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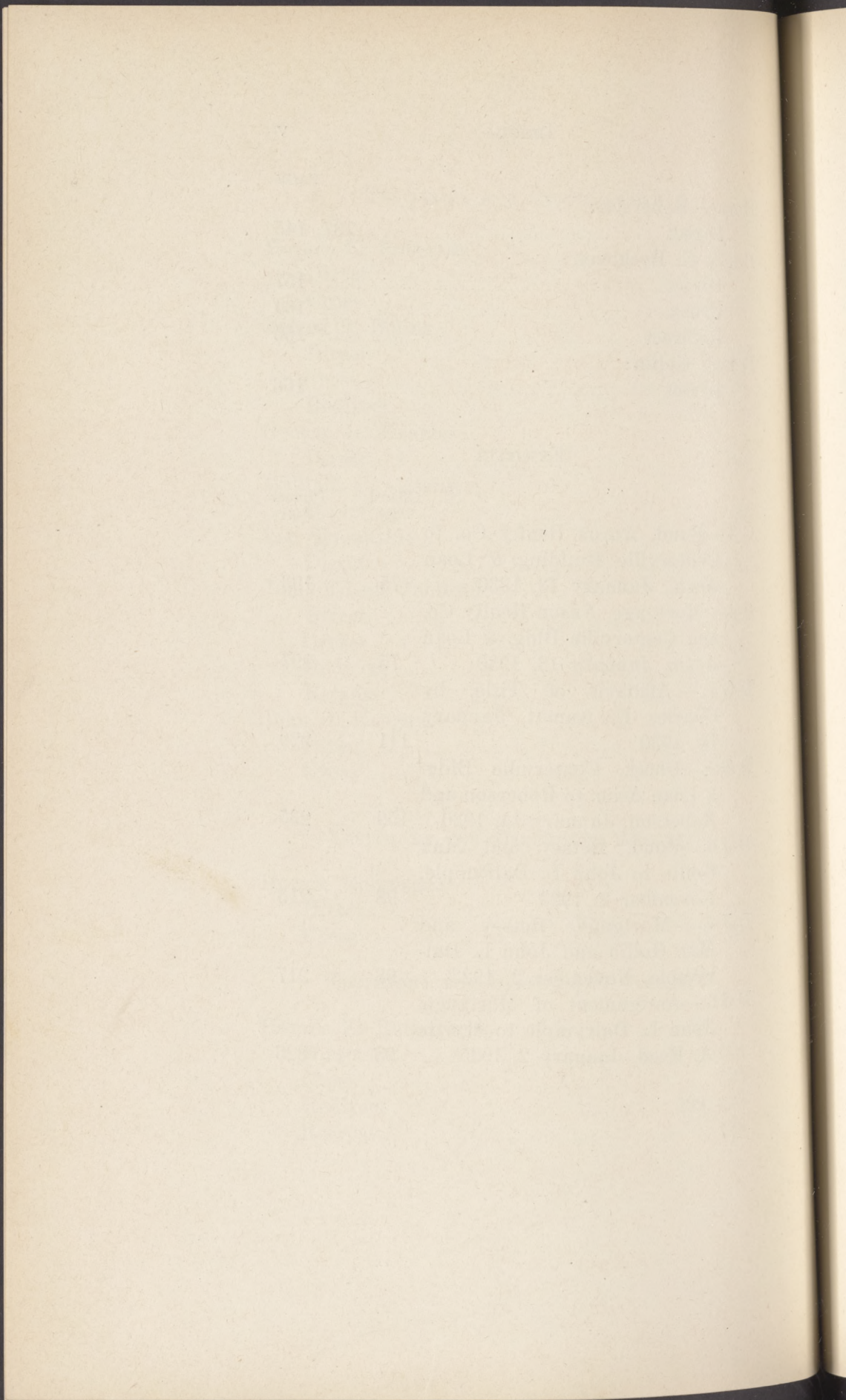
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**Bill to Foreclose**

92-291

(Filed Sept 14, 1932)

**IN CHANCERY OF NEW JERSEY** 10

*To the Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey:*

The Complainant, Centreville Building and Loan Association, a corporation of the State of New Jersey, respectfully shows that:

1. On April 11, 1928, the Anson Realty Company, a corporation organized under the laws of the State of New Jersey, being indebted to the complainant in the sum of Fourteen thousand (\$14,000.00) Dollars, executed to it a bond of that date to secure that sum, payable April 11, 1929, with interest at the rate of six per centum per annum, payable monthly, on the second Monday of each and every month ensuing the date of said bond. 20

2. To secure payment of the bond, said Anson Realty Company, a corporation as aforesaid, executed to said complainant, a mortgage of even date with the bond; and thereby conveyed to it in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage, having been first duly proved and the certificate of proof duly indorsed thereon was recorded in the 30  
40

*Bill to Foreclose*

Register's Office of Hudson County, in Book 1498 of Mortgages, page 199, on April 12, 1928.

3. The mortgaged premises are described as follows:

- 10 ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, which are known and distinguished on a "Map of property belonging to E. C. Bramhall, situated in the Second Ward of the City of Bayonne, surveyed and drawn by Smith & Eddy, June, 1880", as lots three (3) and four (4) in plot 2, in block eleven (11) as laid down on said map.
- 20 Said lots front on the easterly side of Avenue C, distant one hundred and ninety (190) feet northerly from the northerly side of West Thirty-third Street, formerly Bayonne Avenue. Each of said lots is twenty-five (25) feet wide and one hundred seventy-two and one-half (172½) feet deep on each side, as laid down on said map. Since the making of said map, Avenue C has been widened so that said lots are now one hundred sixty-two and one-half (162½) feet in depth on each side.
- 30 Said lots are known as lots eight (8) and nine (9) in City Block one hundred and seventy-seven (177) on the Tax Maps of the City of Bayonne in use at the present time.
- 40 Being the same premises described as the fifth tract in a certain deed made by Annett-Mahnken Realty Company to Anson Realty Company, dated March 22, 1928, recorded March 23, 1928, in the Hudson County Register's Office.

