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2. Your petitioner promptly began said investigation as he was so authorized and directed to do by said order of the Chancellor, and has ever since been and is now continuing to conduct the same.

10 3. The approximate cost of conducting said investigation to date has been the sum of \$7,359.78, as will more fully appear from a summary of expenses hereto annexed, marked Schedule A. Your petitioner estimates that the total cost of conducting the investigation to a conclusion will be approximately \$50,000, exclusive of any allowances to your petitioner or to your petitioner's counsel and associate counsel.

20 4. In and by said order of the Chancellor, dated the 2nd day of May, 1932, it was provided that the counsel appointed by your petitioner might with the approval of your petitioner designate associate counsel and such legal, clerical, investigating and stenographic assistants as might be necessary properly to conduct the investigation "but at the cost of the State Bar Association unless the Legislature shall make appropriation therefor, except a stenographer allowed by statute."

30 5. Your petitioner shows that on June 8, 1932, there were introduced in the Legislature of the State of New Jersey two bills, one for an appropriation of \$5,000 for the actual disbursements incurred in the course of the investigation between May 2 and June 30, 1932, and the other an appropriation of \$45,000 for such disbursements as might be incurred during the fiscal year commencing on July 1, 1932, but that the Legislature adjourned *sine die* without making either appropriation. Your petitioner further shows that he has ascertained from the officers of the New Jersey State Bar Association that said Association is without funds to pay the expenses of conducting the investigation.

6. Your petitioner shows that there is a general fund of this Court which now amounts to approximately \$300,000 and which belongs to the Court itself and to your Honor, as Chancellor, said general fund having ac-

crued through an accumulation of compound interest allowed by the Trenton Banking Company which does not belong to persons interested in the fund on deposit with said Banking Company but to the Court of Chancery, to be disposed of by the Chancellor agreeably to equitable rules. Your petitioner refers to and hereby incorporates herein by reference thereto the report, dated March 22, 1909, of Oscar Keen, Special Master in Chancery, who examined and audited the accounts of the Court as of January 1, 1909, for the Honorable Mahlon Pitney, Chancellor.

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7. Your petitioner shows that an examination of the files of this Court has disclosed that not only did the Honorable Mahlon Pitney, Chancellor, approve and file the said report of Oscar Keen, as Special Master, but that Chancellor Pitney did draw upon said general fund of this Court in the case of James Henry Moran, individually, etc., against Adeline E. Gott, individually, etc., under the following circumstances: the proceeds of the sale of lands were deposited with the Clerk of this Court in said cause and by inadvertence the share of Mary A. Alcorn was paid out by the Clerk to the solicitor for Anna A. MacDonald, and by him to his client said Anna A. MacDonald. Subsequently, the said solicitor paid into Court from his own moneys the sum of \$1,071.03 to cover the overpayment made to his client. He was unable to recover the amount of such overpayment from his client and on the 27th day of February, 1912, an order was made and entered in said cause by Chancellor Pitney, which, after reciting that the amount of the overpayment ought to be charged against the surplus funds of the Court as being in the nature of an expense of administration, directed the Clerk to repay the solicitor of said Anna A. MacDonald said sum of \$1,071.03, together with accumulations thereon and to credit the amount of such overpayment to said cause and charge the same against the expense account on the trust fund ledger of the Court. Your

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petitioner shows that by said order the general fund of this Court was used to make good a loss arising from a payment erroneously made by the Clerk in Chancery.

8. The files of this Court also disclose that said general fund of this Court has been used by your Honor to pay counsel for services rendered in investigating the conduct of solicitors of the Court and for the disbursements of such counsel and refers to the following orders made by your Honor directing such payments from the  
10 general fund:

October 27, 1914, to Nelson B. Gaskill in the matter of Arthur D. Colyer, a solicitor of the Court, \$75.00 and costs as compensation and for disbursements.

On November 2, 1914, to Nelson B. Gaskill in the matter of Addison P. Rosenkrans, a solicitor of the Court, \$100 and costs as compensation and for disbursements.

On June 12, 1914, to Nelson B. Gaskill in the matter of Winfield S. Angleman, a solicitor of the Court, \$75  
20 and costs as compensation and for disbursements.

On July 9, 1914, to Nelson B. Gaskill in the matter of J. Edward Smith, a solicitor of the Court, \$150 and costs as compensation and for disbursements.

On December 1, 1914, to Nelson B. Gaskill in the matter of William M. Goldweber, a solicitor of the Court, \$250 and costs as compensation and for disbursements.

On December 7, 1914, to Nelson B. Gaskill in the matter of Alfred B. Cosey, a solicitor of the Court, \$250  
30 and costs as compensation and for disbursements.

On December 8, 1915, to Nelson B. Gaskill in the matter of Simon Hahn, a solicitor of the Court, \$200 for compensation in arguing an appeal taken by said Simon Hahn to the Court of Errors and Appeals and \$50.00 for disbursements in printing the brief and state of the case.

On December 21, 1914, to Nelson B. Gaskill in the matter of John J. Marnell, a solicitor of the Court, \$100 and costs as compensation and for disbursements.

On December 30, 1914, to Nelson B. Gaskill in the matter of Jarvis N. Atkinson, a solicitor of the Court, \$100 and costs as compensation and for disbursements.

On January 13, 1915, to Nelson B. Gaskill in the matter of Samuel Schleimer, a solicitor of the Court, \$100 and costs as compensation and for disbursements.

On January 23, 1915, to Nelson B. Gaskill in the matter of Herbert E. Davis, a solicitor of this Court, \$75 and costs as compensation and for disbursements.

On March 26, 1915, to Halsey M. Barrett, in the matter of Simon Hahn, a solicitor of the Court, \$150, together with costs, including disbursements amounting to \$5.72 and stenographers' fees for transcript of testimony amounting to \$77.00, which the order recites is to be paid from "the general fund belonging to this Court."

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On February 2, 1921, to M. Casewell Heine, in the matter of Jacob Van DerClock, Will Everett and Isador A. Stern, solicitors of the Court, \$500 for services rendered.

On November 19, 1926, to Harry Lane in the matter of Joseph P. Hayden charged with contempt of Court, \$150 for his services.

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On January 4, 1927, to Harry Lane in the matter of Joseph P. Hayden charged with contempt of Court, \$150 for his services.

On April 10, 1928, to Harry Lane in the matter of Joseph P. Hayden charged with contempt of Court, a counsel fee of \$150 for prosecuting the bond for appearance given by said Joseph P. Hayden and William Carey, surety, and taxed costs of \$41.03.

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9. Your petitioner further shows that said general fund has also been used by your Honor to pay for legal services rendered to your Honor and for the disbursements of counsel who performed such legal services, in the following instances:

On July 29, 1931, a statement of services of Aaron V. Dawes addressed to the Chancellor was directed to be paid from the general fund of this Court. This state-

ment was for services rendered in and about receivers' bonds executed by the Majestic Indemnity Insurance Company of New Jersey and the Equitable Indemnity Company of New York. The bill was for \$250 and disbursements of \$23.03, including train fares to Newark and New York.

10 On April 25, 1932, a statement of services of Aaron V. Dawes addressed to the Chancellor for \$150 was directed to be paid from the general fund of the Court. This statement was for services rendered in arguing a motion to set aside service of subpoena upon the Chancellor and preparing brief thereon in the case of Prudential Insurance Co. *vs.* Clifton Builders Supply Co.

20 10. Your petitioner shows that this petition is based upon the fact that said general fund of the Court, amounting to approximately \$300,000, is subject to the direction and application of the Chancellor in accordance with established practice and the precedents recited in the last previous paragraphs hereof; and that unless this petition be granted and the moneys now prayed for made immediately available to pay the bills and obligations incurred to date as set forth in Schedule A hereto annexed, the complete fulfillment of the duties imposed upon your petitioner by the order dated the 2nd day of May, 1932, will be impossible.

30 11. Your petitioner hereby refers to his first intermediate report dated the 25th day of July, 1932, and submitted to your Honor simultaneously herewith and to all of the oral testimony taken and documentary evidence introduced before your petitioner, to date, as a demonstration of the need of the investigation so ordered by your Honor and of the urgency for the completion thereof.

Your petitioner therefore prays that your Honor, the Chancellor of the State of New Jersey, may, at this time, advance the sum of \$7,359.78 to your petitioner to place your petitioner in funds to pay the obligations incurred during the course of the investigation

as set forth in Schedule A hereto annexed, or that your Honor may direct the Clerk of this Court to pay said obligations out of said general fund of this Court, or that by such other means as to your Honor may seem wise and expedient the disbursements of the investigation thus far made and incurred as so listed may be paid and discharged—reserving unto your petitioner leave to apply to your Honor from time to time in the future for further appropriations from said general fund of this Court to pay and discharge the further expenses of the investigation; and for such other and further relief in the premises as may be equitable.

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And your petitioner will ever pray, etc.

CHARLES L. CARRICK,  
*Master.*

SHELTON PITNEY,  
*Of Counsel.*

Dated, July 26, 1932.

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## SCHEDULE "A"

### *Disbursements*

To Shelton Pitney, Esq., trips to Trenton and Jersey City, telephone tolls and telegrams, overtime, supplies, photostatic prints, messenger service, etc. ....	\$120.67	
To Alexander T. Schenck, Esq. ....	20.75	
Mervin G. Weiner, Esq. ....	13.42	30
John F. Gough, Esq. ....	40.00	
Henry Young, Jr., Esq. ....	24.27	
Charles Jones, Esq., for services and the services of the State Capital Title & Abstract Company in examining the receivership files of the Court (amount estimated in the absence of Mr. Jones, on vacation, the estimate being based on earlier discussions with him) ....	4,500.00	

	Bergen & Heironimus, for stenographic services .....	1,555.65
	Haskins & Sells, for accountancy services and disbursements .....	986.80
	Foster's Industrial & Detective Bureau, for services of operative and disbursements..	58.22
	Honorable Charles L. Carrick, disbursements .....	40.00
10	Total disbursements to date.....	<u>\$7,359.78</u>

STATE OF NEW JERSEY, }  
 COUNTY OF MERCER, } ss.:

CHARLES L. CARRICK, being duly sworn according to law upon his oath, deposes and says:

I am the petitioner in the foregoing petition named. I have read the foregoing petition executed by me. The things therein set forth are true to my own knowledge  
 20 except that as to those matters stated on information and belief, I verily believe the same to be true. My information concerning the use of the general fund of the Court of Chancery is based upon the study of the files of the Court made under my direction by one of associate counsel, Alexander T. Schenck. My information as to the lack of available funds in the Treasury of the New Jersey State Bar Association is obtained from J. Henry Harrison, lately president of said Association (while he was such president) and from other  
 30 officers of said Association.

