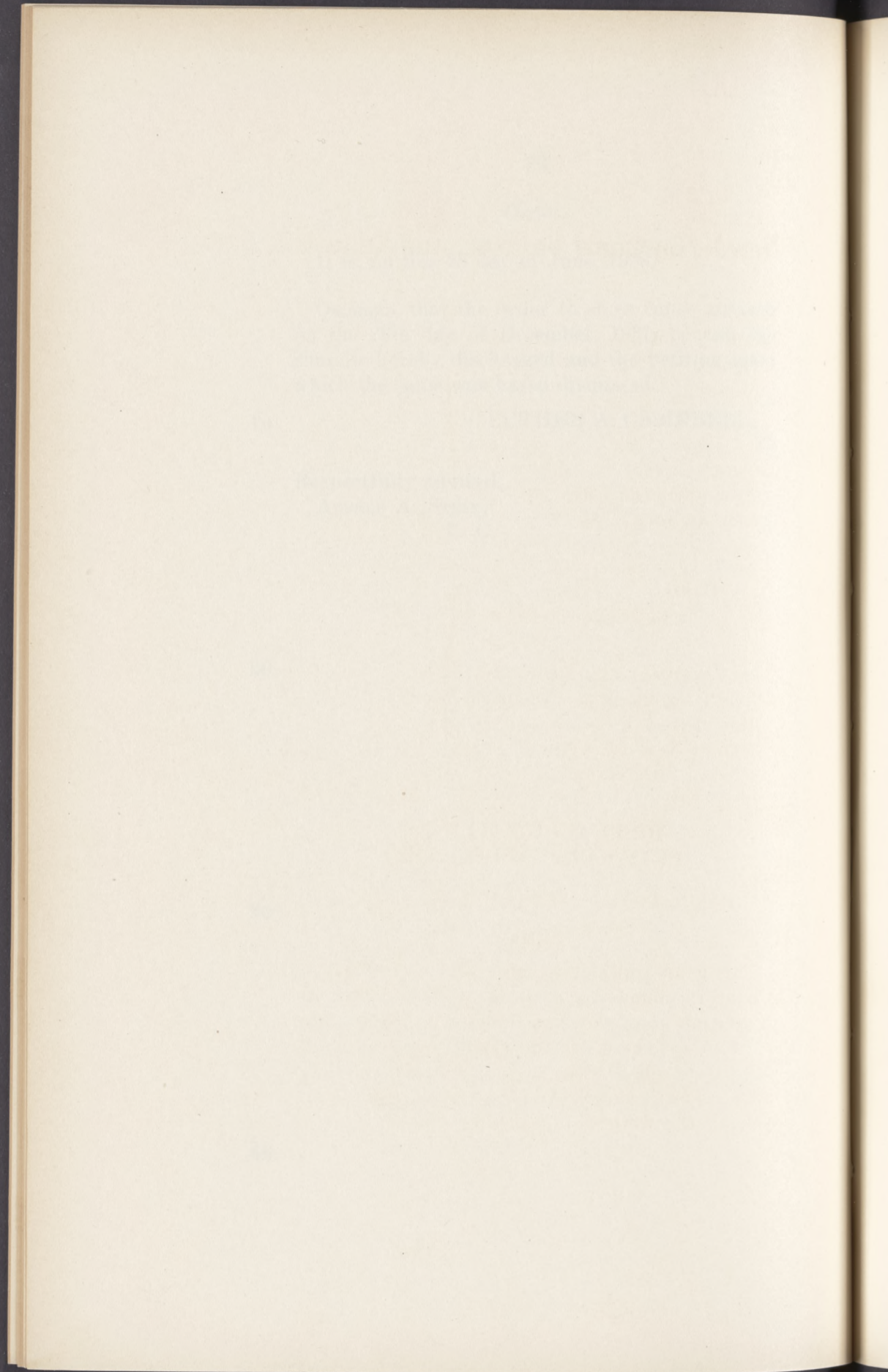
Respectfully advised,  
ALFRED A. STEIN,  
V. C.

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## New Jersey Court of Errors and Appeals

Between

DAVID T. WILENTZ, Attorney  
General of the State of New  
Jersey,

Complainant,  
and

HICKOX FINANCE CORPORATION OF  
NEW JERSEY, a corporation of  
New Jersey,

Defendant.

On Appeal  
from Court  
of Chancery.

DANIEL A. DEVRIES,  
Petitioner-Appellant,

vs.

JAMES L. MCKENNA, Receiver of  
The Hickox Finance Corpora-  
tion of New Jersey, a corpora-  
tion of New Jersey,  
Defendant-Appellee.

### BRIEF ON BEHALF OF PETITIONER-APPELLANT.

(Italics our own, except where otherwise indicated.)

#### Facts.

This is an appeal from an order of the Court of Chancery dismissing an order to show cause and a petition upon which the same was based (S. of C., p. 35). The order was made on the advice of Vice Chancellor Stein on the 28th day of June, 1938. The petition which was filed in the cause sought the return of certain shares of build-

ing and loan stock, two mortgage certificates, a first mortgage and a deed on property in Passaic County transferred to the corporation by reason of its fraudulent practices in the sale of its securities. The corporation was adjudged guilty of a violation of the Securities Act by an order of the Court of Chancery.

A brief history of the case is necessary for a proper consideration of this appeal. The petition which was filed in the cause (S. of C., p. 8) must be accepted as setting forth the true situation and state of facts because the contents thereof are nowhere denied; in fact, they are practically admitted by the affidavit of the receiver (S. of C., p. 28).

The petitioner, Daniel A. DeVries, for the past 34 years was a United States Post Master of Carlton Hill in Bergen County. In or about March of 1937, the defendant, Hickox Finance Corporation of New Jersey, a corporation of the State of New Jersey, inserted in the Newark Evening News an advertisement soliciting building and loan certificates in exchange for monthly cash payments. In April, 1937, several of the agents of the defendant corporation made a personal call upon the petitioner at his home in Carlton Hill, New Jersey, and after a lengthy conversation with the petitioner and his wife, persuaded the petitioner to become interested in their plan. By reason of their false representations and the practice of every conceivable form of deceit, trickery and deception, they promised, on behalf of the defendant corporation, that petitioner would receive an income for life at the rate of approximately \$500.00 per month if he would turn over to them his building and loan shares, mortgage certificates and first mortgages on property. On different occasions, he transferred these various properties.

At one time he turned over his building and loan shares of the Union Loan and Building Association of Passaic of the value of \$1,013.03. Later he turned over to the corporation two first mortgage certificates of the Citizens Title Insurance and Mortgage Company amounting to \$4,500.00. Sometime on or about April 28th, 1937, he also assigned a first mortgage and bond on property located in Passaic, New Jersey, known as the Hayward property, in the amount of \$7,500.00. A short time thereafter, petitioner also gave the defendant corporation a deed to a piece of property which he owned in the City of Paterson, New Jersey, which was worth some \$5,000.00. They even went so far as to attempt to have the petitioner turn over his store, but his wife prevented him from doing so. In all, he parted with property to the value of some \$18,000.00. In return for these transfers, he received two books of post dated checks payable monthly and covering a period of five years.