*Bill to Foreclose*

4. On April 12, 1928, said Anson Realty Company mortgaged said premises to Ethel M. Joy for \$3000.00, which mortgage after having been duly proved was recorded in the Hudson County Register's Office on April 12, 1928 in Book 1498 of Mortgages, on page 205. Any interest which the said Ethel M. Joy has in said mortgaged premises is subject to the lien of complainant's mortgage. 10

5. Both the bond and mortgage of the complainant contained an agreement that if any interest should remain unpaid and in arrears for the space of thirty days after the same should fall due, then the whole principal sum, with all unpaid interest, should at the option of the mortgagee, or its legal representatives, become immediately due. 20

6. Both the bond and mortgage of the complainant contained an agreement that if any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien should be thereafter imposed or acquired on the said mortgaged premises and become due and payable and remain in arrears for the space of ninety days after the same should fall due, then the whole principal sum, with all unpaid interest should, at the option of the mortgagee, or its legal representatives, become immediately due. 30

7. On June 1, 1930, one-half year's taxes amounting to \$193.95 became due and payable to the City of Bayonne on said mortgaged premises. On December 1, 1930, one-half year's taxes amounting to \$193.95 became due and payable to the City of Bayonne, on said mortgaged premises. 40

*Bill to Foreclose*

ises. On June 1, 1931, one-half year's taxes amounting to \$189.82 became due and payable to the City of Bayonne on said mortgaged premises. On December 1, 1931, one-half year's taxes amounting to \$189.81 became due and payable to the City of Bayonne on said mortgaged premises. On June 1, 1932, one-half year's taxes amounting to \$260.68 became due and payable to the City of Bayonne on said mortgaged premises. On August 2nd, 1932, an accumulation of water rents amounting to \$91.03 became due and payable to the City of Bayonne on said mortgaged premises. Each of said items of taxes and water rents have remained due and unpaid for more than ninety days after the same became due and payable and still remain due and unpaid at the present time, with interest thereon at the rate of seven per cent per annum on each of said items from the date when they severally became due.

8. On June 13, 1932, one month's interest amounting to \$70.00 became due and payable on the complainant's bond and mortgage. On June 13, 1932 the mortgagee paid on account of the principal sum of said mortgage \$557.80 leaving a balance thereof of \$13,442.20. On July 11, 1932 one month's interest amounting to \$67.21 became due and payable on the balance of said principal on the complainant's bond and mortgage and on the second Monday of each and every month thereafter, a like sum of \$67.21 became due upon the balance of said complainant's bond and mortgage according to the terms thereof. Said item of \$70.00, said item of \$67.21 and the like item

*Bill to Foreclose*

of \$67.21 which came due on August 7th, 1932 have remained due and unpaid for more than thirty days after the same became due and payable and still remain due and unpaid at the present time.

9. The said Anson Realty Company has always been in possession of the mortgaged premises. 10

10. By reason of said defaults in payment of interest and taxes when the same became due, complainant has elected that the whole principal sum with all unpaid interest shall be now due.

11. Of the principal sum of \$13,442.20 with interest as aforesaid, from June 13, 1932, and also \$70.00 interest which fell due on June 13, 1932 on \$14,000.00 are due upon the complainant's bond and mortgage. 20

12. Since the making of the said mortgage referred to in paragraph four of this bill of complaint the said Ethel M. Joy has married and her married name is Ethel M. Ardrey.

Complainant is without adequate remedy in the courts of law and therefore prays— 30

1. That Anson Realty Company, a corporation as aforesaid, and said Ethel M. Ardrey, formerly Ethel M. Joy, who are the defendants to this suit, may answer this bill of complaint without oath and each statement therein made:

2. That an account may be taken of the amount due on complainants mortgage: 40

*Bill to Foreclose*

10 3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interest and costs, by a short day, to be appointed by this Court; and that in default of such payments, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands: or

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on its mortgage, with interests and costs:

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

Solicitors and Counsel with Complainant.

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**Order Admitting Parties Defendant**

(Filed *Oct. 24, 1932*)

IN CHANCERY OF NEW JERSEY

92/291

<p>Between</p> <p>CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation of New Jersey,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;">and</p> <p>ANSON REALTY COMPANY, <i>et al.</i>,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>On Bill &amp;c.</p> <p>On Petition &amp;c.</p> <p>Order Admitting Parties Defendant</p>
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This matter being opened to the court by Hirschberg & Nashel, solicitors of the petitioner, Betsey Gollin, in the presence of Frank E. Hilken for Horace K. Roberson, solicitor for the complainant, Centreville Building and Loan Association, and the Court having read and considered the petition and the affidavit annexed thereto, and after hearing argument of the respective counsel, from which it appears that the petitioner Betsey Gollin has an interest in the premises described in the bill of complaint filed herein; it is thereupon, on this 24th day of October, nineteen hundred and thirty-two,

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ORDERED, that the said petitioners, Betsey Gollin, and Max Gollin be and they are hereby made party defendants to these proceedings, and that

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*Decree Pro Confesso*

they plead to the bill of complaint filed in this cause, within 15 days from the date hereof.

LUTHER A. CAMPBELL,  
C.

10 Respectfully advised,  
VIVIAN M. LEWIS,  
V. C.

**Decree Pro Confesso**

(Filed December 27, 1932)

IN CHANCERY OF NEW JERSEY

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92-291

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation, etc.

*Complainant,*

and

30

ANSON REALTY COMPANY, a cor-  
poration, etc., *et al.,*

*Defendants.*

On Bill &c.  
Decree Pro Confesso

40 This cause being opened to the court by Bren-  
ner & Kresch, solicitors of the complainant, and  
it appearing that process of subpoena calling  
upon the defendant to answer the complainant's  
bill of complaint, filed herein, has been duly is-  
sued and returned served upon the defendant,

*Decree Pro Confesso*

Anson Realty Company, a corporation of New Jersey; and

IT FURTHER APPEARING, that the said defendant, Anson Realty Company, a corporation as aforesaid, has not filed an answer to said bill of complaint within the time limited by law but has wholly failed and neglected so to do;

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It is, on this 27th day of December, 1932, on motion of Brenner & Kresch, solicitors of the complainant, ORDERED that the complainant's said bill of complaint be and the same is hereby taken as confessed against the said defendant, Anson Realty Company, a corporation of the State of New Jersey, to the end that such decree may be made against it as the court shall deem equitable and just.

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LUTHER A. CAMPBELL,  
C.

A true copy.

FERD. GARRETSON,  
Clerk.

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**Answer and Counterclaim of the Defendants  
Betsey and Max Gollin**

(Filed Nov. 9, 1932)

IN CHANCERY OF NEW JERSEY

92/291

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Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation, etc.

*Complainant,*

and

ANSON REALTY COMPANY, *et al.*,

*Defendants.*

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On Bill &c.

Answer and Counterclaim of the Defendants Betsey and Max Gollin

The defendants, Betsey Gollin and Max Gollin, who have been admitted as parties defendant to this suit, by an order made herein, dated October 24th, 1932, answering the bill of complaint filed herein, say:—

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1. They have not sufficient information or knowledge to form a belief as to the allegations in paragraph 1 of the bill of complaint and neither deny or admit the said allegations.

2. The allegations of paragraph 2 of the bill of complaint are denied; these defendants further say that the mortgage referred to in said paragraph is invalid and is not a lien upon the premises therein described.

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3. The allegations of paragraph 3 of the bill of complaint are denied; these defendants fur-

*Answer and Counterclaim of Defts. Gollin*

ther say that the complainant's mortgage is invalid and in no wise affects the paramount right, title, interest and estate of these defendants in and to the lands described in paragraph 3 of the bill of complaint.

