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Notice of Appeal.

(Filed October 22, 1929.)

In Chancery of New Jersey

Between

MICHAEL T. CONNOLLY,
Complainant,

and

JOSEPH SHANNON,
Defendant.

On Bill, &c.

The complainant, Michael T. Connolly, hereby appeals from the order made in the above entitled cause by the Chancellor on the advice of Vice-Chancellor Berry on October 8th, 1929, dismissing the Complainant's bill of complaint, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

HOMAN, BUCHANAN & SMITH,
Solicitors for Complainant.

Dated: October 17, 1929.

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

MARK A. SULLIVAN,
Of Counsel with Complainant.

Served on Solicitors for Deft., October 29, 1929.

Petition of Appeal.

(Filed November 6, 1929.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

MICHAEL T. CONNOLLY,
Complainant-Appellant,

vs.

JOSEPH SHANNON,
Defendant-Appellee.

On Appeal from the Court of Chancery.

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

The petitioner, Michael T. Connolly, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by an order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Berry, bearing date October 8, 1929, in a certain cause in said Court of Chancery, wherein the said Michael T. Connolly was complainant and the said Joseph Shannon was defendant, in this respect, to-wit, that the said order dismisses the bill of complaint heretofore filed in said cause by petitioner.

And petitioner appeals from said order and from the whole, and every part thereof, upon the ground that the same is erroneous in that the said

bill of complaint sets out a good cause of action within the jurisdiction of the Court of Chancery and that it should not have been dismissed.

Petitioner therefore prays that the said order of the said Chancellor may be wholly 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.

HOMAN, BUCHANAN & SMITH,
Solicitors for Complainant.

MARK A. SULLIVAN,
Of Counsel with Complainant.

Served on solicitors for Deft., November 9, 1929.

Answer to Petition of Appeal.

(Filed November 20, 1929.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

MICHAEL T. CONNOLLY,
Complainant-Appellant,

vs.

JOSEPH SHANNON,
Defendant-Appellee.

On Appeal from the Court of Chancery.

The Answer of Joseph Shannon, the above named Appellee, to the Petition of Appeal of Michael T. Connolly, the above named Appellant.

This Appellee, not admitting the truth of all or any of the matters in the said Petition of Appeal contained, for answer thereto nevertheless admits that an order was, on the 8th day of October, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said Petition mentioned and as therein set forth; but as to the substance and form of said order this Appellee begs leave to refer thereto when the same shall be produced.

This Appellee is advised and believes that the said order is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this Appellee.

(Signed) LINDABURY, DEPUE & FAULKS,
Solicitors for and of counsel with Appellee.

Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

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

Complainant, Michael T. Connolly, of the City of Jersey City, County of Hudson, and State of New Jersey, respectfully shows that:

1. On or about January 3rd, 1929, complainant was the owner of Sixty (60) shares of the capital stock of Mercantile Trust Company of Jersey City, a corporation organized and existing under the banking laws of the State of New Jersey, and was also a Director of said corporation.

2. On said date and for some years prior thereto, defendant, Joseph Shannon, was the President, Director and Chairman of the Executive Committee of the Board of Directors and the owner of more than two-thirds of all of the issued capital stock of said Mercantile Trust Company of Jersey City.

3. On said date and for some time prior thereto and without the knowledge of the Board of Directors of said Mercantile Trust Company of Jersey City, said Joseph Shannon as such President and Chairman of the Executive Committee of the Board of Directors, had been negotiating for the sale and merger of said Mercantile Trust Company of Jersey City to and into another bank or banks on a basis that indicated a willingness on the part of said bank or banks to pay at least Twenty-Five Hundred Dollars ($2500.00) for each share of stock of said Mercantile Trust Company of Jersey City.

4. On said date said Joseph Shannon, with the knowledge so obtained and with the further knowledge of the practical certainty of a sale and merger being consummated on the basis of a value of at least Twenty-Five Hundred Dollars ($2500.00) for each share of stock of said Mercantile Trust Company, and without informing complainant of any of such facts as it was his duty to do, offered to buy from complainant his said stock at Fourteen Hundred Dollars ($1400.00) per share.

5. Complainant, without knowledge of the imminence of a sale or merger and without knowledge of the willingness of said bank or banks to pay at least Twenty-Five Hundred Dollars ($2500.00) for each share of stock of said Mercantile Trust Company of Jersey City and without any means of obtaining such knowledge and relying upon the relation of trust that existed between said Joseph Shannon and himself with regard to the affairs of said Mercantile Trust Company, agreed to and did on said date, convey to said Joseph Shannon Fifty (50) shares of said stock and received from him the agreed upon compensation of Fourteen Hundred Dollars ($1400.00) for each share.

6. On February 26th, 1929, there was submitted to and approved by the respective Boards of Directors of Mercantile Trust Company of Jersey City and Commercial Trust Company of New Jersey, a Banking Institution under the laws of the State of New Jersey, a merger agreement wherein and whereby Commercial Trust Company of New Jersey agreed to purchase all the issued stock of Mercantile Trust Company, amounting to Two Thousand (2000) shares and to pay for

the same by issuing and delivering Sixteen Thousand (16,000) shares of Commercial Trust Company of New Jersey at a valuation of Ninety Dollars ($90.00) per share or aggregate of One Million Four Hundred Forty Thousand Dollars ($1,440,000.00) and by paying in cash the net worth of Mercantile Trust Company of Jersey City in excess of One Million Four Hundred Forty Thousand Dollars ($1,440,000.00).

7. On or about the first day of April, 1929, said agreement was fulfilled and each stockholder of Mercantile Trust Company of Jersey City received for each share of stock held by him in such Company Thirteen Hundred Eighty-seven Dollars and Seventy-three Cents ($1,387.73) in cash and eight (8) shares of stock of Commercial Trust Company of New Jersey, which last named stock then had a market value of Two Hundred Twenty Dollars ($220.00) per share.

8. That as soon as complainant heard of said proposed sale and merger, and on or about the twenty-sixth day of February, 1929, he saw defendant, Joseph Shannon, and repudiated the said sale of fifty (50) shares of stock of Mercantile Trust Company of Jersey City and offered to return to said defendant the purchase price which said defendant refused.

9. Defendant received for the fifty (50) shares of stock he purchased from complainant the sum of Sixty-nine Thousand Two Hundred Eighty-six Dollars and Fifty Cents ($69,286.50) in cash and four hundred (400) shares of stock of Commercial Trust Company of New Jersey.

10. Four hundred shares of stock of Commercial Trust Company of New Jersey cannot be readily purchased and complainant does not know what price to pay for same even if they are obtainable.

