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BILL OF COMPLAINT.

The complainants, John C. Riggin and Emily F. Riggin, of Port Norris, Cumberland County, New Jersey, respectfully show that:

1. On April 25, 1929, the Mutual Life Insurance Co. of New Jersey, a corporation, did insure the life of John C. Riggin and did agree to pay to Emily F. Riggin, the beneficiary named in the policy, \$5,000.00 upon receipt of due proof of the death of said John C. Riggin, the insured, or to pay \$10,000.00 upon proof that the death of John C. Riggin resulted from bodily injury effected solely through external, violent and accidental means, and occurred within 90 days after such injury. The insurer did further agree to pay the insured, John C. Riggin, if the insured was totally and presumably permanently disabled before the age of 60, the sum of \$50.00 monthly during such disability. 10
20

Said policy is not here set forth in full but leave is asked to introduce same on the hearing of this cause.

2. Said policy also contained a provision that any disability income payment which might become payable and which was unpaid at the death of the insured, should be paid to the said beneficiary Emily F. Riggin. 30

3. Before John C. Riggin had acquired any right to disability payments, and on the 7th day of May, 1931, being in debt to the Cumberland National Bank of Bridgeton, New Jersey, in the sum of about \$8,000.00, he did agree to assign the policy on his life as collateral for the amount due to said Bank, which was undertaken by an assign- 40

Bill of Complaint.

ment dated May 7, 1931, to which for greater certainty complainants beg to refer.

10 4. John C. Riggin became totally and presumably permanently disabled in April, 1932, at the age of 38 years, and was thereupon entitled to said disability payments, which right the insurer recognized, and undertook to make such payments.

20 5. John C. Riggin was in good health and not disabled or entitled to such payments when the policy was assigned, and the said Cumberland National Bank did not bargain for or expect to receive, or have knowledge of rights to disability payments, and did not expect to receive any such benefit from the complainant, John C. Riggin, the said Bank having bargained for and agreeing then and there to receive only the insurance on John C. Riggin's life.

30 6. When John C. Riggin and Emily F. Riggin, his wife, executed the said assignment they had not agreed to and did not intend to assign anything but the insurance on the life of John C. Riggin.

40 7. Upon John C. Riggin becoming permanently disabled in April, 1932, the Mutual Life Insurance Company of New York did send to the Cumberland National Bank of Bridgeton, New Jersey, in payment of John C. Riggin's disability benefits, a check payable to the order of John C. Riggin, which check said Bank delivered to said John C. Riggin, and which was cashed by him, and the proceeds thereof were retained by him.

Bill of Complaint.

All further checks for disability benefits from April, 1932, to October, 1934, were received in the same manner by the defendant, and likewise cashed by said John C. Riggin after being delivered by said Bank to him, and the proceeds were retained by him. 10

8. Beginning in the month of October, 1934, when the said Insurance Company sent its check as aforesaid to the Cumberland National Bank, and each month since in like manner, said Bank has refused, though often requested so to do, to deliver up to said John C. Riggin the checks aforesaid or any of them, but has kept and retained the said checks, so that said John C. Riggin cannot receive his said disability payments as called for by said policy. The defendant claims that the legal effect of the assignment is to entitle it to the disability payments. Without admitting said claim, the complainants charge that neither party to the assignment intended that it should embrace such disability payments and that only because of a mutual mistake did the assignment fail to contain a specific clause excepting from its operation disability payments to which the complainants might become entitled. 20 30

9. The complainants further charge that they are entitled to have the assignment reformed in this court to accord with the true intent of the parties, as aforesaid, and that all checks held by the defendant as aforesaid should be turned over by it to said John C. Riggin. 40

Bill of Complaint.

THE COMPLAINANTS ARE WITHOUT ADEQUATE REMEDY IN THE COURTS OF LAW AND THEREFORE PRAY:

10 1. That the defendant, the Cumberland National Bank of Bridgeton, N. J., a corporation of New Jersey, answers this bill and each allegation made herein.

20 2. That the said defendant be compelled to deliver up to John C. Riggin all checks which they now have in hand or which may hereafter come to its hands, for disability payments, and that it also be charged with interest on the said checks and the funds which it has retained in its hands and has refused to turn over to John C. Riggin.

30 3. That the said assignment made by the complainants to the Cumberland National Bank, be reformed so as to assign only the interest of complainants in the insurance on the life of John C. Riggin and not any part of the disability rights or payments, and that an appropriate addition be made thereto to express the true intent of the parties, and that the defendant be decreed to have no interest whatever in the aforesaid disability payments.

4. That the defendant make full discovery as to all of the facts and transactions in which it participated, as alleged in the bill.

5. That complainants may have such other and further relief as may be equitable and just.

40 6. That a writ of subpoena may issue, commanding said defendant to answer this bill of

Answer.

complaint and to abide by such decree as this Court may make in the premises.

GEORGE S. SILZER,
Solicitor for and of Counsel
With Complainants. 10

ANSWER.

The answer of The Cumberland National Bank of Bridgeton, defendant, to the bill of complaint of John C. Riggin and Emily F. Riggin, complainants.

The defendant, The Cumberland National Bank of Bridgeton, answering the bill of complaint says: 20

1. Paragraph 1 is admitted except the Mutual Life Insurance Company is a corporation of the State of New York and not a corporation of the State of New Jersey.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted except the defendant says that under the terms of the written assignment the disability payments should be made to defendant. 30

5. It is admitted that John C. Riggin was in good health and not disabled or entitled to such payments when the policy was assigned. The remainder of said paragraph is denied, and on the contrary the defendant says that it did expect to receive any and all benefits due or to become due 40

Answer.

under the provisions of said policy of life insurance and that the written assignment referred to in paragraph 3 of the bill of complaint so provided.

10 6. Paragraph 6 is denied.

7. Paragraph 7 is admitted but defendant says that said checks were delivered to said John C. Riggin because from April, 1932, until October, 1934, the said John C. Riggin was renewing the notes representing the indebtedness of Eight Thousand Dollars to secure the payment of which said policy of insurance was assigned and was paying the discount or interest on said notes in
20 accordance with the terms thereof.

8. The defendant admits that beginning in the month of October, 1934, when the said insurance company sent its checks as aforesaid to The Cumberland National Bank of Bridgeton and in each month since in like manner said bank refused to deliver up to said John C. Riggin the checks aforesaid or any of them, and that the said defendant has kept and retained the said checks and now
30 has said checks in its possession. It is admitted that the defendant claims that the legal effect of the assignment is to entitle it to the disability payments and the defendant now claims that it is entitled to said disability payments under the terms of said written assignment. The remainder of said paragraph is denied and this defendant says that it did intend to receive under the terms of said assignment all of the rights and benefits due
40 or to become due under said policy.

Replication.
Decree.

9. Paragraph 9 is denied.

This defendant prays to be hence dismissed with its reasonable costs and charges.

FRANK R. BACON,
Solicitor of Defendant.

10

LEROY W. LODER,
Of Counsel with Defendant.

REPLICATION.

(In common form.)

20

DECREE.

This cause coming on to be heard before Honorable W. Frank Sooy, the Vice Chancellor, to whom, by a previous order of the Court the same has been referred, in the presence of George S. Silzer, solicitor for and of counsel with the complainants, and LeRoy W. Loder, of counsel with the defendant, and the Court having examined the pleadings and heard the testimony offered by the parties in open court and having considered the said pleadings and testimony and the arguments of counsel and being of the opinion that the complainants are not entitled to the relief prayed in the bill of complaint; it is, on this 31 day of May, 1938, ordered that the complainants' bill be and the same hereby is dismissed with costs.

30

40

*Testimony.***TESTIMONY.**

May 25th, 1938.

Before Honorable W. Frank Sooy,

Vice-Chancellor.

10 Appearances:

For the Complainants: George S. Silzer, Esq.,
and Leonard J. Emmerglick, Esq., of the New
Jersey Bar.

For the Defendant:

Leroy S. Loder, Esq.

Mr. Silzer: I would like to offer in evidence
policy of the Mutual Life Insurance Company of
New York, number 4146469, on the life of John
20 Riggin, dated April 25, 1929, one-half annual pre-
mium \$83.86, and the assignment which is attached
thereto dated 7th day of May, 1931, and I want
to call attention to the fact that the policy will
pay to the insured's wife, Emily F. Riggin, five
thousand dollars upon his death and will pay fifty
dollars monthly if John becomes totally and per-
manently disabled to John himself. The policy is
in consideration of the application and of the pay-
30 ment of the first premium of \$160.70, receipt of
which is hereby acknowledged.

The Court: Don't divide premium part for
the disability and part for the life?

Mr. Silzer: Yes, it does. That is just what I
was pointing out to your Honor, of which five
dollars is the premium for the double indemnity
benefit, and \$15.50 premium for disability bene-
fits.

40 (Policy admitted and marked Exhibit C-1.)

The Court: In other words, \$140.07 is for the
other?

Offers of Counsel.

Mr. Silzer: Yes. I desire to offer photostatic copies of the check for disability payment which was sent by the Insurance Company to the bank and paid to us.

The Court: These were paid to you?

Mr. Silzer: Yes. Offer them all in one bunch. 10

(Bundle of checks considered marked Exhibit C-2.)

Mr. Silzer: I now offer in evidence the checks which the bank has in its possession, being the checks of the Mutual Life Insurance Company of New York, "pay to the order of John C. Riggin" —asterisk—"Cumberland National Bank of Bridgeton, New Jersey, Bridgeton, N. J.", in the sum of fifty dollars each, which total \$2150. These are all up to date at the present time. 20

Mr. Loder: Yes.

(Checks admitted and marked Exhibit C-3.)

Mr. Silzer: I introduce in evidence statement of the Cumberland National Bank of Bridgeton with Riggin and Riggin, between May 15th, 1933, and February 24th, 1938.

(Statement admitted and marked Exhibit C-4.)

Mr. Silzer: I offer in evidence policy number 4149451 in the amount of \$5000 on the life of William P. Riggin, in which the company will pay to the insured's wife, Mary L. Riggin, \$5000, and fifty dollars a month in case he becomes permanently and totally disabled. 30

(Policy admitted and marked Exhibit C-5.)

Mr. Silzer: I desire to offer in evidence, these, if the Court please, with letters which were sent by the Bank to the Mutual Insurance Company, 40

J. C. Riggan, for Complainants, Direct.

and these are copies which I am offering in evidence. These letters are attached to my demand for admission.

(Copies admitted and marked Exhibit C-6.)

10

JOHN C. RIGGIN, sworn.

Direct Examination by Mr. Silzer:

Q. Mr. Riggan, you are the complainant in this case? A. I am.

Q. How old are you? A. Forty-four.

Q. Married? A. Yes.

Q. Where do you live? A. Port Norris, New
20 Jersey.

Q. Were you in business in 1933 and 1931?
A. 1931 I was in the oyster business.

Q. Whom with? A. My brother William.

Q. Had you any negotiations with the Cumberland National Bank? A. Yes.

Q. Did you have a note which was payable to them at this particular time? A. We did.

Q. How much was it? A. Five thousand dol-
30 lars.

Q. Had you any collateral for that? A. Only our own signatures is all.

Q. You were in business at, oystering business at— A. Morris River.

Q. How long had you been in the business?
A. Since 1916.

Q. Now did you feel that you had any necessity for a further loan? A. Yes, we did. It was
40 the spring of the year and we thought we ought to have a little more money.

J. C. Riffin, for Complainants, Direct.

Q. Spring of what year? A. 1931.

Q. What did you do towards getting that loan?

A. Well, I was on a boat trip, State Board of Shell Fisheries were entertaining a few guests up the Delaware Bay, and the State Police boat, and Mr. Diament was one of the guests. 10

Q. Who was Mr. Diament? A. President of the Cumberland National Bank, and Mr. Yates also, Director of the Cumberland National Bank was there, and I asked him—

Mr. Loder: I object to what Mr. Yates might have said about it, if your Honor please.

The Court: I presume this is only preliminary. I suppose a loan was made and policy put up? 20

Mr. Silzer: Yes, later.

The Court: I don't suppose it is going to help us any in determining whether a mutual mistake under the conversation had on the Bay during a fishing trip.

Mr. Silzer: That is practically where it took place.

Q. What did you and Mr. Yates— A. I asked 30
Mr. Yates about it and he referred me to Mr. Diament. I said, "I don't know Mr. Diament." He said, "I will introduce you," and you go and talk to him about it, so we went over to talk to Mr. Diament, and sat down on the cabin of the boat, and I told him we would like to have three thousand dollars more money, of course didn't give me an immediate answer, let me know, but you come to the bank and find out about it. In 40

J. C. Riggin, for Complainants, Direct.

a few days, within a few days I went to the bank, at the Cumberland National Bank, I saw Mr. Frank Riley.

10 Q. Did you see Mr. Diament? A. I didn't see Mr. Diament any more, and I asked Mr. Riley about it and he says, "Do you have any additional, or any collateral?"

Q. Who was Mr. Riley? A. He was the cashier of the Cumberland National Bank.

Q. He said what? A. "Do you have any collateral?" I said, "We have two five-thousand-dollar life insurance policies on the life of my brother and myself."

20 Q. Each had one \$5000 policy? A. Each had one, and he says, "Well, that is all right. You prepare the assignment and you can have your money when you want it."

30 Q. Now, then, what did you do then? A. Then I went back to the office at Maurice River, a few days Mr.—a representative of the Mutual Life Insurance Company came in, I told him I would like to have an assignment, like to assign, Bill and I would like to assign our life insurance policies to the Cumberland National Bank, so he prepared the assignments, on his next trip he brought the prepared assignments and told me to have them sworn to before a notary, also have Mrs. Riggin as beneficiary to swear to them before a notary, and then I took those assignments a week later, or a few days later, and turned them over to him with the policy, he took the assignments and the policies, and that is the last I knew of
40 them.

J. C. Riffin, for Complainants, Direct.

Q. Were the assignments filled in? A. They were all filled in, all executed, yes, sir.

Q. When they were delivered to you? A. But the typewritten part was filled in, yes.

Q. Now, then, he took these assignments. Have you ever seen them since? A. I have only seen a copy of the assignment, I have never seen the policies. 10

Q. What did you do next, how did you learn—where had this policy gotten to? A. I don't know where they went from there, I turned them over to the agent, and I supposed he turned them in to the company, but I don't know what he did with them. 20

Q. Well, now, what did you do about the loan then? A. Well, when we got to the place where we needed the money—

Q. How long after that? A. Some time during May. I don't know the exact date.

Q. Now the assignment is dated May 7th, 1931. A. Well, it may have been a week or two weeks or longer, I don't know, we didn't want to borrow this money until we needed it.

Q. And the note is dated May 20th, 1931, does that refresh your recollection any? A. Well, that is about right, some time afterwards. 30

Q. Now, at that time were you in good health? A. Perfect health so far as I knew.

Q. Now, then, on May 20th, this note is dated, what did you do at that time? A. I don't understand you, Governor.

Q. I say this note is dated May 20th, 1931. How did you get the money? A. Sent it in to the bank and they gave us credit to our account. 40

J. C. Riggin, for Complainants, Direct.

Q. You sent the note in to the bank? A. Well, I don't know whether sent it or took it in, so far as that goes. I suppose I sent it in, wouldn't take time to go up to the bank with a note, probably sent it in by mail.

10 Q. This note is endorsed Riggin & Riggin, John C. Riggin, William P. Riggin, and Addie S. Riggin. Who was Addie S. Riggin? A. Our mother.

Q. Was she a member of the firm? A. No.

Q. How did she come to sign it? A. Well, because mother is all I know. I don't know. Just because endorsement, she has signed all the papers.

20 Q. She signed all the papers? A. Yes.

Q. So that then after you sent that note in, you received credit at the bank for the amount less the discount? A. That is right.

Q. Now, things went along all right until what time? Were you taken sick after that? A. I was taken sick February, 1932.

Q. That was about a year later? A. Yes.

30 Q. What was the trouble? A. Intestinal trouble.

Q. Where did you go? A. At the Methodist Hospital, Philadelphia.

Q. How long were you there? A. I was there six weeks the first time, and five weeks the second.

40 Q. What do you mean, how long was the second time after the first? A. Well, I was there 1932 six weeks, I think, and 1933, both the month of April.

J. C. Riggin, for Complainants, Direct.

Q. And you were there how long? I didn't understand. A. Five weeks the second.

Q. Second time? A. Second time, approximately.

Q. Did you then make application to this company for disability insurance? A. I did. 10

Q. How did you do that? A. I wrote the company and told them what I had been through, and they sent through a form to be filled out, and then I had to submit to medical, their medical examination.

Q. Who was that doctor? A. Dr. Bradford in Port Norris one, Dr. E. B. Bradford, and Dr. Wood of Philadelphia.

Q. After they examined you, then what? A. They approved the disability. 20

Q. And that was under this clause which gives you fifty dollars a month if you are totally and permanently disabled, is that right? A. Yes, that is right.

Q. Now, then, after they examined you and came to the conclusion that your disabilities were valid, what did the company do? A. They sent this disability benefit check to me to the Cumberland National Bank of Bridgeton. 30

Q. Now, when was the time that you got the first check, do you remember? A. I think it was April, 1932, but it covered a period beginning April 7th, 1932, I don't know when I received the check.

Q. These checks which I show you, are they the ones that have been marked C-2? A. Yes, they are the checks. 40

J. C. Riggin, for Complainants, Direct.

Q. They are the photostatic copies? A. They look like the checks all right.

Q. I notice that there is one here for, dated October 6th, 1932, for \$383.60. A. Well, that is because it was question of continuing the disability.

Q. Was this the first check, seems to be the only one dated in 1932, I think. A. Yes.

Q. Well, you received that check, anyway? A. Some returned premium in that, because the premium is waived, and they return the premium that has been paid, and it was due on April 25th, 1932, and the premium had probably been paid, and they returned the premium along with disability benefits.

Mr. Silzer: For your Honor's guidance, so there won't be so much difficulty through the checks which were paid, there is one check \$383.60, and one February 13, 1933, 150, and then there are twenty-one fifty-dollar checks.

The Court: I don't suppose there is any dispute about the figures at all?

Mr. Loder: I think not. All the original checks we produced, and there is the adding machine tape adding up the amount.

Q. How long did you receive these checks then? A. I didn't receive them directly, the bank sent them to me, the bank received them and mailed them to me and I received them.

Q. What did you do with them then? A. I took them to the bank for their endorsement.

Q. Where did you deposit the checks? A. I

J. C. Riggin, for Complainants, Direct.

turned them over, generally turned them over to Mrs. Riggin, and she deposited them.

Q. The last check I see paid is on October 7, 1934. Now what happened after that? A. Well, the check of November 7th I didn't receive, so I wrote to the company and inquired about it, and they said the Cumberland National Bank had it and I took for granted the Cumberland National Bank had it, and instead of taking them, as they would send it on to me, after receiving their word, I called the Cumberland National Bank, talked to Mr. Riley about it, he said, "We have them, come over and see us, and talk to you about it." I said I would, but I never went over there to talk about it.

Q. Did he say anything about whether he was going to keep the check or not? A. No, that was all was said.

Q. By the way, have you been ill ever since the time you were first taken to the hospital? A. Yes.

Q. What is your condition today? A. Well, it is about the same as it has been for the last two years.

Q. Do you know Mr. Spencer at the bank? A. Yes.

Q. What is his position? A. I really don't know. He represents the bank in some capacity, but I don't know just what it is.

Q. Did you see him some time in December, 1934? A. Well, he came to my home several times concerning the business of Riggin & Riggin, and I wrote him to refer to William all the time,

J. C. Riggin, for Complainants, Cross.

because I wasn't in the business, I was out of it, and he knew what was going on better than I did, but Mr. Spencer was there for information for the bank, and on one occasion he brought one of these disability checks along with him.

10 Q. One that had not been paid to you? A. One had not been turned over to me, but that occasion he didn't come in the house, he was out in his automobile and he held it in his hands, "What do you want me to do with it?" Didn't say much about it. I said I would never sign it because it belonged to my children, and I wasn't going to sign that check.

20 Q. Did he ask you to sign it? A. Well, he didn't ask, he intimated that was his intentions, yes.

Q. When did you stop the business of oystering, what year? A. Governor, I am not able to answer that because it happened since I have been disabled, and I don't know when it was.

30 Q. Did you ever discuss with Mr. Riley or with Mr. Diament or with anybody connected with the bank anything about assigning this disability clause on the policy? A. No, nothing was ever mentioned excepting life insurance, that is all I had.

Q. When you spoke to them about it, you said you would transfer the life insurance policy, is that it? A. Yes, sir.

Q. Nothing was ever said about the disability clause? A. Never mentioned by any one.

CROSS EXAMINATION by Mr. Loder:

40 Q. You told Mr. Spencer that you would not

J. C. Riggin, for Complainants, Cross.

sign the check so the bank could get the money, didn't you? A. I did.