4. The allegations of paragraph 4 of the bill of complaint are denied; these defendants further say that the mortgage therein referred to is invalid and in no wise affects the paramount right, title, interest and estate of these defendants, in and to the lands described in paragraph 3 of the bill of complaint. 10

5. They have not sufficient knowledge or information to form a belief as to the allegations in paragraphs 5, 6, 7 and 8 of the bill of complaint and neither deny or admit such allegations; these defendants further say that the allegations therein contained in no wise affects the paramount right, title, interest and estate of these defendants in and to the lands described in paragraph 3 of the bill of complaint. 20

6. These defendants deny the allegations contained in paragraph 9 of the bill of complaint. 30

7. They have not sufficient information or knowledge to form a belief as to the allegations contained in paragraphs 10, 11 and 12 of the bill of complaint and neither deny or admit such allegations; these defendants further say that the allegations therein contained in no wise affects the paramount right, title, interest and estate of these defendants in and to the lands described in paragraph 3 of the bill of complaint. 40

*Answer and Counterclaim of Defts. Gollin*

8. By way of further answering the bill of complaint, these defendants say:—

These defendants reiterate the allegations contained in the counter-claim hereinafter set forth and make the same a part hereof, with the same force and effect as if fully repeated herein.

10

## COUNTER-CLAIM

By way of counter-claim against the complainant, Centreville Building and Loan Association and against Ethel M. Ardrey, formerly Ethel M. Joy, one of the defendants in this suit, these defendants say:—

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1. That Irving Gollin, a son of these defendants, early in 1923 erected upon a plot of ground known as No. 880 Boulevard, Bayonne, N. J., an apartment house consisting of thirty-two families, and running short of funds during the course of construction, arranged to borrow money by giving as security, mortgages on properties belonging to his mother, the Defendant, Betsey Gollin, which properties are commonly known as Nos. 249, Broadway; No. 501 Boulevard; No. 499 Boulevard and No. 772 Avenue C, all located in the City of Bayonne, County of Hudson and State of New Jersey. The property last mentioned, No. 772 Avenue C, being the same premises now sought to be foreclosed by the complainant herein. And to effectuate these transactions, the said Irving Gollin made a deed of conveyance of the premises known as No. 880 Boulevard, Bayonne, to his

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*Answer and Counterclaim of Defts. Gollin*

2. After the said Irving Gollin had exhausted all the funds raised on the securities of the properties belonging to his mother, he was still indebted to his creditors, and he and these defendants applied to Horace Roberson, Esquire, who had for many years acted as attorney for them, for a loan of sufficient moneys to pay off all his creditors and to discharge the mortgage loans procured on the properties of the defendant, Betsey Gollin, and offered to secure the repayment of such loan by a mortgage on the apartment house known as No. 880 Boulevard, Bayonne, N. J. The said Horace Roberson, endeavored to procure such loan and did procure it, but instead of a mortgage, a deed to said Boulevard apartment house was given by these defendants to the Annett-Mahnken Realty Co. a corporation of the State of New Jersey, for the moneys to be advanced by the said company, and a Trust Agreement dated May, 1924 was entered into by the said Annett-Mahnken Realty Co., a corporation, and these defendants.

3. Under the declaration of trust, the Trustee, Annett-Mahnken Realty Co. was obligated to pay all the debts of Betsey Gollin and Irving Gollin, which arose out of the erection of the apartment house mentioned therein and the mortgage and other liens thereon, and the lands upon which the said apartment house was erected, together with the debts in any wise contracted, which enabled the defendant Betsey Gollin and Irving Gollin aforesaid, to obtain moneys used and employed in and about such construction and for moneys so advanced, to rely upon the security of the said apartment

*Answer and Counterclaim of Defts. Gollin*

house known as 880 Boulevard, Bayonne, N. J., for reimbursement.

10 4. Pursuant to the provisions of the declaration of trust, the said Trustee, Annett-Mahnken Realty Co., a corporation, paid various creditors of Betsey Gollin and the said Irving Gollin. Among the obligations so paid, was a certain mortgage covering premises commonly known as No. 772 Avenue C, Bayonne, N. J., held by one, Myrtle A. Reid, but in fact belonging to Horace Roberson, in the sum of Three Thousand (\$3,000) Dollars. The sum of Three Thousand (\$3,000.00) Dollars represented by said mortgage had been previously advanced by Horace Roberson for use in the erection and the said apartment house known as No. 880 Boulevard, Bayonne, N. J., and the payment of the said mortgage was part of the obligation of the said trustee, Annett-Mahnken Realty Co., a corporation, to pay the debts of Betsey Gollin and Irving Gollin, in any wise contracted, which enabled the said Betsey Gollin and Irving Gollin to obtain moneys used and employed in the erection and construction of the aforesaid apartment house.

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40 5. The said Trustee, Annett-Mahnken Realty Co., after paying the above mentioned mortgage, instead of cancelling the said mortgage, and looking to the apartment house as security for said payment as was contemplated in and provided for by the declaration of trust, took an assignment of the said mortgage and shortly thereafter, without first making an accounting, to the said Betsey Gollin, and Irving Gollin, instituted foreclosure proceedings thereon. The

*Answer and Counterclaim of Defts. Gollin*

said Trustee, Annett-Mahnken Realty Co., at the foreclosure sale bought in the property known as 772 Avenue C, Bayonne, N. J. That the conduct of the Trustee, Annett-Mahnken Realty Co. in foreclosing the said mortgage, and purchasing the said property at its own foreclosure sale was improper and in flagrant violation and abuse of its duties and obligations under the said declaration of trust, and the property thus acquired by the Trustee, Annett-Mahnken Realty Co. a corporation, through its purchase at the foreclosure sale, is held by the said Annett-Mahnken Realty Co., a corporation, by a continuing trust for the benefit of the cestui-que trustent, Betsey Gollin, one of the defendants in this suit.

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6. In April, 1928, the trustee, Annett-Mahnken Realty Co., a corporation, conveyed the said premises known as No. 772 Avenue C, without consideration, to its affiliate, Anson Realty Company, a corporation of the State of New Jersey. The aforesaid conveyance to the Anson Realty Company was made by the trustee, Annett-Mahnken Realty Co., without the knowledge, consent or authorization of these defendants.

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7. In April, 1928, the defendant, Anson Realty Company and the complainant herein, both of whom are represented by Horace Roberson, Esquire, with full knowledge, both actual and constructive, of the wrongful conduct of the trustee, Annett-Mahnken Realty Co., and with knowledge that the property known as No. 772 Avenue C, Bayonne, N. J., was held by the said defendant, Anson Realty Company, in trust for the cestui-que trustent, Betsey Gollin, and without making due and proper inquiry of facts known to

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*Answer and Counterclaim of Defts. Gollin*

them and sufficient to give them knowledge or notice of the facts hereinbefore stated, placed the mortgage now sought to be foreclosed, without the knowledge, consent or authorization of the said defendant Betsey Gollin, the cestui-que trustent.