11. Complainant hereby offers to pay to defendant the said sum of Seventy Thousand Dollars ($70,000.00) so received by him on the sale of said fifty (50) shares of stock of Mercantile Trust Company of Jersey City upon receiving from said defendant four hundred (400) shares of stock of Commercial Trust Company of New Jersey, together with dividends paid thereon since April 1st, 1929, and the sum of Sixty-nine Thousand Two Hundred Eighty-six Dollars and Fifty Cents ($69,286.50) in cash, with interest thereon from said date.

Complainant is without adequate remedy in the Courts at law, and therefore prays:

1. That Joseph Shannon, who is the defendant in this suit, may answer this bill of complaint and each statement therein made.

2. That defendant may be required to account to complainant for the proceeds of the sale of said fifty (50) shares of stock of Mercantile Trust Company of Jersey City to said Commercial Trust Company of New Jersey.

3. That said proceeds of sale be decreed to equitably belong to complainant as of April 1st, 1929.

4. That defendant be directed to transfer and deliver said proceeds of sale to complainant upon

complainant paying him the sum of Seventy Thousand Dollars ($70,000.00).

5. That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

HOMAN, BUCHANAN & SMITH,
Solicitors of Complainant.

MARK A. SULLIVAN,
Of Counsel with Complainant.

Notice of Motion to Strike Out Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

Between

MICHAEL T. CONNOLLY,
Complainant,

and

JOSEPH SHANNON,
Defendant.

On Bill, &c.

To Messrs. Homan, Buchanan & Smith, Solicitors for Complainant:

TAKE NOTICE, that on Tuesday, July 30, 1929, at ten o'clock in the forenoon (Eastern Daylight Saving Time), or as soon thereafter as we can be heard, we shall apply to the Chancellor at the Chancery Chambers in the City of Newark (No. 1060 Broad Street, Newark, New Jersey) for an order striking out the bill of complaint in the above-entitled cause, upon each of the following grounds:

1. That said bill of complaint discloses no cause of action.

2. For want of equity.

Yours respectfully,

LINDABURY, DEPUE & FAULKS,
Solicitors for Defendant.

Dated: July 23rd, 1929.

Order Striking out Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

(73/602)

Between

MICHAEL T. CONNOLLY,
Complainant,

and

JOSEPH SHANNON,
Defendant.

On Bill, Etc.

Joseph Shannon, the defendant herein, having duly moved for an order striking out the bill of complaint herein upon the grounds that said bill discloses no cause of action and for want of equity, and said motion having been duly brought on for hearing, and the Court having heard and considered the arguments of Mark A. Sullivan, Esq., of counsel with Michael T. Connolly, the complainant, and Josiah Stryker, Esq., of counsel with Joseph Shannon, the defendant, and being of opinion that said motion should be granted,

IT IS, on this 8th day of October, 1929, ORDERED, ADJUDGED AND DECREED, that the bill of complaint herein be and the same is hereby dismissed with costs to be taxed.

E. R. WALKER,
Chancellor.

Respectfully advised,

MAJA LEON BERRY,
V. C.

Conclusions.

IN CHANCERY OF NEW JERSEY.

Between

MICHAEL T. CONNOLLY,
Complainant,

and

JOSEPH SHANNON,
Defendant.

On Bill.

Conclusions.
Docket 73,
Page 602.

LINDABURY, DEPUE & FAULKS, for the motion
HOMAN, BUCHANAN & SMITH, Contra.

SYLLABUS.

A president, or director, of a trust company, as such officer, owes no duty to an individual stockholder, to disclose to him, before purchasing his stock, that which he may know affecting the value of that stock. He is, to some extent, trustee for the stockholders, as a body, in respect to the property and business of the corporation, but does not sustain that relation to individual stockholders with respect to their several holdings of stock over which he has no control.

BERRY, V. C.

The bill alleges that the complainant was the owner of sixty shares of the capital stock of the Mercantile Trust Company of Jersey City and

was also a director of the corporation and that the defendant was president, director and chairman of the Executive Committee of the Board of Directors of said company; that the defendant, as such president and chairman, prior to the date mentioned in the bill of complaint, had been negotiating for the sale and merger of said company with another bank and with the knowledge of "the practical certainty of a sale and merger being consummated on the basis of a value of at least $2500 for each share of stock of said Mercantile Trust Company, and without informing complainant of any such facts, as it was his duty to do, offered to buy from complainant his said stock at $1400 per share" and that complainant, without any knowledge of the said facts and "relying upon the relationship of trust that existed between said Joseph Shannon and himself with regard to the affairs of said Mercantile Trust Company", sold fifty shares of his said stock to the defendant at $1400 per share; that later, said proposed merger was effected on a basis which gave to each stockholder of Mercantile Trust Company, for each share of stock held by him, $1397.73 in cash and eight shares of stock of Commercial Trust Company of New Jersey of the market value of $220 per share; and that upon learning of the proposed sale and merger complainant repudiated his sale of stock to the defendant and offered to return to him the purchase price, which offer the defendant refused. The bill further alleges that the defendant on said merger received for the fifty shares of stock purchased from the complainant the sum of $69,286.50 cash and 400 shares of Commercial Trust Company of New Jersey; also that 400 shares of stock of Commercial Trust Company are not readily

obtainable in the open market. The complainant renews his offer to pay the defendant the amount of the purchase price of said fifty shares of stock and demands that the defendant turn over to him what he received in exchange for said stock on said merger. The bill prays an accounting and a decree directing the defendant to transfer and deliver to the complainant the proceeds of complainant's stock on said merger.

This motion is based upon the ground that the bill of complaint discloses no cause of action.

My decision on this motion is controlled by the decision of the Court of Errors and Appeals in *Crowell* v. *Jackson,* 53 N. J. L. 656. It was there held:

> "A director, or the treasurer, of a corporation, is not, because of his office, in duty bound to disclose to an individual stockholder, before purchasing his stock, that which he may know as to the real condition of the corporation affecting the value of that stock. He is, to some extent, trustee for the stockholders, as a body, in respect to the property and business of the corporation, but does not sustain that relation to individual stockholders with respect to their several holdings of stock over which he has no control."

There seem to be two distinct lines of authorities on the point involved on this motion, that is, whether or not an officer and director of a corporation occupies such a fiduciary relation toward individual stockholders as to make it the duty of such officer and director to disclose to an individual stockholder, before purchasing his stock, that which he may know as to the real conditions of the corporation affecting the value of that stock. The majority view, apparently, is that

adopted by the Court of Errors and Appeals in *Crowell* v. *Jackson, supra,* which holds that he does not occupy such fiduciary relation. The minority view is that expressed in *Oliver* v. *Oliver,* 118 Ga. 362, 45 S. E. Rep. 232, cited by counsel for the complainant, and which holds that such fiduciary relation does exist. For a discussion of the conflicting rules, see L. R. A. 1916 B; p. 706, note; Fletcher's Cyclopedia Corporations, Vol. 4, Section 2464 and Corpus Juris, Vol. 14A, p. 128, par. 1896.