Subscribed and sworn to before me this 26th day of July, 1932.

CHARLES L. CARRICK,

O'HARA,  
*A Notary Public of New Jersey.*

IN CHANCERY OF NEW JERSEY.

IN THE MATTER OF THE PETITION OF THE NEW JERSEY STATE BAR ASSOCIATION FOR AN INVESTIGA- TION IN THE COURT OF CHAN- CERY, ETC.	}	On Petition for Funds.
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**ORDER TO SHOW CAUSE**

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*(Filed July 27, 1932)*

Upon reading and filing the petition of Charles L. Carrick, duly verified on the 26th day of July, 1932, wherein the petitioner prays that the Chancellor may appropriate the sum of \$7,359.78 from the general fund of this Court, more particularly referred to in the report of Oscar Keen, Special Master in Chancery, dated the 22d day of March, 1909, for the purpose of paying and discharging the expenses, to date, of the investigation authorized, directed and committed to the petitioner by the order made and entered herein on the 2d day of May, 1932:

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It is on this 27th day of July, 1932, on motion of Shelton Pitney, of counsel with the petitioner, ORDERED that the Comptroller of the State of New Jersey, the Treasurer of the State of New Jersey and the Attorney General of the State of New Jersey, show cause before the Chancellor at the State House, in the City of Trenton, New Jersey, on Tuesday, the 9th day of August, 1932, at 10:30 o'clock on the forenoon of that day (Eastern Daylight Saving Time), or as soon thereafter as counsel can be heard, why the prayer of said petition should not be granted.

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And it is further ORDERED that a copy of said petition and a copy of this order to show cause (which copies need not be certified) be served upon the Attorney General of the State of New Jersey within one day from the date hereof and, further, that like copies hereof

be served within the same time upon or left at the office of the Comptroller of the State of New Jersey and the Treasurer of the State of New Jersey, respectively.

E. R. WALKER,  
C.

A true copy:  
SHELTON PITNEY,  
*Of Counsel with the Petitioner.*

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IN CHANCERY OF NEW JERSEY.

IN THE MATTER OF THE PETITION OF THE NEW JERSEY STATE BAR AS- SOCIATION FOR AN IN- VESTIGATION IN THE COURT OF CHANCERY, ETC.	} } } } }	On Order to Show Cause Why Certain Surplus Moneys of the Court of Chancery Should Not Be Appropriated to Pay the Expenses of Said Inves- tigation.
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**OPINION**

*(Filed August 16, 1932)*

Albert C. Wall and Shelton Pitney, Esquires, in behalf of the State Bar Association for the Order to Show Cause.

Hon. William A. Stevens, Attorney General, and Theodore Backes, Esquire, Assistant Attorney General for the Comptroller, Treasurer and Attorney General of the State of New Jersey, *contra*.

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Aaron V. Dawes, Esquire, *Amicus Curiae*.

WALKER, *Chancellor*.

Sometime before and on May 3, 1932, a petition was presented to the Chancellor setting forth among other things that on April 12, 1932, upon the filing of an affidavit an order was made, advised by Vice-Chancellor Church, removing Harry C. Hendricks as one of the receivers of the Earl Radio Corporation, upon the allegation that the receiver had embezzled large sums of

money belonging to the said receivership estate. Since then proceedings have been had in this Court for money to be paid out of the surplus fund belonging to this Court for the purpose of financing the investigation.

A cursory investigation of Hendrick's account showed that he had embezzled approximately the sum of \$149,000 and Vice Chancellor Church made an order removing him from the Earl Radio receivership and from some twenty or more cases in which he had also been appointed receiver. The averments were sufficient to cause an investigation and Charles L. Carrick, Esquire, was appointed Master and directed to conduct it.

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On May 2, 1932, an order was presented to me on behalf of the State Bar Association providing for such investigation in this Court and appointing Mr. Carrick as Advisory Master to conduct the investigation, but it contained no appropriation for the expenses of the examination. I added the words "but at the cost of the State Bar Association unless the Legislature shall make appropriation therefor."

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I did this because all investigations in New Jersey, of which I knew, had always been prosecuted through a Legislative Committee at the public expense, namely, that of the Legislature, but this was to be a judicial investigation which lent handle to the view that the expenses were payable out of any unappropriated judicial funds and this surplus fund belonging to the Court was available, if lawful. This brings us squarely to the inquiry as to whether or not the expenses of the investigation may be paid out of this Chancery fund.

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The Legislature was in session but adjourned shortly thereafter without having made any appropriation for the purpose. Suggestion was then made that the surplus money belonging to the Court of Chancery might, in part, be used for the liquidation of these expenses but that a judicial determination of the right of the Chancellor to make the appropriation should be requisite to any such diversion of funds. Whereupon, a petition

was presented praying for the allowance of such fund \$7,359.78 from the surplus money belonging to this Court to pay the expenses of the investigation then incurred.

10 Whereupon, an order to show cause was made directed to the State Comptroller, State Treasurer and the Attorney General why the prayer of the petition should not be granted. On the return day of the order, August 9, 1932, the Attorney General said that the Comptroller and Treasurer both disclaimed any interest in the fund under the statutes of this State or otherwise and would file a disclaimer. They were directed to do so.

20 The Attorney General is a party hereto as such Attorney General. It arises out of his representing, as law officer, the public in all matters of trust which are not private, and this is certainly a public trust. *In Lanning vs. Commissioners of Public Instruction*, 63 N. J. Eq., 1, 8, it was held that: As that was a public trust, the Attorney General, representing the public, was a necessary party to the litigation. The general practice seems to be that a bill of this sort in a matter of a public trust is filed by the Attorney General, either of his own motion, or on the relation of some parties interested. In that case the parties interested presented the bill and made the Attorney General a party defendant thereto. No objection to this course having been made by the Attorney General, I think the proper parties were before the Court, and that it was immaterial that the Attorney General was a defendant instead of a complainant. That was the view taken by the Massachusetts Supreme Court in *Harvard College vs. Society, &c.*, and it accords with reason.

30 The allegation of the payment of excessive fees to solicitors, etc., by some Vice Chancellors was certainly grave enough and serious enough to cause this investigation to be at once made, as the practices reported were of a character to discredit honesty of purpose and show a tendency to reward counsel beyond his deserts, in other

words, it amounted to an obstruction of justice and the diversion of funds of suitors and litigants, persons entitled to the assets, which should have gone to their true owners, and the investigation so far as it has proceeded has amply justified the wisdom of the Court's ordering the inquiry.

It is averred that the money belongs to the Court to be used at the discretion of the Chancellor for equitable purposes. This is one of them. This brings us to the question of whether the Court owns the money in a qualified legal sense and that its payment is subject to the discretion of the Chancellor, for the time being, for proper and lawful purposes. These questions are to be answered in the affirmative. The hearing on this order has shown a perfect mine of wealth of legal principles, to the effect that the Court has jurisdiction, that the money being in Court is subject to its control and subject to the appropriation of the Court for lawful purposes (see 137, App. Div. N. Y., p. 789) or the protection of the Court and its self-preservation.

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The Attorney General himself claimed in his argument and brief that the Legislature's refusal to appropriate any funds of the State for the expenses of the investigation was a conclusive determination of the non-existence of any necessity or emergency justifying the expenditure of the public funds.

Whether or not there is a necessity or emergency justifying this Court in using the public funds for the purposes of investigation belongs to the judicial department of this State to determine for itself that fact. See *The State vs. The Governor*, N. J. L. 331, at p. 349, to the effect that each department of government exercises the functions necessary for its self-preservation independent of the other departments. The fund arose in this way: It is to be found in the report of Oscar Keen, Master, as to such accounts of this Court from January 1, 1908, to January 1, 1909, he said *inter alia*, "As hereinbefore stated, the true balance in said Banking Company, to

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the credit of the Court of Chancery on January 1, 1909, was the sum of \$808,165.96. If there is deducted from the sum of \$808,165.96 the amount with which the Clerk is chargeable on January 1, 1909, that is, the sum of \$780,709.82, there remains a balance of \$27,456.14 to the credit of the Court of Chancery on January 1, 1909, in the Trenton Banking Company, being the result of compound interest allowed by the Banking Company, which does not belong to persons interested in the fund on deposit, but to the Court of Chancery, to be disposed of by this Court agreeably to equitable rules. Respectfully submitted to his Honor the Chancellor this twenty-second day of March, nineteen hundred and nine.

OSCAR KEEN,  
Master.

Approved:

MAHLON PITNEY,  
C."

20 And the present Chancellor has added these interpretations:

In the broad sense in which this term (equitable rules) is sometimes used it signifies natural justice, 1 *Bouv. Law Dic. (Rawle's Rev.)*, p. 1057. Equity is according to him who is chancellor. *Lord Selden. Web. New Int. Dic.*, p. 742. Equity is natural justice or right; the giving, or desiring to give, to each man his due, according to natural law. *Web. New Int. Dic.*, p. 742.

30 To show how Hon. Mahlon Pitney, Chancellor (who was a very illustrious Chancellor of New Jersey and thereafter an equally illustrious Justice of the Supreme Court of the United States) interpreted this report and the assertion that the surplus fund of \$27,456.14 belonged to the Court itself, to be disposed of by this Court agreeably to equitable rules, it is only necessary to cite the case of *Moran vs. Gott* (26-794), in which, on February 27, 1912, an order was made that the sum of \$1,071.03, which had theretofore been inadvertently paid to the solicitor of Anna A. MacDonald, one of the

parties, and which the said solicitor and the court were unable to recover from her, should be charged against the expenses of this Court, and credited to the account of Mary A. Alcorn, to whom it belonged and to whom it was subsequently disbursed.

Here was a practical application of the appropriation of \$1,071.03, according to equitable rules in favor of Mary A. Alcorn, whose money to that extent had been inadvertently paid to another, from whom it could not be recovered back.