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8. On April 12, 1928, the defendant, Anson Realty Company and the defendant, Ethel M. Ardrey, formerly Ethel M. Joy, both of whom are represented by Horace Roberson, Esquire, with full knowledge, both actual and constructive, of the wrongful conduct of the trustee, Annett-Mahnken Realty Co., and with knowledge that the property known as No. 772 Avenue C, Bayonne, N. J. was held by the said defendant, Anson Realty Company, in trust for the cestui-que trustent, Betsey Gollin, and without making due and proper inquiry of facts known to them and sufficient to give them knowledge or notice of the facts hereinbefore stated, placed the mortgage now covering the said property, and particularly set forth in the bill of complaint filed herein, without the knowledge, consent or authorization of the said defendant Betsey Gollin, the cestui-que trustent.

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9. By reason of the premises, the mortgages of the said complainant herein and of the defendant, Ethel M. Ardrey, formerly Ethel M. Joy, are invalid and do not affect the paramount right, title, interest and estate of these defendants, in and to the lands described in paragraph 3 of the bill of complaint.

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*Answer and Counterclaim of Defts. Gollin*

These defendants are without adequate remedy in the courts of law and therefore pray:—

1. That the Centreville Building and Loan Association, a corporation and Ethel M. Ardrey, formerly Ethel M. Joy, who are the defendants to this counterclaim, may answer this counterclaim, without oath, and each statement therein made. 10

2. That the bill of complaint filed herein may be dismissed with costs.

3. That a decree may be made declaring and adjudicating the mortgages of the complainant, Centreville Building & Loan Association, and of the defendant, Ethel M. Ardrey, formerly Ethel M. Joy, to be no liens upon the lands and premises described in paragraph 3 of the bill of complaint, and that said Centreville Building & Loan Association and Ethel M. Ardrey, formerly Ethel M. Joy, be directed and commanded to deliver up for cancellation, their respective mortgages mentioned in the counterclaim herein; and that the defendants Betsey Gollin and Max Gollin may have such other and further relief as may be equitable and just in the premises. 20 30

HIRSCHBERG & NASCHEL,  
Solicitors for Defendants  
Betsey Gollin & Max Gollin.

**Replication to Answer and Answer to Counterclaim of the Defendants Betsey and Max Gollin**

(Filed Nov. 19, 1932 )

IN CHANCERY OF NEW JERSEY

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92-291

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,  
*Complainant,*  
and

20

ANSON REALTY COMPANY, a corporation, etc.,  
*Defendant.*

On Bill &c.

Replication to Answer and Answer to Counterclaim of the Defendants Betsey and Max Gollin

The complainant, replying to the answer of the defendants, Betsey Gollin and Max Gollin, says:

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1. It joins issue with the said defendants on the first, second, third, fourth, fifth, sixth and seventh paragraphs of the said answer.

2. It has no knowledge or information sufficient to form a belief as to the allegations of paragraphs one, two, three, four, five and six of the counterclaim, which, under paragraph eight of the answer, is made a part of said answer.

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3. It denies paragraphs seven, eight and nine of the counterclaim, which, under paragraph eight of said answer, is made a part of said answer.

*Replication to Answer and Answer to Counter  
claim of Defts. Gollin*

4. As a further reply to said answer, it says that it is a mortgagee for value without notice or knowledge of the alleged rights of the said defendants, Betsey Gollin and Max Gollin; that it made a loan of \$14,000.00 to the defendant, the Anson Realty Company, and said Anson Realty Company agreed to give to the complainant, as security for said loan, a bond and a first mortgage affecting the premises described in the third paragraph of the bill of complaint filed in this cause, and did execute and deliver to the complainant a bond, secured by a mortgage on said premises, which said bond and mortgage were dated, and said mortgage was recorded, as stated in paragraphs one and two of the bill of complaint, and after the execution and delivery of said bond and mortgage the complainant advanced the said sum of \$14,000.00 on said bond and mortgage by paying the sum of \$7749.60 to the Bayonne Building Association No. 2 in payment of a certain mortgage made by Betsey Gollin and Max Gollin, her husband, to Bayonne Building Association No. 2 in the sum of \$12,000. dated May 22, 1923, recorded July 11, 1923 in the Hudson County Register's Office in Book 1171 of Mortgages, on page 601, which mortgage affected the premises hereinbefore mentioned; by paying the sum of \$1721.61 to the City of Bayonne for taxes on said premises covered by said mortgage for the years 1924 to 1927, both inclusive, and by the payment to said City of Bayonne of the sum of \$66.21, water rents due on said premises covered by said mortgage, and by paying the sum of \$4462.58 to the Anson Realty Company.

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*Replication to Answer and Answer to Counterclaim of Defts. Gollin*

10 By reason of said payments by the said complainant on its said bond and mortgage the said mortgage of the complainant is a valid and existing lien on the premises described therein, prior and paramount to any right, title, interest or estate of the defendants, Betsey Gollin and Max Gollin.

ANSWER TO COUNTERCLAIM

In answer to the counterclaim of the defendants, Betsey Gollin and Max Gollin, the complainant says:

20 1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraphs one, two, three, four, five and six.

2. It denies the allegations of paragraphs seven, eight and nine of the counterclaim.

30 3. Further answering said counterclaim, the complainant says that it repeats paragraph four of the replication to the answer hereinbefore set forth and makes the same a part hereof, with the same force and effect as if it were repeated verbatim herein.

Complainant therefore prays that the answer and counterclaim be dismissed, with its reasonable costs and counsel fees.

BRENNER & KRESCH,  
Solicitors for and of Counsel with  
the Complainant.

## Replication to Answer to Counterclaim

(Filed Nov. 23, 1922)

IN CHANCERY OF NEW JERSEY

92/291

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,

*Complainant,*

and

ANSON REALTY COMPANY, a cor-  
poration, &c.,

*Defendant.*

On Bill &c.

Replication to  
Answer to  
Counterclaim

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The defendants, Betsey Gollin and Max Gollin, by way of replication to the answer to counterclaim filed by the complainant herein, say that:—

The defendants, Betsey Gollin and Max Gollin, join issue with the complainant, on its answer to the counterclaim filed by them.

HIRSCHBERG & NASCHEL,  
Solicitors for Defendants  
Betsey and Max Gollin.

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**Answer of Defendant Ethel M. Ardrey to Counterclaim of Defendants Betsey and Max Gollin**

(Filed Dec. 16, 1937 )

IN CHANCERY OF NEW JERSEY

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92-291

Between

CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation, etc.

*Complainant,*

and

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ANSON REALTY COMPANY, *et al.*,  
*Defendants.*

On Bill &c.

Answer of Defendant Ethel M. Ardrey to Counterclaim of Defendants Betsy Gollin and Max Gollin

The defendant, Ethel M. Ardrey, residing in the Town of Roselle, County of Union, State of New Jersey, answering the counterclaim of the defendants, Betsey Gollin and Max Gollin, says:—

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1. She has no knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 1, 2, 3, 4, 5, 6 and 7.