Since our court of last resort has adopted the majority rule my own view as to which of the rules is the more consonant with equity and justice is immaterial. I will, therefore, advise an order striking out the bill of complaint.

New Jersey Court of Errors and Appeals

Between
MICHAEL T. CONNOLLY,
Complainant-Appellant,
and
JOSEPH SHANNON,
Defendant-Respondent.

On Appeal.

MEMORANDUM ON BEHALF OF COMPLAINANT-APPELLANT.

This is an appeal from an order of the Chancellor (Berry, V. C.) striking out the Bill of Complaint filed in the above entitled cause.

Facts.

The bill alleges that the complainant was the owner of sixty shares of the capital stock of the Mercantile Trust Company of Jersey City and was also a director of the corporation, and that the defendant was president, director and chairman of the Executive Committee of the Board of Directors and the owner of more than two-thirds of all of the issued capital stock of said company; that the defendant, as such president and chairman prior to the date mentioned in the Bill of Complaint and without the knowledge of his Board of Directors, had been negotiating for the sale and merger of said company with another bank and with the knowledge of the practical certainty of a sale and merger being consummated

on the basis of a value of at least $2,500 for each share of stock of said Mercantile Trust Company, and without informing complainant of any such facts, as it was his duty to do, offered to buy from complainant his said stock at $1,400 per share, and that complainant, without any knowledge of the said facts, either as to the imminence of a sale or the price to be paid, and without any means of obtaining such knowledge, and relying upon the relation of trust that existed between said Joseph Shannon and himself with regard to the affairs of said Mercantile Trust Company, sold fifty shares of his said stock to the defendant at $1,400 per share; that later, said proposed merger was effected with Commercial Trust Company of New Jersey on a basis which gave to each stockholder of Mercantile Trust Company, for each share of stock held by him, $1,387.73 in cash and eight shares of stock of Commercial Trust Company of New Jersey of the then market value of $220 per share; and that upon learning of the proposed sale and merger complainant repudiated his sale of stock to the defendant and offered to return to him the purchase price, which offer the defendant refused. The bill further alleges that the defendant on said merger received for the fifty shares of stock purchased from the complainant the sum of $69,286.50 cash and 400 shares of Commercial Trust Company of New Jersey; also that 400 shares of stock of Commercial Trust Company are not readily obtainable in the open market. The complainant renews his offer to pay the defendant the amount of the purchase price of said fifty shares of stock and demands that the defendant turn over to him what he received in exchange for said stock on said merger. The bill prays an accounting and a decree directing the defendant to transfer and deliver to the complainant the proceeds of complainant's stock on said merger.

The motion to strike out was based upon the ground that the Bill of Complaint discloses no cause of action and for a want of equity.

ARGUMENT.

Special circumstances in the case at bar take it out of the general rule enunciated in Crowell v. Jackson.

The order dismissing the bill is based upon the decision of *Crowell* v. *Jackson*, 53 N. J. L. 656.

It is respectfully urged that this decision is not dispositive of the present case because of the difference in the facts and circumstances here before the Court and those set out in the case cited. *Crowell* v. *Jackson* approved of and followed the reasoning in *Tippecanoe County* v. *Reynolds*, 44 Ind. 509. Both of these cases, however, involved only the bare relationship between director and shareholder, and the reason underlying the decision in both cases is that the stockholder had only to avail himself of his right to examine the books of the company and he would then be on a parity in knowledge with the director of the company with whom he was dealing. That he did not avail himself of the opportunity thus afforded was the fault of no one but himself and in the absence of actual misrepresentation by the director there was no liability on the part of the director. This is a hard rule to lay down but it is an understandable one, and while giving our recognition to it as the law of New Jersey under that set of circumstances we should not extend its application to cases which lack the essential facts upon which the rule is founded. In the case before the Court defendant was not only a director but president of the company and chairman of the executive committee of its Board of Directors. He had been

secretly negotiating for a sale of the corporation and the final consummation of such sale was in his hands at all times by reason of his ownership of two-thirds of the stock. He knew approximately how much each share of stock would bring and he also knew that complainant did not know of such negotiations nor prices and had no way of ascertaining them. These facts all distinguish this case from *Crowell* v. *Jackson* and take it out of the reasoning of that decision.

The instant case is more nearly like *Strong* v. *Repide,* 213 U. S. 419. In that case plaintiff Strong was the owner of 800 shares of stock of the Philippine Sugar Estates Development Company and defendant, in addition to his ownership of almost three-fourths of the issued shares of stock of the company, was one of five directors of the company and was elected by the Board the agent and Administrator General of such Company. Defendant was negotiating with the United States Government for the sale to it of certain lands belonging to the Company, which sale would make the stock of the Company quite valuable. Defendant had it within his power to close the contract for the sale of such lands to the Government at any time. While such negotiations were pending and three months before the actual consummation of them by defendant and without informing plaintiff, or her agent, of the facts with regard to such negotiations, defendant purchased plaintiff's 800 shares of stock at about one-tenth of the amount it became worth by the sale of the land, said purchase being made through a third party. For about six months prior to the sale of the stock the subject of the sale of the land to the United States Government was mooted and its probability publicly discussed in a general way. Such discussion was founded upon rumors and gossip as to the condition of the negotiations.