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The present Chancellor followed the rule in a few cases, paying small fees to solicitors doing work for the Court itself, notably the case of *In the Matter of Simon Hahn*, a Solicitor of the Court of Chancery, docket 40, page 174. The case was this: Charles S. Peaker having retained Simon Hahn, a Solicitor in Chancery, to bring a suit for divorce against his wife, Bertha Peaker, for adultery committed with Charles Kase, Hahn drew the petition and immediately went to Kase, the co-respondent, and told him what had occurred, and informed him that unless he paid \$25,000 of hush money to settle the matter the petition would be filed the next day and Kase be thus exposed. Kase raised and paid the money. Hahn informed Peaker that he had settled with Kase, not telling the amount that he received, but giving him \$2,000; and also paying the Gregory Detective Agency, who had obtained evidence, \$9,000, making \$14,000 for Hahn. One year afterward Peaker and the detectives discovered the amount received by Hahn, and upon Peaker's demand for more money Hahn gave him an additional \$2,500, making \$4,500 in all, and gave the detectives, upon their demand, an additional \$1,250, making the solicitor's share 41%, and the detectives' 41%, and the client's, whose cause of action they exploited for their own benefit, only 18%. *Held*, that this conduct on the part of Hahn, the solicitor, toward his client, was unconscionable, oppressive and fraudulent, and that, therefore, he should be debarred from practicing as a solicitor;

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and such an order was made. This man after trial was disbarred in Chancery (although that was reversed but not for the reason that he had acted unconscionably and dishonestly) and the late Halsey W. Barrett as counsel for the Court received a fee and costs amounting to \$267.15 for the work of prosecution.

10 This Court and every other constitutional Court has the inherent power in this State to exert all necessary and appropriate power to function free from destructive and pernicious acts.

Chief Justice White in *Toledo Newspaper Co. vs. United States*, 247 U. S., p. 402, at pp. 416 and 419, established the boundary of inherent powers of constitutional courts. He said, "The test of power is in the character of the acts in question: Whether their direct tendency is to prevent or obstruct the free and unprejudiced exercise of the judicial power." He further said, "The Court has the sacred obligation to preserve their right to discharge their duties free from unlawful and unworthy influences and in so doing, if need be, to clear from the pathway leading to the performance of this great duty all unwarranted attempts to pervert, obstruct or distort judgment."

20 This inherent power includes the right to use the public funds if necessary for the Court to perform its judicial duties, and is a logical consequence of the reasons justifying the power itself and is also established in cases in this country. See *Mercer vs. Coleman, Auditor, etc.*, 14 S. W. (2d), 144 at 145, a Kentucky case decided in 1929 by the Court of Appeals in that State. 30 The question before the Court was whether the House of Assembly having the constitutional duty to decide upon the membership of the House had the inherent power without the concurrence of the Senate or approval of the Governor to use the public funds in investigating the conduct of the election so that the House could decide intelligently the contest.

The court upheld the power of the House to use the public fund and mandamused the auditor to certify to the resolution of the House.

In *McConnell vs. Gallet*, 6 *Pacific*, 2d., p. 143 at 144, held, that the governor's power to proclaim martial law implied the power to incur expenses to pay the national guardsmen. The auditor was, in this case, ordered to audit and pay the expenses of the guardsmen.

In *Moreau vs. Freeholders of Monmouth*, 68 N. J. L., p. 480, at p. 481, Mr. Justice Dixon cites the case of *Board vs. Quinn*, 136 Ind., p. 562, as declaring that constitutional courts have the inherent power to provide themselves with necessary accommodations temporarily but the Court decided that the necessity for the exercise of such power did not exist in that case then before it as adequate accommodations had been provided by the county.

My conclusion is this: that whether or not the Courts have the right to exert inherent power depends upon the facts of the particular case. See *Marshall vs. Gordon, Sergeant-at-Arms*, 243 U. S., p. 521, and that in this case now before me I hold the facts are of sufficient gravity to make it my sacred duty to use the funds under my control under the power which is vested in me to promote this investigation.

ORDERED, That the Order to Show Cause be made absolute and that the money prayed for be appropriated and paid for the purpose aforesaid, out of the accumulated fund belonging to this Court.

Order accordingly.

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IN CHANCERY OF NEW JERSEY. 89-639.

10	IN THE MATTER OF THE PETITION OF THE NEW JERSEY STATE BAR AS- SOCIATION FOR AN IN- VESTIGATION IN THE COURT OF CHANCERY, ETC.	}   }   }   }	On Order to Show Cause Why Certain Surplus Moneys of the Court of Chancery Should Not Be Appropriated to Pay the Expenses of Said Invest- igation.
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### ORDER

(Filed August 19, 1932)

This matter coming on to be heard in the presence of Shelton Pitney, of counsel with Charles L. Carrick and Albert Wall, appearing for the New Jersey State Bar Association and of Hon. William A. Stevens, Attorney General and Theodore Backes, Assistant Attorney General, appearing for the comptroller, treasurer, and Attorney General of the State of New Jersey and of Aaron V. Dawes, *Amicus Curiae*, and the Court having read and considered the petition of said Charles L. Carrick, bearing date the 26th day of July, 1932, and having heard and considered the arguments of counsel and the said comptroller and treasurer of the State of New Jersey having disclaimed any interest under the statutes of this state or otherwise in the general fund of this court, more particularly referred to in the report of Oscar Keen, Esq., Special Master in Chancery, dated the 22d day of March, 1909, and it appearing to the court that on the 2d day of May, 1932, the Chancellor appointed said Charles L. Carrick as Master, in this matter, to conduct an investigation in the Court of Chancery, and that said Charles L. Carrick has incurred, to the present time, obligations during the course of said investigation amounting to the sum of \$7,359.78 and it further appearing to the Court that said general fund belongs to the Court and is to be used at the discretion of the Chan-

cellor for equitable purposes and that it is necessary and agreeable to equitable rules that the cost of said investigation should be paid from said general fund and it further appearing that the order to show cause granted upon the said petition of said Charles L. Carrick has been duly served in the manner therein directed.

It is on this 19th day of August, 1932, ORDERED that the sum of \$7,359.78 be appropriated from the said general fund of this court, more particularly referred to in the said report of Oscar Keen, Esq., Special Master in Chancery, dated the 22d day of March, 1909, for the purpose of paying and discharging the expenses to date of the investigation authorized, directed and committed to said Charles L. Carrick by the order made and entered herein on the 2d day of May, 1932.

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And it is further ORDERED that the clerk of this Court do pay the said sum of \$7,359.78 to the said Charles L. Carrick out of the said general fund belonging to this Court for the purpose of discharging the expenses to date of said investigation.

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And it is further ORDERED that the said Charles L. Carrick have leave to apply on due notice from time to time in the future for further appropriations from said general fund of this Court to pay and discharge the further expenses of said investigation.

And it is further ordered that Charles L. Carrick, Master as aforesaid, shall first audit said bills and that when he shall have made distribution of the money provided for in this order he shall forthwith file in the Court of Chancery and deposit with the Clerk thereof a sworn statement of the distribution and payment of said funds to those entitled thereto.

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E. R. WALKER,  
C.

IN CHANCERY OF NEW JERSEY.

IN THE MATTER OF THE PETITION OF THE NEW JERSEY STATE BAR ASSOCIATION FOR AN INVESTIGA- TION IN THE COURT OF CHAN- CERY, ETC.	}	Petition, etc.
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**NOTICE OF APPEAL***(Filed August 25, 1932)*

William A. Stevens, Attorney General of the State of New Jersey, hereby appeals from an order of the Chancellor bearing date the 19th day of August, 1932, and from the whole and every part thereof, made in this Court, in the above stated cause, to the Court of Errors and Appeals in the Last Resort in All Causes, and conceives that there is good cause for appeal in the above entitled cause.

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Dated, August 24, 1932.

W. A. STEVENS,  
*Attorney General of the State of New Jersey.*

Service of a copy of the Notice of Appeal in the above stated cause is hereby acknowledged this 26th day of August, 1932.

SHELTON PITNEY,  
*Solicitor for Petitioner.*

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Service of a copy of the Notice of Appeal in the above stated cause is hereby acknowledged this 25th day of August, 1932.

FERD GARRETSON,  
*Clerk in Chancery.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE MATTER OF THE PETITION OF THE NEW JERSEY STATE BAR ASSOCIATION FOR AN INVESTIGA- TION IN THE COURT OF CHAN- CERY, ETC.	}	On Appeal from the Court of Chancery.
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**PETITION OF APPEAL**

*(Filed August 29, 1932)*

*To the Honorable the Court of Errors and Appeals in  
the Last Resort in All Causes:*

The petition of William A. Stevens, Attorney General of the State of New Jersey, the appellant in the above stated 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, bearing date of August 19, 1932, in a certain cause in the said Court of Chancery wherein Charles L. Carrick, an Advisory Master of the Court of Chancery, was the petitioner, and William A. Stevens, Attorney General, appeared for the State of New Jersey, in this respect, to wit: that the said order adjudges that the sum of \$7,359.78 be appropriated from the general fund of the Court of Chancery, for the purpose of paying and discharging the expenses of an investigation authorized, directed and committed to the said Charles L. Carrick, as Master, the Chancellor having appointed the said Charles L. Carrick to conduct said investigation in the Court of Chancery; and that the Clerk of the Court of Chancery pay to the said Charles L. Carrick out of the general fund belonging to the said Court for the purpose of discharging the expenses of the investigation the sum aforesaid; and that the said Charles L. Carrick

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have leave to apply from time to time in the future for further appropriations from said general fund to pay and discharge the further expenses of said investigation.

And petitioner appeals from the said order of the Chancellor upon the ground that the same is erroneous in that no money can lawfully be drawn from said general fund of the Court of Chancery without legislative warrant and sanction therefor;

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

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

Service of the within Petition of Appeal is hereby acknowledged this 26th day of August, 1932.

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SHELTON PITNEY.

## New Jersey Court of Errors and Appeals

IN THE MATTER  
of  
THE PETITION OF THE NEW JERSEY  
STATE BAR ASSOCIATION FOR AN  
INVESTIGATION IN THE COURT OF  
CHANCERY, ETC.

ON APPEAL FROM  
THE COURT OF  
CHANCERY.

### BRIEF FOR PETITIONER.

#### Facts.

The facts are undisputed. They are to be found in the petition on page 1 of the State of the Case, the opinion of the Chancellor on page 10, the Keen Report, and the orders in the supplement to the printed Case.

A receiver appointed by the Court of Chancery in the *Earl Radio* case and in 20 or more other cases had embezzled approximately \$149,000 of receivership funds (Opinion, p. 11, ll. 5-10).

On May 2nd, 1932, the New Jersey State Bar Association presented to the Chancellor a petition the averments of which were sufficient in the Chancellor's judgment to cause an investigation (Opinion, p. 11, l. 11).

The Chancellor appointed the Hon. Charles L. Carrick to conduct an investigation into the practice of certain members of the Bar in soliciting receivership cases and to investigate the administration of receiverships and other trust estates

including the fees allowed and paid to receivers, solicitors for and counsel with receivers and other trustees, auctioneers, appraisers, accountants, masters and any other officers of the court, including fees paid to officers or attorneys in the administration of the affairs of closed banks and other financial institutions and whether or not any fees allowed to any of such officers have been split and with whom and whether any officer of the court has benefited directly or indirectly in any fees allowed to any other officers and appointees of the court (Case, p. 1).