What he turned over to the defendant company constituted essentially all of the life savings of himself and his wife, leaving him absolutely penniless. The only monies that the petitioner realized from this transaction was the sum of \$525.00 which was received by cashing several post-dated checks given to him by the defendant company. Thereafter, the defendant corporation through its agents and representatives persuaded him to return the post-dated checks which he had gotten in consideration for the transfer of his property, in exchange for Class A Hickox Finance Corporation Common Stock. This too, he did. The trickery and deceit of the defendant corporation was so bold that upon petitioner's appearance at their offices to learn why their promises were not kept he was given two pamphlets entitled "Not to Wor-

ry" and "The Good Shepherd", embodying certain religious sermons, with the instructions that he read the same and that thereafter he would be convinced that the defendants were righteous and God fearing men and that there was nothing for him to worry about. The transactions between the petitioner and defendant occurred sometime in April and May of 1937.

On numerous occasions thereafter, the petitioner visited the offices of the defendant corporation but received absolutely no satisfaction. Let alone that, but upon his threat to take court action, he was insulted and forced to leave the offices.

Almost immediately from the time that the petitioner suspected and learned that the business practices of the defendant corporation were unlawful and practiced in fraud upon him, he did everything within his power to restore himself to the *status quo* and to repudiate and rescind the transaction. This all long prior to the time that the receiver was appointed by the Court. A reading of the petition will definitely establish the fact that the petitioner acted with dispatch a reasonable time after learning the true situation. Without any notice to him, a receiver was appointed with the consent of the officers of the defendant corporation on October 28th, 1937. That was the first time that the petitioner had knowledge of any such proceedings.

The doings of the defendant corporation were investigated by the Attorney General's office and as a result thereof on October 28th, 1937, a final decree, consented to by the defendant corporation, was entered, adjudging the defendant guilty of violating the New Jersey Securities Act, in that it used and employed deception, misrepresentation, concealment, suppression, fraud, false pretense, false promise and fictitious and pretended

purchase and sale in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within and from the State of New Jersey of Securities as defined by the New Jersey Securities Act, and the said corporation, its officers and agents were enjoined and restrained from exercising any of the privileges of the franchises of the said corporation. At the same time, one James L. McKenna, of Newark, New Jersey, was appointed receiver for the defendant corporation. The said receiver, James L. McKenna, has filed an answering affidavit in answer to the verified petition (S. of C., p. 28). Therein he admits that the petitioner turned over to the defendant corporation the securities and real estate set forth in the petition (S. of C., p. 29, ll. 31-33). The said receiver also set forth in his affidavit that certain officers and agents of the defendant corporation, namely, S. F. Buxbaum, Mr. Dawson, Stanley Gilson, Sidney Stein and Mr. Potts were fugitives from justice by reason of their illegal conduct. *The said receiver also states that he believes the petitioner was induced to purchase the stock of the defendant corporation by reason of false representations, since he has found that in almost all of its transactions with shareholders, fraud and deception was practiced. The receiver also states in paragraph seven of his affidavit (S. of C., p. 30) that he has in his possession a mortgage covering the property at Passaic, New Jersey, together with a deed to property at Paterson, New Jersey.* The building and loan shares and mortgage certificates he states he has not in his possession, they having been disposed of prior to his appointment.

### Argument.

The petition prays that the receiver be compelled to return the specific property now held in his possession by reason of the fraudulent practices of the defendant corporation.

If it is a fact that the building and loan shares and mortgage certificates have been converted by the defendant corporation, since the receiver states that these have been disposed of prior to his appointment, then we concede that the petitioner cannot recover that specific property or claim a preference in the funds in the hands of the receiver in the amount of such shares and certificates. As to those, we admit that the petitioner must share as a general creditor in the entire fund. We do contend, however, that the petitioner is entitled to the return of his other property which the receiver possesses in its original form.

The Court allowed an order to show cause. The matter was argued and the Vice Chancellor wrote a memorandum (S. of C., p. 32) in which he denied the prayer of the petition and concluded that the order to show cause would be discharged and the petition dismissed. Based on said opinion, an order was entered discharging the order to show cause and dismissing the petition. That is the order appealed from. (S. of C., p. 35).

The opinion of the Vice Chancellor dismissing the petition (S. of C., p. 32) concedes the illegal practices of the defendant corporation and the fact that the petitioner parted with his property by reason of the false and fraudulent practices of the defendant corporation. The basis for the opinion seems to be that the petitioner did nothing to restore himself to the *status quo* prior to the appointment of the receiver and by reason thereof cannot recover his specific property.

The Vice Chancellor states (S. of C., p. 32) :

“After the filing of the bill and the appointment of a receiver, petitioner made demand on the receiver to return the building and loan shares, the property in Paterson, the Citizens Title Insurance and Mortgage guaranteed certificates ‘or the funds realized from the sale of the Securities’, in what petitioner terms as a right of rescission.” (ll. 11-18).

The Vice Chancellor continues and holds that by reason of the aforesaid that

“\* \* \* The right of petitioner to recover back the purchase price of the stock, cannot be exercised after the appointment of a receiver to wind up its affairs. *Roe v. Oradell Farms Dairy Co.*, 85 N. J. Eq. 146.” (ll. 19-23).

It seems to us that the Vice Chancellor was mistaken in his conclusion, in that he overlooks the conduct of the petitioner prior to the appointment of the receiver. A reading of the petition will definitely indicate that the petitioner did everything in his power, directly or indirectly, to rescind the transaction. We refer to the affidavit in support of the petition.

“\* \* \* I do know that Mr. Dawson and Mr. Buxbaum kept at me very hard and gave me two books one entitled ‘Not to Worry’ and the other ‘The Good Shepherd’, in order to try to convince me that they were good living men and believed in the Bible. I told Mr. Buxbaum that I did not believe in their honesty in Newark, but he said not to worry, everything was all right and the company was as represented, in good, sound financial condition.” (S. of C., pp. 23 and 24, ll. 37 to l. 8 at p. 24).

“\* \* \* I was only told to come back again

and again which I did and each time another excuse was offered. I told the gentleman whose name is Rosenthal, that I was going to court and make trouble. He told me to get out. They never came to my home after that, nor did I ever hear from them since. They promised me that they would write me and give me an answer." (S. of C., p. 24, ll. 16 to 24).

"I immediately went to the Receiver, Mr. McKenna, and told him the story of how I had been defrauded by the Hickox Finance Corporation and their representatives, Messrs. Buxbaum, Dawson, Gilson, Potts and Stein, and offered to give back the stock and demanded my securities or the money that had been realized from the sale of my securities." (S. of C., p. 24, l. 33 to p. 25, l. 5).