Q. As I understand it, you requested, you had a loan in the Cumberland National Bank for five thousand dollars, Riggin & Riggin, endorsed by you, William and your mother? A. Yes. 10

Q. Application was made for an additional loan of three thousand dollars? A. Yes, that is right.

Q. You were asked if any other collateral could be put up? A. Yes.

Q. And you told him you had a policy of life insurance in the Mutual Life Insurance Company?

A. I don't know whether I told him what company it was, I told him I had life insurance. 20

Q. As a matter of fact, you had a number of policies in various companies at that time, didn't you? A. Well, I had other policies, but I won't say a number of them.

Q. Several of them of the same general character with the disability clause in? A. Yes.

Q. Now, as I understand your testimony, you attended yourself to the assignment, you attended your own self to procuring the assignment of this policy? A. Entirely, yes. 30

Q. You contacted the agent or the company? A. That is right.

Q. Had them send you a form? A. Yes.

Q. You and your wife appeared before Willis Robbins, notary public at Port Norris? A. Yes.

Q. And executed it? A. Yes.

Q. Then you sent the assignment and the policy and the note to the Cumberland National Bank? A. No, we didn't. 40

J. C. Riggin, for Complainants, Cross.

Q. How did it get there? A. I turned the assignment and policy over to the agent.

Q. You are sure you didn't send the assignment direct to the bank? A. Positively.

10 Q. Nor the policy? A. Nor the policy.

Q. Now I show you what purports to be a letter written on the stationery of Riggin & Riggin, under date of May 18th, 1931, addressed Cumberland National Bank of Bridgeton, New Jersey, and purporting to be signed by Riggin & Riggin, and John C. underneath Riggin & Riggin, and ask you if you sent that letter to the Cumberland National Bank? A. Yes, that is my writing and my signature.

20 Q. After reading that letter, does that refresh your recollection, it has been seven years or so? A. Well, I don't remember it.

Q. But that is your—no question about the fact you sent that to the Cumberland National Bank? A. No question at all.

Q. After reading that, would you say that there was any question but what you sent the two life insurance assignments? A. Perhaps I did, but
30 I don't remember doing it. The assignment is not included in that?

Q. What? A. The assignment isn't there?
(Letter offered, received in evidence and marked Exhibit D1.)

Q. Do you recall whether you received any answer to that letter now, Mr. Riggin? A. I don't.

Q. Don't recall? A. No.

40 Q. I show you what purports to be a copy of a letter addressed to Riggin & Riggin, carbon

J. C. Riggin, for Complainants, Cross.

copy, at the bottom it just bears the word "Cashier", and ask you if you will take a look at that and tell me whether that refreshes your recollection as to whether you received the original letter.

A. Well, I don't remember—

Mr. Silzer: Question is whether it refreshes your recollection. 10

A. No, I don't remember ever doing this.

Mr. Loder: I will ask counsel for the complainant if in their papers they have the original letters of which that purports to be a copy, if they will please produce it.

Mr. Silzer: We haven't it.

Q. Now, you have related, I take it, all the conversation you ever had with Mr. Diamant or Mr. Riley about this particular transaction? A. As far as I can remember. 20

Q. As far as you remember, there was no other conversation? A. No.

Q. Now, you continued to renew this three-thousand-dollar note and the five-thousand-dollar note for some considerable period of time after you assigned the Mutual Life policy, didn't you?

A. Yes. 30

Q. Do you remember when you stopped renewing the notes and declined to make any more, or I won't say declined—

Mr. Silzer: I suppose the Bank records will show.

Mr. Loder: But the man himself probably knows.

The Court: I will permit it.

Q. Do you recall when you stopped renewing the notes, or stopped paying any interest or dis- 40

J. C. Riggin, for Complainants, Cross.

count on the notes? A. I don't know anything about that because I wasn't active in it and I didn't bother with it.

10 Q. Didn't bother with what? A. When the thing stopped or what was going on.

Q. Now, up until the month of October, do you say the Bank turned these checks over to you for the disability? A. Yes, sir.

Q. Do you know whether that was about the time that you stopped renewing the notes or stopped paying the interest or discount? A. I don't remember about it.

Q. You don't remember? A. I don't know.

20 Q. But October was the last check, I think, you received? A. 1934, yes.

Q. You never talked with either Mr. Diamant or Mr. Riley about those checks? A. No.

Q. But you did have the conversation that you have just related with Mr. Spencer? A. Yes.

Q. I understand Mr. Spencer holds some position in the bank? A. Yes.

Q. Of course, you never paid the bank their money? A. No.

30 Mr. Silzer: I offer in evidence the original note for three thousand dollars, payable four months after date. It is dated May 20th, 1931, signed by Riggin & Riggin, endorsed by all of the parties, and this note, as the statement shows, by agreement, was discounted in the bank May 23rd.

(Note admitted and marked Exhibit C-7.)

Mrs. E. F. Riggin, for Complainants, Direct.

MRS. EMILY F. RIGGIN, sworn.

Direct Examination by Mr. Silzer:

Q. Mrs. Riggin, you are the wife of John, the last witness? A. I am.

Q. You had something to do with the signing of the assignment? A. No, I signed—yes, I signed the assignment, yes. 10

Q. Tell us what you know about that. A. Well, I don't know anything except I signed the paper Mr. Riggin brought home to me and told me to sign, or asked me to sign.

Q. What did you think you were signing? A. I understood I was signing away any interest that might be mine should Mr. Riggin die. 20

Q. Was anything said at all about the disability policy? A. No.

Q. Now, after that was done, I understand John was taken sick? A. Yes.

Q. Did you get the checks for some time? A. Yes.

Q. What did you do with them? A. Well, Mr. Riggin usually turned them over to me, and I endorsed them and either deposited them in my account or cashed them. 30

Q. What account? A. Cumberland National Bank.

Q. Now, did the time come when no more checks arrived? A. Yes.

Q. Now, that was in the fall of 1934, I think, wasn't it? A. Yes.

Q. What happened at that time? A. Well, they just stopped coming. 40

W. P. Riggin, for Complainants, Direct.

Q. Did you do anything about it? A. I went in to the bank one day and asked for the check, yes.

Q. Whom did you ask for it? A. Mr. Riley.

10 Q. Now, what did you say? A. I asked Mr. Riley or said to him that he was holding a check or had a check that belonged to Mr. Riggin, that I had come to collect for it, and he told me that he had been talking to Mr. Riggin on the phone and that he had asked him to come in and discuss the affair with him, that their business condition was such that they felt that they had to hold these checks, and I told Mr. Riley that I knew nothing
20 at all whatsoever about their business condition, but I did feel the checks belonged to me or to us, and he said that Mr. Riggin had not been in, and I said no, he wasn't fit to come in, and he told me that he sounded all right over the telephone, and I told him that he didn't see him two or three hours after he had been through these harrowing experiences, but I didn't get the check.

Q. What did he say? A. He went (witness shrugs shoulders).

30 Q. Raised his shoulders? A. That was the answer I got.

No Cross-examination.

WILLIAM P. RIGGIN, sworn.

Direct Examination by Mr. Silzer:

40 Q. Sheriff, you are the partner in Riggin & Riggin? A. Yes, sir.

W. P. Riggin, for Complainants, Direct.

Q. Do you remember the time that you were trying to get three thousand dollars more in the Cumberland National Bank? A. Well, I didn't know the exact amount. John and I talked it over before he went away on the boat, we should have a little more money, and when I came back from the week-end, he talked about assigning the insurance policy. 10

Q. Did he say—what did he say about it, whether he received assurance of the loan or not? A. He said if we would assign our life insurance policy, naming a particular one, that the Cumberland National Bank would grant us an additional loan.

Q. Then did you assign you policy? A. Yes, sir. 20

Q. That was for five thousand dollars, wasn't it? A. That is it.

Q. Was anything said at all about the disability? A. Nothing whatever.

Q. Did you understand you were assigning the disability? A. No, sir, just life insurance policy was all was ever mentioned.

Q. That is all you supposed you were signing? A. That is all. 30

Q. Did you have anything more to do with the bank? A. Nothing whatever.

Q. Did you have anything to do with these checks that came in afterward? A. You are speaking of John's disability?

Q. Yes. A. No, I didn't have anything at all to do with them.

No Cross-examination. 40

*J. C. Riggin, re-called for Complainants, Direct.
G. Diament, for Deft., Direct.*

JOHN C. RIGGIN recalled.

Direct Examination by Mr. Silzer :

- 10 Q. Did you ever understand when you signed this paper that it was to cover anything but the life insurance? A. No.
Complainants rest.

Defendant's Testimony.

GEORGE DIAMENT sworn.

Direct Examination by Mr. Loder :

- 20 Q. Mr. Diament, you are the President of the Cumberland National Bank, are you? A. I am.
Q. How long a time have you been the president? A. Since January, 1932.
Q. Prior to that you were one of the vice-presidents? A. Vice-president, yes, sir.
Q. Mr. John Riggin testified to the fact he spoke to you down the Bay about this loan; do you have any recollection of that? A. I don't
30 recall that conversation at the present time.
Q. Do you have with you the statement and transcript of the account, of the note account of Riggin & Riggin? A. I have the liability ledger sheet of Riggin & Riggin, yes.
Q. How far back does it show? A. It shows back to May 16th, 1932.
Q. How much—1932? A. Yes.
Q. I think the original note shows that the \$3,-
40 000 was placed to the credit of Riggin & Riggin on

G. Diament, for Deft., Direct.

May 23rd, 1931. There was already another note for \$5000, was there not? A. In 1932, yes, there was the note five thousand and three thousand.

Q. Now, do you recall that the Mutual Life Insurance Company of New York policy on John C. Riggin, duly assigned to the bank, came to your attention? A. Yes, I remember that came to the bank. 10

Q. When you saw it, you knew that there was a disability clause in the policy, did you?

Mr. Silzer: One moment. I think that is rather leading and suggestive.

The Court: Maybe.

Q. When the policy was brought to your attention did you look at it and examine it? A. Yes, sir. 20

Q. Do you remember just when it was that you saw it? A. Well, no, I don't just remember the date, but I suppose it was about the time it came in.

Q. Do you remember any of the features that were in the policy? A. Well, I remember it had a disability clause in it and that the policy was assigned to the bank. 30

Q. Now, do you recall that later on, I think the testimony is in 1932, that checks of the Mutual Life Insurance Company of New York were received by the bank under this disability clause? A. That was not 1932, was it?

Q. These are the photostatic copies of these checks which were offered in evidence by the other side. A. Yes, 1932. 40

G. Diament, for Deft., Direct.

Q. I call your attention to the fact that they are made payable to John C. Riggin and then Cumberland National Bank, doesn't say "and."

A. No. (Asterisk.)

10 Q. It is true, is it, up until including October of 1934, that the Bank permitted Mr. Riggin to have those checks? A. That is correct.

Q. Now, why did the bank permit Mr. Riggin to have those checks if they were assigned to the Cumberland National Bank, if the disability benefits were assigned to the Cumberland National Bank? A. Well, at that time the Riggin & Riggin notes were being taken care of, being renewed and discount was being paid regularly.

20 Q. Can you—do you know or can you ascertain by looking at the ledger sheet when Riggin & Riggin failed to renew their notes and failed to pay discount and interest?

(Question withdrawn.)

Q. Can you, by looking at the ledger sheets, say when Riggin & Riggin failed to renew the notes?

A. Well, the note was renewed the last, the notes were renewed the last time September 12th, 1934.

30 Q. And were renewed for how long? As a matter of fact, isn't that when they came due? A. That is when they came due, yes, I am wrong, they came due September 12th, 1934.

Q. Did Riggin & Riggin renew the notes that came due in September, 1934? A. No, the notes were protested.

40 Q. Mr. Riggin testified that he received the disability check in October, then after that he didn't get any from the bank. Do you know why,

G. Diament, for Deft., Cross.

did you have anything to do with the bank refusing to send checks any longer? A. Yes, I certainly did, I refused to send the checks after they stopped renewing their notes and paying the discount.

Q. And have held the checks ever since? A. Have held them ever since. 10

Q. Anything in the banking practice, anything unusual about permitting the borrower to receive the dividends or benefit—

Mr. Silzer: I object to that.

Q. —of his collateral as long as the note is attended to?

Mr. Silzer: I object to that.

The Court: I don't see how that helps us any. He simply says the reason they let him have it before, because they were taking care of the notes, when they stopped they immediately stopped sending the checks. If they had a right to do it, I think that is pretty good practice. 20

CROSS EXAMINATION by Mr. Silzer:

Q. You are the president of this bank? A. Yes, sir. 30

Q. I suppose as such you had the direction of everything at the bank, you took care of the things that came in and out of the bank? A. Yes.

Q. I suppose you have got to take care of the money that belongs to the depositors and see it is properly invested and things of that kind? A. Try to, yes, sir.

Q. When did you say the last notes were put in the bank? A. The last renewal? 40

G. Diament, for Deft., Cross.

Q. When the last notes were renewed? A. They came due on—

Q. I don't want when they came due. I want to know when the last notes were put in the bank.

10 A. According to our record here—I don't just understand this, the date is September the 12th and the due date is September 15, 1934, on one, on the five thousand, and September 20, 1934, on the three thousand dollars.

Q. Maybe I can refresh your recollection by this statement, that is the statement of the bank, isn't it? A. That is the statement of the bank, yes.

20 Q. That is the statement you gave to Mr. Riggan? A. Yes. March 16th and March 20th, that is the same shows on here.

Q. Never mind what it is on there, will you please take my statement, when is the last time that the notes were discounted? A. Well, this looks as if it was put on here March 16th and March 20th.

Q. The 16th was the five thousand dollar note? A. Yes.

30 Q. And the 20th was the three thousand dollar note? A. That is right.

Q. Now, that is the last time they were discounted, wasn't it? A. Yes.

The Court: What year?

A. 1934.

Mr. Silzer: 1934.

Q. Then you were wrong when you say that they were discounted at a later date? A. Yes.

40 Q. Well, you signed these interrogatories, didn't you? A. Maybe I am not reading this

G. Diament, for Deft., Cross.

liability ledger sheet just right. I am not so familiar with this.

Mr. Loder: Governor Silzer, I have the original notes in my possession which I handed you before the hearing started, and I would be pleased to hand them to you now. There is no dispute about it. 10

Mr. Silzer: I don't care anything about that. Those notes were discounted in March, that is the last time, on that statement the bank gave to us, shows they were discounted in March.

A. Could I see those notes?

Mr. Loder: I will hand them to you after Governor Silzer is through. 20

A. This sheet may be wrong. I don't know.

Q. You don't mean to say that your bank records are wrong, do you? A. Not usually, no.

Q. Unusually so? A. No.

Q. Well, what do you mean by that? A. I say maybe I am not reading this just right. I am not so familiar with this liability ledger.

Q. This statement was given to Mr. Riggin only recently? A. That is all right. 30

Q. That is correct, isn't it? A. That is all right, yes, that is the statement of the bank balance.

Q. That is correct? A. Yes.

Q. And shows when the notes were discounted? A. Yes.

Q. I am referring now to Exhibit C-4. I notice in the interrogatory which we served upon you, that number 5, "What checks made by the Mutual Life Insurance Company of New York to 40

G. Diament, for Deft., Cross.

John Riggin and sent to the bank were endorsed by the bank?" And the answer is, "Endorsed checks to John Riggin from date of disability payments commenced until October, 1934, when Riggin & Riggin failed to renew these notes and pay the discount." Now is that answer true? A. Yes, these notes were not renewed in September of 1934.

10 Q. I say is that answer true? A. What, that they were not renewed until October?

Q. Yes. A. No, I don't think that is, according to this.

Q. You swore to this, didn't you? A. I suppose I did.

20 Q. Fifth one I am speaking about. A. These dates seem to be the same in here as on this sheet.

Q. Do they? A. Yes.

Q. Now, let's see. A. September, there were two notes, interest on \$5000 note was paid to September 15th, 1934, and on \$3000 note was paid to September 20, 1934. These notes represent the obligations which have been renewed for several years.

30 Q. Fifth answer, "Endorsed checks to John Riggin from date disability payments commenced until October, 1934, when Riggin & Riggin failed to renew the notes and pay the discount." Now, that is not true, is it? A. Had not renewed the notes up to that time, no.

Q. How long before that had they not renewed the notes? A. Well, the note was due September 12th, 15th and 20th of 1934, and had not
40 been renewed.

G. Diament, for Deft., Cross.

Q. Sure about that now, are you? A. Yes, and still laying there past due.

Q. Let me see whether that is correct or not. You say the interest on these notes was paid until September? A. As I get it here from this record, yes, sir. 10

Q. Are you sure about it? A. Yes, I think that is right.

Q. You are positive? A. I can't remember dates.

Q. But you have got your record, haven't you? A. I have got the liability sheet here, yes.

Q. Is there any doubt in your mind about it? A. If I can see the notes, the notes that were protested, I can tell about that better than anything else. 20

Mr. Loder: No reason why I shouldn't hand him the notes?

The Court: No, I don't see.

Mr. Loder: They are the notes you asked for this morning, Governor Silzer, and I handed them to you. (Notes handed to witness.)

Mr. Silzer: I don't care about them. 30

The Court: I don't see why this witness should be asked if he is positive in so far as the record is concerned, that is what he refers to, he said if he could see the notes he could tell more definitely, I don't see any reason why we should encumber the record by anything turns out to be untrue if he can correct it right now.

A. These notes, the \$5000 note came due September 15th, 1934, and was protested, and the 40

G. Diament, for Deft., Cross.

\$3000 note became due September 20, 1934, and was protested. Here are the protests attached thereto.

10 Q. Now that you have seen those, there is your statement again, C-4, did these notes ever go into the bank? A. These notes here?

Q. Yes. A. I don't know.

Q. Well, the statement of the account is before you, now the last date I see on there is March. A. March 16th.

Q. March 16th is the last time that any note of Riggins & Riggins was put in there, isn't it? A. Yes, that is the last one on this statement.

20 Q. And March 20th is the \$3000 note, isn't it? A. Yes, that is right.

Q. This statement shows exactly what took place, doesn't it? A. No, I think that the renewal wasn't gotten on the statement after that.

Q. This statement brings it right down to 1938, doesn't it, and you have charged off the last nine dollars or whatever it is? A. Yes, nine dollars and—

30 Q. Is this statement correct? A. I suppose it is correct as far as it goes, it looks as if there is one renewal there didn't get on that statement.

Q. Wouldn't that change this statement entirely? A. No, that don't change the statement any.

Q. Let's see whether it wouldn't. A. Same note.

40 Q. Supposing you put on the \$3000 in September, wouldn't you take off credit on one side of \$3000 note, and the interest on the other side? A. The discount?

G. Diament, for Deft., Cross.

Q. Yes. A. Yes.

Q. It wouldn't make this statement wrong, wouldn't it? A. Yes, this statement is wrong according to the note.

Q. According to the note? A. Yes. 10

Mr. Silzer: Like to have your Honor look at that.

The Court: I don't see anything else other than that according to this statement the last payment on the note was March 20th, 1934, and this statement they furnished to Riggin & Riggin, and the statement is evidently wrong when you come to look at the notes, because the notes were continued. 20

Mr. Silzer: They were never used, your Honor, that is the point I am making, they were never used.

The Court: What do you mean by never used?

Mr. Silzer: They were in the bank and never used, never discounted and never put on the records of the bank.

A. Oh, yes, they are on here. 30

Mr. Silzer: They are on there since you have made that up.

The Court: Evidently at the time this statement was made, whenever it was.

Mr. Silzer: March, 1938, a few weeks ago.

The Court: How do you know?

Mr. Silzer: Right on the bottom.

The Court: February 24, 1938, is the last item. Now, then, February 24, 1938, should have included— 40

G. Diament, for Deft., Cross.

Mr. Silzer: Should have included these.

The Court: It should have included these, but it is a mistake. I don't see the significance.

10 Mr. Silzer: I think the significance is in this; this witness says the interest was paid up until September. That is not true. For instance, suppose those notes were put on here wouldn't this have been short by the amount of the interest and discount.

The Witness: Well, I suppose it would. There was an overdraft in there.

Q. It would be short the discount? A. Yes.

20 Q. So that then this statement is correct and these notes were not used? A. Yes, those notes were used, absolutely, the notes were used, that may be a mistake there on that statement, but I know these notes were used and went right through the records, here they are, they have got our marks on there, number 2735 and 2736.

The Court: They do appear on the statement you have on your lap?

A. Yes.

30 Q. Let's see that statement. A. That is the liability ledger.

Q. Then you infer this is simply a liability book, and from that date there isn't any—where is the rest of the account? A. Where is the rest of what account?

Q. Is there any account beside that? A. No, that is all on the liability ledger.

40 Q. Where is the rest of the account of Riggins & Riggins? A. Well, we have got that up at the bank, statement to match that.