The Master promptly began the investigation and has been continuing it ever since (Case, p. 2, ll. 1-5).

The order made by the Chancellor on May 2nd, 1932, provided that the counsel appointed by the Master might, with his approval, designate associate counsel and such legal, clerical, investigating and stenographic assistants as might be necessary appropriately to conduct the investigation, "but at the cost of the State Bar Association unless the Legislature should make appropriation therefor, except a stenographer allowed by statute" (Case, p. 2, Par. 4).

Bills were introduced into the Legislature for appropriations, but the Legislature adjourned without making the appropriation.

On July 27th, 1932, the Master filed the petition printed in the State of the Case. The petition showed that the approximate cost of conducting the investigation to the date named had been the sum of \$7,359.78. A summary of expenses was annexed to the petition (Case, p. 7). The petition showed that the Bar Association was without funds to pay the expenses of conducting the investigation (Case, p. 2, l. 35).

The petition then pointed out that there was a general fund of the Court of Chancery amounting approximately to \$300,000, which belonged to the court itself and which had accrued through the accumulation of compound interest allowed by the Trenton Banking Company, which fund did not belong to persons interested in the fund on deposit with the Banking Company, but to the Court of Chancery to be disposed of by the Chancellor agreeably to equitable rules; and the petition referred to a report dated March 22nd, 1909, made by Oscar Keen, Special Master in Chancery, who examined and audited the accounts of the Court of Chancery as of January 1st, 1909, for the Honorable Mahlon Pitney, then Chancellor (Case, p. 3, ll. 1-12). This report is referred to in the opinion of the Chancellor (Case, p. 13, ll. 35-40 to l. 19 on p. 14). The fund then amounted to upwards of \$27,000 and Mr. Keen reported that it was the result of compound interest allowed by the Banking Company "which does not belong to persons interested in the fund on deposit, but to the Court of Chancery to be disposed of by this Court agreeably to equitable rules."

Chancellor PITNEY approved and filed the report and drew upon the fund in *Moran v. Gott* to rectify a mistake of the Clerk in making good a loss from a payment erroneously made by the Clerk. The incident is more particularly described by the Chancellor on page 14, line 29 to page 15, lines 1-5.

The petition showed also that the files of the court disclosed that the fund had been used by Chancellor Walker to pay counsel for services rendered in investigating the conduct of solicitors of the court and for the disbursements of such counsel in 16 different instances listed on pages

4 and 5 of the printed Case. The earliest of these instances was in 1914 and the latest in 1928.

The petition also showed that the fund had been used by Chancellor Walker to pay for legal services rendered to the Chancellor in his official capacity in two instances, the latest of which was on April 25th, 1932, where the Chancellor was obliged to employ counsel to argue a motion to set aside the service of subpoena upon the Chancellor. The orders made in these instances are set forth in the supplement to the case.

It should be noted that in none of the orders was the Attorney-General or anyone else made a party. Indeed, no notice of the petition or order was directed by the Chancellor in any of those cases.

The petition further showed that unless it was granted and the moneys prayed for be made available to pay the bills and obligations incurred to date by the Master, the complete fulfillment of the duties imposed upon him by the order theretofore made would be impossible, and the petition refers to the First Intermediate Report of the Master submitted with the petition and to all the oral testimony taken and documentary evidence introduced in the investigation to the date of the petition, as a demonstration of the need of the investigation ordered by the Chancellor and of the urgency of completing it.

In his opinion (p. 12, ll. 35-40; top of p. 13) the Chancellor says that the investigation so far as it had proceeded had amply justified the wisdom of the Court in ordering the inquiry. The prayer of the petition was that the Chancellor advance \$7,359.78 to the Master to place him in funds to pay obligations incurred during the course of the investigation. The payment prayed for was for

out-of-pocket expenses and did not cover any remuneration for the Master or his counsel, Shelton Pitney, Esq.

On the coming in of the petition the Chancellor directed that notice thereof should be given to the State Comptroller, the State Treasurer and the Attorney-General and made an order returnable on July 27, adjourned to August 9, 1932, directing them to show cause why the prayer of the petition should not be granted.

On the return day the Attorney-General appeared and said that the Comptroller and the Treasurer both disclaimed any interest in the fund under the statutes of this state or otherwise and would file a disclaimer. They were directed to do so (Opinion, p. 12, ll. 8-14). The order appealed from recites their disclaimers. The opinion states that the Attorney-General is a party as such Attorney-General—"it arises out of his representing as law officer the public in all matters of trust which are not private, and this is certainly a public trust" (Case, p. 12, ll. 14-17).

After hearing argument and careful consideration the Chancellor rendered the opinion set forth in the printed Case on page 10, in the course of which he said:

" \* \* \* in this case now before me I hold the facts are of sufficient gravity to make it my sacred duty to use the funds under my control under the power which is vested in me to promote this investigation."

He made the order to show cause absolute and ordered that the money prayed for be paid for the purpose he had described out of the accumulated fund belonging to the Court. The order for payment is printed on page 18 of the Case.

The propriety of the Chancellor's purpose in making the order of payment is not challenged. The Attorney-General appealed, as his brief states, upon the sole ground that the Chancellor was without power to use the money in such fund without legislative warrant and sanction therefor. The money has not been paid.

### **The Question Involved.**

Was it within the competence of the Court of Chancery to dispose agreeably to equitable rules of the portion of the fund covered by the order appealed from?

### **The Nature of the Fund.**

It represents compound interest accumulated over a course of years by reason of the fact that the Trenton Banking Company allowed more interest on the aggregate deposits with it than the Court paid out to the owners of the deposits. The accumulation was inevitable because of the practice of the Court as embodied in the Chancery Rules. Rule 226 is:

“XXXIX.—Of interest on moneys in court. 226: All sums exceeding \$200. which shall be deposited and remain in the court for ten days shall be allowed interest at the rate paid by the depository of the funds of the court at the time, for the full period for which such funds shall remain in court.”

This rule is an amendment of an earlier rule passed October 18, 1870. The earlier rule was known as 161. The only difference is that the earlier rule allowed interest on all sums not ex-

ceeding \$200 which should be deposited and remain in court for thirty days.

Obviously, if there are a large number of deposits under \$200 and the bank pays interest on aggregate deposits, a fund will come into existence representing interest on deposits on which the court pays no interest. Suitors in the court are charged with notice of the rule and the practice of the court. On this ground alone the suitors would have no right to demand interest. There is no way they could enforce that demand without the Chancellor's permission (*Prudential Insurance Co. v. Clifton Builders Supply Co.*, 109 N. J. Eq. 349).

The original owners of these tiny units cannot assert any right to the interest on these units even if they were able to identify and allocate the interest.

As was said in *Archdeacon and others v. Bowes and others*, (1824) 13 Price 353; 147 Eng. Rep. 1015:

“Where the subject matter is of small amount, the court will not take into consideration the question of interest lest the necessary inquiry should lead to an expense that would exhaust the principal which is the object of it.”

They have no rights. No sympathy, however, need be wasted on the owner of 30 cents which has earned interest only because it is associated with an aggregate of sufficient dollars to induce a bank to allow interest. The doctrine that the law will not concern itself with trifles applies—*de minimis, &c.* *Bradshaw v. Bradshaw*, (1756) 2 Lee 289, 161 E. R. 344.

The matter is simple enough if we consider the particular rain drops which make up this reser-

voir. The duty of the Court—the Chancellor under the Constitution—is to dispose of the fund on equitable principles; but that is the Court's duty as to any property in its hands. It is difficult to see how the Chancellor's duty is different in respect to this fund than in respect of any other matter entrusted to him by virtue of his office.

The Attorney-General's position is that the money should not be utilized by the Chancellor "for any purpose unrelated to the fund itself without legislative authority."

What is the purpose related to the fund itself when it has no ascertainable owners?

#### POINT I.

**The approval of the Keen Report of 1909 by Chancellor Pitney, his action thereon, and this and 18 other instances of orders made by Chancellor Walker, settle the practice in respect of the fund.**

These instances cover a period of twenty-three years. They are listed in the orders annexed to the Case and referred to in the petition of Charles L. Carrick (Case, pp. 3, *et seq.*).

## POINT II.

**The Legislature has recognized the power of the Chancellor to dispose of this fund as may be equitable and just.**

See sections of the Chancery Act (Revision of 1902) 81-81a and 81b, Vol. 1, page 441, Compiled Statutes.

Section 81 provides that it is lawful for the Chancellor to cause any moneys brought into court to be deposited in the Clerk's name in any bank or trust company of this state to the credit of the cause to which it belongs, or invested in any public stock of the United States, and such money or such stock shall be from time to time accounted for, invested, transferred or re-invested or otherwise disposed of as the Court shall deem reasonable and proper. On resignation, &c., of the Clerk, all moneys so deposited are to be carried to the account of his successor, and the Chancellor may from time to time make such rules and regulations respecting such deposits and investments as to him shall appear just and right and for the interest of all persons and parties concerned therein.

81a provides that it may be lawful for the Chancellor to cause any moneys remaining on deposit with the Court to be invested in interest bearing bonds of a described character and for the purpose of making such investments moneys remaining to the credit of different persons or causes may be commingled together and the moneys and the securities in which the same may be invested shall be accounted for, transferred, re-invested or otherwise disposed of as the Court shall

deem reasonable and proper; and the interest and income derived from such investments, after deducting necessary expenses, shall be apportioned to the several parties entitled thereto, and the Chancellor may from time to time make such rules and regulations respecting such deposits and investments as to him shall appear just and right and for the interest of all persons concerned therein.

81b gives the Chancellor the power to employ a suitable person of his own selection to exercise general care and supervision, subject to the orders of the Chancellor, over the funds, investments and securities from time to time remaining in the court to allow reasonable compensation for such supervision to be paid either out of the general income of the funds remaining in the court or out of any fund for the benefit of which such services may be rendered, as may be equitable and just.

The obvious meaning of these sections is that the Legislature considered it advisable to give the Chancellor the power to delegate to others portions of his duties. Therefore he was authorized, but not directed, to cause any moneys in the court to be deposited by the Clerk in the Clerk's name in banks, and the disposition of the moneys was definitely committed to the court as it judged proper.

By 81a the Chancellor was authorized, but not directed, to place moneys in investments of a described character, and those investments were to be disposed of as the Court should deem proper; and the Chancellor could make rules and regulations as he thought equitable and just.

81b permits him to appoint someone to exercise care and supervision and allow compensation for such services out of the general income of the

funds remaining in the court. This phrase "general income" appears to be a direct reference to the fund under examination in the present proceeding.