How such conduct can be construed to mean resignation is beyond our comprehension. It was a definite, clear cut intention on the part of the petitioner to restore himself to the *status quo* and rescind the entire transaction. Therefore, it cannot be said that the first time he took any action was after a receiver was appointed. The Court must take into consideration the fact that the petitioner is an ordinary layman and not a lawyer and although his conduct was not by way of legal proceedings, still it was such as to clearly stamp it in the nature of conduct pointing towards a rescission. If we can spell rescission out of the conduct of the petitioner, that is sufficient even though it is not such in so many words. A reading of the petition readily reveals the fact that the petitioner had endeavored to recover back his securities and other property long before the receiver was appointed.

The case of

*Roe v. Oradell Farms Dairy Co.*, 85 N. J.  
E. 146

referred to by the Vice Chancellor in support of his conclusion warrants further consideration. The Court of Errors and Appeals held that the purchase of stock in a corporation induced by fraudulent representations of the corporation's agent, is not a void transaction but is merely voidable at the option of the purchaser and until he exercises such option he is a stockholder of the corporation. *The right of such purchaser to avoid the transaction and recover back the purchase price of the stock, cannot be exercised if the corporation has been adjudged to be insolvent and a receiver has been appointed to wind up its affairs and distribute its assets.*

Chief Justice GUMMERE stated the following at page 148:

“Looking at this transaction in the light most favorable to Mrs. Humphries, the purchase of this stock, assuming it to have been induced by fraudulent representations on the part of the agent of the defendant company, was not a void transaction, but merely voidable at the option of the purchaser. Until she exercised that option (assuming that she had a right to do so) she was a stockholder of the corporation. Her right to participate as a creditor in the distribution of the assets of the defendant company depends, therefore, upon whether a stockholder who has been induced by fraud to become a member of the corporation, and who does not discover the fraud until just before the institution of proceedings for the winding up of the corporation as insolvent can, after the appointment of a receiver, exercise her option, repudiate her purchase of

the stock, and thereby change her position as a stockholder in, to that of a creditor of, the corporation to the extent of the purchase-money paid by her. *We think that the right of a stockholder to so change her status (if such right exists) must be exercised while the corporation is a going concern, presumably solvent, and able to meet its engagements.* So long as this is the status of the corporation, it is a matter of no concern to its creditors whether it repays to the repudiating stockholder the money advanced by her for the purchase of her stock or not. *But when it ceases to be able to pay its creditors in full, has been adjudged to be insolvent, and a receiver has been appointed, the situation is vastly different.* The assets of the corporation, instead of being held by it as the representative of the stockholders, have become vested in the receiver as trustee, primarily, for creditors, and secondly, for stockholders \* \* \*."

If the *Roe* case is applicable at all to the case at bar, it is to declare that if the petitioner acted to rescind the transaction before the appointment of a receiver, then he is entitled to recover back his specific property.

We also think that the Vice Chancellor's reference to the *Roe* case, *supra*, in support of his conclusion is erroneous, in that in the *Roe* case the application was made for the appointment of a receiver under the Corporation Act by reason of the *insolvency of the corporation*. The appointment of a receiver in the case at bar was by virtue of a violation of the "New Jersey Securities Act" approved March 19th, 1927, as amended and supplemented. A question of insolvency was not at all in issue. We doubt, therefore, very much whether the application of the principle in the *Roe* case, if applicable at all, would be the same if ap-

plied to the state of facts in the case at bar where insolvency is not in question but merely a violation by reason of fraudulent practices. The Vice Chancellor in his opinion holds that the receiver takes the property of the corporation for the equal benefit of all who establish an interest therein. The Statute in question is R. S. 49:1-15 which reads as follows:

“Appointment of receiver for person; powers and duties of receiver. When the Court of Chancery shall issue an injunction as provided for in sections 49:1-11 to 49:1-14 of this title against a person, it may appoint a receiver with power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this chapter, including property with which such property has been mingled, if it cannot be identified in kind because of such commingling, and to sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of the court for the equal benefit of all who establish an interest therein by reason of the use and employment by the defendant of any practices herein declared to be illegal and prohibited. The Court shall have jurisdiction of all questions arising in such proceedings and may make such orders and decrees therein as justice and equity shall require.”

Section 49:1-16 states in part as follows:

“Upon the appointment of the receiver, all the real and personal property of the corporation, partnership, company, association or trust, and its franchises, rights, privileges, and effects shall forthwith vest in him and the corporation, partnership, com-

pany, association or trust shall be divested of the title thereto.”

The intent and purpose of the above statute is confined solely to and for the benefit of those persons only whose property has been taken by and through the fraudulent practices prohibited by such legislation and they are the only creditors entitled to a share in and payment from the funds in the hands of a receiver. *Stevens v. Wallace*, 111 N. J. E. 406.

The Vice Chancellor, in his opinion, aside from relying upon the *Roe* case, *supra*, which we have endeavored to indicate does not apply to the facts in the case at bar, also relies upon the cases of

*Stevens v. Wallace*, (E. & A.) 111 N. J. E. 406

and

*Wilentz v. A. S. Weston Co.*, 117 N. J. E. 142.

The *Wallace* case requires our consideration in order to point out to this Court its inapplicability to the case at bar by reason of the factual differences. In the case at bar, it is conceded by the receiver that he has in his possession intact the mortgage covering property at No. 86 Boulevard, in the amount of \$7,500.00 and also the deed to the property at No. 292 Governor Street, Paterson, New Jersey. The building and loan shares and mortgage company certificates, he states, are not in his possession, they having been disposed of prior to his appointment (S. of C., p. 30, par. 5). We confine ourselves to the property which he has in his possession. As to that property, we contend that the petitioner has a right to its return. There is nothing contained in the *Wallace* case to prevent the return of such property. In the *Wallace* case several creditors sought to be-

come preferred creditors as to the funds in the hands of the receiver. One creditor obtained a judgment some time after the receiver was appointed for the corporation. The creditor failed to file a claim with the receiver and merely excepted to the Master's report on the ground that he was not classed as a preferred creditor. The Court denied the application of this creditor because he had not filed his claim with the receiver nor did he follow the dictates of the statute in proving and establishing claims. Another creditor recovered a judgment against the corporation but it was not such a judgment as came within the Securities Act, that is, the judgment was not the result of the fraudulent practices of the corporation, and the Court denied his right to a preference and rightfully so because the Act applies only to the fraudulent conduct of a corporation. Two other creditors had recovered a judgment against the corporation by reason of the fraudulent practices of the corporation and before the time that the receiver was appointed. The Court merely permitted them to be joined as general creditors and denied their right to a preference. The Court stated at page 415 of the *Wallace* case, *supra*:

“It appears to us that this language expresses a clear and unmistakable legislative purpose, founded, as we have before shown, upon reason and legal precedent, that all parties who make proof of their claims, arising through such prohibited practices are to share equally in the fund so created and that notwithstanding that their claims may have, by their activity in advance of others of like character, been put in the process of legal proceedings or even reduced to judgment.”