G. Diamant, for Deft., Cross.

Q. Statement to match this? A. Yes, we have got our ledger sheets up there.

Q. Now, this liability simply shows that the last two items— A. Amount on those dates.

Q. You have got this amount on there, but you haven't any discount or anything of that kind. A. 10
Not on that, no. We don't keep discount on that sheet.

Q. The discount you did keep on C4, didn't you? A. That goes through their account, yes.

Q. If those notes had been used by the bank, that additional discount would have appeared on this statement, wouldn't it? A. That statement is wrong. Here is the notes speak for themselves.

Q. This statement is wrong? A. That state- 20
ment, which it is made up originally, Mr. Riggins came in after it, they didn't look back to our ledger sheet, and get those notes on there, may be on the ledger sheet.

Q. Wouldn't the discount be on here? A. No.

Q. Would be that much less, wouldn't it? A.
No.

Q. If the notes were discounted, he would be charged with the discount, wouldn't he? A. Not 30
if it didn't get on that sheet, no.

Q. What do you mean, if it didn't get on that sheet?

The Court: Oh, if by mistake it didn't get on that sheet.

Q. Do I understand you made a mistake in making out this? A. I don't know.

Q. Did you make a mistake or didn't you? Which is it? A. I don't know. All I know, I 40
know these are right (referring to notes), nothing to do with that.

G. Diament, for Deft., Cross.

Q. Let me see this a minute. What does "N P" mean? A. M P?

Q. N P. A. Notary Public, don't it?

Q. Doesn't mean "Note Protest?" A. On the note?

10 Q. Yes. A. I don't know. Where is it marked?

Q. Right there. A. I don't know what that mark is there for.

Q. Did you put it there? A. No.

Q. Who did? A. I don't handle the notes.

Q. What does "any out" mean? A. I don't know.

Q. Whose writing is that? A. I don't know
20 whose writing it is.

Q. You had these notes, didn't you?

The Court: He says he didn't handle the notes.

A. I didn't handle the notes.

Q. Who does handle them? A. Discount clerk.

Q. Who is he? A. Mr. Wynn, or Mr. Mulford.

30 Q. Is the record that you have in your hand, is that the original record or is it a copy made from the bank? A. That is the original which is taken right out of the file and brought here, right out of the ledger.

Q. Who made it? A. Why, the girl that keeps this liability ledger.

Q. Is she here? A. No.

Q. Did you understand that this assignment of policy when you received it was for anything but
40 the life insurance? A. I understood the policy

G. Diament, for Deft., Cross.

covered everything with it, the disability and the life insurance and whatever there was to the policy was assigned to us.

Q. Where did you get that idea from? A. You can read it in the policy.

10

Q. What? A. The policy states it.

Q. That is the only place you got it from? A. Yes.

Q. And you believed at that time that it gave you all of those rights? A. Gave us everything that was in the policy.

Q. When did you see this policy, how long after the notes were discounted did you inspect this policy? A. I can't say whether it was—I think the policy was sent in there before the notes were discounted. (20)

Q. Well, now, I am asking you a question, when did you see the policy? A. At the time the note was discounted.

Q. You come to that conclusion? A. Yes.

Q. Was it before or after the note was discounted? A. Well, I can't say whether it was—I suppose it was before because we always look our collateral over. (30)

Q. That is your opinion, but do you know whether before or after? A. It has been six years now, I can't tell you whether it was the day, I suppose it was the day before we discounted the note, or the day we did discount the note.

Q. You suppose that. I want to know whether you have any recollection of it being either before or after? A. Certainly wasn't after.

Q. Have you any recollection it was before or after? A. It certainly wasn't after. (40)

G. Diament, for Deft., Cross.

Q. What makes you recall that? A. Well, I know our way of handling our collateral, that is all; we inspect collateral before we make loans.

10 Q. So then you understood when you first got this policy and the assignment that it carried with it the right to these disability benefits? A. Carried everything that was in the policy, yes.

Q. Did Mr. Riggin ever say anything to you about it? A. No.

Q. Never said a word? A. No.

Q. None of the Riggins? A. No.

Q. You were supposed to preserve the funds of the bank, weren't you? A. I suppose so.

20 Q. Why did you give away \$1500 that belonged to the bank, then, when you knew, as you say now, that this was an absolute assignment? A. When did we give it away?

Q. Didn't you give Mr. Riggin all these checks? A. Oh, yes, we let him have the checks as long as he was paying the discount on the note.

Q. What right did you have to do that? A. We had a perfect right to do that.

30 Q. To give away the depositors' money? A. Yes.

Q. How long have you had that right? A. That wasn't the depositors' money.

Q. Whose money was it? A. We were giving that to Mr. Riggin because he had kept these notes alive.

Q. Whose money was it? A. It was put up with this collateral.

40 Q. Was it your money? A. Well, it was our money, yes.

G. Diament, for Deft., Cross.

Q. If it was your money, you had no business to give it away, had you? A. Yes.

Q. You could give away money that belonged to the bank? A. No, wasn't giving it away.

Q. You gave the checks away, didn't you? A. Sure, we gave those checks to him as long as he paid the discount on the note. 10

Q. But the money was yours, you say, now, the money was yours, wasn't it? A. According to that policy that money was assigned to us, yes.

Q. Therefore it became yours, that is correct, isn't it? That money became yours the moment you made the assignment, didn't it? A. Whatever the policy said there.

Q. I want to know what you thought about it, did you think it didn't belong to you? A. I didn't think— 20

The Court: He has testified he thought he had a right as long as they were paying their discount he permitted him to enter up on his collateral and that he had a right to return that to them, and then when they stopped paying the discount, that he immediately applied it to the notes or tried to. 30

Mr. Silzer: Of course I am trying to test him on that question, your Honor.

The Court: All argumentative, it seems to me.

Q. Now, you took these two additional policies as security for the \$3000 note, didn't you? A. Took it on the entire loan.

Q. And you took it at a time when John was 40

G. Diament, for Deft., Cross.

a thoroughly well man? A. Well, I don't know—I don't have any idea.

Q. When you thought he was? A. Well, we might have.

10 Q. You saw no sign of his being sick at that time, did you? A. No.

Q. You got the collateral, then, while he was ill, and totally disabled, you gave those checks away to him in the sum of some fifteen hundred dollars, didn't you? A. I don't know how much amounted to.

Q. I will tell you the amount, \$1583.60. A. Yes.

Q. You think that is good banking practice?

A. I thought that was good banking practice.

20 Q. To take security when a man is well, but when he is ill and can't earn a dollar, then give him the fifteen hundred dollars? A. They are earning money, I think.

Q. Where was he earning money? A. I think he had other policies.

Q. Was that earning money? A. Bringing in an income.

30 Q. Was that earning money? A. In a way, yes. He had an investment there that was earning money.

Q. Was he paying anything off these notes? A. No.

Q. All he had, you say he was earning, I would like to know something about that, if you know anything about where he earned a dollar. A. No, I knew he was in the oyster business.

Q. That was before he was sick, wasn't it?

40 A. He was in the oyster business when he was

G. Diament, for Deft., Cross.

sick, I thought. I didn't know he was ever out of it until they began to transfer their property, and when they began to transfer their property then we began to keep the checks.

Q. Oh, is that it? A. Yes.

Q. So that— A. Quit paying on these notes and on the notes of the other banks.

Q. So that the reason you kept these checks, was because they transferred some property? A. Not altogether, because they stopped paying on these notes and all.

Q. Was it on account of their transferring the property? A. It was primarily because they stopped paying on the notes.

Q. What did you mean when you said a few minutes ago on account of their transferring property? A. Well, I meant by that that then is when they stopped paying on these notes.

Q. That is the time? A. That was about the time.

Q. About the time. A. Yes.

Q. When did they transfer the property? A. I don't know the exact dates.

Q. You don't know anything about it, do you? A. I did know about it, but I don't have the dates.

Q. You know about it now? A. I haven't got the dates, we had hearings on this before, I think Mr. Adler took some testimony.

Q. I would like to have you go through with me on C-4, I am coming now to March 12th, March 16th this note for \$5000 was discounted, that is correct, isn't it? A. Yes, sir.

Q. At that time there was a deposit of \$100 as a check in that bank? A. Yes.

G. Diament, for Deft., Cross.

Q. Now, when that—then on the other side you charged \$4923.33, that is taking the discount off?

A. That is right.

Q. Then that left \$22.03? A. Eighty-three cents.

10 Q. Now, then, the next transaction here is on March 20th, and again had \$22.83 in the bank, you discounted the note \$3000? A. Yes.

Q. You took the discount off of that, left \$23.19 overdrawn? A. That is right.

Q. Now, then, the next transaction on here is a charge of twenty-five cents, and that left \$23.44 overdrawn? A. That is right.

20 Q. Then he deposited \$33 on April 23rd, that is 1934? A. Yes.

Q. And that left him \$9.56? A. That is right.

Q. And that \$9.56 your bank appropriated on February 24th, 1938? A. That is right.

Q. Did any bank examiner come to your bank and discuss these Riggins notes with the bank? A. Yes.

30 Q. When? A. Well, I think every examination since the notes have been passed due they have discussed them.

Q. And they discussed them just before you stopped payment on them, didn't they? A. I don't know whether they did or not.

Q. Why don't you? What kind of bank examiner came there? A. You never know when they are coming.

40 Q. Did you have a Federal bank examiner, too? A. That is the only kind we have. We are a national bank.

G. Diament, for Deft., Cross.

Q. Didn't he discuss the question with you as to your paying out this \$1583? A. No.

Q. He said it was all right? A. Didn't know anything about it.

Q. He didn't know anything about it? A. I don't suppose he did. I don't know. 10

Q. You say he discussed it with you? A. No, I didn't say he discussed paying out that money with me, no.

Q. The bank examiner did discuss it with you or didn't he? A. What?

Q. These checks that you were giving out to Mr. Riggin. A. No.

Q. Never discussed it at all? A. No. 20

Q. He didn't care, the bank examiner, I suppose, didn't care—

Mr. Loder: I object, if your Honor please, as to what the bank examiner cared.

(Question withdrawn.)

Q. I want to show you, Mr. Diament, letter dated October 10th, 1934, which, that is, a copy of it, which you sent to the Mutual Life. You recognize the letter, do you? A. Yes. 30

Q. Let me ask you this: and we are to think as follows, this bank has assigned to it by John C. Riggin a \$5000 policy number 4146469, and your company, that is an ordinary life policy, with total indemnity for death by accident, and total and permanent disability benefits. We understand, or didn't you talk with Mr. Riley before you sent this letter? A. I don't recall.

Q. Who do you mean by "we"? A. The bank. 40

G. Diament, for Deft., Cross.

Q. "We understand that Mr. Riggin and his wife Emily Riggin are receiving disability benefits and we are wondering if they are on this policy." Did you write that? A. Yes, that is my letter.

10 Q. You were wondering whether the disability benefits came from this policy that you have in your possession? A. No, I wasn't wondering about that.

Q. That is what you say here, don't you, you say that here, don't you? A. Well—

Q. Do you? A. The letter speaks for itself.

Q. Do you say in here— A. The letter will have to speak for itself.

20 Q. We understand, you said you understood at that time, this is October, 1934— A. What I was trying to do, I was trying to draw the company.

Q. Not what you were trying to do, I want to know what you said, "We understand Mr. Riggin and his wife Emily Riggin are receiving disability benefits and we are wondering if they are on this policy." You knew they were on this policy, didn't you? A. Yes, I knew they were on this
30 policy, sure.

Q. So that this was renewed? A. No, I knew they were receiving—trying to find out the other disability benefits they were receiving, too.

Q. You were trying to find out what the other disability benefits were by checking this one? A. Yes.

40 Q. "If they are on this policy, if so we feel that those benefits should be turned over to this

G. Diament, for Deft., Cross.

bank, since the policy has been assigned to it.”
 You said that, didn’t you? A. That is right.

Q. “We understand that these benefits are \$50 monthly, payable to John Riggin, and \$50 monthly payable to Emily C. Riggin.” Now, you were referring in this policy 4146469, weren’t you, and you say so in your letter? A. I said so on the same sheet, but I didn’t think I was referring to it in that second paragraph. 10

Q. You didn’t think so? A. No, I was trying to find out some policies, I heard they were getting benefits from disability benefits.

Q. You didn’t ask them that, did you? A. That is what I was referring to. Maybe I didn’t make it clear there. 20

Q. This isn’t clear, either? “Will you kindly advise us whether they cover this policy or another policy that they may hold in your company?” Didn’t you know what the policy which— A. I knew what this policy covered, yes.

Q. Why did you ask about it? A. I was asking about these other policies.

Q. You were asking about another policy, although you referred to this particular one? A. Yes, I referred to that particular one in the first paragraph there. 30

Q. You didn’t know until you got an answer from the insurance company that you were entitled to this money, did you? A. Yes, I did.

Q. You did? A. Yes, sure.

Q. That is the reason you didn’t keep it? A. No, that is not the reason we didn’t keep it, only reason we didn’t keep it, as I said before, they 40

G. Diament, for Deft., Cross.

were keeping these notes alive, that is the reason we didn't keep it, we were trying to go along with them, but when they started to take everything away from us, then we thought it was time we should keep this collateral.

10 Q. That is the time you thought you better keep the collateral, that is the first you thought of it, wasn't it? A. When they stopped paying, yes, sure.

Q. When they were taking things away was the first you thought taking this collateral? A. Absolutely.

20 Q. If they had not been taking things away, you would have let them go right on and let him being paid for fifty dollars a month? A. We wouldn't have had any reason for taking it if they had been paying us, no reason whatever.

Q. You would have gone right on and paid them? A. Sure, we would have gone right on and paid them, if they had kept these notes alive and paid the discount.

30 Q. Well, the insurance of—the transfer of this policy didn't give to you merely the interest on the notes, did it? You were entitled to all of it, on account of principal? A. Sure, if they had not paid the principal, yes, in case of their death, why, we could have collected on these policies to take care of the note.

40 Q. Why couldn't this have been applied by holding all of it, then, so you could eventually pay it on account of the principal? A. We don't usually do that on collateral, we don't usually take the coupons off of bonds, or we don't usually

G. Diament, for Deft., Cross.

collect the dividends off of stock, while the notes are alive and people are taking care of it, but commonly when they stop paying us, then we start to collect on our collateral, and that is what we did in this case.

Q. But this was the assignment, you understood it, to you of all of his interest in these insurance benefits? A. Yes.

10

Q. And you gave them away to him because you say he didn't pay—up until the time he didn't pay the interest? A. That is right.

Q. Does your bank make loans on policies that don't have these disability contracts in them? A. Yes, we take insurance policies as collateral.

20

Mr. Loder: These notes purporting to be executed by Riggin & Riggin, one for three thousand, dated June 20, 1934, and the other June 15th, 1934, for five thousand dollars, these are the notes that you have been testifying from?

A. Yes.

Mr. Loder: I would like to offer them in evidence.

(Notes offered, received in evidence and marked Exhibits D-2 and 3.)

30

Q. I understand all of your books of account are at the bank? A. Yes.

Q. And this statement you gave us is the only record you have got here, or we have got here?

A. Yes.

Defendant rests.

 40

*J. C. Riggan, re-called in Rebuttal for
Complainants, Direct.*
F. E. Riley, in Rebuttal, for Deft., Direct.

COMPLAINANTS' REBUTTAL.

JOHN C. RIGGIN, re-called.

10 Direct Examination by Mr. Silzer:

Q. When you got these first checks, I am referring to a check October 6, 1932, was that check endorsed by Mr. Riley? A. It was, yes.

Q. May 3rd, 1933, is that endorsed by Mr. Riley? A. It was.

Q. April 3rd, is that endorsed by Mr. Riley? A. It was.

20 Q. Are any of the rest of them endorsed by him? A. No.

Q. How did that come about that he endorsed three and didn't endorse the rest? A. After I took the third check up there for endorsement, he took it and stamped it and said, "You don't have to bring these checks up here for endorsement, they are for, they are sent to you in care of us, and they belong to you, and we will send them on
30 down."

Q. And that was, of course, afterward? A. That was afterward.

FRANK E. RILEY, sworn.

Direct Examination by Mr. Loder:

Q. Mr. Riley, you are the cashier of the Cumberland National Bank? A. I am.

40 Q. Apparently your name appears as cashier

F. E. Riley, in Rebuttal, for Deft., Cross.

on the back of the endorsement of three of these checks, according to the testimony. Did you tell Mr. Riggin that these checks belonged to him and didn't require your endorsement? A. I did not.

Q. What did you tell him? A. I told him it wasn't necessary for him to bring them up to me to endorse, because they were used in our bank and consequently had to have our bank endorsement on the back of them before they went out. 10

CROSS EXAMINATION by Mr. Emmerglick:

Q. Mr. Riley, are you the person connected with the bank with whom Mr. Riggin first had discussion respecting this three thousand dollar loan? A. No, as I understand it, Mr. Diament, he spoke with Mr. Diament first about it down in the Bay. 20

Q. As I understood Mr. Diament, he had no recollection whatever of the conversation. However, did you have a conversation with Mr. Riggin relative to this proposed \$3000 loan before it was made?

Mr. Loder: I object as not cross examination.

The Court: It is not cross examination. 30

Mr. Emmerglick: I asked that question only for the purpose of the record, so it might be objected to. The witness, as I understand it, isn't offered for any number of purposes than to deny Mr. Riggin's assertion as recalled on the stand. I think that is all.

Testimony closed.

CONCLUSIONS.

Mr. George S. Silzer (Mr. Leonard J. Emmerglick, of counsel), solicitor for Complainant.

Mr. LeRoy W. Loder, solicitor for Defendant.

SOOY, V. C.

10 I have definite views that do not seem to require a reply. I am interested, of course, in the academic statement of each one of the equitable principles argued and contended for. After all, none of these equitable principles may be applied excepting as they are applied on facts which justify the application of those principles and the relief thereunder. The factual situation here, upon which we must apply any relief that might
20 be granted is, it seems to me, clear and practically uncontroverted.

There was a boat trip, upon which the complainant expressed the desire to have some money in addition to that which he and his brother had borrowed as co-partners in the Cumberland National Bank. Mr. Riley and Mr. Diamant, one or both of them, said: "What additional collateral have you?" and his reply was: "Got a life insurance policy," and the effect of all that conversation was—send down your collateral; if it is satisfactory to the bank we will make an additional loan. Now then, it ended there. There was not a contract. There wasn't any meeting of minds. There was simply a discussion as to what might happen if an application was made for an additional \$3000 loan and proper collateral accompanied the application. Neither Riley nor
30 Diamant, of course, could have entered into a
40

Conclusions.

contract for the bank to discount the paper, down on the boat, without action of the board of directors, nor is there any contention on the part of Mr. Riggin that such was the case. It is argued that the casual conversation as to what might happen ripened into a contract by the partners with reference to the proposed loan. 10

After they returned from the trip down the bay the complainant and his brother discussed the situation with reference to getting a loan and were told, I mean the brother was told by the complainant, that if they would put up their life insurance policies they would probably get the loan. The complainant knew exactly what his insurance policy said, I assume. He is charged with the burden of having read it and he knew it contained three forms of insurance, one for life, one for total disability and one, I think, for accident, or whatever it may have been, double indemnity. He did not go to the bank and state to them—make assignment for me of my life insurance policy, excluding the other two features therein—nor did he go to the bank at all, but he went to his insurance representative, as I presume he would have to do eventually, and evidently asked the insurance agent to assign the policy, and the insurance representative assigned the policy. He did not assign the life insurance feature and reserve the other two features, nor did he assign one feature other than life and reserve the other two, but he made a full, straight assignment. 20
30
40

Conclusions.

10 The complainant did not go down and inter-
view any of the bank officers or have any discus-
sion about it, but the bank was in possession of
the life insurance policy, either by the insurance
representative or by letter and, of course, the
letter indicates that that is the way the policy
got to the bank, and that is the natural reference
you make to it, and an application for a loan, and
Mr. Diament says he looked over the policy and
found it in due form and found that it contained,
in addition to the ordinary life feature, the other
two features, and after an inspection of the pol-
icy and a consideration of the loan, the loan was
passed.

20 How anyone can say the bank's mind met with
that of the complainant, if that was his mind in
the proposition, that the assignment only carried
the one feature and not the two features, I can-
not conceive. There is nothing to show that the
bank, in receiving that policy, got more than they
contemplated. They got exactly what they con-
templated, got what the face of the policy said
30 they were to get, and I do not see any principle of
equity under that statement of fact, where there
was absolutely no fraud on the part of the bank
or any of its representatives, and no demand on
the part of the bank or any of its representatives,
other than that which appears by a reading of
the papers, how I would be justified in saying that
there should be a reformation of the assignment
on any theory of equity, nor do I know of any-
thing that would invoke a doctrine of this assign-
40 ment being against public policy and therefore

Conclusions.

void. It is entirely different from a personal injury case, and the law applicable to this situation is entirely different than the rules set forth where relief is given for injuries to a person at a time when he doesn't know just exactly how seriously he is injured and afterward determines his injuries were more serious than he expected them to be. Of course, with reference to that line of cases there is such a diversity of opinion throughout the country that you can get decisions pro and con. One was filed here recently in which I felt more strongly than in some of the other cases I have had, but on the whole, I can see no justification at all for the interposition of equitable relief.