These statutes recognize the inherent power of the Chancellor and do not seek to invest him with power. He had the power to delegate without legislative sanction; but the fact that the money or investments so handled by his delegates are to be disposed of by the Chancellor leads to an absurdity unless the Chancellor has the inherent power to deal with the general income of the Court.

The Legislature, when giving him power to dispose of sums he had entrusted to the Clerk, certainly did not mean that he had greater power over these funds than over the funds he kept in his own hands.

### POINT III.

**Apart from legislation, the Chancellor had entire jurisdiction in his discretion to deal with the payment of \$7,359.78, and the exercise of that discretion will not be reviewed by this Court.**

The Attorney-General, on page 10 of his brief, states that he concurs with the decision in the *Matter of Stevenson*, 122 N. Y. Supp. 644. We agree with the Attorney-General as to the authority of that case. It was affirmed by the New York Court of Appeals in Vol. 202, N. Y., p. 608.

The first and second head notes of the *Stevenson* case are:

1. Deposits in Court (Sec. 9\*)—Cestui que trust—Necessity.

Where there is no known or ascertainable cestui que trust who can claim funds in court, the funds are not properly trust funds.

2. Deposits in Court (Sec. 11)—Proceedings for Payment—Jurisdiction of Court.

Under Const. Art. 6, Secs. 1, 2, continuing the Supreme Court with general jurisdiction in law and equity, etc. and Code Civ. Proc. Sec. 217, providing that the general jurisdiction in law and equity of the Supreme Court includes all the jurisdiction possessed by the Supreme Court of the Colony in New York and by the Court of Chancery in England, etc., the Appellate Division has jurisdiction to direct the payment of funds in court, to which there are no claimants, to sufferers from an unfortunate investment of their moneys by a former chamberlain of the City of New York on mortgages, which in foreclosure resulted in a large deficiency; but the court cannot direct the payment to such persons of funds in court to which there are claimants.

That suit was brought by sufferers from an unfortunate investment of their moneys by a former Chamberlain in mortgages which upon foreclosure resulted in a large deficiency. They asked to have those losses paid out of the funds in the hands of the Chamberlain known as "The General Fund of the Supreme Court." This fund was made up of four accounts. The Contingent Account and the Interest Account are the only ones of moment in the present case. The opinion (p. 667) says in reference to the Contingent Account:

"The expert witnesses all agree that it is impossible to trace the sources of this fund

so that it can be re-distributed, and it is made perfectly manifest by the referee's report and the evidence taken by him that neither of the last two mentioned funds can be traced back to their original sources, except as to certain items of interest above referred to, and that it is impossible to credit them back to any accounts so that any person can ever establish a claim to any part of them.

“They are emphatically ‘dead’ funds, which will go on accumulating forever if left undisturbed. There being no known or ascertainable cestui que trust who can make claim upon them, these funds cannot properly be called ‘trust funds’. *Matter of Hicks*, 170 N. Y. 195, 63 N. E. 276. The Supreme Court and its predecessor has always exercised plenary power to order payments to be made out of such funds as this for various purposes, including, on more than one occasion, the reimbursement of suitors whose money had been paid into court and lost through unfortunate investments. This power was vested in the Court of Chancery of England as early, at least, as 1725, being provided for and recognized by many acts of Parliament. 12 Geo. I, cc. 32, 33 (1725); 12 Geo. II, c. 24 (1739); 4 Geo. III, c. 33 (1764); 5 Geo. III, c. 28 (1765); 9 Geo. III, c. 19 (1768). This power passed to the Court of Chancery of this state upon the organization of the state, and thence to the Supreme Court. Const. 1846, art. 6, Sec. 3; Const. 1894, art. 6, Sec. 1; Code Civ. Proc. Sec. 217. It was formerly exercised for the court by the General Term thereof, and its jurisdiction is now possessed by the Appellate Division. Const. 1844, art. 6, Sec. 2. We consider that the authority and jurisdiction of this court to order payments to be made out of these last-mentioned funds

is fully established, and we consider that a part, at least, of such funds, should be applied to the relief of the petitioners and others similarly situated.”

And on page 669:

“From this fund will be paid to the petitioners, and to others similarly situated, such proportion of their losses as may, upon the coming in of the report, appear to be reasonable; due regard being had to reserving in said fund a sum which may be applied hereafter to proper purposes.

The counsel who appeared before the referee have rendered most valuable and laborious services in unraveling a very complicated matter; but we doubt our authority to grant them allowances out of the fund.”

It is this last paragraph which the Attorney-General quotes (p. 11 of his Brief).

To us it seems that this last paragraph does not have the significance attributed to it by the Attorney-General. Plainly it means that as the payment of counsel was not an issue in the case, and as the decision upheld the plenary power of the lower court, the Appellate Court would not interfere with that discretion on the question of payment of counsel fees.

It is elemental that the Court of Chancery of New Jersey possesses all the powers of the English Court of Chancery as they existed July 4th, 1776, together with the powers granted up to the time of the adoption of the Constitution. These powers cannot be diminished by the Legislature. As the Court of Errors and Appeals said in *Flanigan v. Smelting Co.*, (1899) 63 Law 647, 650:

“Section 1 of Article 6 of the Constitution provides ‘that the judicial power shall be vested in a Court of Errors and Appeals \* \* \* a Court of Chancery \* \* \* a Supreme Court \* \* \* It will be admitted that these provisions guarantee the integrity of the constitutional courts of which the Supreme Court is one. Whatever powers that court had, whatever jurisdiction that court exercised, at the time of the adoption of the Constitution were by such adoption incorporated into the fundamental law and ensured against destruction or abridgement except through a change in the fundamental law itself. To abolish the court, to alter its organic character, to impair its jurisdiction, to diminish its authority are beyond legislative power because that character, jurisdiction and authority form part of a body of law which upon wise grounds has been made immutable by any mere legislative act. \* \* \* Under this constitutional guaranty the powers which inhered in the court at the formation of the Constitution must be unassailable by legislation.’ ”

The opinion in the present Case says (Case, p. 14, ll. 19, &c.):

“And the present Chancellor has added these interpretations:

In the broad sense in which this term (equitable rules) is sometimes used it signifies natural justice, 1 Bouv. Law Dic. (Rawle’s Rev.) p. 1057. Equity is according to him who is chancellor. Lord Selden. Web. New Int. Dic. p. 742. Equity is natural justice or right; the giving or desiring to give, to each man his due according to natural law. Web. New Int. Dic. p. 742.”

See

*In re Appointment of Vice Chancellors,*  
105 N. J. Eq., p. 759.

In an appendix to 19 N. J. Equity on page 577, is printed an account of the origin of the jurisdiction of the Court of Chancery prepared by Chancellor Zabriskie.

Keasbey Courts and Lawyers of New Jersey, Vol. II, page 490.

The authority of the office of Chancellor is described by Blackstone, Book III, page 47. He says:

“The Chancellor is an officer of the greatest weight and power of any now subsisting in the kingdom. \* \* \* Keeper of the King’s conscience. He is the general guardian of all infants, idiots and lunatics and has the general superintendence of all charitable uses in the kingdom. And all this over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the Court of Chancery.”

It would seem that such a personage had authority to use unclaimed and unclaimable funds in his court for the investigation of inequitable practices which in his judgment strike at the probity of the administration of trusts by the agents in whom he is obliged to confide.

If the Attorney-General’s construction of the Chancellor’s powers should be adopted, it would be impossible without legislative warrant for the Chancellor to dispose of \$5 worth of unclaimed cash found in his department.

The brief of the Attorney-General suggests that the many payments out of the fund made since the Keen Report in proceedings to which the Attorney-General was not made a party may be validated by legislative act.

An answer to his argument is as was said in

*Prudential Insurance Co. of America v. Clifton, &c. Co.*, 109 N. J. Eq. 349-350:

“It is almost equally elemental that officers of the State exercising the sovereign power of the State within their appropriate sphere are not subject to the jurisdiction of any other department of government and hence are not subject to suit in the courts of that state without consent or authorization from the State. *State v. Governor*, 25 N. J. Law 331 (at pp. 349 et seq.) Application was made in that case for the issuance by the Supreme Court of a rule to show cause upon the Governor of the state. Such a rule is essentially process and if issued would have been a judicial authorization of a suit against the Governor of this state in the courts of this state. It was denied inter alia, upon the broad ground that the court had no power to interfere with the action of the Governor within his appropriate sphere of duties under the Constitution (which that litigation sought to have the court do).

“It must be also that the constitutional courts of this state in the exercise of their judicial functions within their sphere are immune from interference not only by the executive and legislative branches of the government, but also by other courts except insofar as the Constitution may have authorized” (p. 351).

Even if the Legislature should pass a law on the subject disposing of the fund, clearly such a law would be unconstitutional as an unwarrantable interference by the legislative department of the State government with the rights secured by the Constitution to the judicial branch of the government.

Even if we assume it remains a trust fund, how can the Legislature take it out of the dominion of the court? Assuming that the public has some interest in its proper disposition which might be asserted by the Attorney-General in behalf of the State, is not the only admissible control of the court's use of the fund for equitable purposes an appeal to the Court of Errors and Appeals, on a claimed abuse of discretion?

That the proposed use of the fund is a proper and equitable purpose is practically conceded. No one appears to question on the record the propriety of the use by the court of the fund within its control, not specifically devoted to any other purpose, to correct abuses in the administration of justice by officials of the court.

#### POINT IV.

##### **The Attorney-General has no standing in this proceeding.**

The Chancellor directed that the order to show cause of July 27, 1932, be served on the Attorney-General, the State Treasurer and the State Comptroller. As recited in the order appealed from, the State Treasurer and State Comptroller disclaimed any interest.

In none of the 20 orders made since the Keen Report has the Attorney-General ever been made a party. The probable clue to the Chancellor's reason for providing that the order be served on the Attorney-General is in the opinion which says:

“The Attorney-General is a party hereto as such Attorney-General. It arises out of

his representing as law officer the public in all matters of trust which are not private, and this is certainly a public trust." (Case, p. 12, ll. 15-19).

A public trust as defined in the Century Dictionary is:

"A trust constituted for the benefit either of the public at large or of some considerable part of its answering to a particular description."

Bouvier defines it in practically the same language adding after the word "description", (as a public charity).

6 Words & Phrases 5825. PUBLIC TRUSTS. "Public"—or, as they are frequently termed "charitable"—trusts are those created for the benefit of an unascertained, uncertain and sometimes fluctuating body of individuals, in which the cestuis que trustent may be a portion or class of a public community: as, for example the poor or the children of a particular town or parish. *Doyle v. Whalen*, 32 Atl. 1022, 1025, 87 Me. 414, 31 L. R. A. 118; *Brooks v. City of Belfast*, 38 Atl. 222, 226, 90 Me. 318."