The public press referred to it not infrequently, but the actual state of the negotiations, the actual probabilities of the sale being consummated and the particular position of power and influence which the defendant occupied in such negotiations, prior to the time of the purchase of plaintiff's stock, were not accurately known by plaintiff's agent or by anyone else outside those interested in the matter as negotiators. Plaintiff brought an action against defendant to recover such shares from the defendant on the ground, among others, that defendant had fraudulently concealed the facts affecting the value of the stock, in that he made no disclosure of the condition of the negotiations for the sale of the land to the United States nor his key position in the matter. Justice Peckham in writing the opinion of the Court, said:

> "The question in this case, therefore, is whether, under the circumstances above set forth, it was the duty of the defendant, acting in good faith, to disclose to the agent of the plaintiff the facts bearing upon or which might affect the value of the stock.
>
> If it were conceded, for the purpose of the argument, that the ordinary relations between directors and shareholders in a business corporation are not of such a fiduciary nature as to make it the duty of a director to disclose to a shareholder the general knowledge which he may possess regarding the value of the shares of the company before he purchases any from a shareholder, yet there are cases where, by reason of the special facts, such duty exists. The supreme courts of Kansas and of Georgia have held the relationship existed in the cases before those courts because of the special facts which took them out of the general rule, and that, under those facts, the director could not purchase from the shareholder his shares without informing him of the facts which affected their value. Stewart *v.* Harris, 69 Kan. 498, 66 L. R. A. 261,

105 Am. St. Rep. 178, 77 Pac. 277, 2 A. & E. Ann. Cas. 873; Oliver *v.* Oliver, 118 Ga. 362, 45 S. E. 232. The case before us is of the same general character. On the other hand, there is the case of Tippecanoe County *v.* Reynolds, 44 Ind. 509-515, 15 Am. Rep. 245, where it was held (after referring to cases) that no relationship of a fiduciary nature exists between a director and a shareholder in a business corporation. Other cases are cited to that effect by counsel for defendant in error. These cases involved only the bare relationship between director and shareholder. It is here sought to make defendant responsible for his actions, not alone and simply in his character as a director, but because, in consideration of all the existing circumstances above detailed, it became the duty of the defendant, acting in good faith, to state the facts before making the purchase. That the defendant was a director of the corporation is but one of the facts upon which the liability is asserted, the existence of all the others in addition making such a combination as rendered it the plain duty of the defendant to speak. He was not only a director, but he owned three-fourths of the shares of its stock, and was, at the time of the purchase of the stock, administrator general of the company, with large powers, and engaged in the negotiations which finally led to the sale of the company's lands (together with all the other friar lands) to the government at a price which very greatly enhanced the value of the stock. He was the chief negotiator for the sale of all the lands, and was acting substantially as the agent of the shareholders of his company by reason of his ownership of the shares of stock in the corporation and by the acquiescence of all the other shareholders, and the negotiations were for the sale of the whole of the property of the company. By reason of such ownership and agency, and his participation as such owner and agent in the negotiations then going on, no one knew as well as he the exact

condition of such negotiations. No one knew as well as he the probability of the sale of the lands to the government. No one knew as well as he the probable price that might be obtained on such sale. The lands were the only valuable asset owned by the company. Under these circumstances, and before the negotiations for the sale were completed, the defendant employs an agent to purchase the stock and conceals from the plaintiff's agent his own identity and his knowledge of the state of the negotiations and their probable result, with which he was familiar as the agent of the shareholders, and much of which knowledge he obtained while acting as such agent, and by reason thereof. The inference is inevitable that, at this time, he had concluded to press the negotiations for a sale of the lands to a successful conclusion; else, why would he desire to purchase more shares which, if no sale went through, were, in his opinion, worthless because of the failure of the government to properly protect the lands in the hands of their then owners? The agent of the plaintiff was ignorant in regard to the state of the negotiations and their probable result were a most material fact affecting the value of the shares of stock of the company, and he would not have sold them at the price he did had he known the actual state of the negotiations as to the lands, and that it was the defendant who was seeking to purchase the stock. Concealing his identity when procuring the purchase of the stock, by his agent, was in itself strong evidence of fraud on the part of the defendant. Why did he not ask Jones, who occupied an adjoining office, if he would sell? But, by concealing his identity, he could, by such means, the more easily avoid any questions relative to the negotiations for the sale of the lands and their probable result, and could also avoid any actual misrepresentations on that subject, which he evidently thought were necessary in his case to constitute a fraud. He kept up the concealment as long as he could,

by giving the check of a third person for the purchase money. Evidence that he did so was objected to on the ground that it could not possibly even tend to prove that the prior consent to sell had been procured by the subsequent check given in payment. That was not its purpose. Of course, the giving of the check could not have induced the prior consent, but it was proper evidence as tending to show that the concealment of identity was not a mere inadvertent omission, an omission without any fraudulent or deceitful intent, but was a studied and intentional omission, to be characterized as part of the deceitful machinations to obtain the purchase without giving any information whatever as to the state and probable result of the negotiations, to the vendor of the stock, and to, in that way, obtain the same at a lower price. After the purchase of the stock he continued his negotiations for the sale of the lands, and finally, he says, as administrator general of the company, under the special authority of the shareholders, and as attorney in fact, he entered into the contract of sale December 21, 1903. The whole transaction gives conclusive evidence of the overwhelming influence defendant had in the course of the negotiations as owner of a majority of the stock and as agent for the other owners, and it is clear that the final consummation was in his hands at all times. If, under all these facts, he purchased the stock from the plaintiff, the law would indeed be impotent if the sale could not be set aside or the defendant cast in damages for his fraud."

See also Fletcher's Cyclopedia Corporations, Vol. 4, Sec. 2567; L. R. A. 1916 B p. 713; C. J. Vol. 14-A, p. 129, Sec. 1896, note 55.

In the instant case the defendant was president, director and chairman of the Executive Committee of the Board of Directors and owner of two-thirds of the issued capital stock of the corpo-

ration. As such president and chairman of the Executive Committee and without knowledge of his Board, he had been negotiating for a sale or merger of the corporation to and into another bank and knew that he alone, by reason of his ownership of stock, could effect such sale and merger so that the Mercantile Trust Company stock would show a value of at least $2,500.00 per share. Complainant was a director of the Company and was entitled to know the facts concerning the negotiation. He did not know them nor have any means of ascertaining them and defendant knew this. Complainant had a right to rely and did rely upon the trust relationship that existed between the defendant and himself with regard to the affairs of the Company, for defendant acted in the negotiation for the sale and merger, as president and as chairman of the Executive Committee of the Board, of which plaintiff was a member. The similarity between the facts in *Strong* v. *Repide* and the case before the Court is striking and the reasoning of Justice Peckham therein is applicable in all its vigor to the instant case.

Keely v. *Black,* 91 N. J. E. 520, is also distinguishable from the present case. Complainants in *Keely* v. *Black* had sold no stock to the defendant and no complaint was being made by those who had. Complainants in that case were endeavoring to compel Black, as President of the Company, to account *to the Company* for money paid him by the Bell Telephone Company for his services in acquiring the stock. The Court in that case says on page 523:

> "The moneys paid to him were for his services in acquiring and transferring the stock and in doing that he did not occupy a position of trust *with relation to the company of* which he was President."

What follows thereafter is dictum and had nothing to do with the decision of the case. It is also to be noted in this case that defendant Black sold the stock to the Bell Telephone Company for the same amount that he had purchased it and that the money that he received according to the finding of the Court of Errors and Appeals were for his services in acquiring and transferring the stock. This case manifestly has no bearing upon the question here before the Court.