10

20

It may well be that the Court of Errors and Appeals could be made to see the light, and if counsel determines that shall be the course, I would be glad to review the facts *in extenso*, although I do not think there is much more to be said on that line, and to answer, as far as I consider it necessary for the enlightenment of the Court of Errors and Appeals, as to the basis of my conclusions, and to file written conclusions, but at the present time I can see no chance for the relief prayed for.

30

Mr. Emmerglick: May I respectfully ask if your Honor will so leave the matter that we may have the opportunity to have the question of whether this claim was assignable disposed of as a matter of law as distinguished from a matter of equity, so that feature of the case shall not be *res adjudicata*?

40

Petition of Appeal.

10 The Court: After a case is argued, tried and argued, I simply decide it. Insofar as this Court is concerned, there has been nothing presented that would justify my finding that there was a non-assignability of the entire policy, including the disability feature, and no principle of equity that would justify me so finding. That is all I can do. I cannot do anything that would either help or prevent your having any remedy that you may have at law.

Mr. Emmerglick: I think your Honor's statement has clarified the record for every purpose I have in mind.

20 Mr. Loder: Only thing I shall put in the decree—not entitled to the relief prayed for and the bill dismissed, and will send a copy to Governor Silzer.

Determined: May 25, 1938.

PETITION OF APPEAL.

30 *To the New Jersey Court of Errors and Appeals in the last resort in all causes:*

The petition of John C. Riggin and Emily F. Riggin respectfully shows that:

1. Petitioners are the appellants herein.
2. Petitioners are aggrieved by reason of a final decree of the Court of Chancery made by the Chancellor on May 31, 1938, on the advice of Honorable William F. Sooy, Vice Chancellor, by which it is adjudged that the bill of these appellants for relief against the respondents herein should
40 be dismissed, for the following reasons:

Petition of Appeal.

(a) Because there were two separate obligations on the policy of insurance; one on the life of John C. Riggin, and the other on the Health Disability of John C. Riggin. Being separate, the assignment did not assign the Disability Contract, but only assigned the life Contract. 10

(b) Because the respondent turned over to appellants all benefits accruing on the Disability Policy from April, 1932 to October, 1934, and they never knew or believed that said assignment carried anything but the life contract and that they never expected to get Disability Benefits, and never did get them.

(c) Because, at the time of the making of the assignment, Riggin was not permanently disabled, and so appellant never agreed and respondent never expected to receive and never did receive an assignment of the Disability Benefits. 20

(d) Because the interest of the appellant John C. Riggin in the disability contract affixed to his life insurance policy, was separate and distinct from the life insurance contract and unassignable in law and equity. 30

(e) Because the interest of the appellant John C. Riggin in the disability contract affixed to his life insurance policy, was separate and distinct from the life insurance contract and was by virtue of R. S. 17:18-12, as well as by the public policy of this State, not assignable.

(f) Because the assignment of the disability contract affixed to the life insurance policy of Riggin, was the result of mistake, and brought 40

Petition of Appeal.

about an unjust enrichment of the respondent, entitling the appellant to the relief of reformation of the assignment in accordance with the prayers of the bill.

10 (g) Because, from the uncontradicted evidence, the parties never bargained or contracted for the assignment by the appellants to the respondent, of the disability contract affixed to the life insurance policy of Riggin; and that the assignment was the result of mutual mistake, entitling the appellants to reformation thereof in accordance with the prayers of the bill.

20 (h) Because the evidence before the Court required the finding, that the assignment to the respondent of the disability contract (affixed to the life insurance policy of John C. Riggin) was the result of mutual mistake, and that the appellants were entitled to the relief prayed for in the bill.

(i) Because the respondent was chargeable in equity, as a trustee for the moneys it had received in payment of disability benefits due to John C. Riggin, which finding was required by the
30) uncontradicted evidence before the Court.

(j) Because interest in the disability contract (affixed to the life insurance policy of Riggin) passed to the respondent by the assignment of the life insurance policy; and that the respondent was chargeable as a trustee for the sums it had received as disability payments, under the said disability contract; and in further refusing and failing to find that the appellants were entitled to a
40) decree adjudging that respondent had no interest in the disability contract.

Notice of Appeal.
Exhibit C-1.

WHEREFORE, petitioners respectfully pray that the decree of the Chancellor be in all respects reversed.

GEORGE S. SILZER, 10
Solicitor for and of Counsel
with Complainants-Appellants.

LEONARD J. EMMERGLICK,
Of Counsel with Complainants-
Appellants.

NOTICE OF APPEAL.

(In Common form, service acknowledged by at- 20
torney for the Bank.)

EXHIBIT C-1.

Page 1

Policy No. 4,146,469 Amount \$5000 Age 35

T H E
MUTUAL LIFE
INSURANCE COMPANY OF 30
NEW YORK

(First Policy issued February 1st, 1843)

Will Pay

to the Insured's wife Emily F. Riggin, the
Beneficiary,

FIVE THOUSAND Dollars,

(Face Amount of this Policy)

upon receipt of due proof of the death of John
C. Riggin, the Insured, or 40

TEN THOUSAND Dollars,

(Double the Face Amount of this Policy)

Benefit

ity

Exhibit C-1.

10 upon receipt of due proof that such death resulted from bodily injury effected solely through external, violent, and accidental means, and occurred within ninety days after such injury, all upon the conditions set forth in Section 1, AND if the Insured is totally and presumably permanently disabled before age 60, WILL PAY to the Insured F I F T Y Dollars monthly during such disability, besides waiving premium payments, all upon the conditions set forth in Section 3.

Disability Benefits
(a) Income and
(b) Waiver of Premium

20 This Policy also provides for
Optional Modes of Settlement (Section 2),
Annual Dividends (Section 4),
Application of Dividends to make Policy fully paid or mature as an Endowment (Section 5),
Privilege of Change to other Forms of Policy (Section 6),
Loans (Section 7), Cash Value (Section 8),
Options on Lapse—Continued Term Insurance, Paid-up Insurance, or Cash Value (Section 9),
30 Grace in Payment of Premiums (Section 12),
Privilege of Reinstatement (Section 13).

Premiums

40

Exhibit C-1.

ceipt of which is hereby acknowledged, and of the payment to the Company of One Hundred Sixty and 70/100 Dollars (of which Five Dollars is the premium for the Double Indemnity Benefit and Fifteen and 15/100 Dollars the premium for Disability Benefits) on each Twenty-fifth day of April hereafter until the death of the Insured. 10

The succeeding pages 2, 3, and 4 of this Policy are a part of this contract.

IN WITNESS WHEREOF, the Company has caused this Policy to be executed this Twenty-fifth day of April 1929.

DAVID F. HOUSTON, 20
President.
WILLIAM L. SIMRELL,
Secretary.

Countersigned

G. * * * (Illegible)

Registrar.

25-12
Life
and D. I.

Amount of Insurance Payable at Death. Double Indemnity for Death by Accident. Total and Permanent Disability Benefits Providing for Monthly Income and Waiver of Premium. Annual Dividends. Premiums Payable for Life, Unless Dividends Applied to Shorten Period.
* * * * *

SECTION 3. BENEFITS IN EVENT OF TOTAL AND PERMANENT DISABILITY BEFORE AGE 60. 30

Total Disability.—Disability shall be considered total when there is any impairment of mind or body which continuously renders it impossible for the Insured to follow a gainful occupation.

Permanent Disability.—Total disability shall, during its continuance, be presumed to be permanent; 40

Exhibit C-1.

(a) If such disability is the result of conditions which render it reasonably certain that such disability will continue during the remaining lifetime of the Insured; or,

- 10 (b) If such disability has existed continuously for ninety days.

When Benefits become Effective.—If, before attaining the age of sixty years and while no premium on this Policy is in default, the Insured shall furnish to the Company due proof that he is totally and permanently disabled, as defined above, the Company will grant the following benefits during the remaining lifetime of the Insured
20 so long as such disability continues.

Benefits. (a) Income.—The Company will pay a monthly income to the Insured, during the continuance of such disability, of the amount stated on the first page hereof (\$10 per \$1,000 face amount of Policy), beginning upon receipt of due proof of such disability.

30 *(b) Waiver of Premium.*—The Company will also, after receipt of such due proof, waive payment of each premium as it thereafter becomes due during such disability.

Specified Disabilities.—The entire and irrecoverable loss of the sight of both eyes, or the use of both hands or both feet or one hand and one foot, will be considered total and permanent disability.

40 *General Provisions.*—The Company may, before making any income payment or waiving any

Exhibit C-1.

premium, require due proof of the continuance of total and permanent disability, but such proof shall not be required oftener than once a year after such disability has continued for two years. If such proof is not furnished on demand or if it shall appear to the Company that the Insured is no longer totally and permanently disabled, no further income payments will be made or premiums waived. 10

Neither the dividends nor the amount payable in any settlement hereof shall be decreased because of Disability Benefits granted.

If the Insured shall at any time so recover that the payment of Disability Benefits terminates and later shall furnish due proof that he has again become totally and permanently disabled, Disability Benefits shall be subject to the same conditions as if no prior disability had existed. 20

If the disability of the Insured shall be the result of insanity, income payments shall be payable to the beneficiary, if any, instead of to the Insured. 30

Any disability income payment which may become payable and which is unpaid at the death of the Insured shall be paid to the beneficiary.

Disability Benefits shall not be granted if disability is the result of self-inflicted injury.

The provision for Disability Benefits shall automatically terminate if the Insured shall at any time, voluntarily or involuntarily, engage in military or naval service in time of war outside of the 40

Exhibit C-1.

continental limits of the United States of America and the Dominion of Canada.

If requested in writing by the Insured, the Company will terminate the provision for Disability Benefits by endorsement on this Policy.

If the Insured attains the age of sixty years or if the provision for Disability Benefits terminates, the premiums payable after such age or such termination shall be reduced by the premium for such benefits.

* * * * *

20 SUPPLEMENTARY BENEFITS TO SECTION ENTITLED "BENEFITS IN EVENT OF TOTAL AND PERMANENT DISABILITY BEFORE AGE 60."

Benefits if Proof Delayed and no Premium in Default.—If, while no premium is in default, the proof furnished the Company under the section providing for "Benefits in Event of Total and Permanent Disability before Age 60" is such as to entitle the Insured to the Disability Benefits provided for therein, and if due proof is also furnished the Company that such disability has been continuous since its beginning, the Company will;

- 30 (a) Begin the monthly income payments provided for in such section as of the end of the first completed month of such disability if earlier than the date of receipt of such proof instead of as of the date of receipt of such proof, and,

40

Exhibit C-1.

- (b) Return any premium due after the beginning of such disability which has been paid during the continuance thereof.

Benefits of Premium in Default not over Six Months.—If, not later than six months after the due date of any premium in default and provided no previously due premium is also in default, due proof is received by the Company before the Insured shall have attained the age of sixty years that the Insured was totally and permanently disabled, as defined in the section entitled “Benefits in Event of Total and Permanent Disability before Age 60,” at the date when such premium in default fell due, and has been continuously so disabled since said due date, the Policy will be reinstated without evidence of insurability and the waiver of premium and disability income benefits shall be the same as if such default had not occurred.

THE MUTUAL LIFE INSURANCE
COMPANY OF NEW YORK,
WILLIAM L. SIMBELL,
Secretary.

* * * * *

Only those clauses, that have to do with the disability are printed. All of the rest of the policy is a life policy in the usual form thereof.

ASSIGNMENT.

10

20

30

40

IN THE STATE OF NEW YORK, I, the undersigned, a Notary Public, do hereby certify that the foregoing is a true and correct copy of the original instrument filed in my office on the _____ day of _____, 19____, at _____, New York.

SEE PROOF OF EXECUTION, BY A CORPORATION, BY A CORPORATION BELOW.—When executed by a Corporation, the Corporate Seal of the Corporation, and the names of the President, Secretary, Treasurer, or other authorized officer, must be furnished. A certified copy of the resolution of the Board of Directors giving him authority to execute this instrument must be furnished.

(2) The acknowledgment, where marked with a red star (*) fill in "NOTARY" or whatever may be the official designation of the officer before whom the acknowledgment or proof of execution is taken must affix his official seal. If he has no seal, a County Clerk's

(3) The officer before whom the acknowledgment or proof of execution is taken must affix his official seal. If he has no seal, a County Clerk's

USE CARE IN FILLING IN BLANK SPACES. READ CAREFULLY BEFORE EXECUTING.
 (1) SEE PROOF OF EXECUTION BY A CORPORATION BELOW.—When executed by a Corporation, the Corporate Seal of the instrument. This instrument should be executed by the President, Vice-President, or Treasurer. A certified copy of the resolution of Directors giving him authority to execute this instrument must be furnished.
 (2) The acknowledgment, where marked with a red star (*) fill in "NOTARY" or whatever may be the official designation of the officer before whom the acknowledgment is taken.
 (3) The officer before whom the acknowledgment or proof of execution is taken must affix his official seal. If he has no seal, a County Clerk's Certificate must be furnished, showing officer's authority to act.

Form 3602 5000-1-30
 Absolute Assignment.
 Edition Apr. 1927.

Both the original and duplicate instruments must be sent to the Company.

ORIGINAL ASSIGNMENT.

The duplicate will be retained at the Home Office and the original will be returned with the Registrar's acknowledgment.

For One Dollar, to ^{me} _{us} in hand paid, and for other valuable considerations (the receipt of which is hereby acknowledged) ^I _{we} hereby assign, transfer and set over to (relationship to the insured, if any, should be stated) as their interest may appear
 Cumberland National Bank

whose P. O. Address is Bridgeton, N. J.

all ^{my} _{our} right, title and interest in policy No. 4146,469 issued by

The Mutual Life Insurance Company of New York,

and for the consideration above expressed ^I _{we} do also for myself ^{my} _{ourselves} my executors and administrators, guarantee the validity and sufficiency of the foregoing assignment to the above named assignee ^{his} _{her} ^{their} executors, administrators or assigns, and ^{his} _{her} ^{their} successors title to the said policy will forever warrant and defend.

IN WITNESS WHEREOF, ^I _{we} have hereunto set ^{my} _{our}

hand and seal, this 7th

day of May 1931

ACKNOWLEDGMENT BY AN INDIVIDUAL

State of New Jersey }
 County of Cumberland } ss:

duly commissioned and thereunto authorized, came John C. Pegg and Emily J. Pegg to me known and known to me to be the individual described in and who executed the foregoing assignment, and acknowledged that executed the same.

*Notary see "INSTRUCTIONS" 2 and 3 at top of Original Assignment. (Notary sign here)

On this 7th day of May in the year 1931 before me the undersigned a Notary Public residing in East Orange, N.J. John C. Pegg and Emily J. Pegg William F. Dobbin, Notary Public

PROOF OF EXECUTION BY A CORPORATION

See at Top Instruction 1

State of _____ }
 County of _____ } ss:

that he resides in _____; that he is the _____ of _____ the corporation described in and which executed the foregoing assignment; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

*Notary see "INSTRUCTIONS" 3 at top of Original Assignment. (Notary sign here)

ACKNOWLEDGMENT The duplicate of this original instrument has been noted and filed subject to all claims, liens and indebtedness, if any, existing in favor of the Company against above policy. The Company assumes no responsibility as to the validity or effect of the said instrument.

C. E. Thomas
 Registrar.

Per Denise

EXHIBIT C-1

THE MUTUAL LIFE INSURANCE
COMPANY OF NEW YORK

No. T57292

NEW YORK, Oct 6 - 1932

THE NEW YORK TRUST COMPANY

PAY THREE HUNDRED EIGHTY THREE 60/100 DOLLARS \$383.60

TO THE ORDER OF JOHN C. RIGGIN • CUMBERLAND NATIONAL BANK, BRIDGETON, N. J.

TELEPHONE NO. 3
THE AMOUNT DUE ON THE ABOVE DATE
UNDER THE DISABILITY PROVISION OF POLICY NO. 4146469

[Signature]
ASST. CASHIER

[Signature]
TREASURER

T-107

EXHIBIT C-2

This check is issued in settlement of an amount which will become payable only if the person whose life is insured is living on the due date of the check. Payment, therefore, may not be made to an executor or an administrator.

I (we) the payee(s) named in this check certify that I (we) endorsed said check on or after the day it bears date and that on said date the insured was alive and was totally and permanently disabled.

[Signature]
JOHN C. RIGGIN
120 CUMBERLAND NATIONAL BANK BUILDING

For *[Signature]*
[Signature]

RECEIVED PAYMENT
THROUGH NEW YORK CLEARING HOUSE
PRIOR ENDORSEMENTS GUARANTEED
OCT 11 1932
CHASE NATIONAL BANK
NEW YORK
No. 74

FRANK E. RILEY, Cashier
BRIDGETON, N. J. 85-208
CUMBERLAND NATIONAL BANK
OCT 10 1932
Previous Endorsements Guaranteed
PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST COMPANY

EXHIBIT C-2.

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Exhibit C-2.

All of the following checks are similar to that of October 6, 1932:

	<i>Checks</i>	<i>Amounts</i>
	1. October 6, 1932	\$383.60
10	2. November 7, 1932	50.
	3. February 17, 1933	150.
	4. March 7, 1933	50.
	5. April 7, 1933	50.
	6. May 7, 1933	50.
	7. June 7, 1933	50.
	8. July 7, 1933	50.
	9. August 7, 1933	50.
	10. September 7, 1933	50.
20	11. October 7, 1933	50.
	12. November 7, 1933	50.
	13. December 7, 1933	50.
	14. January 7, 1934	50.
	15. February 7, 1934	50.
	16. March 7, 1934	50.
	17. April 7, 1934	50.
	18. May 7, 1934	50.
	19. June 7, 1934	50.
	20. July 7, 1934	50.
30	21. August 7, 1934	50.
	22. September 7, 1934	50.
	23. October 7, 1934	50.
	Total	\$1583.60

Three checks, of April 7, 1933, May 7, 1933, and October 6, 1932, were endorsed "Frank E. Riley, Cashier"; the others the bank turned over to Riggins, and they were deposited, in the bank, to the credit of Riggins, and spent by him. All checks

Exhibit C-3.

were payable to "John C. Riggin * Cumberland Nat'l Bank."

EXHIBIT C-3.

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The defendant bank has now in its possession checks from October 7, 1934, to date, each in the sum of \$50, and totalling \$2150.

These checks are still unpaid and are similar to checks in Exhibit No. 2.

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EXHIBIT C-4.

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OLD BA

1

6

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3

3

22

2

17

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3

3

2

1

9

KEY
 IN —Interest
 EC —Error Corrected
 RT —Returned Item
 ND —Note Discount
 CL —Collections

IN ACCOUNT WITH
THE CUMBERLAND NATIONAL BANK OF BRIDGETON
 BRIDGETON, N. J.

RIGGIN & RIGGIN

RIGGIN & RIGGIN
 MAIL JOHN RIGGIN
 PORT NORRIS N.J.

Statement of your Account to close of business

PLEASE EXAMINE AT ONCE. IF NO ERROR IS REPORTED IN TEN DAYS THE ACCOUNT WILL BE CONSIDERED CORRECT.