As pointed out above, the *Stevenson* case held that where there is no known or ascertainable cestui que trust who can claim funds in court, the funds are not properly trust funds. An authority cited in the *Stevenson* case for this ruling is *Matter of Hicks*, 170 N. Y. 195.

We submit, therefore, with all deference, that the fund is not a public trust any more than any other property or cash in the disposition of the

Chancellor is a trust, and that consequently the Attorney-General has no appealable interest in this cause and that the appeal must be dismissed for want of a proper party appellant.

**POINT V.**

**The order appealed from should be affirmed.**

Respectfully submitted,

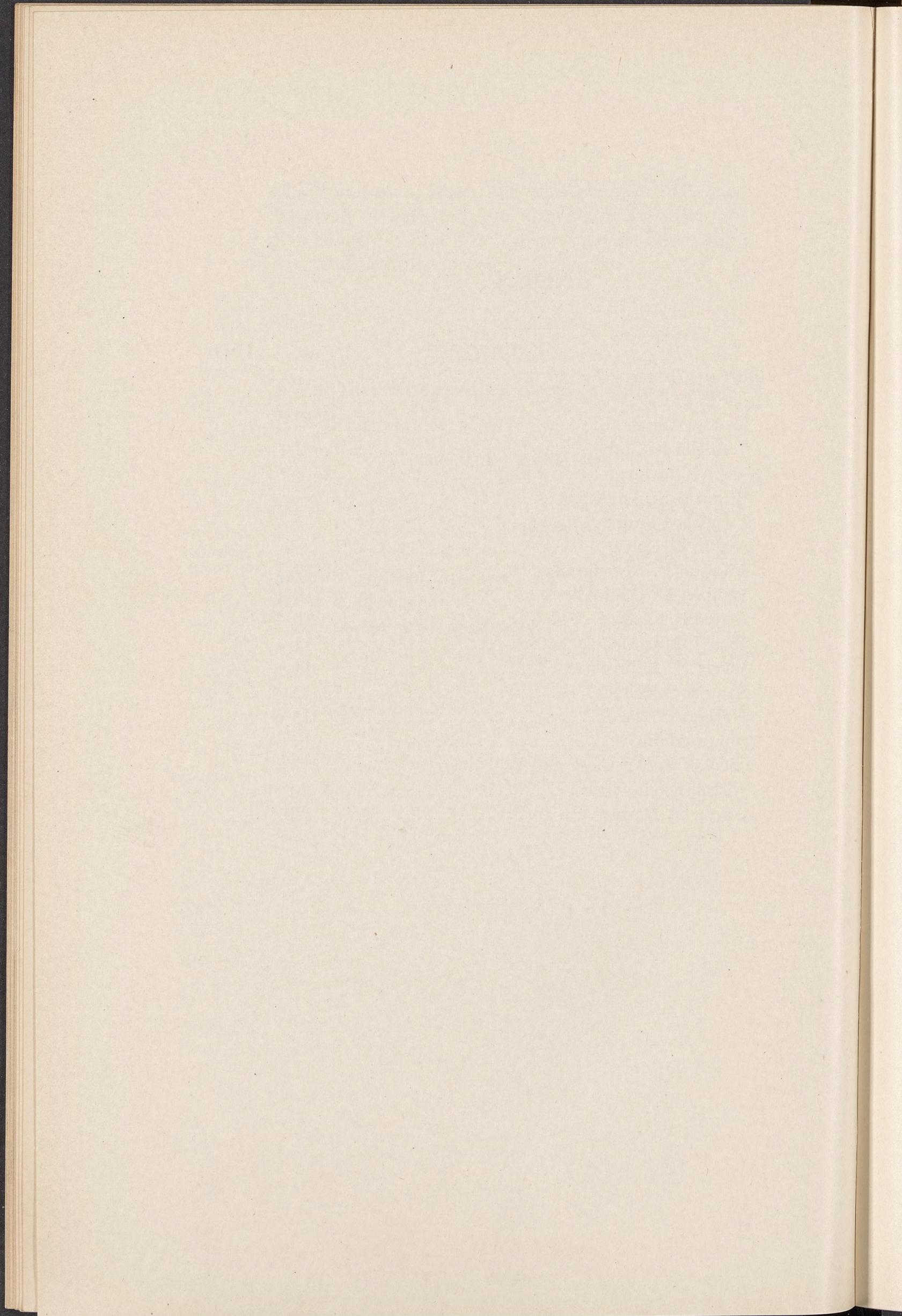
SHELTON PITNEY,  
*Solicitor for Petitioner.*

ALBERT C. WALL,  
JACOB L. NEWMAN,  
*of Counsel with Petitioner.*

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## In Chancery of New Jersey

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IN THE MATTER OF THE PETITION OF THE NEW JERSEY STATE BAR ASSOCIATION FOR AN INVESTIGA- TION IN THE COURT OF CHAN- CERY.	} Petition for Funds to Pay Certain Dis- bursements	10
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### SUPPLEMENT TO STATE OF THE CASE

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“If there is deducted from the sum of \$808,165.96 the amount with which the Clerk is chargeable on January 1, 1909, that is the sum of \$780,709.82, there remains a balance of \$27,456.14 to the credit of the Court of Chancery on January 1, 1909, in the Trenton Banking Company, being the result of compound interest allowed by the Banking Company, which does not belong to persons interested in the fund on deposit, but to the Court of Chancery to be disposed of by this Court agreeably to equitable rules.” 30

Respectfully submitted to his Honor the Chancellor, this twenty-second day of March, nineteen hundred and nine.

OSCAR KEEN, *Master*.

Approved:  
MAHLON PITNEY.

## IN CHANCERY OF NEW JERSEY.

Between  
 JAMES HENRY MORAN,  
 individually &c.,  
*Complainant,*  
 and  
 ADELINE E. GOTT, individually  
 and as Executrix &c., *et als.,*  
*Defendants.*

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**ORDER TO PAY***(Filed February 28, 1912)*

It appearing to the Court that by a decree entered in this cause on the second day of April, A. D. nineteen hundred and seven, certain lands situate in the Township of Lodi, in the County of Bergen and State of New Jersey, were ordered sold under the direction of Pierre F. Cook, one of the Special Masters of this Court.

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And it further appearing that one Anna A. MacDonald, hereinafter mentioned, was in and by said decree, adjudged and decreed to be seized of and entitled to the equal undivided one fourth part of said lands and premises.

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And it further appearing that in pursuance of said decree, the said Special Master did make sale of said lands and premises to one George C. Mercer, for the sum of \$21,250.00, which said sale was by an order entered in this cause on the twenty-fourth day of June, A. D. nineteen hundred and seven, duly confirmed; and the said master was therein directed to make, execute and deliver a deed to the said George C. Mercer, or to his assigns, for the premises so purchased by him.

And it further appearing by an order of distribution entered in this cause on the eighth day of October, A. D. nineteen hundred and seven, the said master was, among other things, ORDERED to pay the share to which the above named Anna A. MacDonald was entitled, into

court, there to remain until further order of the order was made in reference thereto.

And it further appearing that in pursuance of said order of distribution, the said master did pay into Court, as and for the share of Anna A. MacDonald in the proceeds of sale, the sum of \$1,827.28, which sum was deposited with the Clerk of this Court on the thirtieth day of October, A. D. nineteen hundred and seven, and credited to the above entitled cause.

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And it further appearing that a similar sum was also paid into Court by said master, under the order of distribution, representing the share of Mary A. Alcorn, making a total deposit by said master of \$3,654.36.

And it further appearing that subsequently, an application was made for the distribution of said share so deposited for the benefit of Anna A. MacDonald, and upon said application an order was made upon the fourth day of December, A. D. 1907, as follows :

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“It is on this fourth day of December, nineteen hundred and seven, by the Honorable William J. Magie, Chancellor of the State of New Jersey, ORDERED and decreed, that the Clerk of this Court do and shall pay out of the fund paid into Court and deposited with him in this cause representing the share or interest of the defendant Anna A. MacDonald in the proceeds of the sale of the premises in partition in this suit to the complainant or his solicitor the sum of three hundred and seventeen and forty-eight one-hundredths dollars, together with complainant’s costs of this application, since the making of said order to show cause and same to be taxed by the Clerk; and that said Clerk do also pay the whole of the residue and remainder after the payment or payments above mentioned to the defendant Anna A. MacDonald, or to her solicitor, providing that said Clerk in the case of each of said payments take a proper receipt and discharge for the moneys so paid from the several persons to whom

30

the same shall be paid pursuant to the provisions of this order."

And it further appearing that in pursuance of said order the Clerk of this Court made distribution of the said fund in his hands, as appears by the books of account of this Court, as follows:

	Received under Order of Distribution Oct.	
10	30, 1907, Pierre F. Cook, Special Master,	\$3,654.36
	Dec. 20, 1907, accrued interest . . . . .	10.32
		<hr/>
		\$3,664.68

Said fund was disbursed as follows:

	Oct. 30, 1907, commissions deducted . . . . .	\$6.07
	Dec. 20, 1907, paid J. H. Winans, Solicitor of Complainant amount of mortgage . . . . .	\$317.48
	Costs on application . . . . .	34.07
20		<hr/>
		351.55
	Dec. 20, 1907, paid to Cornelius Doremus as Solicitor for Anna A. MacDonald . . . .	3,307.06
		<hr/>
		\$3,664.68

And it appearing that by inadvertence, the whole of the balance of said deposit was paid over to Cornelius Doremus, as Solicitor of Anna A. MacDonald, WHEREAS, in fact there should have been retained in Court, the sum of \$1,829.41 being the amount (minus commissions and plus interest up to the date of payment) deposited by said master for the benefit of Mary A. Alcorn.

And it further appearing that subsequently Cornelius Doremus, solicitor for the said Anna A. MacDonald, recovered from her, the sum of \$800.00, part of the money so over paid to her, which said sum of \$800.00 was by said Cornelius Doremus paid into Court on the thirty-first day of August, nineteen hundred and eight, leaving still due to the fund representing the share of

Mary A. Alcorn, a balance of \$1,029.41, together with interest thereon from the twentieth day of December, A. D. nineteen hundred and seven.

And it further appearing that at the time of the discovery of said error, as above recited the said Cornelius Doremus was duly notified and subsequently appeared before the Court, and on or about the eleventh day of March A. D. 1909, tendered and paid into Court out of his own moneys the balance of said overpayment, with interest, amounting in all to the sum of \$1,071.03, which sum was accepted by the Court tentatively.