We therefore respectfully insist that the special circumstances pointed out above take the instant case out of the rule enunciated in *Crowell* v. *Jackson, supra*, and bring it within the rule of *Strong* v. *Repide, supra,* and that the order dismissing the Bill of Complaint filed herein should be reversed.

HOMAN, BUCHANAN & SMITH,
Solicitors of Complainant.

MARK SULLIVAN,
Of Counsel.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

(2629)

New Jersey Court of Errors and Appeals

Between

MICHAEL T. CONNOLLY,
Complainant-Appellant,

and

JOSEPH SHANNON,
Defendant-Respondent.

On Appeal.

SUPPLEMENTAL MEMORANDUM ON BEHALF OF COMPLAINANT-APPELLANT.

Almost the whole of Part II of respondent's brief is devoted to showing that the instant case differs from *Strong* v. *Repide,* 213 U. S. 419, in two respects. First, the lack of control of the sale and merger, and, second, the non-concealment of the actual purchaser.

It is true that there was no concealment of the identity of the purchaser, but we submit that "the owner of more than two-thirds of all of the issued capital stock" personally controlled the sale and could in time effect a merger with another willing bank.

It was not appellant's contention in its brief, however, that the facts in the instant case were the same as those in *Strong* v. *Repide,* but that they were of similar character and that they therefore brought the instant case under the reasoning of that case. To quote from *Strong* v. *Repide*:

> "It is here sought to make defendant responsible for his actions, not alone and simply

> in his character as a director, but because, in consideration of all the existing circumstances above detailed, it became the duty of the defendant, acting in good faith, to state the facts before making the purchase. That the defendant was a director of the corporation is but one of the facts upon which the liability is asserted, the existence of all the others in addition making such a combination as rendered it the plain duty of the defendant to speak."

No invariable rule can be laid down by which to determine the existence of a fiduciary relationship. The law is as cautious in defining the fiduciary relation in the sense in which we are now using that term as it is in limiting by definition the boundaries within which fraud may be pursued.

> "Courts of equity have carefully refrained from defining the particular instances of fiduciary relations in such a manner that other and perhaps new cases might be excluded. It is settled by an overwhelming weight of authority that the principle extends to every possible case in which a fiduciary relation exists as a fact, in which there is confidence reposed on one side, and the resulting superiority and influence on the other. *The relation and the duties involved in it need not be legal; it may be moral, social, domestic, or merely personal.*" 2 Pom., 4th Ed., Sec. 956.

See also *Harrop* v. *Cole,* 85 N. J. E. 32. Respondent in his brief dwells wholly on the contention that there was no *legal* duty involved in the relationship between director and stockholder. This, of course, was settled in this State by *Crowell* v. *Jackson,* 53 N. J. L. 656, but our facts and circumstances take us beyond this *legal duty* question; we are in a court of conscience, and, as Pomeroy points out, *supra,* the duty involved may be a moral or even a personal one.

The crucial question in this case is this: Having in mind all the facts and circumstances set out in the bill of complaint, was respondent, *in equity and good conscience* bound to act with due regard to the interests of appellant and inform appellant of the negotiations for sale or merger? Sound morality would seem to dictate an affirmative answer, just as it did in *Strong* v. *Repide*.

Crowell v. *Jackson* is apparently considered by respondent to be a sort of touchstone that dissolves all legal and equitable questions where a controversy between a director and stockholder arises as to the lawfulness of a purchase by the director of stock from the stockholder. With confidence we say that this is not so. The special circumstances of each case must be considered and the case decided in the light of such circumstances. The decision in *Crowell* v. *Jackson* is the result of the application of a hard legal rule to a question of law in a court of law. It should not be applied in an equitable suit to equitable questions merely because some of the facts are similar.

Respectfully submitted,

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New Jersey Court of Errors and Appeals

Between
MICHAEL T. CONNOLLY,
Complainant-Appellant,
and
JOSEPH SHANNON,
Defendant-Respondent.

On Appeal

BRIEF ON BEHALF OF DEFENDANT-RESPONDENT.

This is an appeal from an order of the Chancellor advised by Vice Chancellor Berry striking out the bill of complaint in the above entitled cause. The opinion of the Vice Chancellor appears on page 12 of the State of Case.

Facts.

The statement of facts in appellant's brief is substantially accurate. Some further statements with regard to the allegations of the bill concerning the proposed merger may perhaps be helpful to the Court. The date of the sale of appellant's stock to respondent is given in the bill of complaint as January 3, 1929 (Case, p. 6, par. 4; p. 5, par. 1). The merger agreement was not submitted to the Board of Directors of either of the merging trust companies until February 26, 1929, nearly eight weeks later (Case, p. 6, par. 6), and the merger was not actually consummated until the following first of April (Case, p. 7, par. 7). The bill of complaint does not charge, as might be inferred from

the statement of facts in appellant's brief, that prior to the sale of appellant's stock respondent had been negotiating with the bank with which the merger was subsequently effected, *i. e.,* the Commercial Trust Company. The charge in paragraph 3 of the bill is that prior to the date of the sale respondent "had been negotiating for the sale and merger of said Mercantile Trust Company of Jersey City to and into another *bank or banks* on a basis that indicated a willingness on the part of said bank or banks to pay at least $2,500 for each share of stock, etc." (italics ours).

ARGUMENT.

I.

Under the settled law of this State the bill of complaint discloses no ground for equitable relief.

Appellant's claim to equitable relief is based upon the theory that a relation of trust existed between him and respondent and that respondent in purchasing appellant's stock without advising him of the incomplete and uncertain negotiations, which are alleged to have previously occurred, for a merger of the trust company with some bank or banks was guilty of a breach of trust. The only basis for the assertion that such trust relationship existed is the allegation that respondent was the president of the Mercantile Trust Company, a director thereof, and the chairman of its executive committee, while appellant was a director and stockholder thereof.

The bill of complaint does not allege that respondent made any misrepresentation to the appellant, or that he actively and intentionally con-

cealed any material fact. The supposed breach of trust consisted solely of the alleged failure of respondent to tell appellant that negotiations had been conducted with a "bank or banks" and that such "bank or banks" had *"indicated a willingness"* to pay at least $2,500 for each share of stock of the Mercantile Trust Company.

The Vice Chancellor in disposing of this contention of appellant said in part:

> "My decision on this motion is controlled by the decision of the Court of Errors and Appeals in *Crowell* v. *Jackson,* 53 N. J. L. 656. It was there held:
>
> 'A director, or the treasurer, of a corporation, is not, because of his office, in duty bound to disclose to an individual stockholder, before purchasing his stock, that which he may know as to the real condition of the corporation affecting the value of that stock. He is, to some extent, trustee for the stockholders, as a body, in respect to the property and business of the corporation, but does not sustain that relation to individual stockholders with respect to their several holdings of stock over which he has no control.' " (Case, page 14).

