go into the merits of the settlement unless its validity is questioned by a party to it, or unless the court fears that the party may be imposed upon by reason of infirmity or other disability.

The formality of the notice of discontinuance is of small consequence, although an orderly procedure as indicated by the court in the *Azoff* case[25] would require that notice of the settlement be given to the court by a motion to dismiss the appeal. But cases in other jurisdictions indicate, that in their anxiety to refrain from deciding moot questions, the courts have considered even the most informal notice sufficient.[26]

That our court of Errors and Appeals realizes that it is not essential that every consent dismissal be subjected to the actual scrutiny of the court, is indicated by its Rule 11,[27] which provides that consent dismissals may be filed with the Clerk when the court is not sitting for the hearing of arguments.

The conclusion becomes inescapable. Courts are not empowered to render decisions in cases which have become moot. Consequently, after appeal, on receipt of notice that the parties, without jeopardizing the rights of others and being *sui juris,* have settled their controversy, consenting to a dismissal of the appeal, the court should carry into effect the agreement by granting the dismissal of the appeal.

JURISDICTION OF THE COURT OF CHANCERY TO INVESTIGATE THE CONDUCT OF ITS OFFICERS.—By a recent opinion, filed by the Chancellor,[1] the jurisdiction of the Court of Chancery to conduct, through a master, an investigation into the practises of its officers in the conduct of receivership cases in that court was upheld, on the ground of the inher-

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[25] *Supra,* Note 14.

[26] In Wedekind v. Bell, 26 Nev. 395; 69 P. 612; 99 Am. Rep. 704 (Sup. Ct., 1902) the case had been argued and submitted for decision, but before judgment was rendered the justices were informed that the controversy between the parties had been settled. The court issued citations to both attorneys requiring them to show cause why the appeal should not be dismissed as being moot. In Haygood v. Stone, 164 Ga. 732; 139 S. E. 426, (Sup. Ct, 1927) the parties informed the court by letter of their settlement. Upon receipt of the letter a rule was issued by the clerk to the appellate court calling attention of counsel to the letter and ordering them to show cause why the case should not be dismissed as being moot. No answer being made to the rule, the facts presented in the letter were presumed to be true, the issues were held to be moot and the appeal was dismissed.

[27] Rules of the Court of Errors and Appeals: 11. DISMISSAL OF CAUSE BY CONSENTS "Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and respondent in an appeal, shall at any time hereafter, when the court is not sitting for the hearing of arguments, by their respective attorneys or solicitors, who are entered as such on the record, sign and file with the clerk, an agreement in writing, directing the case to be dismissed, and specifying the terms on which it is to be dismissed, it shall be the duty of the clerk to enter a rule or order of dismissal and remit the cause to the court from which it has been removed." Promulgated Nov. Term, 1998, republished Nov. Term, 1907.

[1] In re: New Jersey State Bar Association, 112 N.J. Eq. 606 (Ch. 1933).

ent jurisdiction of the court to inquire into and control the actions of its officers in matters entrusted to them by the court. That such a determination follows the weight of authority and is well grounded in principle was pointed out in a leading article in this Review,[2] where the authorities are considered.

The matter came before the court on petition of one of the Vice-Chancellors, whose actions were under examination to vacate the order authorizing the investigation, to limit the scope thereof, and for the suppression or limitation in scope of the report of the master so far as it affected the petitioner.[3]

From the decision of the Chancellor the petitioner has taken an appeal to the Court of Errors and Appeals. Passing over the purely technical question of whether the matter is one reviewable by the upper court, and considering the contention of the petitioner of lack of jurisdiction, the conclusions of the Chancellor seem to be quite sound. Not only does he hold that the power of investigation exists as an inherent power of the court, but he holds that this power may, for the convenience of the court, be exercised not only by the Chancellor himself, but through any master whom the court may appoint for that purpose; that it is a matter of no moment whether, technically, the order appointing the master was made in a preceeding strictly judicial in character or not, or whether, technically, it expired with the death of the Chancellor making it, since, once granting the power of the court to make such an order, that power of necessity existed in the present Chancellor who might either, by a new order, continue the proceedings or, with less formality, treat, as the present Chancellor did treat the order, as still effective, thus by implication continuing its efficacy. The Chancellor further held the language of the order to be broad enough to permit of the investigation of a vice-chancellor. The Chancellor does not permit himself to be misled by the suggestion raised by the counsel for the petitioner that the investigation into the actions of the Vice-Chancellor constituted an extra-judicial review of the judical acts of the Vice-Chancellor under investigation and thus a collateral attack upon his

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[2] THE CURRENT CHANCERY INVESTIGATION, 1 MERCER BEASLEY L. REV. 51, 2, p. 30 (1932).

[3] In re: New Jersey State Bar Association, Chancery Docket (89-639). Petition of John J. Fallon. The prayer of the petition is as follows:

1. That the order of reference be set aside.
2. That it be limited in its scope and effect to the subject-matters expressed therein without inquiry into the judicial acts or private business affairs of the petitioner.
3. That the testimony respecting the private business affairs and judicial acts of the petitioner be suppressed.
4. That the report of the master should be suppressed.
5. That the report should be limited in presenting the testimony without comment, recommendation or conclusion of the master.
6. That the framing, publishing and filing of the report be stayed pending the hearing.

judicial determinations. Conceding that the investigation would be improper if its effect were to reverse, set aside or modify a particular judgment, decree or finding, he points out that, "No particular, nor in fact any, finding of any vice-chancellor is attempted to be affected by the present inquiry nor will it nor can it be," and repeats, as he states, "at the expense of repetition," the purpose of the inquisition.[4] The Chancellor further avoids the pitfall suggested that the proceeding is, in effect, one for the removal or suspension of a vice-chancellor, both of which powers he concedes to be lacking to the chancellor, without definitely passing upon the question of whether the office of vice-chancellor be statutory or constitutional.