2. She denies the allegations set forth in paragraphs 8 and 9.

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3. Further answering said counterclaim, this defendant says that her said mortgage is a valid and existing lien in the full amount thereof on the premises described in the bill of complaint, and that she took and holds the same for value

*Order of Substitution of Solicitor*

and without notice of any right or claim of right on the part of the defendant Betsey Gollin, as cestui-que trustent or otherwise, in the said premises.

This defendant therefore prays that said counterclaim as against this defendant be dismissed with costs.

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BENNY & CRUDEN,  
Solicitors for Defendant  
Ethel M. Ardrey.

**Order of Substitution of Solicitor**(Filed *Nov. 19, 1932*)

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IN CHANCERY OF NEW JERSEY

92-291

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,  
*Complainant,*  
and

ANSON REALTY COMPANY, a cor-  
poration, etc.,  
*Defendant.*

On Bill &amp;c.

Order of Substitu-  
tion of Solicitor

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It appearing to the court that Horace K. Roberson, solicitor of the complainant, the Centreville Building and Loan Association, in the above entitled cause, consents hereto;

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*Petition of Appeal*

It is, on this 17th day of November, 1932, ORDERED that Brenner & Kresch, be and they are hereby substituted as solicitors for the said complainant in the place and stead of the said Horace K. Roberson.

10 I hereby consent to the entry of the foregoing Order.

HORACE K. ROBERSON.

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**Petition of Appeal**

(Filed *Sept. 13, 1934*)

20 NEW JERSEY COURT OF ERRORS  
AND APPEALS

92-291

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,  
*Complainant-Appellant,*

*v.*

30 BETSEY GOLLIN & MAX GOLLIN,  
*Defendants-Appellees,*

and

ANSON REALTY COMPANY, a corporation,  
*Defendant.*

On Appeal from  
Court of  
Chancery

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

*Petition of Appeal*

The petition of Centreville Building & Loan Association, the complainant in the above entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of the State of New Jersey on advice of John J. Fallon, Advisory Master, bearing date August 9th, 1934, in a certain cause in said Court of Chancery wherein the said Centreville Building & Loan Association, a corporation was complainant and the said Anson Realty Company, a corporation, Betsey Gollin and Max Gollin were defendants, in this respect, to wit, that the said decree adjudges that the said complainant, Centreville Building & Loan Association, a corporation surrender its said mortgage properly endorsed for cancellation to the defendant, Betsey Gollin within ten days after service of a copy of the decree and further adjudges that the mortgage of the complainant, Centreville Building & Loan Association, a corporation, be cancelled of record and be no longer a lien upon the lands and premises described in the Bill of Complaint filed in said cause and further adjudging that the complainant, Centreville Building & Loan Association pay to the defendants, Betsey Gollin and Max Gollin the costs of suit to be taxed including a counsel fee of One hundred and Fifty (\$150.00) Dollars and that execution issue for the collection thereof and adjudging that fraud was perpetrated upon the defendants, Betsey Gollin and Max Gollin participated in and with knowledge of the complainant, Centreville Building & Loan Association in the execution of a mortgage in the sum of Sixty-six hun-

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*Petition of Appeal*

dred (\$6600.00) Dollars described in the Bill of Complaint filed in the said cause.

10 And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that no fraud was perpetrated by the complainant, Centreville Building & Loan Association, nor did said Centreville Building & Loan Association participate in or have any knowlege of any fraud being perpetrated in the acceptance of a mortgage in the amount of Sixty Six Hundred (\$6600.00) Dollars on premises described in the Bill of Complaint filed in this cause and in that it was error to adjudge and decree that the Centreville Building & Loan Association should  
20 surrender the said mortgage endorsed for cancellation and in that it was adjudged and decreed that the said mortgage should be cancelled of record so as to be no longer a lien upon the lands and premises described in the Bill of Complaint filed in said cause.

And in that it was adjudged and decreed that costs and counsel fee be paid by the complainant, Centreville Building & Loan Association.

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

BRENNER & KRESCH,  
Solicitors for Appellant.

ALFRED BRENNER,  
Of Counsel.

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

ALFRED BRENNER,  
Of Counsel with Appellant.

## Final Decree

(Filed *Aug. 9, 1934*)

IN CHANCERY OF NEW JERSEY

92-291

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,  
*Complainant,*

and

ANSON REALTY COMPANY, a cor-  
poration, *et al.,*  
*Defendants.*On Bill &  
Final Decree

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This cause coming on to be heard in the presence of Brenner & Kresch, Esquires, solicitors for the complainant, and Hirschberg & Nashel, Esquires, solicitors for the defendants Betsey Gollin and Max Gollin, and Louis Rubenstein, Esquire, of counsel with said defendants, and Benny & Cruden, Esquires, solicitors for the defendant Ethel M. Joy-Ardrey, and the court having examined the pleadings and having taken proofs orally and in open court, and having heard and considered the arguments of counsel, and being satisfied that the complainant Centreville Building & Loan Association, a corporation, is not entitled to the relief prayed for in its bill of complaint, and being satisfied that the mortgage made and executed by the defendant Anson Realty Company, a corporation, to the said complainant mentioned and set forth in the bill of

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*Final Decree*

complaint and counterclaim filed herein, dated April 11, 1928, for the principal sum of \$14,000.00, and recorded in the Register's Office of Hudson County in Book 1498 of Mortgages for said County, at pages 199 &c., was executed by fraud and imposition perpetrated by the defendant Anson Realty Company, a corporation, upon the defendant Betsey Gollin, in which the complainant participated by acts of culpable negligence and that the said complainant was chargeable with knowledge of the fraudulent acts of the defendant Anson Realty Company, a corporation, and of the equitable ownership of the property described in the bill of complaint by the defendant Betsey Gollin and that the said complainant was not a bona fide mortgagee for value without notice, and the court being further satisfied that the mortgage made and executed by the defendant Anson Realty Company, a corporation, to the defendant Ethel M. Joy-Ardrey mentioned in the bill of complaint and counterclaim filed herein, dated April 12, 1928, for \$3000.00, and recorded in the Register's Office of Hudson County in Book 1498 of Mortgages for said County at pages 205 &c., was executed by fraud and imposition perpetrated by the defendants Anson Realty Company, a corporation, and Ethel M. Joy-Ardrey, upon the defendant Betsey Gollin and that the said defendant Ethel M. Joy-Ardrey was chargeable with knowledge of the equitable ownership of the property described in the bill of complaint by the defendant Betsey Gollin and that the said defendant Ethel M. Joy-Ardrey was not a bona fide mortgagee for value without notice, and the court being satisfied that the aforesaid two mortgages are invalid and that the defendants Betsey

*Final Decree*

Gollin and Max Gollin are entitled to the relief prayed for by them in their counterclaim:

It is thereupon, on this 9th day of August, 1934 ORDERED, ADJUDGED and DECREED that the complainant's bill of complaint be and the same is hereby dismissed.