Crowell v. *Jackson,* the case cited and relied upon by the Vice Chancellor, was an action for deceit in the purchase of certain shares of the capital stock of the Holbrook Printing Company by the defendant from the plaintiff. The declaration alleged that plaintiff was a shareholder of the Holbrook Printing Company and that defendant was a director and the treasurer thereof; that the company *had made* a favorable sale of property which enhanced the value of its stock; that this sale was known only to the directors and officers of the company; that plaintiff had no knowledge of it and no knowledge of facts which put him on inquiry with reference to it; that de-

fendant knew of it and knew that it enhanced the value of the stock and that plaintiff was ignorant of it; that possessing this knowledge, defendant bought the plaintiff's shares of stock at a price for which the plaintiff in his ignorance of the advantageous sale by the corporation was willing to sell them, which was much below the real value of the stock purchased.

This Court unanimously affirmed the judgment of the Circuit Court sustaining a demurrer to the declaration. The opinion was by Chancellor McGill and cited with approval the decision of the Supreme Court of Indiana in *Board of Commissioners of Tippecanoe County* v. *Reynolds,* 44 Ind. 509.

In the case last cited the action was brought by Tippecanoe County against one Reynolds. The plaintiff alleged that the county was the owner of 570 shares of the capital stock of the Lafayette & Indianapolis Railroad Company; that the defendant was the president of the company and the principal manager of its affairs; that the condition of the company had been concealed by the defendant by failing to declare dividends, by representing that the stock was not worth par and by failing to show the condition of the affairs of the company; that the plaintiff was ignorant as to the value of the stock which the defendant knew; that he represented that the depreciation in the value of the stock had been caused by losses sustained by the company, while he knew that the accumulations of the company were sufficient to pay all debts and losses and leave the stock worth 1100% above par; that under these circumstances the defendant through his agent, Moses Fowler, who was also a director of the company, purchased the stock of the county at below par and had it transferred to one Wilson to hold as his trustee, and that the defendant was then nego-

tiating to sell the road to the Indianapolis & Cincinnati Railroad Company and afterwards did sell it for $2,500,000. The defendant answered by a general denial. The cause was tried by the Court without a jury and resulted in a judgment in favor of the defendant, from which the plaintiff appealed. The Appellate Court, at page 513, states the question for decision as follows:

> "Was the defendant, in consequence of being a director and the president of the company, a trustee of the plaintiff as a stockholder, whereby it became his duty, as a purchaser of the stock, to pay a fair and adequate price for it, to take no advantage of the relation which he bore to the company or the knowledge acquired thereby, and to disclose to the plaintiff all the material facts within his knowledge, not known to the plaintiff, affecting the value of the stock?"

In answering this question it said:

> "We are of opinion, upon an examination of such authorities as have been brought to our notice, upon the point, that the relation of trustee and *cestui que trust* does not exist in such case."

At page 516 the Court, after discussion of the nature of the interest of a stockholder, said:

> "Such being the nature of the interest of the stockholder in his stock, and the directors having no control, power, or dominion over it or duty to discharge in reference to it, beyond the duty devolving upon them to prudently manage the affairs and property of the corporation itself, it seems to us to be very clear, that, in the purchase of stock by a director from the holder, the relation of trustee and *cestui que trust* does not exist between them."

In the above case the Indiana Supreme Court relied in part upon *Carpenter* v. *Danforth,* 52 Barbour 581, in which the Supreme Court of New York had reached the same conclusion concerning a purchase of stock by a director from a stockholder.

In *Keely, et al.* v. *Black, et al.,* 91 N. J. Eq. 520, the facts established were as follows: In 1917, when Camp Dix, at Wrightstown, New Jersey, was constructed by the Federal Government as a training camp for the World War the Farmers Telephone Company owned a telephone system in the vicinity thereof which, however, was operated by the Delaware and Atlantic Telegraph & Telephone Company and the New York and New Jersey Telephone Company, both of the latter companies being part of the Bell system. The defendant Black, who was the president of the Farmers Telephone Company, then entered into an arrangement with these other companies by which the Bell system companies took over the work of installing and operating the required service. This contract was ratified by the Board of Directors of the Farmers Telephone Company. It provided that Mr. Black should acquire and turn over to the Bell companies a controlling interest in the Farmers Company, through the acquisition of its stock. He was to endeavor to acquire and assign to these other companies the whole of the outstanding stock of the Farmers Telephone Company, and if he could not accomplish this, then to acquire all thereof that he was able to over and above 51%. As an inducement to him to do this the other companies agreed to pay him a bonus over the par value of the stock he delivered to them. The Farmers Company was capitalized at $100,000, divided into 2,000 shares of $50 par value each. Black owned in his own right about 500 shares which he transferred to

the Bell companies. Together with the stock he acquired from other stockholders, he delivered to them 1,909 shares. These constituted all the shares of the Farmers Company, except the 80 or 81 thereof held by complainants, and in every instance he paid for the stock so acquired by him from other stockholders only the par value thereof. For the 1,400 shares acquired by him from other stockholders he received a bonus from the Bell companies of $21,000, and his bonus, including the amount he received above par for his own shares, totaled $28,635. Vice Chancellor Backes held Black liable to repay to the company the entire bonus received by him upon the ground that "Black, while president of the company and in fiduciary relation to it and the body of stockholders, clandestinely dealt with corporate assets for his private gain." This Court in unanimously reversing the opinion below, said, in part, as follows:

> "* * * The moneys paid to him were for his services in acquiring and transferring the stock, and in doing that he did not occupy a position of trust with relation to the company of which he was president. *It seems to us that he had a perfect right, as an individual, to purchase the stock from the holders thereof at such prices as he and they should agree on,* and after buying it he was entitled to sell it again for such price as he and a purchaser should agree on. *In these transactions he occupied no relation of trust either to the Farmers company or to the various stockholders.* For it is important to observe that he was not dealing with the property of the company, but with his own, the title to some of which he derived from other stockholders. That is the significant feature of the present case, which distinguishes it from the cases relied on by the respondents." (Italics ours.)

This case while different in its facts from *Crowell* v. *Jackson* nevertheless reiterates the doctrine of that case that an officer of a corporation occupies no relation of trust to the stockholders of such corporation in a transaction which involves the purchase of their stock by him for his own benefit.