The principle of law established by this case is that where a corporation has obtained the property or funds of individuals by fraudulent practices in violation of the Securities Act, upon the appointment of a receiver those persons are to be classed as general creditors without any preference, by reason of the fact that "the fund so created" belongs equally to all the parties defrauded. This necessarily presupposes that the property has been converted into cash; or if cash was transferred it has lost its identity and becomes part of the general funds to be shared equally by all the creditors.

It is important to note that such is the principle where the specific property of the individuals defrauded has been converted into money. In that state of affairs, they all become general creditors with equal benefits, under the Act. The situation in the case at bar is, of course, different. In this case we are not dealing with funds of the petitioner which have become the result of property which he transferred to the corporation by fraudulent practices, but rather with that same property in its original form which he turned over to the corporation. That is the distinguishing feature which makes the principle of the *Wallace* case inapplicable to the case at bar.

The Vice Chancellor, in the case at bar, quoted the principle of law in the *Wallace* case. With that principle, we find no fault. However, we do say that the Vice Chancellor erred in applying that principle because of the different factual situation existing in the case at bar. *Our contention is that we do not seek to become a preferred creditor as to the funds realized by a conversion of our property, but we seek rather a return of the identical property.* Under those circumstances, the question of preferential payments does not

enter. There is contained in the *Wallace* case a very important principle which applies to the case at bar and, perhaps, is dispositive of the issue herein. In that case, Chancellor CAMPBELL, speaking for the Court, stated at page 413:

“ \* \* \* from the beginning and ever since, the law very righteously has been that a thief shall not profit by his nefarious and criminal acts and the property in such ill-gotten gains, never, in law, resides in him, but always remains in the victim from whom he took them. So likewise is the law respecting property obtained from another by fraudulent means and practices. In all such cases the law immediately sets up a constructive trust—the malefactor holding such property, in the eyes of the law, in trust for the use and benefit of those who contributed of their properties thereto through and because of such fraud.

In 39 Cyc. 170, it is said: ‘Constructive trusts arise by operation of law and not by agreement or intention and are not within the statute of frauds or statutes prohibiting parol trusts. Fraud, actual or constructive, is the basis of such a trust and a court of equity will not permit a person to shield himself behind the statute of frauds in order to perpetrate a fraud.’

Our reports are full of cases where this doctrine has been asserted and employed.”

So, too, in the case at bar, the property of the petitioner was taken from him by fraudulent practices. The corporation, in fact, was the thief and by reason of such conduct title to said property never passed from the original owner, the petitioner, and still remains in the petitioner. As the Chancellor very properly stated, there can be no doubt concerning this principle of the law and the stability of the principle does not warrant

the citation of cases. The oft quoted example applies to the case at bar. If a thief steals *A*'s watch, the title to said watch never passes to anyone else excepting the rightful owner, who can demand it from any person who obtains possession thereof innocently or otherwise.

In the case of

*Williamson v. N. J. Southern R. R. Co.*,  
29 N. J. E. 311 (E. & A.)

Justice DEPUE stated at page 319:

“The evidence clearly shows that the car company was induced to complete the sale by the grossest fraud. A vendor, who is induced by fraudulent means to part with his property under color of a contract of purchase, may disaffirm the sale and reclaim the property. In such case no title passes to the fraudulent vendee, even though delivery be made; nor will execution creditors or purchasers or mortgagees under such fraudulent vendee, acquire a title superior to the original vendor, unless they be purchasers or mortgagees bona fide and for a valuable consideration.” (Citing cases)

The property of the petitioner in the case at bar is identified. It is in the hands of the receiver as it was when the petitioner turned it over to the corporation. The title to that property never passed and could not pass by reason of the manner in which the corporation obtained it. The petitioner in the case at bar does not seek the value of such property or the funds realized by the sale of such property, because such property was not sold and because such property may still be identified in its original form in the hands of the receiver. In that respect, it sufficiently differs from

the facts in the *Wallace* case, so as to take it out of the language of the statute which declares that all the property in the hands of the receiver shall be for the benefit of all the creditors, namely, those people who have been defrauded. The statute would only apply to those cases where property of individuals has been fraudulently taken and disposed of and in its place money obtained by the corporation. In that event, all the creditors would benefit equally. Certainly no preference is shown to the petitioner because the petitioner, by his contention, does not take or partake of property or the benefits of the sale of property of others as well as of himself. He merely seeks the return of his own property and not that of anyone else. If the property of any other creditor were in the hands of the receiver in its original form, this petitioner could claim no benefit therein nor could he object to the return of that property to its rightful owner. Such a contention does not raise any question of a preference. A preference could only be exercised where a person sought the benefits or the proceeds derived from some change in the property which he originally transferred. The petitioner's property has been stolen, so to speak. How, therefore, can anyone else possibly claim any interest therein for their benefit, which the receiver, by his refusal to return, is seeking to enforce. It may well be that where the petitioner seeks the return of the funds realized by the sale of some property in the hands of the receiver originally turned over to the corporation, then, in that event, he would be seeking a preference, but we confine ourselves merely to that property which the receiver has in its original form. The petitioner's claim to the return of such property cannot be defeated by the principle of the *Wallace* case because that applies, as

we have endeavored to show, to a situation entirely different from the facts in the case at bar.

The case of

*Wilentz v. A. S. Weston Co.*, <sup>117</sup>~~118~~ N. J. E.  
142

cited by the Vice Chancellor in support of his conclusion, is merely a reference to the holding of the *Wallace* case. A consideration of that case, too, bears out our contention because in that case the petitioner sought a preference to the return of certain funds realized by the sale of certain securities turned over by the petitioners to the corporation. The Court rightfully held that the petitioners would not be entitled to such a preference. The reason therefor is apparent, namely, that the original property, the shares of stock, were sold and certain funds realized therefrom which were turned over to the corporation. In that case, of course, the petitioners cannot claim a preference but the funds must be disposed of for the equal benefit of the general creditors. The query in the present case, however, is whether the petitioner is entitled to the recovery of his own property which is now in the possession of the receiver in the same physical condition it was when he transferred it to the corporation through its fraudulent practices. We need concern ourselves with no general funds to which this property has been reduced which the petitioner is claiming is his.

The matter is entirely different from that presented in the cases *supra* and is different from the cases relied upon by the Vice Chancellor in sustaining his conclusion that the petitioner is not entitled to the return of said property and that to do so would constitute a preference.