10

And the Court being willing to aid the said Cornelius Doremus to recover, if possible from his client the said Anna A. MacDonald the amount overpaid to her as aforesaid, it was ordered that the said sum of \$1,071.03 be deposited with the Trenton Banking Company, in the name of Vivian M. Lewis, then Clerk in Chancery, as Special Master, to the end that the said Cornelius Doremus might bring suit against the said Anna A. MacDonald, in the name of the Chancellor to recover the said sum.

20

And it now appearing to the Court that every reasonable effort has been made by the said Cornelius Doremus, to realize from his client, the said sum of \$1,071.03 but without success and that any further effort to recover the said sum would be futile.

And the Court after duly considering all the facts in the case, being of the opinion that the said deposit of \$1,071.03 so made by Cornelius Doremus from his individual funds, should be returned to him with interest as credited thereon by the bank.

30

And the Chancellor being further satisfied that the overpayment inadvertently made by the Clerk to the said Anna A. MacDonald as aforesaid ought not to be have charged against the share of the said Mary A. Alcorn who was in nowise at fault with respect to said overpayment, and that the amount of said overpayment (less the sum of \$800.00 recovered on account thereof as

aforesaid) ought now to be charged against the surplus funds of the Court as being in the nature of an expense of administration, and credited to the account of the said Mary A. Alcorn.

10 It is thereupon, on this twenty-seventh day of February, A. D. nineteen hundred and twelve, by his Honor Mahlon Pitney, Chancellor of the State of New Jersey, Ordered, Adjudged and Decreed that Vivian M. Lewis, as Special Master do forthwith pay to the Clerk of this Court the sum of \$1,071.03 so deposited in his name as Special Master in the Trenton Banking Company, together with all accumulated interest thereon.

And it is further ordered, that the Clerk of this Court do pay to the said Cornelius Doremus, the said sum of \$1,071.03 together with the accumulations thereon.

20 And it is further ordered that the Clerk of this Court do credit to the above entitled cause the sum of \$1,029.41 plus interest at 3 per cent from the twentieth day of December, A. D. nineteen hundred and seven, and that the said sum be charged against the Expense Account on the Trust fund ledger of this Court.

And it is further ordered that the rights and equities in the said sum (stated in said order as \$1,027.80) be reserved until the further order of the Court is made touching thereon.

MAHLON PITNEY, C.

A true copy.

FERD GARRETSON,  
*Clerk.*

IN CHANCERY OF NEW JERSEY.

In the Matter of  
WINFIELD S. ANGLEMAN,  
a Solicitor of the Court of Chancery. }

**ORDER FOR PAYMENT**

(Filed June 15, 1914)

10

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above stated matter, and the same having been heard by the Court:

It is thereupon on this twelfth day of June, nineteen hundred and fourteen, ORDERED, that the sum of seventy-five dollars, together with the taxed costs of these proceedings, be and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

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E. R. WALKER, C.

A true copy.

FERD GARRETSON,  
Clerk.

---

IN CHANCERY OF NEW JERSEY.

In the Matter of  
J. EDWARD SMITH,  
a Solicitor of the Court of Chancery  
of New Jersey. }

30

**ORDER FOR PAYMENT**

(Filed July 9, 1914)

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above stated matter, and the same having been heard by the Court:

It is thereupon on this ninth day of July, nineteen hundred and fourteen, ORDERED, that the sum of one hundred and fifty dollars together with the taxed costs of these proceedings, be and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

E. R. WALKER, C.

10 A true copy.  
FERD GARRETSON,  
Clerk.

---

IN CHANCERY OF NEW JERSEY.

20 In the Matter of  
ARTHUR D. COLYER,  
a Solicitor of the Court of Chancery  
of New Jersey. }

### ORDER FOR PAYMENT

(Filed October 27, 1914)

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above stated matter, and the same having been heard by the Court:

30 It is thereupon, on this twenty-seventh day of October, A. D. nineteen hundred and fourteen, ORDERED, that the sum of seventy-five dollars together with the taxed costs of these proceedings be, and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

E. R. WALKER, C.

A true copy.  
FERD GARRETSON,  
Clerk.

IN CHANCERY OF NEW JERSEY.

In the Matter of  
ADDISON P. ROSENKRANS,  
a Solicitor of the Court of Chancery  
of New Jersey.

**ORDER FOR PAYMENT**

(Filed November 4, 1914)

10

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above stated matter, and the same having been heard by the Court:

It is thereupon, on this second day of November, A. D. nineteen hundred and fourteen, ORDERED, that the sum of one hundred dollars together with the taxed costs of these proceedings be, and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

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E. R. WALKER, C.

A true copy.

FERD GARRETSON,  
Clerk.

IN CHANCERY OF NEW JERSEY.

In the Matter of  
WILLIAM M. GOLDWEBER,  
a Solicitor of the Court of Chancery  
of New Jersey.

30

**ORDER FOR PAYMENT**

(Filed December 1, 1914)

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above stated matter, and the same having been heard by the Court:

It is thereupon, on this first day of December, A. D. nineteen hundred and fourteen, ORDERED, that the sum of two hundred and fifty dollars, together with the taxed costs of these proceedings be, and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

E. R. WALKER, C.

A true copy.

10 FERD GARRETSON,  
Clerk.

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IN CHANCERY OF NEW JERSEY.

In the Matter of  
ALFRED B. COSEY,  
a Solicitor of the Court of Chancery  
of New Jersey. }

20

### ORDER FOR PAYMENT

(Filed December 7, 1914)

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above stated matter, and the same having been heard by the Court:

30 It is thereupon, on this seventh day of December, A. D. nineteen hundred and fourteen, ORDERED, that the sum of two hundred and fifty dollars, together with the taxed costs of these proceedings be, and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

E. R. WALKER, C.

A true copy.

FERD GARRETSON,  
Clerk.

IN CHANCERY OF NEW JERSEY.

In the Matter of  
JOHN J. MARNELL,  
a Solicitor of the Court of Chancery  
of New Jersey.

**ORDER FOR PAYMENT**

(Filed December 21, 1914)

10

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above stated matter, and the same having been heard by the Court:

It is thereupon, on this twenty-first day of December, A. D. nineteen hundred and fourteen, ORDERED, that the sum of one hundred dollars together with the taxed costs of these proceedings be, and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

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E. R. WALKER, C.

A true copy.

FERD GARRETSON,  
Clerk.

IN CHANCERY OF NEW JERSEY.

In the Matter of  
JARVIS N. ATKINSON,  
a Solicitor of the Court of Chancery  
of New Jersey.

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**ORDER FOR PAYMENT**

(Filed December 30, 1914)

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above entitled matter, and the same having been heard by the Court:

It is thereupon, on this thirtieth day of December, A. D. nineteen hundred and fourteen, ORDERED, that the sum of one hundred dollars together with the taxed costs of these proceedings be, and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

E. R. WALKER, C.

10 A true copy.  
FERD GARRETSON,  
Clerk.

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SHERIFF'S OFFICE

Union County

ELIZABETH, N. J., September 1st, 1914.

20 MR. NELSON B. GASKILL,  
Broad St. Bank Bldg.,  
Trenton, N. J.

In the case of In the matter of Samuel Schleimer, a Solicitor of the Court of Chancery of N. J. vs. service was made in the following manner. Order and affidavits September 1st, 1914, personally on Samuel Schleimer for 2.60. I enclose herewith Proof of Service.

30 (Elizabeth is in Union County not Middlesex.)

Respectfully yours,

WILLIAM H. WRIGHT, Sheriff.

IN CHANCERY OF NEW JERSEY.

In the Matter of  
SAMUEL SCHLEIMER,  
a Solicitor of the Court of Chancery  
of New Jersey.

}

**ORDER FOR PAYMENT**

(Filed January 13, 1915)

10

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above stated matter, and the same having been heard by the Court:

It is thereupon, on this thirteenth day of January, A. D. nineteen hundred and fifteen, ORDERED, that the sum of one hundred dollars together with the taxed costs of these proceedings be, and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

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E. R. WALKER, C.

A true copy.

FERD GARRETSON,  
Clerk.

IN CHANCERY OF NEW JERSEY.

In the Matter of  
HERBERT E. DAVIS,  
a Solicitor of the Court of Chancery  
of New Jersey.

}

30

**ORDER FOR PAYMENT**

(Filed January 23, 1915)

The Court having assigned Nelson B. Gaskill to prosecute the rule to show cause in the above stated matter, and the same having been heard by the Court:

It is thereupon, on this twenty-third day of January, A. D. nineteen hundred and fifteen, ORDERED, that the sum of seventy-five dollars together with the taxed costs of these proceedings be, and the same are hereby allowed to the said Nelson B. Gaskill, as compensation and for disbursements, the same to be paid out of the general fund of this Court.

E. R. WALKER, C.

10 A true copy.  
FERD GARRETSON,  
Clerk.

---

IN CHANCERY OF NEW JERSEY.

In the Matter of  
SIMON HAHN,  
a Solicitor of the Court of Chancery  
of New Jersey. }

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**ORDER**

(Filed March 26, 1915)

The above stated matter having been heard and argued before the Chancellor:

30 It is on this twenty-sixth day of March, nineteen hundred and fifteen, of the Court's own motion, ORDERED, that one hundred and fifty dollars (\$150.00) be paid to Halsey M. Barrett, counsel assigned by the Court to prosecute the above stated matter, together with the costs of these proceedings to be taxed including disbursements amounting to five dollars and seventy-two cents (\$5.72) and stenographer's fees for transcript of testimony amounting to seventy-seven dollars (\$77.00); and the Clerk of this Court is hereby ordered to pay said fee and costs to the said Halsey M. Barrett, solicitor, out of the general fund belonging to this Court.

E. R. WALKER, C.

A true copy.  
FERD GARRETSON,  
Clerk.

TRENTON, N. J., November 19, 1915.

Book Binders  
Stationers  
Engraving  
Electrotyping

Nelson B. Gaskill,  
To MacCrellich & Quigley Co., Dr.  
Printers **10**  
Opposite the Post Office.

-----  
Oct. 28 30 copies—State of Case (Simon Hahn) 8.00  
Received Payment  
12-2-15  
MacCrellich & Quigley Co.  
Per J. N.

TRENTON, N. J., November 19, 1915. **20**

Book Binders  
Stationers  
Engraving  
Electrotyping

Nelson B. Gaskill,  
To MacCrellich & Quigley Co., Dr.  
Printers **30**  
Opposite the Post Office.