The rule announced by this Court in *Crowell* v. *Jackson* is referred to by text book writers and courts as the majority rule in this country. Among the states adopting it may be mentioned Illinois, Kentucky, Delaware, Pennsylvania, Tennessee and Washington, besides Indiana, New York and New Jersey. (See Fletcher's Cyclopedia Corporations, Sec. 2564.)

See also *Hooker* v. *Midland Steel Co.,* Sup. Ct., Ill., 1905, 74 N. E. 445; *Bawden* v. *Taylor,* Sup. Ct., Ill., 1912, 98 N. E. 941; *Barth* v. *Fidelity & Columbia Trust Co.,* Ct. of App., Ky., 1920, 224 S. W. 351; *Waller* v. *Hodge,* Ct. of App., Ky., 1926, 283 S. W. 1047; *Krumbhaar* v. *Griffiths,* Sup. Ct., Pa., 1892, 25 Atl. 64; *Deaderick* v. *Wilson,* Sup. Ct., Tenn., 1874, 8 Baxter 108; *O'Neile* v. *Ternes,* Sup. Ct., Washington, 1903, 73 Pac. 692; *Lofland* v. *Cahall,* Sup. Ct., Del., 1922, 118 Atl. 1.

The unanimous decision of this Court in *Crowell* v. *Jackson* has been unquestioned in this State for nearly forty years. Under the rule thereby established respondent was clearly under no duty to mention to appellant the negotiations for a merger. We respectfully submit that since no charge is made of either misrepresentation or active concealment, the above decision is dispositive of the question raised by this appeal.

II.

No special circumstances are alleged which take the case at bar out of the rule established by *Crowell* v. *Jackson*.

Appellant does not question the soundness of the rule established by *Crowell* v. *Jackson*. He merely argues that such rule is inapplicable to the case at bar by reason of circumstances he claims to be present in this case, and not in *Crowell* v. *Jackson*. Counsel insists that that case involved only the bare relationship between director and shareholder and that the reason underlying the decision is that the stockholder had only to avail himself of his right to examine the books of the company and he would then be on a parity in knowledge with the director of the company with whom he was dealing. The decision in that case, however, was not based upon any such ground. The sole question involved was whether the defendant sustained such a relationship to the plaintiff as an individual stockholder that he was under a duty to disclose to the plaintiff facts affecting the value of the stock which to his knowledge were unknown to the plaintiff. The decision was based not upon the character of the facts which the defendant knew as an officer and director of the corporation, but squarely upon the absence of any relation of trust and confidence between the defendant as a director and officer and the plaintiff as an individual stockholder.

It may be noted that in the Indiana case above cited one of the facts which was not disclosed was the pending negotiations for the sale of the railroad at a high price, which negotiations were consummated by the defendant after the purchase of plaintiff's stock.

Appellant's brief states that at the time respondent purchased his stock the respondent had been secretly negotiating for the sale of the corporation; that the final consummation of such sale was in his hands at all times by reason of his ownership of two-thirds of the stock, and that he knew approximately how much each share of stock would bring. This assertion, however, if true, would not distinguish the case at bar from *Crowell* v. *Jackson,* as the defendant in that case knew that a favorable sale *had been made* which was known only to the directors and officers of the company and not to the plaintiff.

The allegations of the bill of complaint in the case at bar, however, do not support appellant's statement. The final consummation of the merger was not in the hands or control of respondent. The merger of two trust companies is governed by Chapter 197 of the Session Laws of 1925, P. L., p. 465. The pertinent sections of this act are printed in the appendix to this brief, page 16. The manner in which a trust company may merge with a bank is prescribed by Chapter 203 of the Session Laws of 1925, P. L., p. 481. The pertinent sections of this act are also printed in the appendix, page 17. Under both of these statutes the merger agreement must be authorized by the respective boards of directors of each corporation by vote of two-thirds of all the members of each board (Section 2). The merger agreement, together with sworn copies of the proceedings of the meetings of the respective boards at which the agreement was authorized, must be submitted in duplicate to the Commissioner of Banking and Insurance for his approval (Section 4). Within sixty days after notice to such corporations of the approval of the Commissioner of Banking and Insurance, the agreements must be submitted to the stockholders of each of such

corporations and approved by vote or ballot of stockholders owning at least two-thirds in amount of the stock of each of such corporations (Section 5).

Of course, respondent could not have controlled the action of either the directors or stockholders of the other bank or trust company with which a merger was proposed. While he could vote the stock held by him in the Mercantile Trust Company in favor of the merger, the favorable action of the Board of Directors of such company approving the agreement, and the approval of the Commissioner of Banking and Insurance, were prerequisites to the submission of the question to the stockholders. As alleged in the bill of complaint (paragraph 6), the agreement was not submitted to either Board of Directors until nearly eight weeks after the sale, and even though it be assumed that the trust company with which the merger was finally concluded was one of the banks with which respondent is alleged to have been negotiating at and prior to the sale (the complaint contains no allegation of any such fact), it is evident that the proposed merger was in an inchoate and uncertain state at the time of the purchase of appellant's stock.

Appellant relies upon *Strong* v. *Repide,* 213 U. S. 419. In that case the defendant was the owner of 30,400 of the 42,030 shares issued by Phillipine Sugar Estates Development Company, Ltd. He was one of the five directors of the company and had been elected by the Board as the agent and administrator general of the company "with exclusive intervention in the management" of its general business. The company owned a large tract of land in the Phillipine Islands, which was its only substantial asset. Because of the failure of the government to protect these lands, they had become practically valueless. The com-

pany had paid no dividends and was unable to even pay its taxes.

The government had been negotiating for the purchase of the lands owned by this company and other adjoining lands and had made a very substantial offer therefor, which was unsatisfactory to the defendant, who was holding out for a higher price. The defendant, as administrator general and owner of the majority of the stock, had power to sell the lands without any action by the Board of Directors. When the negotiations had reached the point where the defendant had determined to sell the lands for the best price that could be obtained he purchased the stock of the plaintiff. In doing so he resorted to an elaborate scheme for the purpose of concealing his interest in the purchase. Although his office was next door to that of the plaintiff's agent, who was known to him to have authority to sell her stock, the defendant, instead of dealing with plaintiff's agent, employed one Kaufman, who in turn employed a broker to make the purchase. When the sale was made the stock was delivered to Kaufman in the broker's office and payment therefor was made with the check of a third party. By this method the defendant intentionally and successfully concealed his connection with the transaction and this concealment was treated by the Court as evidence of actual fraud.