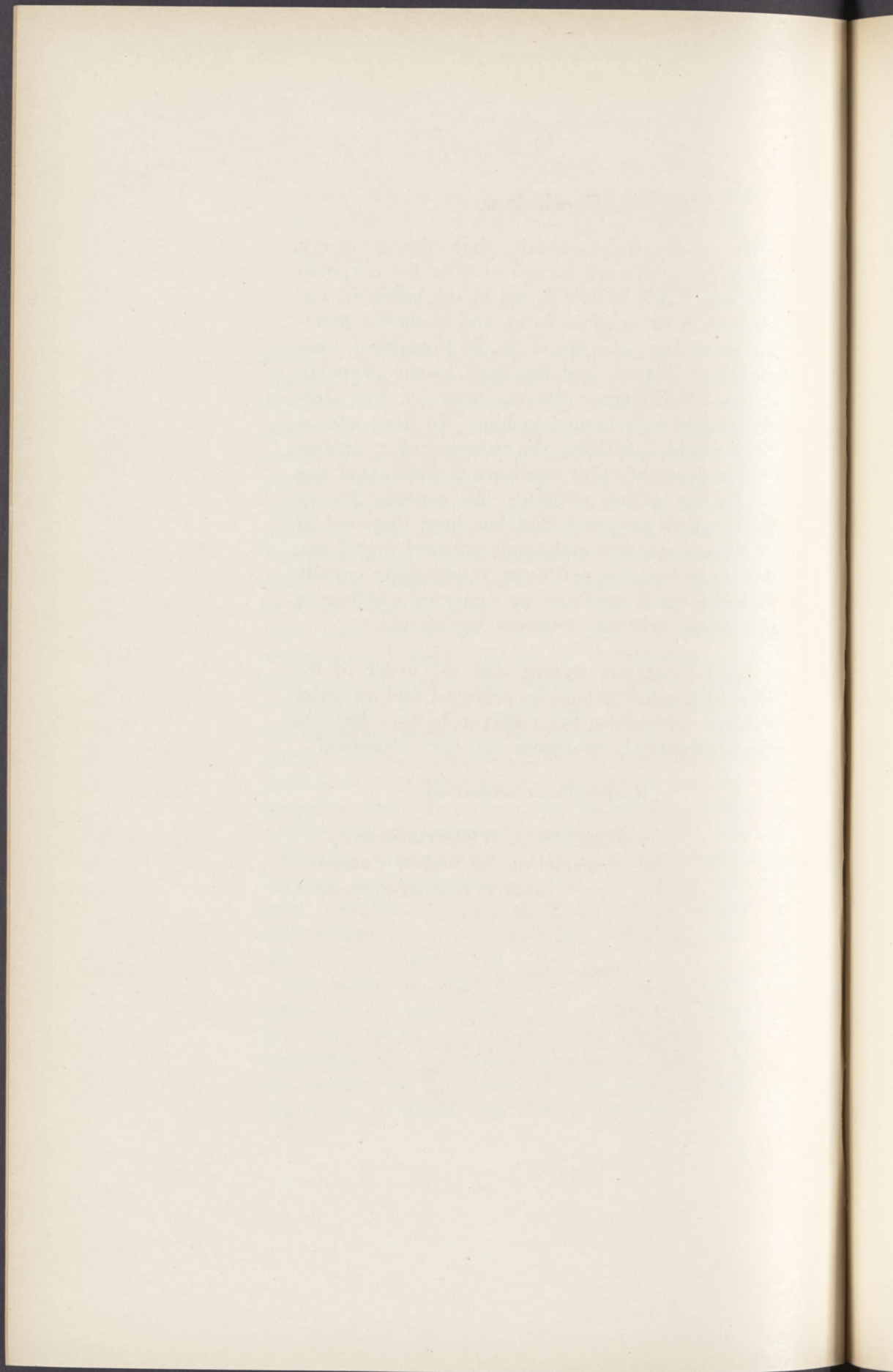
### Conclusion.

We respectfully submit that the property which the petitioner turned over to the corporation and which is now found in the hands of the receiver in its original form, and being the mortgage covering property at No. 86 Boulevard, Passaic, New Jersey, and the deed to the property at No. 292 Governor Street, Paterson, New Jersey, should be returned to him. To deny such a right would constitute the exercise of a preference in favor of other creditors to which they are not by fact or law entitled. We concede that as to the other property that has been disposed of by the corporation and funds realized therefrom, that as to that the petitioner would share equally with the other creditors as a general creditor in accordance with the terms of the statute.

We respectfully submit that the order of the Vice Chancellor should be reversed and an order entered compelling the receiver to turn back to the petitioner the mortgage and deed aforesaid.

Respectfully submitted,

JOSEPH J. WEINBERGER,  
Solicitor for and of Counsel  
with Petitioner-Appellant.



## FACTS

The Hickox Finance Corporation of the State of New Jersey, (hereinafter referred to as the Corporation) on complaint filed by the Attorney General of the State of New Jersey, under date of October 28, 1937, was adjudged guilty of violating the "New Jersey Securities Law," Revised Statutes (1937) 49:1:1. *et seq.* Appellant, Daniel DeVries, a stockholder of the Corporation, was one of a great number of stockholders defrauded. The final decree, consented to by the Corporation adjudged that said Corporation was guilty in that it had employed deception, misrepresentation, concealment, suppression, fraud, false pretense, false promise and fictitious and pretended purchase and sale in connection with the issuance sale, offer for sale, purchase, offer to purchase, promotion, negotiation advertisement and distribution within and from State of New Jersey of Securities as defined by the "New Jersey Securities Law," and James L. McKenna was appointed Receiver for said Corporation, under and by virtue of its provisions.

The appellant, Daniel DeVries, conveyed to the Corporation by deed property at 292 Governor st., Paterson, N. J. and also duly assigned to said Corporation a mortgage in the amount of \$7500.00 that he held on property 86 Boulevard, Passaic, N. J. Appellant also turned over to said Corporation the other property set forth in his petition. In consideration of his transferring said property, both real and personal, he received liquidating debenture stock and Class "A" common stock in said Corporation as recited in said petition. A great many other investors delivered shares of Building & Loan stock and other securities and received stock of the Corporation. At the time of

the appointment of a receiver practically all the securities, realty and other personal property that had been received in exchange for stock of the Corporation and which had a ready market for sale had been disposed of. The mortgage on 86 Boulevard, Passaic and the Governor St., Paterson, property had not been disposed of. All the other property formerly owned by appellant and transferred to the Corporation in exchange for stock had been disposed of. As to what representations or misrepresentations had been made to appellant, or to any other stockholders, in order to induce them to purchase the stock of the corporation, the receiver had only the statements of the parties defrauded to rely upon, since the officers and salesmen are fugitives from justice. Of course, the final decree, adjudging fraud and deceit, had been consented to by the corporation.

Appellant demanded of the receiver the return of the property at No. 292 Governor St., Paterson, and also the return of the mortgage he had assigned covering the property at 86 Boulevard, Passaic. He did offer to return to the receiver the stock he had received from the Corporation but it is equally true that he did not offer at any time to the receiver the amount of cash he had been paid by the Corporation in partial redemption of his liquidating debenture stock. The petition sets forth, (pages 14 and 15, S. C.) that appellant prior to the appointment of a receiver went to the office of the Corporation at 850 Broad St., Newark, to complain about not having received dividends. Appellant states he told some one at the office that he had been told by the agents who sold him the stock that he could borrow on it; that he wanted to borrow in order to fix up his store; but he was

told to come back again and again which he did. Appellant further states that he spoke to one, Rosenthal, and told him he would make trouble; that he never heard from them after that until he received a copy in the mail of a final decree restraining the Corporation from doing business and appointing a receiver. There is absolutely nothing in the petition to show that at any time before the appointment of a receiver that appellant took steps to rescind his contract or that he asked for the return of his property. At most he asked for a loan. It is conceded that he did ask the receiver for the return of his property, but that the receiver refused to return same to him assuming the position that appellant should be treated as other stockholders upon whom fraud and deceit had had been practiced, and that he should not be shown a preference over other stockholders by having his property returned to him, and thus deplete the estate held by the receiver for the benefit of all stockholders and creditors.