N^o 888, ATHENS, O. 95974

OLD BALANCE	DATE	CHECKS IN DETAIL	CHECKS ARE LISTED FROM LEFT TO RIGHT FOLLOWING DATE OF PAYMENT	DATE	DEPOSITS	DATE	NEW BALANCE
20.03						MAR 30 '32	20.03 *
142.41	MAY 15 '33	5,000.00 -			122.38	R 24 '33	142.41 *
69.89	MAY 20 '33	3,000.00 -		.02	4,897.50	MAY 15 '33	69.89 *
8.37	SEP 15 '33	5,000.00 -			30.00	MAY 20 '33	8.37 *
67.48	SEP 20 '33	3,000.00 -		.02	2,938.50	SEP 15 '33	67.48 OD
				.02	4,924.17	SEP 20 '33	113.00 OD
113.00	OCT 20 '33	.10 -			2,954.50	OCT 4 '33	2.00 *
1.90	NOV 14 '33	75.00 -			115.00	OCT 20 '33	1.90 *
26.90	NOV 25 '33	11.71 -			100.00	NOV 14 '33	26.90 *
15.17	NOV 25 '33	50.00 -		.02	480.27	NOV 25 '33	15.17 *
445.42	NOV 28 '33	60.00 -	25.00 -	.04		NOV 25 '33	445.42 *
360.38	NOV 28 '33	50.00 -		.02		NOV 28 '33	360.38 *
310.36	NOV 29 '33	35.73 -	50.00 -	.04		NOV 28 '33	310.36 *
224.59	NOV 29 '33	125.00 -				NOV 29 '33	224.59 *
99.59	DEC 14 '33	.45 -				NOV 29 '33	99.59 *
99.14	DEC 20 '33	5,001.00 -				DEC 14 '33	99.14 *
23.12	DEC 26 '33	200.00 -		.02	4,925.00	DEC 20 '33	23.12 *
223.12	DEC 27 '33	300.10 -			400.00	DEC 26 '33	223.12 *
177.10	JAN 17 '34	.15 -		.02	2,955.00	DEC 27 '33	177.10 *
176.95						JAN 17 '34	176.95 *
312.13	MAR 6 '34	12.05 -			135.18	FEB 26 '34	312.13 *
300.06	MAR 7 '34	100.00 -		.02		MAR 6 '34	300.06 *
200.04	MAR 12 '34	100.00 -		.02		MAR 7 '34	200.04 *
100.02	MAR 16 '34	5,000.50 -				MAR 12 '34	100.02 *
22.83	MAR 20 '34	3,000.00 -	No Cancelled notes returned.	.02	4,923.33	MAR 16 '34	22.83 *
23.19	APR 11 '34	.25 -		.02	2,954.00	MAR 20 '34	23.19 OD
23.44						APR 11 '34	23.44 OD
9.56	FEB 24 '38	9.56 -			33.00	APR 23 '34	9.56 *
						FEB 24 '38	.00 *

BALANCE

This statement is furnished you instead of balancing your pass book. It saves you the trouble of bringing your pass book to the bank and waiting for it to be balanced. These statements will be found very convenient to check up and file. All items are credited subject to final payment.

USE YOUR PASS BOOK ONLY AS A RECEIPT BOOK WHEN MAKING DEPOSITS.

*Exhibit C-6.***EXHIBIT C-5.**

Insurance policy on the life of William P. Riggin, No. 4,149451, in the amount of \$5,000. Payable to insured's wife, Mary L. Riggin. Will pay \$50 a month in case of permanent and total disability. Similar to policy sued upon. 10

EXHIBIT C-6.

1.

THE CUMBERLAND NATIONAL BANK
OF BRIDGETON

BRIDGETON, N. J. 20

October 10, 1934.

Mutual Life Insurance Company
of New York,
New York City.
Gentlemen:

This bank has assigned to it by John C. Riggin a \$5000. Policy #4146469 in your company. This is an ordinary life policy with total indemnity for death by accident and total and permanent disability benefits. 30

We understand that Mr. Riggin and his wife, Emily F. Riggin, are receiving disability benefits and we are wondering if they are on this policy. If so, we feel that those benefits should be turned over to this bank since the policy has been assigned to it. We understand that these benefits are \$50. monthly, payable to John C. Riggin, and 40

Exhibit C-6.

10 \$50. monthly payable to Emily F. Riggin. Will you kindly advise us whether they cover this policy or another policy that they may hold in your company? If they cover this policy, then could these checks be made payable to this bank as assignee under the terms of the policy?

Very truly yours,

(sd.) GEORGE E. DIAMENT
President

GED:W

2.

20 THE CUMBERLAND NATIONAL BANK
OF BRIDGETON

BRIDGETON, N. J.

November 7, 1934.

The Mutual Life Insurance
Company of New York,
New York City.

30 *Attention: Mr. Frederick L. Allen,*
Vice President and General Counsel
Re: Policy No. 4146469 — John C. Riggin.

Gentlemen:

Referring to your letter of October 19th, in which you state that disability benefits in the amount of \$50. per month are being paid, under the above numbered policy, to the joint order of John C. Riggin and The Cumberland National Bank, Bridgeton, N. J., we have today received
40 your check No. 119024 for \$50. which reads—

Exhibit C-6.

“Pay to the order of John C. Riggin * Cum-
berland Natl Bank of Bridgeton N J
Bridgeton N J”

This to us does not appear to be joint order, but simply payable to John C. Riggin at this address. Will you kindly advise us whether you interpret this as a joint order or not, and if not, we would like to return this check to you and have it made out payable to John C. Riggin and this Bank jointly. 10

Very truly yours,

(sd.) GEORGE E. DIAMENT
President

GED:W

20

3.

THE CUMBERLAND NATIONAL BANK
OF BRIDGETON
BRIDGETON, N. J.

November 30, 1934.

Mr. Frederick L. Allen,
Vice President and General Counsel, 30
Mutual Life Insurance Company,
New York City.

In re: Policy No. 4146469 — John C. Riggin

Dear Sir:

Referring to your letter of November 9th in reference to the above numbered policy, against which we hold your draft No. 119024 for \$50., dated November 7, 1934, payable to the order of John C. Riggin * Cumberland National Bank of 40

Exhibit C-6.

Bridgeton, N. J., Bridgeton, N. J., we have presented this draft to Mr. Riggin for his signature and he has refused to sign the same.

10 You understand that our position in the matter is that this policy was put up as collateral against a loan which we made Mr. Riggin, and that this loan at this time is in default on account of the nonpayment of interest. We are trying to get Mr. Riggin to endorse this check so that we can apply it on the interest due us. Since he will not agree to do this we have refused to turn the check over to him.

20 Will you kindly advise us whether there are any premiums being paid on this policy while Mr. Riggin is collecting disability benefits?

We also hold as collateral Policy No. 4149451 for \$5,600. on the life William P. Riggin. Will you kindly advise us whether or not premiums are being paid on this policy? If for any reason Mr. Riggin should fail to pay the premiums on this policy could we guarantee the payment of same so that it would not lapse?

30

Very truly yours,

(sd.) GEORGE E. DIAMENT
President.

GED:W

40

Exhibit D-2.

EXHIBIT D-1.

RIGGIN & RIGGIN
Maurice River Cove

OYSTERS

Wholesalers and Growers

10

Maurice River, N. J.
May 18th, 1931.

Cumberland National Bank,
Bridgeton, N. J.

Gentlemen:

We are enclosing herewith our note for three thousand dollars (\$3000.00) and two life insurance policies assignments, each policy for \$5000.00

20

Thanking you for your many favors, we are

Yours very truly,

RIGGIN & RIGGIN
John C.

EXHIBIT D-2.

(Copy)

30

\$3000-00/100

Bridgeton, N. Y. Jun 20 1934

Three months after date We promise to pay to the order of Ourselves

Three Thousand 00/100..... Dollars
at The Cumberland National Bank

Bridgeton, N. J. 55-208
for Value received, and Attorney's fees or com-

40

Exhibit D-3.

missions of ten per cent. should this Note not be paid at maturity.

Credit the Drawer

2736

10

Sept. 20

(Signed) RIGGIN & RIGGIN

[ENDORSEMENTS]

RIGGIN & RIGGIN

WILLIAM P. RIGGIN

JOHN C. RIGGIN

ADDIE S. RIGGIN

20

Note was protested Sept. 20, 1934 by Hugh L. Reeves, Notary Public, and notices were served on makers and endorsers.

EXHIBIT D-3.

(Copy)

30 \$5000-00/100

Bridgeton, N. J. Jun 15 1934

Three months after date We promise to pay to the order of Ourselves

Five Thousand 00/100 Dollars
At the Cumberland National Bank

Bridgeton, N. J. 55-208

40 For Value received, and Attorney's fees or com-

Exhibit D-3.

missions of ten per cent. should this Note not be
paid at maturity.

Credit the Drawer

2735

Sept. 15

10

(Signed) RIGGIN & RIGGIN

[ENDORSEMENTS]

RIGGIN & RIGGIN

WILLIAM P. RIGGIN

JOHN C. RIGGIN

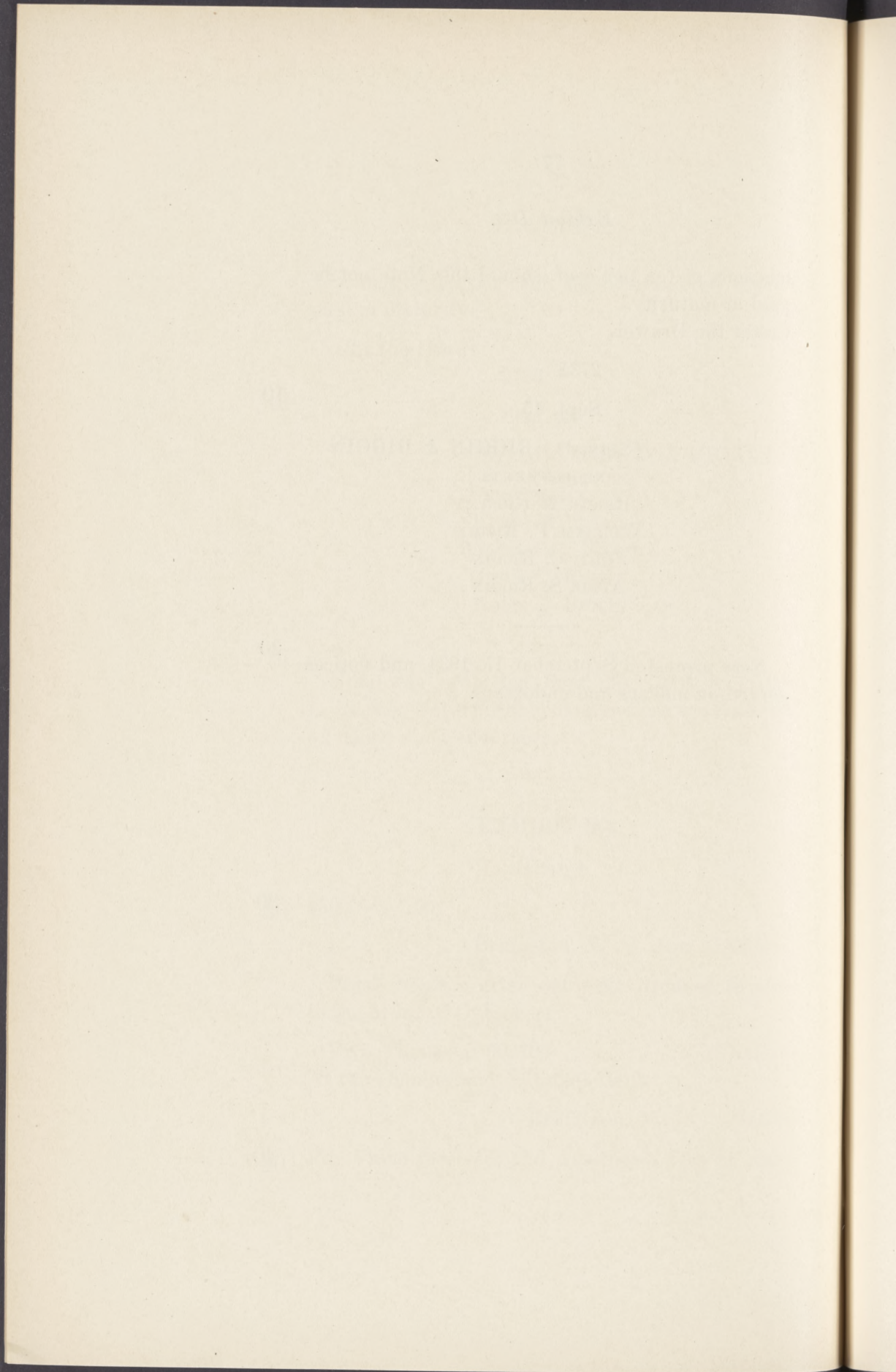
ADDIE S. RIGGIN

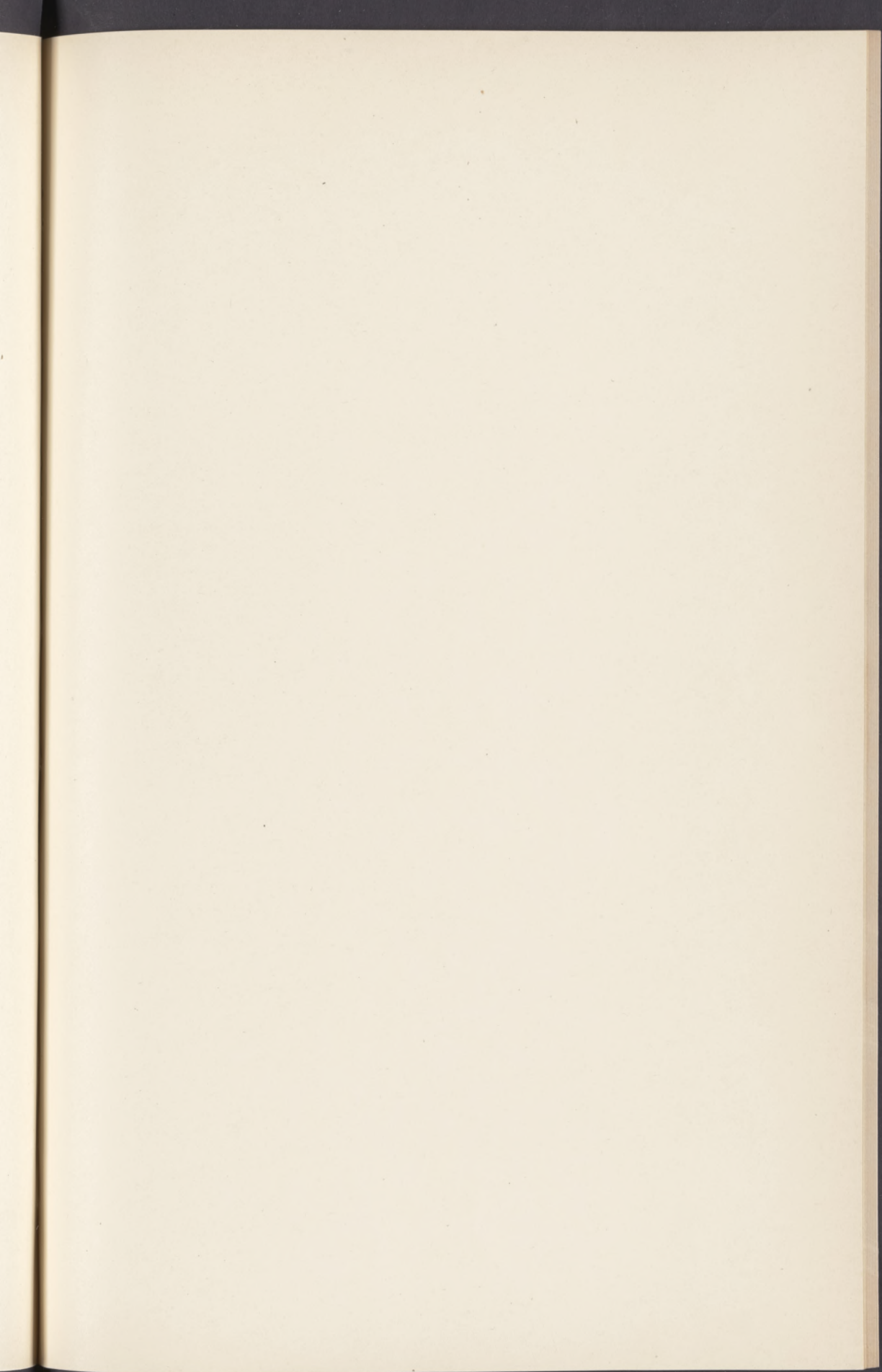
—————
Note protested September 17, 1934, and notices
served on makers and endorsers.

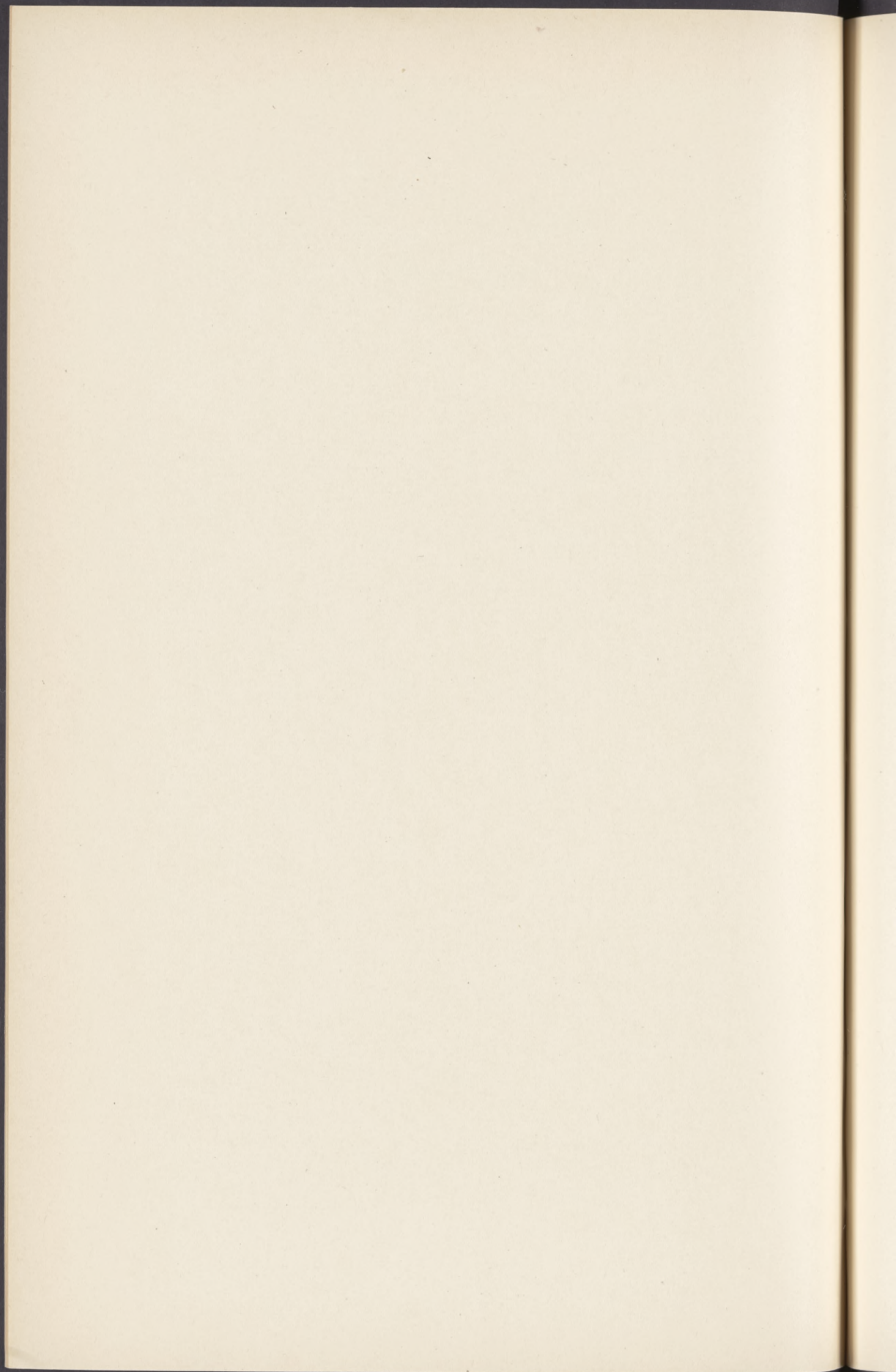
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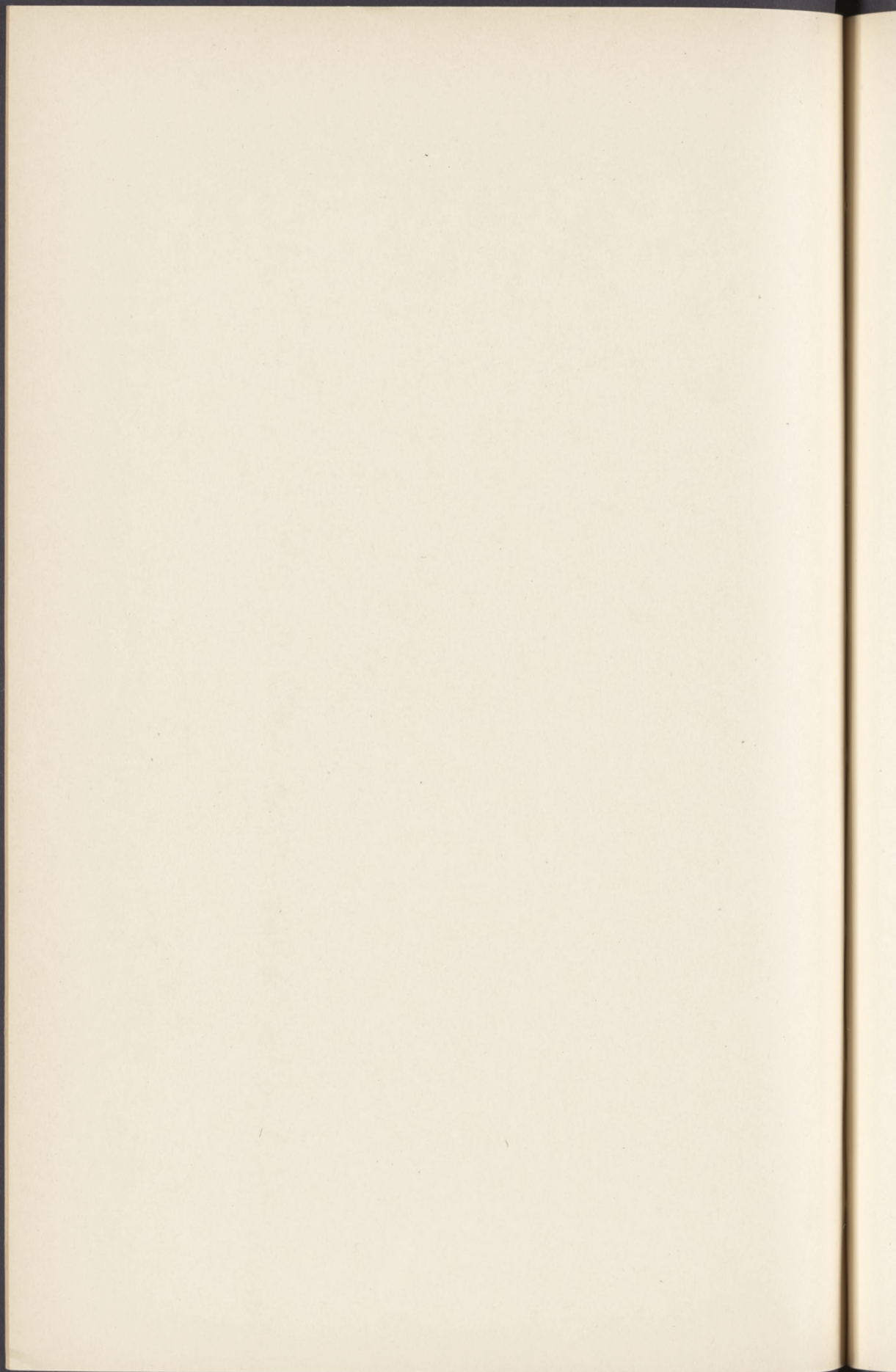
40