Furthermore the evidence affirmatively showed that the plaintiff would not have sold at the price at which the sale was made had she or her agent known that the defendant was attempting to make the purchase. The reason why such a sale would not have been made is obvious, as the plaintiff's agent knew that the defendant controlled the negotiations for the sale of the land and that if such sale was not effected the stock would be practically worthless. There are, therefore, two im-

portant differences in the facts which distinguish the case at bar from *Strong* v. *Repide*:

First: In *Strong* v. *Repide* the defendant had absolute control of the sale as the government desired to buy and the owners of the other lands wished to sell, and the defendant as administrator general and majority stockholder could bind his company without any action by the directors. In the case at bar the negotiations for a merger could amount to nothing without favorable action not only by two-thirds of the Board of Directors and stockholders of the trust company, of which both complainant and defendant were directors, but also by two-thirds of the directors and stockholders of the bank with which the merger was contemplated, which latter directors and stockholders were in no respect under respondent's control. In addition the approval of the Commissioner of Banking and Insurance was also required. At the time the respondent purchased appellant's stock, therefore, there could have been no certainty that any merger would be effected, and, in fact, the complaint does not definitely charge that any merger did occur with any of the banks with which negotiations had been conducted prior to such purchase.

While this difference in facts distinguishes *Strong* v. *Repide* from the case at bar, it alone would not distinguish it from *Crowell* v. *Jackson*, as in that case the favorable sale which affected the value of the stock had already occurred when the defendant made the purchase.

Second: The defendant in *Strong* v. *Repide* was guilty of active intentional concealment under circumstances which made it self-evident that his purchase could not be accomplished by dealing in person with the plaintiff or her agent without fraudulent misrepresentation (see quotation from

opinion of the Court at bottom of page 7 and top of page 8 of appellant's brief). In the case at bar respondent dealt openly with appellant and resorted to no artifice of any kind or character for the purpose of concealing any fact. This difference serves to distinguish *Strong* v. *Repide* not only from the case at bar, but also from *Crowell* v. *Jackson.*

In the case last cited this Court said:

> "In purchase or sale, if there be no designed misrepresentation by words or deeds and no *active intentional concealment* and no intentional silence, where there is a duty to speak, an action for deceit will not lie." (Italics ours.)

The artifice resorted to by the defendant in *Strong* v. *Repide* to conceal the identity of the purchaser when considered in connection with the fact that but for the sale of the lands the stock was valueless, might well be regarded as active intentional concealment within the meaning of this language. In the case at bar, however, respondent's failure to advise appellant when dealing personally with him for the purchase of his stock of the uncompleted and indefinite negotia-

tions for a merger, cannot, we submit, be regarded as active concealment.

Counsel's assertion that appellant had a right to rely and did rely upon the trust relationship that existed between the respondent and himself flies in the face of the decision of this Court in *Crowell* v. *Jackson* that no such relationship existed with regard to the purchase of appellant's stock.

We respectfully submit, therefore, that the pending case is controlled by *Crowell* v. *Jackson* and that the order of the Court of Chancery dismissing the bill of complaint should be affirmed.

Respectfully submitted,

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Solicitors for Defendant-Respondent.

FREDERIC J. FAULKS,
JOSIAH STRYKER,
Of Counsel.

Appendix.

(P. L. 1925, p. 465):

"CHAPTER 197.

A Further Supplement to an act entitled 'An Act concerning trust companies (Revision of 1899)', approved March twenty-fourth, one thousand eight hundred ninety-nine.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Any two or more corporations organized under the act to which this is a supplement, or under any special act, and all having their main offices or principal places of business in the same municipality, are hereby authorized to merge one or more of such corporations into another of them as herein prescribed.

2. The respective boards of directors of such corporations may, by vote of two-thirds of all the members of each board, make or authorize to be made between such corporations a written agreement in duplicate under their respective corporate seals for the merger of such corporations. A sworn copy of the proceedings of such meetings, made by the secretaries thereof respectively, shall be presumptive evidence of the holding and action of such meetings.

* * * * * *

4. Such merger agreement and sworn copies of the proceedings of the meetings of the respective boards of directors at which the making of such agreement was authorized shall be submitted in duplicate to the Commissioner of Banking and Insurance for his approval.

5. The merger agreement shall, within sixty days after notice to such corporations of its approval by the Commissioner of Banking and Insurance, be submitted to the stockholders of each of said corporations at a meeting thereof to be called upon notice of at least two weeks, specifying time, place, and object thereof, addressed to each stockholder at his last-known post-office address and deposited in the post office, postage prepaid; and if such agreement so approved by the Commissioner of Banking and Insurance, shall be approved at each of such meetings by vote or ballot of the stockholders owning at least two-thirds an amount of the stock of their respective corporations, it shall thereupon become binding upon such corporation. A sworn copy of the proceedings of such meetings, made by the secretaries thereof respectively, shall be presumptive evidence of the holding and action of such meetings.

* * * * * *"

(P. L. 1925, p. 481):

"CHAPTER 203.

An Act permitting and regulating the merging of banks and trust companies.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Any one or more banks organized under 'An Act concerning banks and banking (Revision, 1899)', approved March twenty-fourth, one thousand eight hundred and ninety-nine, or under any special act, and one or more trust companies organized under 'An Act concerning trust companies (Revision, 1899)', approved March twenty-fourth, one thousand eight hundred and ninety-nine, or under any special act, and all having their main offices or principal places of business in the same city, town, township or village,

are hereby authorized to merge one or more of such corporations into another of them as herein provided.

2. The respective boards of directors of such corporations may, by vote of two-thirds of all the members of each board, make or atuhorize to be made between such corporations a written agreement in duplicate under their respective corporate seals for the merger of such corporations. A sworn copy of the proceedings of such meetings, made by the cashiers or secretaries thereof respectively, shall be presumptive evidence of the holding and action of such meetings.

* * * * * *

4. Such merger agreement and sworn copies of the proceedings of the meetings of the respective boards of directors at which the making of such agreement was authorized shall be submitted in duplicate to the Commissioner of Banking and Insurance for his approval.

5. The merger agreement shall within sixty days after notice to such corporations of its approval by the Commissioner of Banking and Insurance be submitted to the stockholders of each of said corporations at a meeting thereof to be called upon notice of at least two weeks, specifying time, place, and object thereof, addressed to each stockholder at his last known post office address and deposited in the post office, postage prepaid; and if such agreement so approved by the Commissioner of Banking and Insurance, shall be approved at each of such meetings by vote or ballot of the stockholders owning at least two-thirds in amount of the stock of their respective corporations, it shall thereupon become binding upon such corporation. A sworn copy of the proceedings of such meetings, made by the cashiers or secretaries thereof respectively, shall be presumptive evidence of the holding and action of such meetings.

* * * * * *"