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It is further ORDERED, ADJUDGED and DECREED that the said complainant Centreville Building and Loan Association, a corporation, surrender its said mortgage properly endorsed for cancellation to the defendant Betsey Gollin within 10 days after the service upon said complainant or its solicitors of a true but uncertified copy of this decree.

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It is further ORDERED, ADJUDGED and DECREED that the said mortgage of the complainant Centreville Building & Loan Association, a corporation, hereinbefore referred to be cancelled of record and be no longer a lien upon the lands and premises therein described.

It is further ORDERED, ADJUDGED and DECREED that the said defendant Ethel M. Joy-Ardrey surrender her said mortgage properly endorsed for cancellation to the defendant Betsey Gollin within 10 days after the service upon her or her solicitors of a true but uncertified copy of this decree.

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It is further ORDERED, ADJUDGED and DECREED that the said mortgage of the defendant Ethel M. Joy-Ardrey hereinbefore referred to be cancelled of record and be no longer a lien upon the lands and premises therein described.

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*Complaint*

10 It is further ORDERED, ADJUDGED and DECREED that the complainant Centreville Building & Loan Association, a corporation, pay to the defendants Betsey Gollin and Max Gollin, the costs of suit to be taxed, including a counsel fee of \$350.00, and that in default of the payment of said taxed costs within 10 days after the service upon said complainant or its solicitors, of a true copy of said taxed costs and of this decree, execution issue against the goods and chattels, lands and tenements, hereditaments and real estate of said complainant Centreville Building & Loan Association, a corporation, to make said taxed costs, according to the practice of this court.

20 LUTHER A. CAMPBELL,  
C.

Respectfully advised,  
JNO. J. FALLON,  
A. M.

**Complaint**

(Filed *Sept. 16, 1937.*)

30 IN CHANCERY OF NEW JERSEY.

92-332

*To the Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey:*

40 The complainant, CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation organized under the laws of the State of New Jersey, having its principal office at No. 394 Broadway, in the City

*Complaint*

of Bayonne, in the County of Hudson and State of New Jersey, respectfully shows that:—

1. On January 13, 1930 the Anson Realty Company, a corporation of the State of New Jersey, being indebted to the complainant in the sum of \$6600.00 executed to it a bond of that date to secure that sum, payable in the following manner, viz: By the payment of \$1.15 on each of 33 shares of the 55th Series of the capital stock of the said Association, owned by the said Anson Realty Company and standing in its name on the books of the said Association and which were thereby assigned to the complainant as collateral security for the payment of said loan, and on which said loan was based, on the second Monday of each and every month thereafter, or such other time as might thereafter be appointed for that purpose, until the said shares should attain the par value of \$200.00 each, together with interest on said sum to be computed from the date thereof, at the rate of six per cent per annum, payable monthly, at the same time and in the same manner as the stock payments aforesaid, and also all fines that might become due as provided for by the constitution and by-laws of the said Association, which had been duly assented to by the said Anson Realty Company, and made a part of the said bond.

2. To secure the payment of said bond, said Anson Realty Company executed to the complainant a mortgage of even date with the bond, thereby conveying to the complainant, in fee simple, the lands and premises described in the third paragraph of this bill of complaint, on the express condition that such conveyance should

*Complaint*

be void if payment should be made according to the terms of the bond, which mortgage having been first duly proved and the certificate of proof endorsed thereon, was recorded January 14, 1930 in the Hudson County Register's Office in Book 1583 of Mortgages on page 546.

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3. The said mortgaged premises are described as follows:—ALL that certain tract, a piece or parcel of land and premises, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, described as follows:

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BEGINNING at a point on the westerly side of the New Public Road (commonly called the Boulevard), distant thereon about thirty-four (34) feet southerly from the southerly side of West Nineteenth Street measured on a line drawn parallel with the easterly line of Lot #12 in Block S on "Map of Joseph B. Close, situated in the Second Ward of Bayonne, Hudson County, N. J., Smith & Weston, Civil Engineers," said beginning point being also the southeasterly corner of lands conveyed by Betsey Gollin and husband to Barnhard Pollak and another, by deed dated August 30, 1906; thence running (1) Westerly parallel with West Nineteenth Street, ninety-seven and forty-nine one hundredths (97.49) feet more or less to the easterly line of Lot #12 aforesaid; thence (2) Southerly along the easterly line of Lot #12, thirty-two (32) feet more or less to the northwesterly corner of lands mortgaged by Betsey Gollin and husband, to Florence Pocock October 15, 1906; thence (3)

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Easterly parallel with West Nineteenth Street, ninety-six and seventy-three one hundredths

*Complaint*

(96.73) feet more or less to the westerly side of said Boulevard, and thence (4) Northerly along the same, thirty-two (32) feet more or less to the point or place of beginning.

Being the same premises described as the third tract in the deed of conveyance made by Annett-Mahnken Realty Company, a corporation of New Jersey, to Anson Realty Company, dated March 22, 1928, recorded March 23, 1928 in the Hudson County Register's Office in Book 1679 of Deeds, on page 315.

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4. Both the bond and mortgage of the complainant contained an agreement that if any installment on said shares, or said interest, or any part thereof, should remain unpaid and in arrears for thirty days after the same should fall due, then the whole principal sum, with all unpaid installments, interest, premiums and fines should, at the option of the mortgagee, or its legal representatives, become immediately due.

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5. Both the bond and mortgage of the complainant contained an agreement that if any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien should be thereafter imposed or acquired on the premises described in said mortgage, and become due and payable and remain in arrears for the space of sixty days after the same should fall due, then the whole principal sum with all unpaid installments, interest, premiums and fines should, at the option of the mortgagee, or its legal representatives, become immediately due.

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6. On June 13, 1932 an installment of dues, interest and premium, amounting to \$70.95 be-

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*Complaint*

10 came due and payable on the complainant's bond and mortgage, and default was made in the payment of the same. On July 11, 1932 a similar installment of \$70.95 became due and payable on said bond and mortgage, and default was made in the payment of the same. On August 8, 1932, a similar installment of \$70.95 became due and payable on said bond and mortgage, and default was made in the payment of the same. Each of said installments has remained due and unpaid for more than thirty days after the same became due and payable, and no part thereof has yet been paid.

20 7. On June 1, 1930, one-half year's taxes amounting to \$162.67 became due and payable to the City of Bayonne on said mortgaged premises. On December 1, 1930, one-half year's taxes amounting to \$162.67 became due and payable to the City of Bayonne on said mortgaged premises. On June 1, 1931, one-half year's taxes amounting to \$159.20 became due and payable to the City of Bayonne on said mortgaged premises. On December 1, 1931, one-half year's taxes amounting to \$159.20 became due and payable to the City of Bayonne on said mortgaged premises. On June 1, 1932, one-half year's taxes amounting to \$218.64 became due and payable to the City of Bayonne on said mortgaged premises. On September 6, 1932, water rents amounting to \$108.91 became due and payable to the City of Bayonne for water consumed in said mortgaged premises. Each of said items of taxes has remained due and unpaid for more than sixty days after the same became due and payable, and still remains due and unpaid at the present time.