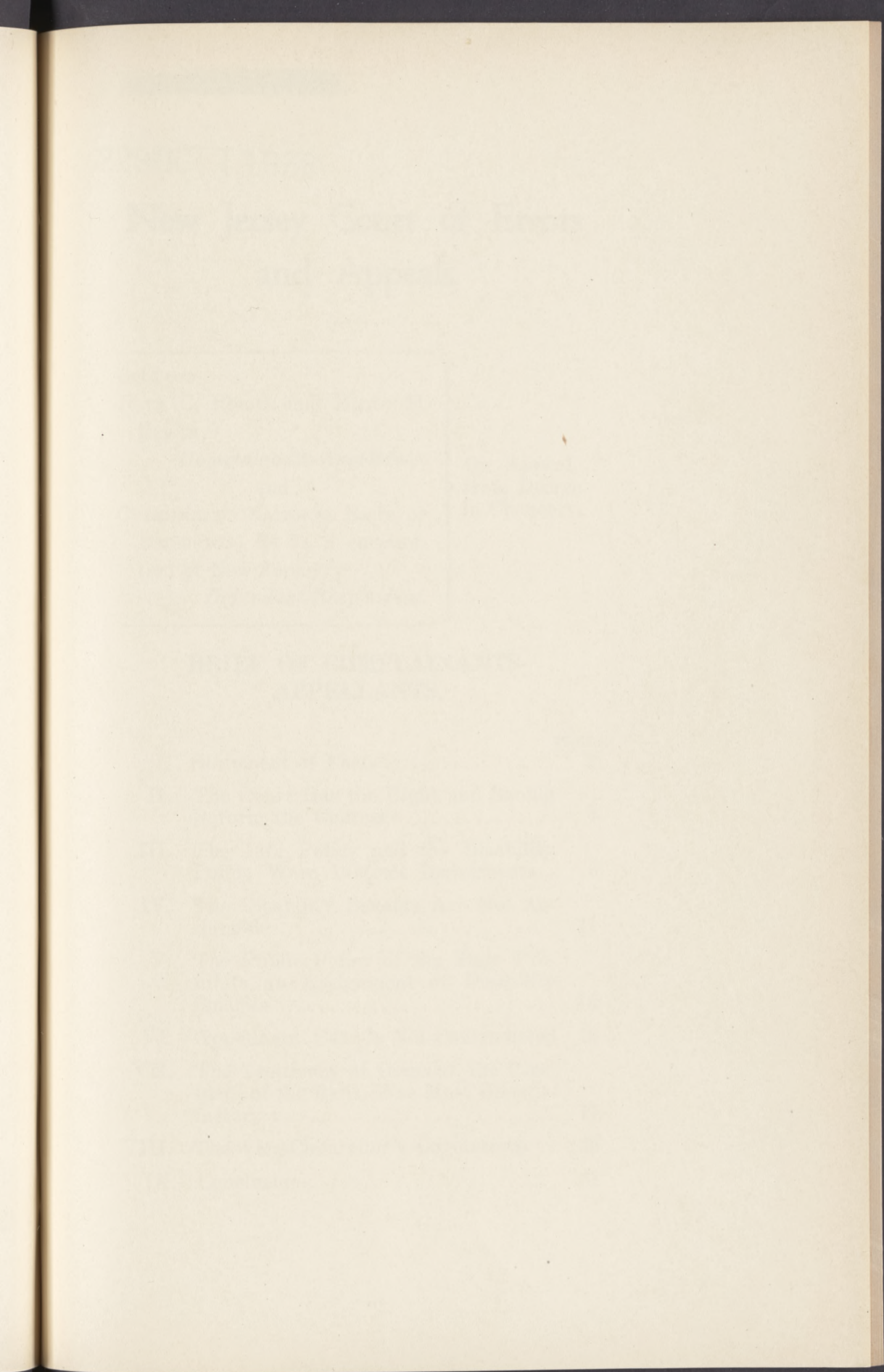












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~~2290CT.T.1938~~
2290CT.T.1938

New Jersey Court of Errors and Appeals

Between
JOHN C. RIGGIN and EMILY F.
RIGGIN,
Complainants-Appellants,
and
CUMBERLAND NATIONAL BANK OF
BRIDGETON, N. J., a corpora-
tion of New Jersey,
Defendant-Respondent.

On Appeal
from Decree
in Chancery.

BRIEF OF COMPLAINANTS- APPELLANTS.

	PAGE
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II. The Court Has the Right and Should Reform the Contract	4
III. The Life Policy and the Disability Policy Were Distinct Instruments..	8
IV. The Disability Benefits Are Not Assignable	11
V. The Public Policy of the State Prohibits an Assignment of Disability Benefits	15
VI. Appellants' Case Is Not Contradicted	16
VII. The Testimony of Diament, the President of the Bank, Was Most Unsatisfactory	17
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I.

Statement of Facts.

John C. Riggin, who has been disabled since 1932 and hasn't been able to do any business since, brings suit against Cumberland National Bank, to reform an assignment of a policy of insurance, so that it will cover only the insurance on his *life*, as was agreed to by the parties.

John C. Riggin and William Riggin were in the oyster business at Port Norris. They had a note in the Cumberland National Bank for \$5,000 on which there was no collateral whatever.

In the Spring of 1931, they decided that they needed some more money in their business. The State Board of Shell Fisheries happened to be entertaining, on board a boat on Delaware Bay, and Mr. Yates, a Director, and Mr. Diament, the President of the Bank, were aboard.

Mr. John Riggin spoke to Mr. Yates, who said he would introduce Mr. Riggin to the President, which he did at that time. The President wouldn't do any business then and said to come to the Bank, which Riggin did, and there saw Mr. Riley, the Cashier, and all the business was done with Riley. He was asked by Riley if he had any collateral for the sum asked, to which Riggin replied, "We have two \$5,000 life insurance policies on the *life* of my brother and myself." Riley said, "That is all right. You prepare the assignment and you can have the money when you want it." That was the bargain. It was the entire bargain.

On May 7, 1931, Riggin had the assignments of the two \$5,000 life policies prepared and delivered, nothing more was said, and the money was put to his credit.

John Riggin was taken seriously ill in February, 1932, and has been totally and permanently disabled ever since. He had intestinal trouble, and in 1932 was in the hospital for 6 weeks, in 1933 for 5 weeks, and since then has been unable to do any business.

The policies assigned contained two insurance features, (1) on the Life of Riggin, with a premium of \$160.70, and (2) for Disability Benefits, with a premium of \$15.50. It will be observed at once, that Riggin agreed to transfer only his life policy and not his Disability Benefits. The assignment of the policy was general.

In April, 1932, John Riggin applied to the Company for disability benefits, and being found to be permanently and totally disabled, was allowed \$50.00 a month.

The Insurance Company, as a precaution, sent all checks to the Bank, making them payable to John Riggin—asterisk—Cumberland National Bank. The Bank endorsed the first three checks and paid them to Riggin, and thereafter the checks were turned over by the Bank to Riggin, without endorsement.

The checks so turned over to Riggin, were 23 in number, and covered from April, 1932, to October 7, 1934—a period of over two years.

Suddenly, thereafter, the Bank refused to turn any more over to Riggin, and Riggin then brought this suit. The Bank at the time of trial held \$2,150 of checks due to Riggin and would not give them up.

This action was brought to reform the assignment, so as to assign only the Life policy, as agreed upon between the parties.

The Bank has at present \$10,000 insurance on the lives of John and William Riggin and over \$2,150 in Disability checks, which it holds as collateral for \$8,000 borrowed.

The entire defense is based on the testimony of Mr. Diamant, the President, who neither made the contract nor remembered the conversation. The defense is based on paragraph 7 of the Answer, page 6, that the Bank gave Riggin the checks as long as the interest on the notes was paid.

II.

The Court has the right and should reform the contract.

Turning now to the authorities, we find that where an instrument is intended to carry into execution a previous parole agreement but by mistake, either as to fact or law, violates the intention of the parties, equity will correct the mistake so as to fulfill the actual agreement. In *Cochran v. Burns*, 91 N. J. Eq. 7, Vice Chancellor Leaming

discussed the propriety of granting reformation where there was alleged to be an agreement to convey lands subject to the rights of tenants, and the conveyance failed to express that reservation. The learned Vice Chancellor said:

“In my judgment, these averments clearly express the essential facts on which reformation may be decreed. If, in fact, the agreement was to convey subject to the rights of the occupying tenants, and the conveyance which was made failed to express that reservation, and the omission of that reservation from the deed of conveyance occurred through mutual inadvertence and mistake of the parties, complainants are clearly entitled to have the deed contain a reservation of that nature.”

So also here the bargain which the parties made was for the assignment of a life insurance policy. The assignment by mistake failed to contain a reservation of the disability contract.

The learned Vice Chancellor indicated by his statement of the law that in such a case as this reformation is granted. He declared:

“The general rule touching reformation of written instruments, as early stated in our federal supreme court, cannot be questioned: ‘Where an instrument is drawn and executed, which professes, or is intended, to carry into execution an agreement, whether in writing or by parol, previously entered into, but which, by mistake of the draftsman, either as to fact or law, does not fulfill, or which violates the manifest intention of the parties to the agreement, equity will correct the mistake, so as to produce a conformity of the instrument to the agreement.’ *Hunt v. Rousmaniere*, 1 Pet. 1, 13. The rule, as there stated, is given express approval in *Exrs’ Wintermute v. Exrs’ Snyder*, 3 N. J. Eq. 89,

500, and is in substance approved by our court of errors and appeals in *Freichnecht v. Meyer*, 39 N. J. Eq. 551, 560. * * *”

That the legal proposition stated above embraces such a case as this is evident from an opinion of Vice Chancellor Lewis in *Louis Stern Sons v. Connolly*, 95 N. J. Eq. 356. The learned Vice Chancellor said:

“If, therefore, equitable relief of reformation customarily exercised under the circumstances heretofore indicated is properly applicable to a situation where the complainant goes so far as to seek reformation, not because the written instrument fails to set forth the correct terms of the verbal agreement, but because it fails to clearly indicate the real intent of the parties, then I would be inclined to grant the reformation prayed for by the complainant in this case.

“This proposition is not free from doubt in my mind, but there are authorities which seem to go that length. * * *”

The Court then proceeded to quote the excerpt from *Hunt v. Rousmaniere*, which Vice Chancellor Lewis quoted in his opinion, and cited among other New Jersey cases *Cochran v. Burns*.

A very common exercise of the authority to reform instruments is that by which a description in a deed is corrected where it conveys more land than was intended by the parties to be conveyed. Such relief is analogous to the type of relief sought here. Among the numerous decisions are *Conover v. Wardell*, 22 N. J. Eq. 492; *Loss v. Obry*, 22 N. J. Eq. 52; *Read v. Cramer*, 2 N. J. Eq. 277.

As stated recently by the Court of Errors and Appeals in *Downs v. Jersey Central Power and Light Co.*, 117 N. J. Eq. 138:

“There may be reformation where either through a mistake common to both parties, or through the mistake of the complainant accompanied by the fraudulent knowledge and procurement of the defendant, the written instrument fails to express the real agreement or transaction.”

This Court has never countenanced an assertion that a man who bargained for one thing and received more than he bargained for was, nevertheless, entitled to retain all that he had received. But such is the attitude of the defendant. It is not even incumbent upon the complainant to establish a definite affirmative exception of the disability contract, and this for at least two reasons. In the first place, the parties having bargained for the assignment of a life insurance policy and the assignment having transferred in addition to the subject matter of the bargain, a disability policy, the defendant has been unjustly enriched to the extent that the last mentioned contract was embraced in the assignment. Even courts of law provide today a remedy against unjust enrichment by the device known as the *quasi-contract*. This relief is patterned after the earlier practice of this Court of giving a remedy against unjust enrichment because of mistake. A familiar example of the exercise of this Court's authority to reform instruments where there has been an unjust enrichment, through mistake, is found in the reformation of releases. *Professor Williston* in his celebrated work on the *Law of Contracts* (Sec. 1551) declares:

“A release though general in terms will be reformed so as to cover merely the right with regard to which the parties were deal-

ing and exclude rights of which they were ignorant.”

This principle has ever been applied to releases given in settlement of a claim for accidental injuries. See *Lion Oil Refining Co. v. Albritton*, 21 Fed. (2nd) 280 (C. C. A. 8th Ct.); *Hind v. Silva*, 75 Fed. (2nd) 74 (C. C. A. 9th Ct.); *Dominicis v. U. S. Casualty Co.*, 116 N. Y. Sup. 975; Restatement Law of Contracts, Sec. 504, Illustration #4.

And Mr. Pomeroy declares (Equitable Remedies, Second Edition, Sec. 678):

“If one should execute a *release* so broad in its terms as to release his rights in property, of which he was wholly ignorant, and which was not in contemplation of the parties at the time the bargain for the release was made, a court of equity may either cancel the release or by reformation restrain its application as intended. * * *”

And it seems to be the law of this State that reformation may be granted even where the mistake is not strictly mutual, the defendant either not noticing the error or observing the error and failing to disclose the fact to the complainant.

Lionel C. Simpson Plumbing & Heating Co. v. Geschke, 76 N. J. Eq. 475; *Zarecki v. Guarantee Realty Co.*, 82 N. J. Eq. 489.

III.

The life policy and the disability policy were distinct instruments.

It is to be observed that the defendant did not merely receive a life insurance contract with some

disability benefits appended thereto, very much as some incidental right to borrow on the policy or convert the insurance from one type into another, might be appended to a life insurance contract. The disability feature was not an appendage, but *an independent distinct contract*. Its legal effect was the same as though it had been written in a separate, distinct policy. In *Legg v. St. John*, 299 U. S. 489, the Court pointed out this very important fact, saying *per* Justice Brandeis:

“The fact that the disability benefits, are provided for in a ‘Supplementary Contract’ issued on the same day as the policy and physically attached thereto does not make them life insurance. The life policy and the contract were executed as distinct instruments. The ‘Supplementary Contract’ was to operate for some purposes as if a part of the life policy. But for all other purposes it is a separate obligation. The hazards covered by the two instruments are obviously different. The beneficiaries differ also. The payment under the life policy was to be made to the wife; the disability benefits are to be paid to Legg himself. A separate and different premium was exacted for the obligations assumed in each instrument. It was provided that forfeiture of the life policy would terminate all right arising from disability; but the supplementary contract could be terminated by Legg without affecting otherwise his life policy.”

Also of help here in a discussion of the meaning of the word “insurance” as used in Section 70a of the Bankruptcy Act, which provides that a bankrupt’s insurance policy which has a cash surrender value payable to himself, his estate or personal representatives, is subject to redemp-

tion by the bankrupt by paying the surrender value of the trustee. The Court held that *disability payments under a disability contract written together with the life insurance policy were not insurance* within the meaning of the statute, saying:

“It was not exempted by section 70a because the obligation to pay disability benefits is not ‘insurance’ within the meaning of that section. The term ‘insurance’ as there used referred only to legal reserve life insurance, the kind of insurance to which a cash surrender value was a common incident. For such value specific detailed provision is commonly made in life policies. Compare *Burlingham v. Crouse*, 228 U. S. 459, 33 S. Ct. 564, 57 L. Ed. 920, 46 L. R. A. (N. S.) 148; *Cohen v. Samuels*, 245 U. S. 50, 38 S. Ct. 36, 62 L. Ed. 143. The effect of the provision in section 70a is to assign to the trustee the cash surrender value of the life insurance policy. *Everett v. Judson*, 228 U. S. 474, 33 S. Ct. 568, 57 L. Ed. 927, 46 L. R. A. (N. S.) 154. No provision is made in the ‘Supplementary Contract’ for a cash surrender value of the obligations thereby assumed; and none is provided by law or custom. * * *

This decision of the United States Supreme Court clearly holds that these were two separate and distinct contracts, placed for convenience in one policy.

It is also notable, that the beneficiaries in the two policies are *different*. (1) The life policy is payable to Emily F. Riggin, and (2) the disability policy to John Riggin. Either of such policies could be made payable to anybody else.

IV.

The disability benefits are not assignable.

The Court cannot help but observe that the right which the defendant claims it was entitled to receive—the right to disability payments which might become payable in the future—is not assignable. While most rights to future conditional receipts of money may be assigned, there are a number of exceptions. In the *Restatement of the Law of Contracts*, Sec. 151, it is pointed out:

“A right may be the subject of effective assignment unless, (b) the assignment is forbidden by statute or by the policy of the common law.”

This principle is supported in this State by numerous decisions, including *Township of Wayne v. Cahill*, 49 N. J. L. 144; *Kip v. People's Bank & Trust Co.*, 110 N. J. L. 178; *Seaman v. Mann*, 114 N. J. Eq. 408.

Among the several types of rights which cannot be assigned are claims for damages for an injury the gist of which is to the person. Thus in Sec. 547 of the *Restatement of the Law of Contracts* it is said:

“(1) An assignment of a claim against a third person or a bargain to assign such a claim is illegal and ineffective if the claim is for

(d) damages for an injury the gist of which is to the person rather than the property, unless the claim has been reduced to judgment.”

A number of New Jersey decisions support this view, including the decision of the Court of Chancery in *Seaman v. Mann*, *supra*; *Weller v. Jersey*

City, etc. Railway Co., 68 N. J. Eq. 659; and *Goldfarb v. Reicher*, 112 N. J. Law 413, affirmed 113 N. J. Law 399.

In *Weller v. Jersey City, etc., Railway Co.*, *supra*, this Court declared:

“* * * A right of action for personal injuries cannot be made the subject of assignment before judgment, in the absence of a statutory provision to the contrary. Except when otherwise provided by statute, nothing is assignable, either at law or in equity, that does not directly or indirectly involve a right to property. * * *”

In *Goldfarb v. Reicher, supra*, this Court pointed out that neither the right of action, nor the right to the moneys to become due when the claim should be reduced to judgment, is assignable. The Court said:

“This attempted assignment of defendant’s right of action, or of the moneys to become due when the claim was reduced to judgment, was nugatory. It is a firmly established rule that a right of action for personal injuries cannot be made the subject of assignment before judgment, in the absence of a statutory provision to the contrary. * * *”

* * * * *

“* * * An assignment of such a right of action before judgment would contravene the policy of our law, and would consequently be illegal and void. In *Jones v. Randall, Cowp. 39*, Lord Mansfield held that ‘many contracts which are not against morality, are still void as being against the maxims of sound policy.’”