The only contention which we have been able to discover in opposition to these views on the part of the petitioner lies in an effort to distinguish investigations of *inferior* officers of the court, such as attorneys and counsellors, from investigations of superior officers of the court. It is pointed out that in all the cases cited sustaining the court's power to investigate[5] only the case of *Capps v. Gore* involves the inquiry into the action of a judge, and that the inquiry in that case was made upon the request of the accused judge and resulted in his exoneration. The relevancy of this attempted distinction is not apparent. It would seem clear that if the dignity of the court required the existence of a power to investigate its inferior officers *a fortiori,* that dignity might, in appropriate instances, require the power to investigate its superior and more potent officers to the end that even-handed justice might be administered. Once it has been conceded that the investigation does not involve the collateral review of judicial proceedings *inter partes,* in the absence of the parties affected, all logical basis for the denial of this power would seem to fall. In limiting the scope of the master's report to a report of the evidence taken, without advice or recommendation as to any action, judgment or order to be made by the Chancellor respecting the petition, the Chancellor would seem fully to have met the objection that the proceedings deny to the petitioner due process of law and removes from the master the dual position which he was

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[4] *Supra,* note 1, et. seq.

"Charges were made that certain practices, particularly in receivership matters existed which were improper, that officers of the court had not in such proceedings exercised judicial integrity, that allowances had been exorbitant and at least a suspicion was created that vice-chancellors and other officers of the court were profiting and participating therein, directly or indirectly.

The purpose of the inquisition upon the part of the chancellor was to definitely ascertain whether or not these charges were true, to what extent and who were guilty of such practices.

It is perfectly apparent, therefore, that the principle or doctrine urged under this point has no application to the matter in hand."

[5] P. 618; People, ex rel. Karlin v. Culkin, Sheriff, 248 N.Y. 465; 162 N.E. Rep. 487; In re Investigation by Bar Association of Hudson County, 109 N.J.L. 275; Rubin v. State (Sup. Ct., Wis., 1927), 216 N.W. Rep. 513; Capps v. Core (Court Appeals, Ky., 1929), 21 S.W. Rep. (2d ed.) 266.

asserted by the petitioner to hold of both prosecutor and judge, a contention which the Chancellor points out, "presupposes a report by the master adverse to the petitioner, a thing which may not take place, is not admitted or established."

Another phase of the same matter perhaps deserves a passing reference. Chancellor Walker in an opinion in the same cause[6] authorized the payment from funds in the control of the Court of Chancery of the sum of $7,359.78 to defray the expenses to date of the investigation above referred to. The funds from which this payment was to be made, it would appear, had accumulated in the Court of Chancery over a long period of years by reason of the fact that the interest paid by the court upon numerous deposits therein had been less than the interest which had actually been received on deposits of funds of litigants and wards of the court. These interest sums, relatively trivial in themselves and difficult of specific segregation, had, by virtue of the large number of accounts involved, and by the process of compounding, increased to a sum of several hundred thousand dollars not directly allocable to any specific deposits. Chancellor Walker citing the *Matter of Stevenson,*[7] held that the money, being in court, was subject to its control and subject to the appropriation of the court for lawful purposes or for the protection of the court and its self-preservation; that it is for the court to determine the necessity or emergency justifying its use,[8] and, referring to an opinion by Oscar Keen as master of such accounts in court, approved by Chancellor Pitney,[9] he also cites an earlier case in which payments were made from this fund under order of Chancellor Pitney[10] and the reimbursement of counsel for the court in a disbarment proceeding where allowance was made to counsel out of this fund.[11] The Court of Errors and Appeals reversed this finding of the Chancellor[12] upon grounds with which it is difficult to quarrel. The appelllate tribunal found that the moneys constituted a trust fund; that the investment of a part of the funds afforded no reason to divert a surplus which, in days of shifting values, might or might not exist in fact; and that if the accumulated surplus be considered as in lieu of commissions for the administration of the trust, the commissions thus earned belonged, not to the court to be expended at its discretion, but to the State of New Jersey and as such, were subject to legislative appropriation as in the case of other state funds. Whether such surplus funds might, with propriety, be used to offset losses, (*Moran v. Gott*),[13] the court refused to decide.

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[6] 111 N.J. Eq. 234, 162 Atl. 99 (Ch. 1932).
[7] 137 App. Div. (N.Y.) 789.
[8] Citing, State v. Governor, 25 N.J.L. 331, 349 (Sup. Ct. 1856).
[9] *Supra,* note 6 at p. 238.
[10] Moran v. Gott, N.J. Chancery Docket (26-794).
[11] In re Hahm, N.J. Chancery Docket (40-174); 84 N.J. Eq. 523, reversed on other grounds, 85 N.J. Eq. 510.
[12] In re New Jersey State Bar Assn., 112 N.J. Eq. 236, 164 Atl. 1.
[13] *Supra,* note 10.