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*Complaint*

8. There is due to the complainant on the said bond and mortgage for arrears of dues the sum of \$66.00; for arrears of interest the sum of \$66.00; for arrears of premium the sum of \$9.90; and for arrears of fines the sum of \$7.10, making a total of \$149.00. The value of 33 shares of the 55th Series of the capital stock of said complainant at \$37.84 per share is \$1248.72, which is the amount to be credited on the said bond and mortgage. After crediting the value of said shares on the amount of said loan and arrearages of dues, interest, premiums and fines, there is left due to the complainant the sum of \$5538.23. 10

9. By resolution of the Board of Directors of the complainant, the shares of stock of the said Anson Realty Company, upon which said mortgage loan was based, were declared forfeited and the complainant elected that the whole principal sum of said mortgage, together with the aforesaid arrearages of dues, interest, premiums and fines should become immediately due and payable. 20

10. Said Anson Realty Company has always been in possession of the said mortgaged premises. 30

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Anson Realty Company, who is the defendant to this suit, may answer this bill of complaint, without oath, and each statement herein made. 40

*Complaint*

2. That an account may be taken of the amount due on complainant's bond and mortgage.

10 3. That the defendant may be decreed to pay to complainant the amount so found due, with interest and costs, by a short day to be appointed by this court, and that in default of such payment, it be debarred and foreclosed of all equity of redemption in said lands, or

4. That a decree may be made for the sale of the mortgaged premises, to raise and pay to the complainant the amount so found due on its mortgage, with interest and costs.

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

HORACE K. ROBERSON,  
Solicitor for and of Counsel  
with Complainant.

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## Order Admitting Parties Defendant

(Filed Oct. 24, 1932 )

IN CHANCERY OF NEW JERSEY

92/332

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation of  
New Jersey,

*Complainant,*

and

ANSON REALTY COMPANY, a cor-  
poration, etc.,

*Defendant.*

On Bill &c.

On Petition &c

Order Admitting  
Parties Defend-  
ant

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This matter being opened to the court by Hirschberg & Nashel, solicitors of the petitioner, Betsey Gollin, in the presence of Frank E. Hilken for Horace K. Roberson, solicitor for the complainant, Centreville Building and Loan Association, and the Court having read and considered the petition and the affidavit annexed thereto, and after hearing argument of the respective counsel, from which it appears that the petitioner, Betsey Gollin, has an interest in the premises described in the bill of complaint filed herein; it is thereupon, on this 24th day of October, nineteen hundred and thirty-two,

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ORDERED, that the said petitioner, Betsey Gollin, and Max Gollin be and they are hereby

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*Decree Pro Confesso*

made party defendant to these proceedings, and that they plead to the bill of complaint filed in this cause, within 15 days from the date hereof.

LUTHER A. CAMPBELL,  
C.

10 Respectfully advised,

VIVIAN M. LEWIS,  
V. C.

**Decree Pro Confesso**

(Filed December 27, 1932)

20 IN CHANCERY OF NEW JERSEY  
92—332

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation, etc.

*Complainant,*

and

30 ANSON REALTY COMPANY, a cor-  
poration, etc.,

*Defendant.*

On Bill &c.

Decree Pro  
Confesso

40 This cause being opened to the court by Bren-  
ner & Kresch, solicitors of the complainant, and  
it appearing that process of subpoena calling  
upon the defendant to answer the complainant's  
bill of complaint, filed herein, has been duly

*Decree Pro Confesso*

issued and returned served upon the defendant, Anson Realty Company, a corporation of New Jersey; and

IT FURTHER APPEARING, that the said defendant, Anson Realty Company, a corporation as aforesaid, has not filed an answer to said bill of complaint within the time limited by law but has wholly failed and neglected so to do;

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It is, on this 27th day of December, 1932, on motion of Brenner & Kresch, solicitors of the complainant, ORDERED that the complainant's said bill of complaint be and the same is hereby taken as confessed against the said defendant, Anson Realty Company, a corporation of the State of New Jersey, to the end that such decree may be made against it as the court shall deem equitable and just.

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LUTHER A. CAMPBELL,  
C.

A true copy

FERD GARRATSON  
Clerk

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**Answer and Counterclaim of the Defendants  
Betsey and Max Gollin**

(Filed *Nov. 9, 1932* )

IN CHANCERY OF NEW JERSEY

92/332

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Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,

*Complainant,*

and

ANSON REALTY COMPANY, a cor-  
poration, etc.,

*Defendant.*

On Bill &c.

Answer and Coun-  
terclaim of the  
Defendants  
Betsey and Max  
Gollin

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The defendants, Betsey Gollin and Max Gollin, who have been admitted as parties defendant to this suit, by an order made herein, dated October 24th, 1932, answering the bill of complaint filed herein, say:

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1. They have not sufficient information or knowledge to form a belief as to the allegations in paragraph 1 of the bill of complaint and neither deny or admit the said allegations.

2. The allegations of paragraph 2 of the bill of complaint are denied; these defendants further say that the mortgage referred to in said paragraph is invalid and is not a lien upon the premises therein described.

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*Answer and Counterclaim of Defts. Gollin*

3. The allegations of paragraph 3 of the bill of complaint are denied; these defendants further say that the complainant's mortgage is invalid and in no wise affects the paramount right, title, interest and estate of these defendants in and to the lands described in paragraph 3 of the bill of complaint. 10

4. They have not sufficient knowledge or information to form a belief as to the allegations in paragraphs 4, 5, 6, 7, 8, 9, of the bill of complaint and neither deny or admit such allegations; these defendants further say that the allegations therein contained in no wise affects the paramount right, title, interest and estate of these defendants in and to the lands described in paragraph 3 of the bill of complaint. 20

5. These defendants deny the allegations contained in paragraph 10 of the bill of complaint.

6. By way of further answering the bill of complaint, these defendants, say:

These defendants reiterate the allegations contained in the counterclaim hereinafter set forth and make the same a part hereof, with the same force and effect as if fully repeated herein. 30

## COUNTERCLAIM

By way of counterclaim against the complainant, Centreville Building and Loan Association, these defendants say:

1. That Irving Gollin, a son of these defendants, early in 1923 erected upon a plot of ground known as No. 880 Boulevard, Bayonne, N. J., an 40

*Answer and Counterclaim of Defts. Gollin*

10 apartment house consisting of thirty-two families and running short of funds during the course of construction, arranged to borrow money by giving as security, mortgages on properties belonging to his mother, the defendant, Betsey Gollin, which properties are commonly known as Nos. 249 Broadway, No. 501 Boulevard, No. 499 Boulevard and No. 772 Avenue C, all located in the City of Bayonne, County of Hudson and State of New Jersey; the property No. 501 Boulevard being the same premises now sought to be foreclosed by the complainant herein. And to effectuate these transactions, the said Irving Gollin made a deed of conveyance of the premises known as No. 880 Boulevard, Bayonne, to his mother, Betsey Gollin.