Thereupon appellant filed a petition in the Court of Chancery in the matter of David T. Wilentz, Attorney General of the State of New Jersey, against Hickox Finance Corporation of New Jersey. This was in the same proceeding in which Hickox Finance Corporation of New Jersey had been adjudged guilty of violating the Securities Law and in which case James L. McKenna was appointed Receiver for said Corporation. The petition asked to rescind contracts between appellant and Hickox Finance Corporation, and the return of securities, real property and building and loan shares alleged to have been fraudulently taken from him. On the petition an order to show

cause was issued directing the receiver to show cause why the prayer of said petition should not be granted. As to whether appellant's action should have been by plenary suit or not, no issue is taken thereon. After a hearing an order was made by Vice Chancellor Stein discharging the order to show cause and dismissing the petition upon which the same was based. From said action appellant appeals.

#### ARGUMENT

**The petition to rescind contracts and for the return of securities, real property and building and loan shares, fraudulently taken from the petitioner, was properly dismissed.**

The cases of

*Roe v. Oradell Farms Dairy Co.*, 85 N. J. Equity 146;

and

*Stevens, Att'y General v. Wallace*, 111 Equity, 406

are controlling and entirely dispositive of the issues in this case and therefore the appellee will herein quote at length therefrom.

In *Roe v. Oradell Farms Dairy Co.* a Receiver had been appointed for Oradell Farms Dairy Company. A notice was given by the receiver to the creditors to file their claims. The receiver received claims from various persons holding stock of the company, wherein they asserted they had been induced to purchase it by reason of false and fraudulent representations of the financial status of the company, made to them by an accredited agent of the company for the sale of its stock. They

alleged that they had not discovered the untruthfulness of the statements made to them until a short time prior to the institution of insolvency proceedings; the claims set forth that they repudiated their respective purchase of the stock, and claimed that by such rescission they had become creditors of the corporation and were entitled to be repaid out of its assets in the hands of the receiver the moneys that they had been fraudulently induced to expend in the purchase of the stock.

The receiver refused to recognize the validity of the claims. Appeal from his decision was taken and the receiver's refusal was approved. One claimant, Mrs. Humphries, appealed.

The Court of Errors and Appeals unanimously in an opinion by Chief Justice Gummere, upheld the Court of Chancery.

The opinion stated that looking at the transaction in the light most favorable to Mrs. Humphries, the purchase of the stock, assuming it to have been induced by fraudulent representations on the part of the agent for the defendant corporation, was not a void transaction, but merely voidable at the option of the purchaser. The court at page 148 said:

“\* \* \* until she exercised that option (assuming that she had a right to do so) she was a stockholder of the corporation. Her right to participate as a creditor in the distribution of the assets of the defendant corporation depends, therefore, upon whether a stockholder who has been induced by fraud to become a member of the corporation, and who does not discover the fraud until just before the institution of proceedings for the winding up of the

corporation as insolvent can, after the appointment of a receiver, exercise her option, repudiate her purchase of the stock, and thereby change her position as a stockholder, in, to that of a creditor of, the corporation to the extent of the purchase-money paid by her."

"We think that the right of a stockholder to so change her status (if such right exists) must be exercised while the corporation is a going concern, presumably solvent, and able to meet its engagements. So long as this is the status of the corporation, it is a matter of no concern to its creditors whether it repays to the repudiating stockholder the money advanced by her for the purchase of her stock or not. But when it ceases to be able to pay its creditors in full, has been adjudged to be insolvent, and a receiver has been appointed, the situation is vastly different. The assets of the corporation, instead of being held by it as the representatives of the stockholders, have become vested in the receiver as trustee, primarily, for creditors and secondly, for stockholders. The eighty-sixth section of the Corporation Act \* \* \* requires the receiver at the close of the winding up proceedings, after paying the expenses thereof, to first satisfy out of the assets in his hands all liens upon the funds of the corporation in the order of their priority, then to pay the general creditors, and, if anything is left after paying debts, to distribute what remains among the stockholders in proportion to their respective holdings. The creditors referred to in this section are those persons who are such at the date of the decree of insolvency and the appointment of the receiver, for, by that adjudication and appointment, the right of the corporation to continue the carrying on of its business

ceases, and consequently, it can thereafter create no further indebtedness. So, too, the stockholders referred to in the section are those who occupy that position at the same date."

The court then at page 149 refers to the 21st section of the Corporation Act, and states that it is plain that that section

"which makes each subscriber to the stock of a corporation, who has not paid the full par of his subscription, liable to pay over to the receiver the unpaid portion of the purchase-money, when it is required to pay debts because of insufficiency of other assets. It has been held under similar statutory provisions, and, as we consider, rightly, that such liability cannot be escaped after a winding up proceeding has been instituted, and the corporation has been decreed insolvent, even though the subscriber was induced to purchase the stock by fraudulent misrepresentations made to him by the corporation, or its duly authorized agent.

Oakes v. Turguand, L. R. 2 H. L. 325;

Tennent v. Glasgow Bank, 4 App. Cas. 615;

Houldsworth v. Glasgow Bank, 5 App. Cas. 317;

Scott v. Deweese, 181 U. S. 202."

"It is true that in the cases cited the matter to be determined was the right of such stockholders to avoid liability to make contribution for the payment of the debts of the insolvent corporation by repudiating his contract, but the principle involved is equally applicable to the present situation; for, if the stockholder cannot avoid his liability to make contribution for the benefit

of creditors by repudiating his purchase of the stock, he cannot by such action deplete the assets of the corporation in the hands of the receiver, held by him in trust primarily for their benefit."

It will be noted that the late Chief Justice in the opinion, *supra*, never conceded that Mrs. Humphries had the right to void her transaction, for he said parenthetically "' \* \* \* (assuming that she had a right to do so) \* \* \*'" and later on in discussing the right of a stockholder to change her status he said parenthetically "(if such right exists)."

On examination of the original New Jersey Securities Law (or Blue Sky Law) we find it was enacted by the Legislature in 1927. Various amendments and supplements were enacted. In 1931 the Act was changed and amended by Chapter 226, Laws of 1931, page 566. Section 6 provided that where an investigation disclosed that any person, partnership, corporation, company, trust or association, has engaged in, is engaging in, or is about to engage in any practice declared to be illegal and prohibited by the Act the Attorney-General might, by petition or bill of complaint, setting forth the facts and circumstances, of the case, apply to the Court of Chancery for a writ of injunction or the appointment of a receiver, or both, and the Court might then proceed in a summary way to hear the proofs, and restrain the person, partnership, corporation, company, trust or association or any of its agents, employees, brokers, partners, officers and directors and stockholders from issuing securities and continuing illegal practices.