-----  
Oct. 28 30 cops. single sheet (Alf. B.  
Cosey) ..... 1.00  
Nov. 5 50 cops. Brief (Cosey) ..... 41.00  
----- 42.00

Received Payment  
12-2-15  
MacCrellich & Quigley Co.  
Per J. N.

## IN CHANCERY OF NEW JERSEY.

In the Matter of  
                     SIMON HAHN,  
 a Solicitor of the Court of Chancery  
 of New Jersey. } }

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**ORDER FOR PAYMENT***(Filed December 9, 1915)*

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Simon Hahn, the respondent in the rule to show cause heretofore issued in this matter, having prosecuted an appeal to the Court of Errors and Appeals, and a motion to dismiss the said appeal having been made, and the Court having assigned Nelson B. Gaskill to present to the Court of Errors and Appeals argument in behalf of the motion to dismiss the said appeal, which involved jurisdictional and constitutional questions, and the same having been duly presented and heard by the said Court of Errors and Appeals:

30

It is thereupon, on this eighth day of December, A. D. 1915, ORDERED, that the sum of \$200.00 be and the same is hereby allowed to the said Nelson B. Gaskill, as compensation therefor. And the said Nelson B. Gaskill having expended the sum of \$50.00 in and about the printing of the brief in the said cause, the State of the Case, and a supplement to the State of the Case in the matter of Alfred B. Cosey, the sum of \$50.00 is hereby allowed to the said Nelson B. Gaskill for disbursements, both allowances to be paid out of the general fund of this Court.

E. R. WALKER, C.

A true copy.

FERD GARRETSON,  
*Clerk.*

IN CHANCERY OF NEW JERSEY.

In the Matter of JACOB VAN DER  
CLOCK and WILL EVERETT,  
Solicitors of the Court of Chancery  
of New Jersey, and of ISADOR A.  
STERN, Solicitor of the Court of  
Chancery of New Jersey. }

10

**ORDER**

(Filed February 2, 1921)

This matter being opened to the Court and it appearing that an Order to Show Cause was heretofore made by the Chancellor in the above entitled matter on the twenty-second day of October, 1920, directing the above named solicitors, Jacob Van Der Clock and Will Everett to show cause why they should not be adjudged guilty of contempt of the power, authority and dignity of this Court for and on account of their conduct as therein set forth, and that M. Casewell Heine, Esquire, one of the solicitors of this Court was thereby appointed to prosecute said order and to conduct the proceedings taken thereunder.

20

And it further appearing that said matter was referred to the Honorable John H. Backes, one of the Vice-Chancellors of this Court for hearing by Order of Reference dated October 22, 1920; and it further appearing that said M. Casewell Heine, Esquire, did thereupon undertake the prosecution of said matter and did cause service to be made upon the said above named solicitors, as directed by said order, and that he did thereupon interview and subpoena witnesses whose testimony was material in the prosecution of said matter, and that he did further make investigation of other causes in which the above named solicitors had appeared respectively for complainants and defendants and in which no defense

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had been interposed at the hearing thereof, and that he did further examine the parties, complainant and defendant, in said causes and did examine the records of this Court in the same, and that he did thereupon prepare said matter for trial and did attend with witnesses before the said Honorable John H. Backes on the 19th and 22nd days of November, 1920, and did then and there conduct the trial of said matter, which resulted in the conviction of said solicitors of the offences as charged.

10 And it further appearing that thereafter a further Order to Show Cause was made by this Court on the 13th day of December, 1920, directing the said solicitor, Jacob Van Der Clock, to show cause why he should not be adjudged guilty of contempt of the power, authority and dignity of this Court on account of his conduct in causing a certain newspaper interview to be published, as therein set forth, and that a further Order to Show Cause was made by this Court on the 13th day of  
20 December, 1920, directing said Jacob Van Der Clock to show cause why he should not be adjudged guilty of contempt of the power, authority and dignity of this Court in connection with his conduct of the case of *Clark vs. Clark*, as in said order specified, and said solicitor, M. Casewell Heine, Esquire, having been designated to conduct the prosecution of said matters in the said two orders to show cause last above referred to, and he having caused service of the said two orders to show cause to be made in accordance with the direction therein upon said Van Der Clock and having interviewed and subpoenaed the witnesses whose testimony was material to the prosecution of the said matters, and  
30 having further examined the records of this Court in connection with the above matters, and having brought the same on for hearing before the Honorable John H. Backes, to whom said matter had been referred, and having conducted the prosecution of said matters on the 14th day of January, 1921, the said solicitor, Jacob Van Der Clock, having been adjudged guilty of the offences as charged in connection with the publication

of said article in a newspaper in the City of Paterson, and having been adjudged not guilty of the offences as charged in connection with the conduct of the case of *Clark vs. Clark*.

And it further appearing that one of the solicitors of this Court, Isador A. Stern, did heretofore file a bill for a Receiver in which Louis Goldstein was complainant and Eagle Stationery Company was defendant, and that an Order was made in said matter appointing said M. Casewell Heine, Esquire, as Receiver of said above named corporation defendant, and that he duly qualified and undertook the performance of his duties as said Receiver and that in the course of the performance of his duties it was disclosed that said Isador A. Stern, on behalf of said Louis Goldstein, complainant and Treasurer of said Eagle Stationery Company, and of Abraham Weinglass, Secretary of said Eagle Stationery Company, who were his clients, had collected and was endeavoring to collect moneys which were due to said Eagle Stationery Company and its Receiver for the use and benefit of persons other than said Company and its Receiver, and said matter being laid before the Court and said M. Casewell Heine, Esquire, having been directed to investigate the acts and conduct of said solicitor, Isador A. Stern, for the Court, and he having conducted an investigation particularly in connection with accounts in Jersey City, Morristown, Roselle Park, Westfield, and elsewhere, and having examined witnesses and having taken affidavits and having presented the result of his said investigations to the Court and to the proper authorities in the County of Essex under the direction of the Court, with the result that said solicitor, Isador A. Stern, was by this Court suspended from practice before it, and said M. Casewell Heine having further at the direction of the Court prepared and drawn Orders removing said Stern as Receiver of matters in which he had theretofore acted as such, and having in other ways assisted the Court in the prosecution of matters hereinbefore set forth;

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It is now, on this 2nd day of February, 1921, of the Court's own motion,

ORDERED, that there be paid from the general fund of and under the control of the Chancellor to said M. Casewell Heine, Esquire, for the services rendered as above set forth the sum of five hundred dollars (\$500.00), and that the clerk do forthwith draw and forward to said M. Casewell Heine a check or warrant for the above named sum.

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Respectfully advised,

JOHN H. BACKES, *V. C.*E. R. WALKER, *C.*

A true copy.

FERD GARRETSON,

*Clerk.*


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 IN CHANCERY OF NEW JERSEY.

20

In the Matter of  
                   JOSEPH P. HAYDEN,  
 charged with contempt of Court. }

**ORDER***(Filed November 19, 1926)*

It is on this nineteenth day of November, A. D. 1926,  
 ORDERED, that Harry Lane, the solicitor appointed by  
 30 the Court to prosecute the above entitled cause, be and  
 he is hereby allowed the sum of one hundred and fifty  
 dollars for his services herein, to be paid out of the  
 general fund belonging to this Court.

Respectfully advised,

VIVIAN M. LEWIS, *V. C.*E. R. WALKER, *C.*

A true copy.

FERD GARRETSON,

*Clerk.*

IN CHANCERY OF NEW JERSEY.

In the Matter of }  
JOSEPH P. HAYDEN,  
charged with contempt of Court. }

61-254

**ORDER**

10

(Filed January 4, 1927)

It is on this fourth day of January, A. D. 1927, ORDERED, that Harry Lane, the solicitor appointed by the Court to prosecute the above entitled cause, be and he is hereby allowed the sum of one hundred and fifty dollars, for his services herein, to be paid out of the general fund belonging to this Court.

Respectfully advised,

VIVIAN M. LEWIS, V. C. E. R. WALKER, C. 20

A true copy.

FERD GARRETSON,  
Clerk.

---

IN CHANCERY OF NEW JERSEY.

In the Matter of }  
JOSEPH P. HAYDEN,  
charged with contempt of Court. }

30

(65-381)

**ORDER TO PAY COUNSEL**

(Filed June 6, 1928)

Harry Lane, Esquire, having been assigned as attorney by the Court to prosecute the bond for appearance given by said Joseph P. Hayden and William Carey, surety;

and said bondsman having settled same by payment of the amount thereof in full, and the cause commenced in the Supreme Court of New Jersey for the collection of said bond having been discontinued, and the costs thereof taxed at \$41.03;

10 It is thereupon, on this 10th day of April, 1928, ORDERED, that a counsel fee of \$150.00, together with said taxed costs of \$41.03, amounting in all to the sum of \$191.03, be paid by the Clerk of this Court to the said Harry Lane, Esquire, out of the general fund belonging to this Court.

E. R. WALKER, C.

A true copy.

FERD GARRETSON,  
*Clerk.*

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(Filed July 30, 1931)

20

EDWIN ROBERT WALKER

Chancellor of the State of New Jersey

to

Aaron V. Dawes, Dr.

30 To professional services in and about receivers' bonds executed by the Majestic Indemnity Insurance Company of New Jersey and the Equitable Indemnity Company of New York, respectively, to the Chancellor of the State of New Jersey, which companies were in process of liquidation in the District Court of the United States for the District of New Jersey, and in the Supreme Court of the State of New York ..... \$250.00

Said services necessitated conferences with the Hon. Francis P. Ward, Special Deputy Superintendent of Insurance of the State of New York, in New York City, and with the Receiver of the Majestic Indemnity Company and his counsel at Newark.

Three car fares, Trenton to New York, \$4.12	
per trip .....	12.36
Two car fares, Trenton to Newark, \$3.46	
per trip .....	6.92
Incidental Expenses .....	3.75
	<hr/>
Total .....	\$273.03
	<hr/>

Approved for \$273.03/100.

The Clerk in Chancery will please pay out of the general fund. 7-29-31. 10

E. R. WALKER, C.

A true copy.

FERD GARRETSON,  
Clerk.

(Filed April 25, 1932)

April 22, 1932. 20

The Chancellor of New Jersey  
to  
Aaron V. Dawes, Dr.

.....  
To arguing motion to set aside service of subpcena upon the Chancellor of New Jersey and preparing brief thereon in the case wherein Prudential Insurance Company of America is complainant and Clifton Builders Supply Co. is defendant. (109 N. J. E. 340, 157 At. 443) \$150.00 30

Correct. The Clerk will please pay \$150.00 out of the general fund. 4-25-32.

E. R. WALKER, C.

A true copy.

FERD GARRETSON,  
Clerk.