In *Seaman v. Mann, supra*, Vice Chancellor Bigelow held that neither a cause of action for false

arrest, nor an interest in the judgment to be recovered thereon, is assignable before judgment.

In short, it is quite definitely the policy of this State not to permit the assignment of claims which do not involve an interest in property and are essentially claims for harm done to the person, as distinguished from harm done to his property.

Essentially there is no difference between such claims and the inchoate contingent possible claim which Mr. Riggin might some day have against the insurer in case he should become totally disabled. The assured is obliged to furnish due proof that he is totally and permanently disabled, according to the provisions of the policy. In other words, the Company must be satisfied, and if it is not then the matter becomes litigated. The policy also provides that thereafter, at stipulated intervals, the Company may require due proof of the *continuance* of total and permanent disability. Here is another possible source of litigation.

The disability contract does not give to the assured a fixed vested right immediately upon the happening of an event, namely, total and permanent disability. The insurer must be satisfied that total and permanent disability exists. The assured must prove that fact. If the Company feels that he has not done so his "right" to permanent disability is merely a claim. In essence, therefore, there is no substantial difference between a claim of this kind and a claim for damages, resulting from wilful or negligent conduct, to the person of the assured.

There is another reason why the disability claim was not assignable. In *Lynde v. Lynde*, 64 N. J. Eq. 736, it is pointed out that alimony to grow due in the future, provided for by a decree of the Court of Chancery, cannot be assigned.

Obviously, if the wife were permitted to anticipate her alimony payments and squander or imprudently lose the money acquired by an assignment of them, she would very likely become a public charge, the husband's obligation to support her having been fulfilled. To prevent such a result the very sound policy has been adopted which prevents her from assigning the installments to grow due. Such an assignment, if valid, would operate upon something which requires nothing but the passage of time to make the payments due. In the instant case, the mere passage of time would not make due any disability payments. A very contingent event would have to take place, namely, the suffering of some misfortune which would create permanent and total disability.

If it should be possible for an assured to assign such payments he would put himself into a position where he would very likely become a public charge. Hence, the same public policy which precludes an assignment of alimony to become due in the future, *a fortiori* should prevent the assignment of such a contingent right to disability payments as exists before any disability has occurred.

The statute (17:18-2) referred to under the next heading V., also holds that these benefits are unassignable.

V.

The public policy of the state prohibits an assignment of disability benefits.

Recently the legislature indicated that such is the policy of this State, by providing that even the creditors of an assured receiving payments under a disability policy should not be permitted to levy upon or attach such funds. The statute (17:18-12) provides:

“No money or other benefit paid, provided or allowed to be paid, provided or allowed by any stock or mutual life, health or casualty insurance corporation on account of the disability from injury, or sickness of any insured person under any policy of insurance, whether heretofore or hereafter issued, shall be liable to execution, attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person whether such debt or liability was incurred before or after the commencement of such disability, but this section shall not affect the assignability of any such disability benefit otherwise assignable, nor shall this section apply to any money income disability benefit in an action to recover for necessities contracted for after the commencement of the disability covered by the disability clause or contract allowing such money income benefit. * * *”

The language used to save any features of assignability is obviously an indication that the legislature has not undertaken to say that such rights should be assignable, but on the contrary has very cautiously refrained from creating for them a

quality inconsistent with the spirit and purpose of the legislation. Apparently the legislature had in mind the fact that it might be proper for a person to assign disability payments after they become due and therefore did not desire to create the inference that such an assignment would be improper.

That permanent disability resulted after the attempted assignment does not add to its validity. The defect is not technical or mechanical, but the result of the policy of our law. The burden in such a case is clearly on the defendant.

VI.

Appellants' Case Is Not Contradicted.

Riggins' testimony is: the approach to Yates, a Director, p. 11, l. 30; the introduction to Diament, the President, who said, "Come to the Bank," p. 11, l. 40; his going to the Bank and seeing the Cashier Riley, with whom the contract was made, Riggins saying they had policies on their *lives*, and Riley saying it was *all right*, and to have the assignment made. (P. 12, l. 20.)

It is very significant that Riley was called by the defendant as a witness, but his examination consisted of only *three* questions. (P. 50, & 51.) The complainant was not permitted to examine him on anything else but his very limited direct examination. (P. 51, l. 25.)

The most significant thing about it is, that *Riley never contradicted what Riggins said, about the*

contract. So Riggin's testimony is uncontradicted and stands as true.

The Bank apparently was afraid, that if we were allowed to cross-examine, Riggin would further prove his case. Complainants had John Riggin, William Riggin and Mrs. Riggin, and there is no denial of their testimony. The only testimony to meet that of John Riggin, William Riggin and Mrs. Riggin is by two witnesses, Mr. Riley, as just stated, and Mr. Diament, whose testimony I do not think is worthy of belief and besides he only knows what has been done since the loan was agreed to.

VII.

The testimony of Diament, the president of the bank, was most unsatisfactory.

The entire defense was based on the testimony of Mr. Diament, President, who did not make the contract, and who did not recollect the conversation.

Mr. Diament, the President, was called by defendant.

1. He starts off by saying he doesn't remember conversations that took place in 1932. (P. 26, l. 30.) He doesn't for very good reasons, he was on the boat, and referred the matter to the Bank, where Riggin went and did business with Mr. Riley, the Cashier, as above set forth. How can Diament remember anything about the contract, when he was not present when it was made?

But he brings into Court a "liability ledger sheet," and the notes, and testifies to them. He does not remember when he saw the policy (p. 39, ll. 20-30), but says he examined it. It does not make any difference, whether he examined it or not, for the bargain was made with Mr. Riley to take a *Life* policy. (P. 12, l. 20.) This is not contradicted by Riley.

2. Diament says the note came due on September 12, 1934, and because the interest wasn't paid, he gave Riggin no more disability checks.

This is untrue.

The account with or statement of the Bank, and furnished by it (C 4, p. 70), shows distinctly that this is untrue. It shows that the last time the notes were renewed, was March 16, 1934, the \$5,000 note, and on March 20, 1934, the \$3,000 note, both for three months. This made them payable June 16th and 20th. Yet the Bank gave the checks to Riggin, for May, June, July, August, September and October, 1934. The President swore untruthfully. He later admits it in the testimony. The last time the notes were discounted was March 16th and 20th. (P. 30, l. 30.)

These liability sheets, now produced by the Bank, were evidently patched up for the occasion by the Bank to show that they didn't give the checks to Riggin after the interest stopped. The checks were held, not put through the Bank and finally protested in September. He "is not so familiar with this liability ledger." (P. 31, l. 15.)

This was wrong.

3. The Bank took \$9.56 off to close the account on February 24, 1938. He admits that this figure would be wrong, if the notes came due and were protested in September, 1934. (P. 44, ll. 0 to 21.)

This was wrong.

4. If the discount were taken off, and the notes were discounted in September, the Bank statement (C 4) would be wrong. "Yes, this statement is wrong according to the note." (P. 35, l. 1.)

Could not explain.

5. If what Diament said was true, the assignment was an absolute assignment to the Bank, and the money from the Disability Benefits belonged to the Bank.

He could not explain that if the purpose was to transfer the Disability Payments to the Bank, why the Bank gave them away for over two years. (P. 41, l. 1.)

His attempted explanation that the interest became due in October was, as before shown, untrue, by the records of the Bank.

It was illegal to give checks.

6 The Bank, if he tells the truth, was absolutely illegal, in giving away for 23 months, the assets of the Bank. The attempt to say it is like dividends is farcical to say the least. It was the

depositors' money. How absurd for the Bank to say that when Riggin became sick and ill and couldn't pay interest, that then the Bank gave the money away. (P. 42, l. 20.)

Letters to Insurance Company show he is now telling untruths.

7. Diament wrote three letters to the Insurance Company, dated October 10, 1934, November 7, 1934 and November 30, 1934. (Ex. C 4, p. 70.) These letters are very enlightening, but never considered by the Court. On October 10, 1934 the Bank did not know that they owned the Disability Policy, for the letter says: "We understand that Riggin and his wife * * * are receiving disability benefits, and we are wondering if they are on this policy." The Bank had possession of the very policy all of the time.

And he says further: "Could the checks be made payable to this bank."

In the letter of November 7th he says, referring to the check that was sent as usual, with an asterisk between Riggin and Cumberland National Bank: "We would like to return this check to you and have it made out payable to John C. Riggin and this Bank jointly."

In the letter of November 30, 1934, he says: "We are trying to get Mr. Riggin to endorse this check so that we can apply it on the *interest* due us."

If he *then* believed, what he *now* says on the stand, why would he not want it to apply on the

principal, as well as on the interest. If he had an assignment of the Disability Contract, he could apply the subsequent checks to the principal that was due.

The Bank had no collateral on the first note of \$5,000, and took two \$5,000 life policies of John and William, with \$10,000 each, double liability. No doubt, John will not live long, and they will get the \$5,000. which will be due on his life. They still hold the policy on William for \$5,000, and the other endorsements.

He doesn't understand.

8. Mr. Diamant says (p. 30, l. 10): "I *don't* just *understand* this—the date is September 12th and *due* date September 15th on \$5,000.00 note, and September 20th on \$3,000.00." These were the last notes discounted. (P. 30, l. 33.)

He was wrong.

9. (P. 30, l. 32):

"March 16th \$5,000 note discounted; March 20th, \$3,000 note discounted.

A. 'That is right.'

"Q. Now this is the last time they were discounted wasn't it. A. Yes.

"Q. Then you were *wrong* when you say that they were discounted at a later date?

A. Yes."

Statement C 4 is correct.

10. (P. 31, l. 30):

"Q. That is (the statement given Riggins C 4) is correct, isn't it?

A. That is all right—yes—that is the statement of the Bank Balance."

He swore to untruth.

11. (P. 30, l. 38). Referring to interrogatory: "I don't think it is." But he swore to the interrogatory, which was different.

(P. 30, l. 38):

"Q. Then you were wrong? A. Yes.

Q. Well you signed these interrogatories didn't you? A. Maybe I am not reading this liability ledger sheet just right. I am not so familiar with this."

He doesn't know.

12. (P. 34, l. 8):

"Q. Now that you have seen these, there is your statement again C4, did these notes ever go into the Bank? A. *I don't know.*"

The Statement of the Bank is wrong.

13. (P. 35, l. 1 &c):

"Q. It wouldn't make this statement wrong, would it? A. Yes, this statement is wrong according to the note."

The Statement is wrong.

14. (P. 37, l. 15):

"Q. If those notes had been used by the Bank, that additional discount would have appeared on the statement wouldn't it? A. That statement is *wrong.*"

Doesn't know if he made a mistake.

15. (P. 37, l. 35):

"Q. Do I understand you made a mistake in making out this? A. I don't know."

Doesn't know what initials mean.

16. (P. 38, l. 1): Doesn't know what "N. P." means on note. No Protest, Notary Public, or what.

No employees in Court.

17. No other employees of Bank are in Court.
(P. 38, l. 28 to 35.)

Doesn't know if the President looked collateral over before making loan.

18. (P. 39, l. 15-30):

“Q. Was it before or after the note was discounted (that he saw the policy)?

A. Well, I can't say whether it was—I suppose it was before because we always look our collateral over.”

Riggin never spoke to President.

19. (P. 40, l. 15): “Mr. Riggin never said a word to me about the policy.”

He had the right to give depositor's funds away.

20. (P. 40, l. 29):

“We had a perfect right to give away the depositor's money—Yes.”

Money was assigned to the Bank.

21. (P. 40, l. 39):

“Q. Was it your money (checks given to Riggin)?

A. Well, it was our money, yes.”

(P. 41, l. 15):

“The money was assigned to us.”

He didn't think.

22. (P. 41, l. 20):

“Q. I want to know what you thought about it (the money he paid Riggin), did you think it didn't belong to you? A. I didn't think.”

(P. 42, l. 10): Gave checks away when Riggin was disabled and couldn't pay—\$1,583.60.

(P. 49): On April 23, 1934 (C 4) there was a balance of \$9.56 to the credit of Riggin, and this was appropriated by the Bank on February 4, 1938. There is no money when the notes were alleged to have been protested in September, 1934.

He didn't make it clear.

23. (P. 47, l. 19):

“Q. You didn't ask them that, did you?

A. That is what I was referring to. Maybe I didn't make it clear there.”

(P. 47): “I heard they were getting benefits from disability benefits.”

He asked about the policy but he had to find out about others.

24. (P. 47, l. 27):

“A. I knew what this policy covered.

Q. Why did you ask about it? A. I was asking about these other policies.

Q. You were asking about another policy although you referred to this particular one?

A. Yes.”

Take life policies alone.

25. (P. 49, l. 17):

“Q. Does your bank make loans on policies that don't have these disability contracts in them? A. Yes, we take insurance policies as collateral.”

This is the man upon whom the whole defense rests. This man whose answers are so very unsatisfactory—and so untrue.

While the bargain was made with Mr. Riley and he does not contradict anything the complainants say, the President draws all these conclusions from a liability ledger of the Bank, which the bank statement proves wrong.

VIII.

The Vice-Chancellor's Conclusions.

The learned Vice-Chancellor said:

“It may well be that the Court of Errors and Appeals could be made to see the light.” We have no doubt, that we can show this Court the light which the Vice-Chancellor did not see.

The learned Vice-Chancellor's opinion was erroneously based on his conception of the facts. He says (p. 52, l. 18):

“The factual situation here, upon which we must apply any relief that might be granted is * * * clear and practically uncontroverted.”

He apparently assumed facts which were not in the testimony, and misconstrued other facts, and failed to take into consideration, and entirely disregarded, written evidence. This we have heretofore pointed out.

He says (p. 52, l. 30) a talk was had with Diamant or Riley in which it is alleged he said:

“Send down your collateral; if it is satisfactory to the bank we will make an additional loan. Now then, it ended there.”

This was not so. Here is the testimony: Mr. Diament doesn't remember the conversation. (P. 26, l. 30.) Mr. Riley did not testify to anything. (Pgs. 51 and 52.)

Mr. Riggin (p. 11, l. 39):

“He didn't give me an immediate answer * * * but said you come to the bank and find out.”

He went to the bank and saw Mr. Riley. (P. 40, ll. 1 and 3.) And the bargain was then made.

The learned Vice-Chancellor says (p. 52, l. 39):

“Neither Riley nor Diament, of course, could have entered into a contract for the bank to discount the paper, down on the boat, without action of the board of directors, nor is there any contention on the part of Mr. Riggin that such was the case.”

This was an error. Loans are constantly made by the officers without the consent of the board of directors. Whenever the board meets after a loan is made, (and such meetings may be as long as a month afterward) it then confirms *in bulk* the action of its officers.

There was not a word in the case about a board of directors, or that even one existed in the bank. Even if the board confirmed the loan afterward, it got security for the loans, on the *life* policies of \$10,000, that it never had before. The board naturally would be satisfied with the *life* policies. This was an absolute conclusion, not based on the evidence.

The learned Vice-Chancellor further says (p. 53, l. 32):

“and (Riggin) evidently asked the insurance agent to assign the policy, and the insurance representative assigned the policy.”

This quotation does not agree with the facts. Riggin asked to have the “*life* insurance policy” assigned, not the policy (p. 12, l. 27):

“I told him I would like to have an assignment, like to assign, Bill and I would like to assign our *life* insurance policies.”

The learned Vice-Chancellor says (p. 54, l. 14):

“Mr. Diament says he looked over the policy and found it in due form and found that it contained, in addition to the ordinary life feature, the other two features, and after an inspection of the policy and a consideration of the loan, the loan was passed.”

Mr. Diament testified (p. 39, l. 25):

“Q. Was it before or after the note was discounted? A. Well, I can't say whether it was—I suppose it was before because we always look our collateral over.”

The fact is that Riley, the cashier, handled the case and Diament had nothing to do with it. Riley did all the business.

The learned Vice-Chancellor says (p. 54, l. 25):

“There is nothing to show that the bank in receiving that policy, got more than they contemplated.”

If Mr. Riley and Mr. Riggin agreed that the bank was to get only the *life* policies of \$10,000, the bank certainly got more, when the disability

policy was also given to them. This is certainly shown.

The life policy had a present worth, because everybody *must die*. There was, however, no present value to the disability policy, because Riggin was perfectly well and there was no evidence or thought that he ever would be sick. When the bank got the life policy, it got all that was worth anything, and they were satisfied.

The learned Vice-Chancellor says (p. 53, l. 20):
 “The complainant knew exactly what his insurance policy said, I assume.”

This is a most violent assumption, to say the least. He knew he had a life policy with double indemnity and a disability policy. But to assume that he knew all the terms of that policy is a little too absurd. There is no member of this Court, or anyone else, who knows “exactly what his policy says.” It is quite evident that the learned Vice-Chancellor disregarded the very significant *written* testimony which was quite enlightening.

For over two years the disability checks were handed over to Riggin—\$1583.60 from October, 1932 to October, 1934. If Riggin assigned his disability policy to the Bank, why did they not keep these checks and apply them to the interest and to the principal?

The moment the assignment was made of the disability policy, the Bank was criminal if it gave any part of it away.

Mr. Diament testifies (P. 40, l. 28) :

“Q. What right did you have to do that?

A. We had a perfect right to do that.

Q. To give away the depositors' money?

A. Yes.”

(P. 40, l. 40) :

“A. Well, it was our money.”

The three letters from the Bank (from Mr. Diament) Exhibit C 6 (p. 71, l. 32) :

In the letter of October 10, 1934, he says :

“We understand that Mr. Riggin and his wife, are receiving disability benefits and we are wondering if they are on this policy.”

This was in October, 1934, and the Bank did not know that anything but the life policy was assigned. And further (p. 72, l. 10) (a) They did not know that the disability policy was assigned.

“Will you kindly advise us whether they cover this policy or another policy * * * If they cover this policy then could these checks be made payable to this Bank * * *”

Mr. Diament who now swears that when he made the loan he saw the disability clause in the policy. On October 10, 1934, he did not know anything about the disability clause or checks and asked the insurance company to tell him. How absurd this is.

The letter of November 30, 1934, says, Mr. Riggin refused to sign the checks (p. 74, l. 13) showing that he always believed he had only assigned to the Bank the *life* policy.

The learned Vice-Chancellor paid no attention whatever to any of these exhibits and ignored

them entirely in arriving at his conclusions. They were not disputed.

The learned Vice-Chancellor apparently thought that his decision in the case of *Spangler v. Kartzmark*, 187 A. R. 770, had a controlling effect on his decision in the present case.

In this he was undoubtedly mistaken. That was a case in which a release was given for personal injuries received. Later when complainant tried to have the release set aside, it appeared that one physician said the injuries were greater, and another said they arose from other causes. Of course, in such a situation, the release could not be set aside.

The Vice-Chancellor also lays down the rule in such cases to be as follows:

“That in order to invalidate a release on account of mutual mistake, the mistake must relate to a past or present fact, material to the contract, and not an opinion respecting further conditions, as a result of present facts.”

It is quite apparent that this has no application to the facts in the case at hand.

Here is a case where an assignment was given (not a release) which, (by the undisputed testimony) was for the *life* policies. If by mistake, more was put in the assignment than was contemplated, the Court will undoubtedly correct the mistake—especially in equity, as before stated. Equity does justice.

IX.

CONCLUSION.

The application is to reform the assignment so it will only assign what was agreed upon.

The testimony of what the bargain was, is testified to by John, William and Mrs. Riggin and is not contradicted by Mr. Riley who testified in Court.

The testimony of Diament, the President, is so doubtful and untruthful that it cannot be believed, and besides he does not have any knowledge as to what Riggin and Riley agreed to. At all events his testimony is worthless, as proving anything.

The Vice-Chancellor, apparently took a wrong view of the testimony, and assumed that Diament was telling the truth and that he made the contract—which he didn't do.

It is therefore insisted, that the decree should be revised, and a decree entered for complainant.

Respectfully submitted,

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LEONARD J. EMMERGLICK,
Of Counsel with Complainants-Appellants.

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Brief of Defendant-Respondent

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**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

JOHN C. RIGGIN and EMILY F. RIGGIN,
Complainants-Appellants,

v.

THE CUMBERLAND NATIONAL BANK OF BRIDGETON,
N. J., a corporation,
Defendant-Respondent.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF DEFENDANT-RESPONDENT.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Court of Chancery dismissing the complainants' bill of complaint.

The bill seeks to have reformed an assignment made by John C. Riggin and Emily F. Riggin of all their rights, title and interest in and to a certain policy of insurance issued by The Mutual Life Insurance Company of New York on the life of John C. Riggin with Emily F. Riggin as beneficiary.

Brief of Defendant-Respondent

The policy of insurance is dated April 25, 1929, and among other provisions contains a provision that if before obtaining the age of sixty years the insured shall become totally and permanently disabled that the insurance company will pay to him \$50.00 per month during such disability and will waive the payment of each premium as it thereafter becomes due during such disability.