Section 7 (a) provided that where an injunction issued against a *person*, as provided in Sec. 6, the Court might

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

Sec. 7 (b) provided that where an injunction issued against a *corporation* as provided in Sec. 6, the Court of Chancery might

“restrain the corporation, and its officers, directors, stockholders and agents, from exercising any of its privileges or franchises, and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to the receiver appointed by the Court until the Court shall otherwise order; and upon the appointment of a receiver for a corporation,

all the real and personal property of the corporation, and all its franchises, rights, privileges and effects shall forthwith vest in him, and the corporation shall be divested of the title thereto, and the receiver thus appointed shall settle the estate and distribute the assets, and have all the powers and duties conferred upon receivers by the provisions of an Act entitled 'An Act Concerning Corporations' (Revision of 1896), approved April 21, 1896, and the Acts amendatory thereof and supplemental thereto, so far as said provisions are applicable."

Section 7 (c) provided the procedure where an injunction issued against a *partnership, company* or *association* and provided for winding up in accordance with the provisions of the Corporation Act of 1896, so far as said provisions are applicable.

Section 7 (d) provided the procedure where an injunction issued against a *trust* and provided for winding up in accordance with the provisions of the Corporation Act of 1896, so far as said provisions are applicable.

"The New Jersey Securities Law" is now Title 49 (Revised Statutes 1937).

Sections 49:1:11 to 49:1:14, provide that when it appears that a person, partnership, corporation, company, trust or association, is engaged in or about to engage in illegal practices as prohibited by the Act the Attorney-General may by petition or bill, setting forth the facts, apply to the Court of Chancery for a writ of injunction or the appointment of a receiver, or both, and have the sale of securities restrained.

49:1:15 provides that when the Court of Chan-

cery issues an injunction against a *person*, it may appoint a receiver

“with power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills and notes and property of every description derived by means of any practice declared to be illegal and prohibited, including property with which such property has been mingled, if it cannot be identified in kind because of such commingling; and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the Court for the equal benefit of all who establish an interest therein by reason of the use and employment by the defendant of any practices herein declared to be illegal and prohibited. The Court shall have jurisdiction of all questions arising in such proceedings and may make such orders and decrees therein as justice and equity shall require.”

This is virtually a reenactment of Section 7 (a) of Chapter 226, Laws of 1931.

Section 49:1:16 provides that when an injunction is issued as provided for in Sections 49:1:11 to 49:1:14 against a *corporation, partnership, company or trust*, the Court of Chancery may appoint a receiver and may restrain the corporation, its officers, directors, stockholders and agents, the partnership, company or association, its officers, members agents, and the trust, its grantors, trustees, officers, *cestui que trustent* and agents, from exercising any of its privileges or franchises, and in the case of a trust from executing the trust, and in all cases from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, monies, funds, lands,

tenements or effects except to the receiver appointed by the Court until the Court shall otherwise order.

“Upon the appointment of a receiver all the real and personal property of the corporation, partnership, company, association or trust, and its franchises, rights, privileges, and effects shall forthwith vest in him and the corporation, partnership, company, association or trust shall be divested of the title thereto.

The Receiver shall settle the estate and distribute the assets, and have the powers and duties conferred upon receivers by the provisions of Title 14, Corporations, General, so far as the provisions thereof are applicable.”

In *Stevens v. Wallace*, 111 Equity 406, Chancellor Campbell in discussing the Securities Law says:

“Parties entitled to participate in the funds in the hands of a receiver, under these statutes, have no preference through proceedings to enforce their claims, or through judgments obtained thereon, the direct and specific legislative declaration being that *such funds shall be for the equal benefit of all who establish an interest therein.*”

At page 413, paragraph 4, Chancellor Campbell says:

“from the beginning and ever since, the law very righteously has been that a thief shall not profit by his nefarious and criminal acts and the property in such ill-gotten gains, never, in law, resides in him, but always remains in the victim from whom he

took them. So likewise is the law respecting property obtained from another by fraudulent means and practice. In all such cases the law immediately sets up a constructive trust—the malefactor holding such property, in the eyes of the law, in trust for the use and benefit of those who contributed of their properties thereto through and because of such fraud.”

In view of the provisions of the statute and the authorities it cannot be argued with any merit that since some of the property of appellant is still in the hands of the receiver, while other of his property is not, (some having been disposed of prior to the appointment of a receiver) and while property of most other stockholders has been disposed of, that he, appellant alone is to be preferred to all others and now have his specific property returned.

The language in the Wallace case, *supra*, can mean simply that the receiver, in the eyes of the law, holds all property *for the use and benefit of each and everyone who contributed of their properties because of fraud practiced on them.*

Appellant certainly is not to be preferred because he has instituted a proceeding to recover some of his property. The language in the Wallace case, *supra*, negatives such a claim because therein the Chancellor says:

“Parties entitled to participate in the funds in the hands of a receiver, under these statutes, have no preference through proceedings to enforce their claims, or through judgments obtained thereon \* \* \*.”

The opinion further recites at page 413:

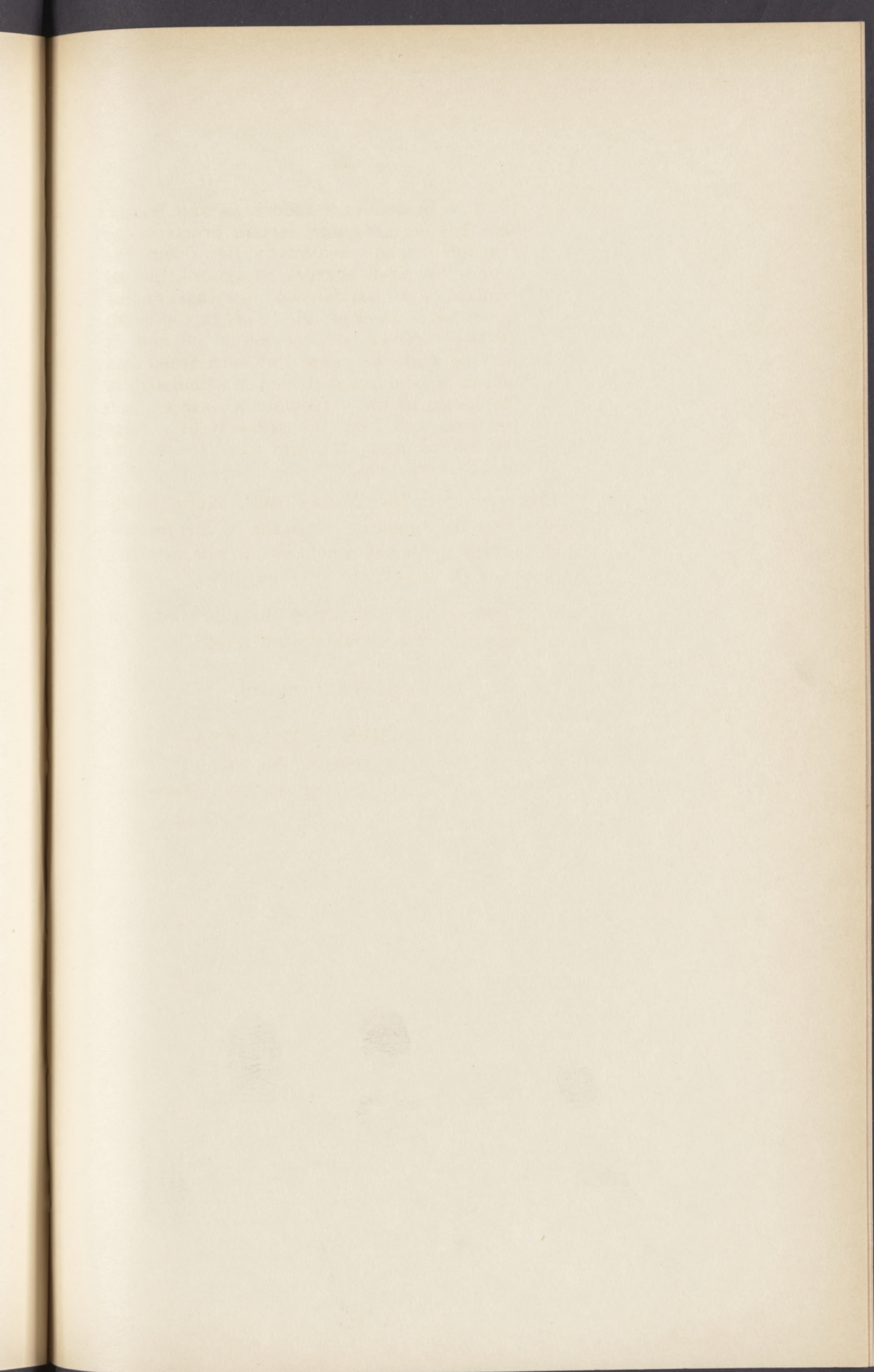
“\* \* \* in the case before us the legislature has declared that certain practices are fraudulent and prohibited; the Court has found that such charges as against the defendant were established and that finding is not here attacked; the funds in the hands of the receiver are the result of and, it may be said, the reward of such fraudulent activities and created and accumulated in the hands of the defendant because of such practices and from the property of a large number of claimants who were the victims of such practices.”

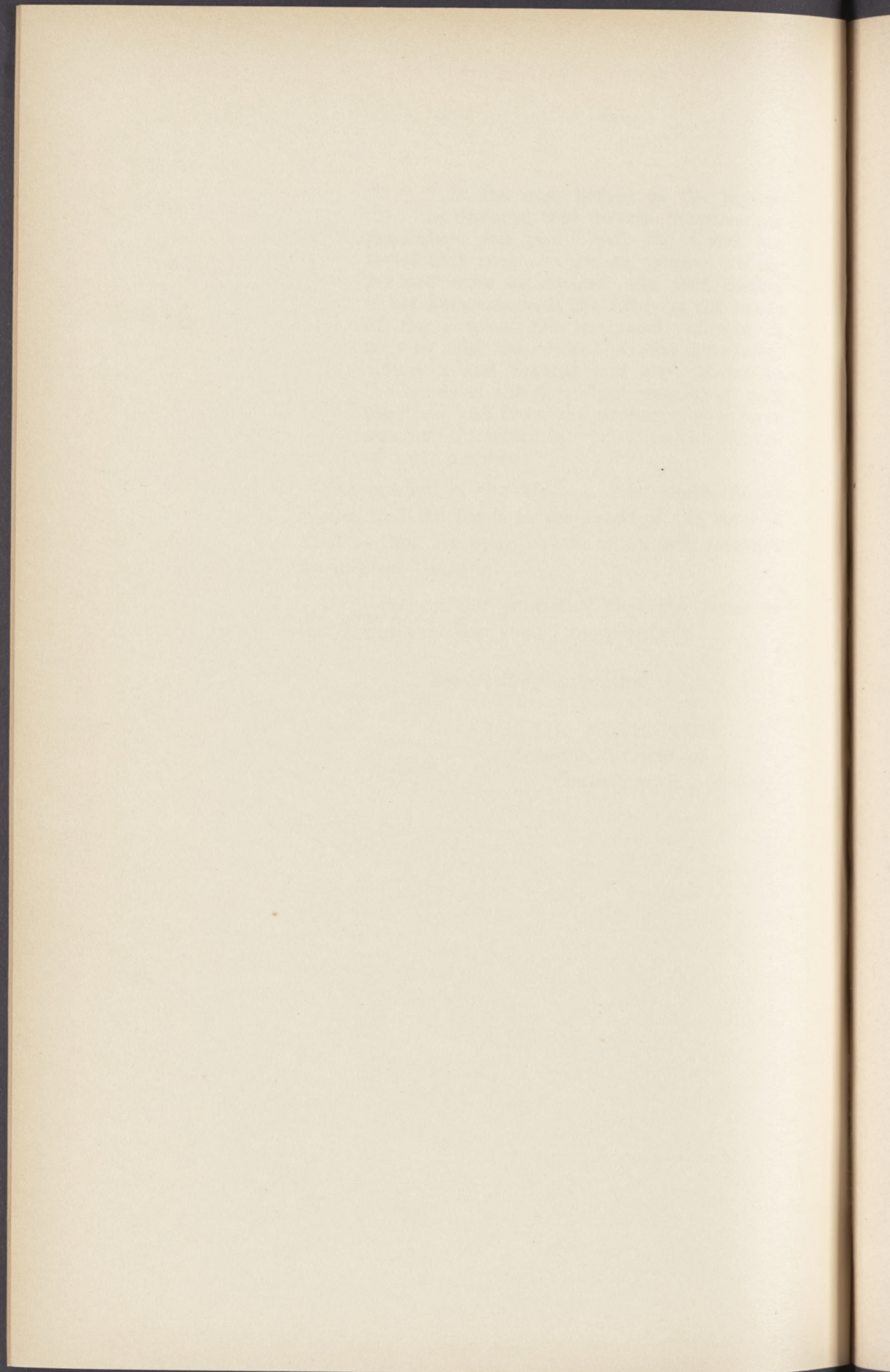
The opinion in the Wallace case, *supra*, finally recites that the funds in the hands of the receiver shall be “for the equal benefit of all who establish an interest therein.”

It is respectfully submitted that the order of the ~~Vice-Chancellor~~ <sup>COURT OF CHANCERY</sup> should be affirmed.

Respectfully submitted,

JAMES L. MCKENNA,  
Solicitor for and of  
Counsel with Appellee.





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