On May 7, 1931, John C. Riggin and Emily F. Riggin assigned all their right, title and interest in and to this policy to The Cumberland National Bank of Bridgeton.

The policy was assigned as collateral security for a loan made by The Cumberland National Bank of Bridgeton.

On or about April, 1932, John C. Riggin became totally and presumably permanently disabled and under the terms of the policy The Mutual Life Insurance Company of New York made checks for the disability payment to the order of John C. Riggin-The Cumberland National Bank of Bridgeton and sent the checks to the bank.

The Cumberland National Bank of Bridgeton turned the checks over to John C. Riggin as long as interest was paid on the indebtedness to the bank. When interest was no longer paid on the notes the bank retained the checks and insisted that the said John C. Riggin endorse them so that the money could be applied on account of the indebtedness. This the said John C. Riggin refused to do.

The bill sets up that through the mutual mistake of the parties the disability benefits were not excepted from the assignment and contends that it

Brief of Defendant-Respondent

was a mutual mistake and that the said John C. Riggin did not intend to assign and The Cumberland National Bank of Bridgeton did not intend to receive any assignment of the disability benefits.

The Cumberland National Bank, by its answer, contends that there was no mutual mistake and the bank intended to receive all the right, title and interest of said John C. Riggin and Emily F. Riggin, his wife, in the insurance policy, including the disability benefits.

This seems to be the only question under the pleadings and under the evidence in this case and the Vice-Chancellor found that there had been no mutual mistake and dismissed the bill.

POINTS.

1. Under the pleadings and proof reformation is sought only on the ground of mutual mistake of the parties.

2. Defendant-respondent contends that there was no mutual mistake and that, therefore, there is nothing to reform.

Point I.

Relief is not sought on any ground other than that of mutual mistake of the parties.

Paragraphs five and six of the bill of complaint (State of the Case, page 2), provides:

Brief of Defendant-Respondent

“5. John C. Riggin was in good health and not disabled or entitled to such payments when the policy was assigned, and the said Cumberland National Bank did not bargain for or expect to receive, or have knowledge of rights to disability payments, and did not expect to receive any such benefit from the complainant, John C. Riggin, the said Bank having bargained for and agreeing then and there to receive only the insurance on John C. Riggin’s life.

6. When John C. Riggin and Emily F. Riggin, his wife, executed the said assignment they had not agreed to and did not intend to assign anything but the insurance on the life of John C. Riggin.”

Point II.

The defendant-respondent contends that there was no mutual mistake and that, therefore, there is nothing to reform.

LAW.

The rule in reference to reformation for mutual mistake is laid down in *Pomeroy’s Equity Jurisprudence*, Fourth Edition, Volume 5-675, under the caption of “Reformation for Mutual Mistake”:

“Reformation is appropriate in cases of mutual mistake,—that is, when an agreement has

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been made, or a transaction has been entered into or determined upon, as intended by all the parties interested, but in reducing such agreement or transaction to writing, through the mistake common to both parties, the written instrument fails to express the real agreement or transaction. In such a case the instrument may be corrected so that it shall truly represent the agreement or transaction actually made or determined upon according to the real purpose and intention of the parties. It is to be observed that the mistake which is ground for this relief must be in reducing the contract to writing. 'In every case, it must clearly and satisfactorily appear that the precise terms of the contract had been orally agreed upon, and that the writing afterwards signed failed to be, as it was intended, an execution of such previous agreement, but, on the contrary, expresses a different contract.' A court of equity will not make a contract for the parties. The mistake may be either as to the contents or the effect of the instrument; but the mistake of both parties must be in regard to the same matter."

Before equity will reform an instrument upon the ground that there was a mutual mistake and does not express the intention of the parties, the mistake must be shown to have been mutual by clear proof amounting to reasonable certainty. *Gross v. Yeskel*, 100 N. J. Eq. 293.

A written contract will not be reformed in equity because of a mistake, in the absence of fraud, un-

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less it is mutual, that is common to both parties and each under the same mistake as to its term. *Caffaro v. American Fire Insurance Company, et al.*, 91 N. J. Eq. 114.

In the case of *Ordway v. Chace*, 57 N. J. Eq., at page 487, the Court said:

“Now, the reformation, as distinguished from the rescission of a contract, can only be decreed in the absence of fraud in the defendant, where the minds of the parties have met contractually, but a mistake has been made in writing out the contract in expressing the meaning, so as to make them appear to enter into a contract which they have not entered into, and the reformation must result in making the contract correspond precisely with that upon which their minds have met.”

In the case of *Santa Maria v. Shell Eastern Petroleum Products, Inc.*, 116 N. J. Eq., page 29, Vice-Chancellor Egan said:

“Reformation is the means by which the instrument is made to conform to the intention of the parties. It is applicable to cases of mistake and fraud. If there is mistake on one side and fraud on the other, reformation is the remedy. Mistake exists when a person, under some erroneous conviction of law or fact, does, or omits to do, some act which but for the erroneous conviction he would not have done or omitted. *Cummins v. Bulgin*, 37 N. J. Eq. 476. It may arise either from unconsciousness,

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ignorance, forgetfulness, imposition or misplaced confidence. Where it arises from imposition or misplaced confidence, relief may be had on the ground of fraud. Where it arises from unconsciousness, ignorance or forgetfulness, no fraud exists and redress must be on the basis of mistake. The mistake must be one that is mutual, material and not induced by negligence. *Swedesboro Loan and Building Association v. Gana*, 65 N. J. Eq. 132; *Paulison v. Van Iderstine*, 28 N. J. Eq. 206."

The reformation of an instrument on the ground of mutual mistake must be shown to have been mutual by clear proof amounting to reasonable certainty. *Ethnes v. Monroe Loan Society*, 120 N. J. Eq. 599.

FACTS.

John C. Riggin testified (p. 10) that he and his brother, William, were in the oyster business in 1931; that they had a note amounting to five thousand dollars in the Cumberland National Bank of Bridgeton and that they desired an additional loan; that John C. Riggin spoke to George Diament, President of the Cumberland National Bank (p. 11), while on a boat trip and says he told him, "We would like to have three thousand dollars more money," and said that Mr. Diament told him to come to the bank and talk to him. Mr. Riggin testified (p. 12) that he went to the bank but did not

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talk to Mr. Diament but talked to Mr. Riley, the cashier. He testified that he told Mr. Riley, "We have two five-thousand dollar life insurance policies on the life of my brother and myself." He further testified (p. 12):

"Q. Now, then, what did you do then?

A. Then I went back to the office at Maurice River, a few days Mr.—a representative of the Mutual Life Insurance Company came in, I told him I would like to have an assignment, like to assign, Bill and I would like to assign our life insurance policies to the Cumberland National Bank, so he prepared the assignment, on his next trip he brought the prepared assignments and told me to have them sworn to before a notary, also have Mrs. Riggins as beneficiary to swear to them before a notary, and then I took those assignments a week later or a few days later, and turned them over to him with the policy he took the assignments and the policies, and that is the last I knew of them."

He testified (p. 13) the assignments were filled in and executed and delivered to him. He testified he did not know how they reached the Cumberland National Bank but said he turned them over to the agent and supposed he turned them into the company but that he did not know what he did with them.

On page 20 he testified he was sure he did not send the assignments direct to the bank. On line 10, page 20, he identified a letter as bearing his signature and said that perhaps he had sent the

Brief of Defendant-Respondent

two life insurance assignments to the bank but did not remember it.

The letter referred to is Exhibit D-1. (Page 75, State of the Case.)

Mr. George Diament, President of the Cumberland National Bank, testified that he had no recollection of Mr. Riggin's speaking to him down the bay about the loan (p. 26). He further testified (p. 27) that he recalled the assignment coming to the bank and that it was brought to his attention. He further testified that the policy and the assignment were brought to his attention and that he remembered the policy had a disability clause in it. He further testified that beginning in 1932 checks for disability benefits were received by the Cumberland National Bank and that they were made payable to John C. Riggin-Cumberland National Bank (p. 28) and that up to and including October, 1934, the bank permitted Mr. Riggin to have these checks because Riggin & Riggin were taking care of and renewing the notes and discount was being paid.

He testified (p. 28) that the notes came due on September 12, 1934, and that they were not renewed and after the October check had been received, witness, as President of The Cumberland National Bank, refused to send the check to Mr. Riggin and insisted on holding it.

On cross-examination the witness said (pp. 38-39), "I understood the policy covered everything with it, the disability and the life insurance and whatever there was to the policy was assigned to us." He further testified (p. 39) that he saw the policy and noted the disability clause before or at the time the loan was made.

Brief of Defendant-Respondent

The assignment of the policy is Exhibit C-1. (Page 67, State of the Case.)

ARGUMENT.

There was no testimony anywhere to indicate that there was a mutual mistake.

It is admitted that John C. Riggin, the complainant, offered to assign the policy of insurance and went to his insurance representative who prepared the assignment and attended to its execution by John C. Riggin and his wife. It conclusively appears by the testimony of the witnesses and by Exhibit D-1 that John C. Riggin mailed the assignment and the policy together with a note for three thousand dollars to The Cumberland National Bank (p. 75).

Mr. Diament testified that he saw the assignment and the policy at the time or before making the loan and that he saw the disability clause on the policy.

It is true that The Cumberland National Bank permitted Mr. Riggin to have the checks for the disability benefits at the time he became disabled up to and including October, 1934. The reason is perfectly plain. The three-thousand dollar note and the five-thousand dollar note, aggregating eight thousand dollars, were being renewed and discount was being paid. Permitting Mr. Riggin to receive the disability benefits under the policy is similar to permitting the borrower to receive the dividends on shares of stock, or the interest on bonds pledged

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with the bank as collateral. This is usually permitted as long as the borrower renews the notes and keeps the interest paid and satisfactorily attends to the paper.

This certainly cannot be said to indicate that the Cumberland National Bank did not intend to assert its claim to the disability benefits when it became necessary to protect its interests.

Mr. Diament further testified that about the time Riggin & Riggin stopped paying discount on the notes they began to transfer their property.

In complainants' brief an attack is made upon the testimony of Mr. Diament, President of The Cumberland National Bank. It is true that the statement furnished by the bank to Riggin & Riggin seems to show that the notes were last renewed on March 16, 1934, but this is simply an error and was fully explained at the hearing. An examination of the testimony shows that there could not have been any question in any one's mind that the notes were last renewed in June, 1934. On page 33 there appears the following:

“Q. Is there any doubt in your mind about it?

A. If I can see the notes, the notes that were protested, I can tell about that better than anything else.

Mr. Loder: No reason why I shouldn't hand him the notes?

The Court: No, I don't see.

Mr. Loder: They are the notes you asked for this morning, Governor Silzer, and I handed them to you. (Notes handed to witness.)

Brief of Defendant-Respondent

Mr. Silzer: I don't care about them.

The Court: I don't see why this witness should be asked if he is positive in so far as the record is concerned, that is what he refers to, he said if he could see the notes he could tell more definitely, I don't see any reason why we should encumber the record by anything turns out to be untrue if he can correct it right now.

A. These notes, the \$5000 note came due September 15th, 1934, and was protested, and the \$3000 note became due September 20, 1934, and was protested. Here are the protests attached thereto."

The notes are Exhibits D-2 and D-3. (Pages 75 and 76.)

On page 31 of the complainants' brief, counsel for the complainants says:

"The Vice-Chancellor apparently took a wrong view of the testimony, and assumed that Diamant was telling the truth and that he made the contract—which he didn't do."

The testimony of Mr. Diamant is consistent throughout and the Vice-Chancellor who gave credit to his testimony had the benefit of observing Mr. Diamant, his manner of testifying and his demeanor while upon the witness stand.

In Point V of complainants' brief it is insisted that the public policy of the State prohibits an assignment of disability benefits, but the statute referred to expressly provides that

Brief of Defendant-Respondent

“but this section shall not affect the assignability of any such disability benefit otherwise assignable * * *”

If the complainants had in mind to make the reservation as to the disability and neglected to do so but did not so inform The Cumberland National Bank and The Cumberland National Bank had in mind that it was receiving all of the right, title and interest of the complainants under the policy, then there certainly was no mutual mistake and there is, therefore, nothing to reform.

The cases cited in complainants' brief on pages 4, 5, 6, 7 and 8 will, upon examination, show that there was a mutual mistake, or at least a mistake on one side and fraudulent conduct on the other. There is no contention in the pleadings and no intimation in the proof that there was any fraudulent conduct on the part of the defendant or that the defendant received anything that it did not expect and intend to receive.

We respectfully submit that the decree of the Vice-Chancellor should be affirmed.

FRANK R. BACON,
Solicitor for Defendant-
Respondent.

LEROY W. LODER,
Of Counsel with Defen-
dant-Respondent.

New Jersey Court of Errors and Appeals

Justice
John C. Roeder and Lewis B.
Lynch
Comptroller General,
and
Sergeants at Law, Clerk of
Court, and
Deputy Clerks of Court,
New Jersey

In Reply,
John C. Roeder,
Comptroller General

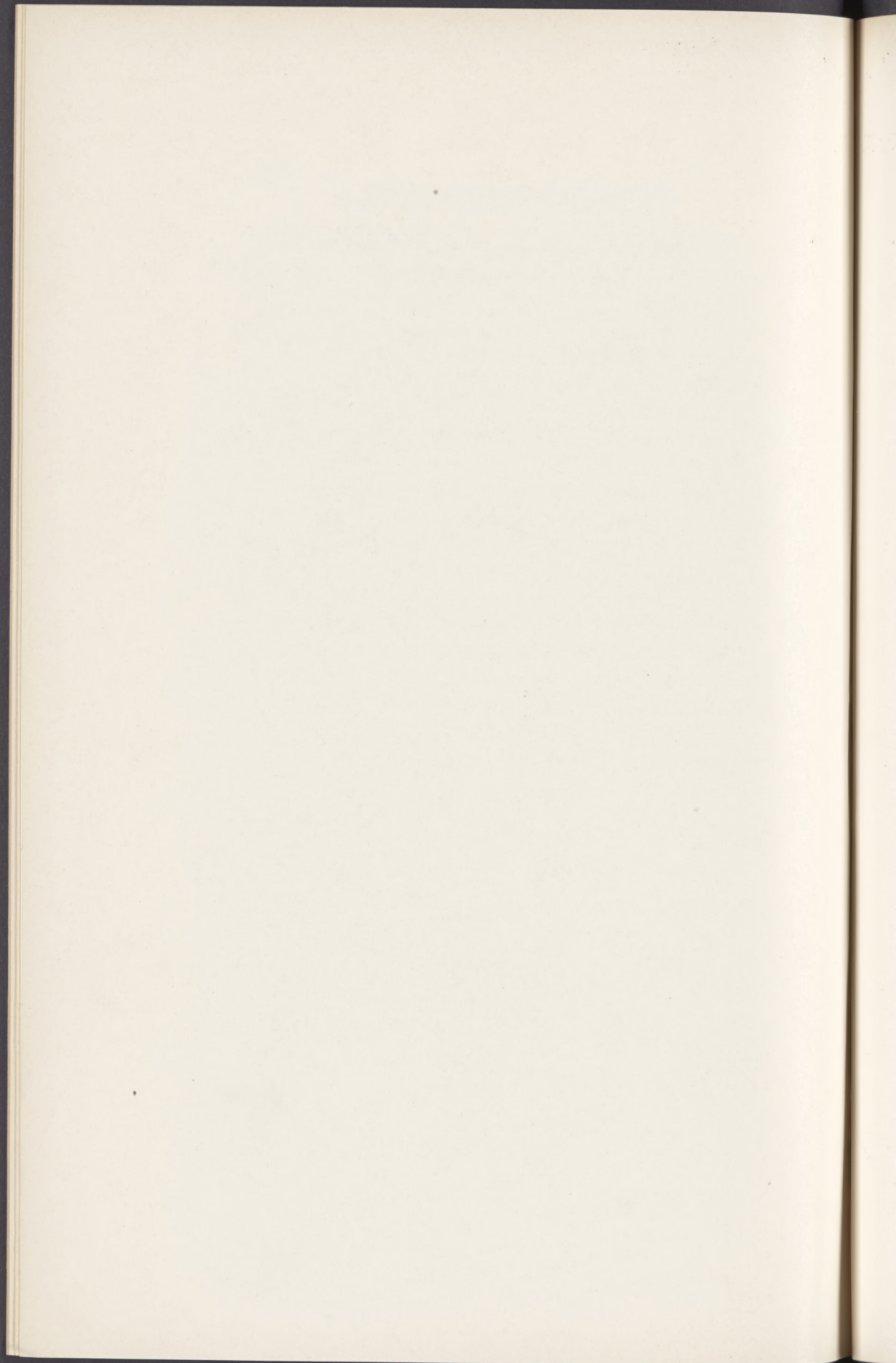
ANSWERING BRIEF OF COMPLAINANTS- APPELLANTS

The undersigned, in compliance with the order of the
Court, which was delivered orally, and copy sent
by mail, that an answer to a written in-
terrogatory be made, under oath, to the

Justice Roeder in what was a Memorandum to
J. C. Roeder, under the rule of the Court, which
is as follows:

"The right to take a deposition is a
fundamental right, and it is not to be
denied without cause shown. It is the
policy of the law to give the party the
right to take a deposition, and it is the
policy of the law to give the party the
right to take a deposition, and it is the
policy of the law to give the party the
right to take a deposition."

"To demand a deposition is to demand
the testimony of the witness, and it is
the policy of the law to give the party
the right to take a deposition, and it is
the policy of the law to give the party
the right to take a deposition."



New Jersey Court of Errors and Appeals

Between JOHN C. RIGGIN and EMILY F. RIGGIN, Complainants-Appellants, and CUMBERLAND NATIONAL BANK OF BRIDGETON, N. J., a corpora- tion of New Jersey, Defendant-Respondent.	} On Appeal from Decree in Chancery.
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ANSWERING BRIEF OF COMPLAINANTS- APPELLANTS.

We do not quite agree with the opinion of the Court, which was delivered *orally*, nor with our opponents, that no reformation of a written instrument will be made, unless there is fraud.

Justice Bergen in *Giammares v. Allemannia*, 91 N. J. Eq. 114, states the rule quite explicitly, when he says:

“The right to have reformation prayed for depends upon an agreement, part of which it is alleged was omitted when reduced to writing, because of mutual mistake which both admit, *or the evidence shows they ought to admit*, and it rests, in the last analysis, upon *what the agreement was.*” (Italics ours.)

“To warrant a reformation for mistake, the demonstration of the mistake, must be clear, and satisfactory, and such as produces a strong conviction of truth.”

Universal v. America, 95 N. J. Eq. 752,
123 A. 618.

“The evidence to warrant reformation must
be clear, unequivocal and convincing.”

Brook v. Cadillac, 101 N. J. Eq. 55, 136 A.
713.

See also cases cited by Egan, V. C., in
172 A. R. 337.

Every case, depends on the evidence of that case, for the Court to determine whether or not to reform the instrument. If it is satisfied there was a mistake the Court will reform it, and if not satisfied it will not do so.

The entire defense in this case was twofold, and was offered by Mr. Diamant. It consisted of the statement (1) that the bank paid the disability checks until Riggin refused to pay interest on his debt, and (2) that he had (he believes) seen the agreement, we desire to reform. Neither is a defense.

Even Diamant does not say that the agreement expressed what was intended, for he does not know, the agreement was made by Riley. All he says is that “he remembers the policy had a disability clause, and the policy was assigned to the bank.” This we admit, or there would be no suit.

He does *not*, however, say that this was the agreement the parties intended, for he did not make it, and Mr. Riley who made it, does not contradict Riggin. Therefore there is no contradiction of the plaintiff's testimony.

The defense that the bank paid the disability checks until Riggin stopped paying the interest, is shown to be absolutely untrue, by the bank records themselves, Diament's admissions, and the Riggin testimony.

Was it good Bank policy, to give Riggin checks amounting to \$1,583.60 at a time when he was ill and couldn't work, or was it done because the disability policy was not transferred to the bank and the bank didn't expect it. Furthermore, the bank statement C-4 shows that on March 24, 1934 Riggin's account was overdrawn \$23.19, and this has continued to this date. If these notes came due in September, 1934, the interest and protest fees would have been on the statement and they were not.

If the account was overdrawn \$23.19 on March 24, 1934, it was also overdrawn when the notes became due in July and when the notes became due in September, (as Diament says). There can be no truth in defendant's statement that the checks did not go to Riggin, because he did not pay interest. Why didn't they take one check and pay the \$23.14, the amount overdrawn—which was interest?

There is no answer in defendant's brief to the case of *Leqa v. St. John*, 296 U. S. 487; nor to the argument that these disability payments are not assignable.

Respectfully submitted,

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Solicitor for Complainants-Appellants.

LEONARD J. EMMERGLICK,
Of Counsel with Complainants-Appellants.

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