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2. After the said Irving Gollin had exhausted all the funds raised on the securities of the properties belonging to his mother, he was still indebted to his creditors, and he and these defendants applied to Horace Roberson, Esquire, who had for many years acted as attorney for them, for a loan of sufficient moneys to pay off all his creditors and to discharge the mortgage loans procured on the properties of the defendant, Betsey Gollin, and offered to secure the repayment of such loan by a mortgage on the apartment house known as No. 880 Boulevard, Bayonne, N. J. The said Horace Roberson, endeavored to procure such loan and did procure it, but instead of a mortgage, a deed to said Boulevard apartment house was given by these defendants to the Annett-Mahnken Realty Co., a corporation of the State of New Jersey, for the moneys to be advanced by the said company, and

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*Answer and Counterclaim of Defts. Gollin*

a Trust Agreement dated May, 1924, was entered into by the said Annett-Mahnken Realty Co., a corporation, and these defendants.

3. Under the declaration of trust, the Trustee, Annett-Mahnken Realty Co. was obligated to pay all the debts of Betsey Gollin and Irving Gollin, which arose out of the erection of the apartment house mentioned therein, and the mortgage and other liens thereon, and the lands upon which the said apartment house was erected, together with the debt in any wise contracted, which enabled the defendant, Betsey Gollin and Irving Gollin aforesaid, to obtain moneys used and employed in and about such construction and for moneys so advanced, to rely upon the security of the said apartment house known as 880 Boulevard, Bayonne, N. J., for reimbursement.

4. Pursuant to the provisions of the declaration of trust, the said Annett-Mahnken Realty Co. paid various creditors of Betsey Gollin and Irving Gollin. Among the obligations so paid were two certain mortgages covering the premises commonly known as No. 501 Boulevard, Bayonne, N. J. held by the Kaybee Investment Co., a corporation—one in the sum of \$11,000. and one in the sum of \$4,000., aggregating the total sum of \$15,000.00. The said sum of \$15,000. represented by said two mortgages had been previously advanced by the said Kaybee Investment Co. for use in the erection and construction of said apartment house known as No. 880 Boulevard, Bayonne, N. J., and the payment of the said mortgages was part of the obligation of the said Trustee, Annett-Mahnken Realty Co., a cor-

*Answer and Counterclaim of Defts. Gollin*

poration, to pay the debts of Betsey Gollin and Irving Gollin, in any wise contracted, which enabled the said Betsey Gollin and Irving Gollin to obtain moneys used and employed in the erection and construction of the aforesaid apartment house.

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5. The said Trustee, Annett-Mahnken Realty Co., after paying the above mentioned mortgages, instead of cancelling the said mortgages, and looking to the apartment house as security for said payment as was contemplated in and provided for by the declaration of trust, took an assignment of the said mortgages, and shortly thereafter, without first making an accounting to the said Betsey Gollin and Irving Gollin, instituted foreclosure proceedings thereon. The said Trustee, Annett-Mahnken Realty Co., at the foreclosure sale bought in the property known as No. 501 Boulevard, Bayonne, N. J. That the conduct of the Trustee, Annett-Mahnken Realty Co. in foreclosing said mortgage, and purchasing the said property at its own foreclosure sale was improper and in flagrant violation and abuse of its duties and obligations under the said declaration of trust, and the property thus acquired by the Trustee, Annett-Mahnken Realty Co., a corporation, through its purchase at the foreclosure sale, is held by the said Annett-Mahnken Realty Co., a corporation, by a continuing trust for the benefit of the *cestui-que trustent*, Betsey Gollin, one of the defendants in this suit.

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6. In January, 1930, the trustee, Annett-Mahnken Realty Co., a corporation, conveyed the said premises known as 501 Boulevard, Bayonne, N. J. to its affiliate, Anson Realty

*Answer and Counterclaim of Defts. Gollin*

Company, a corporation of New Jersey, without consideration. The aforesaid conveyance to the Anson Realty Company was made by the trustee, Annett-Mahnken Realty Co., without the knowledge, consent or authorization of these defendants.

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7. On January 13, 1930, the defendant, Anson Realty Company, and the complainant herein, both of whom are represented by Horace Rober- son, Esquire, with full knowledge, both actual and constructive, of the wrongful conduct of the trustee, Annett-Mahnken Realty Co., and with knowledge that the property known as No. 501 Boulevard, Bayonne, N. J. was held by the said defendant, Anson Realty Company, in trust for the *cestui-que trustent*, Betsey Gollin, and with- out making due and proper inquiry of facts known to them and sufficient to give them knowl- edge or notice of the facts hereinbefore stated, placed the mortgage now sought to be foreclosed, without the knowledge, consent or authorization of the said defendant, Betsey Gollin, the *cestui- que trustent*.

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8. By reason of the premises, the mortgage of the complainant, Centreville Building & Loan Association is invalid and does not affect the paramount right, title, interest and estate of these defendants, in and to the lands described in paragraph 3 of the bill of complaint.

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These defendants are without adequate remedy in the courts of law and therefore pray:

1. That the Centreville Building & Loan As- sociation, a corporation, who is the defendant to

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*Answer and Counterclaim of Defts. Gollin*

this counter-claim, may answer this counter-claim, without oath, and each statement therein made.

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2. That the bill of complaint filed herein may be dismissed with costs.

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3. That a decree may be made declaring and adjudicating the mortgage of the complainant, Centreville Building & Loan Association, to be no lien upon the lands and premises described in paragraph 3 of the bill of complaint, and that said Centreville Building & Loan Association, be directed and commanded to deliver up for cancellation, its mortgage mentioned in the counter-claim; and that the defendants, Betsey Gollin and Max Gollin, may have such other and further relief as may be equitable and just in the premises.

HIRSCHBERG & NASHIEL,  
Solicitors for defendants,  
Betsey Gollin & Max Gollin.

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**Replication to Answer and Answer to Counterclaim of the Defendants Betsey and Max Gollin**

(Filed *Nov. 19, 1932* .)

IN CHANCERY OF NEW JERSEY

92—332

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Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,

*Complainant,*

and

ANSON REALTY COMPANY, a corporation, etc.,

*Defendant.*

On Bill &c.

Replication to Answer and Answer to Counterclaim of the Defendants Betsey and Max Gollin

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The complainant, replying to the answer of the defendants, Betsey Gollin and Max Gollin, says:

1—It joins issue with the said defendants on the first, second, third, fourth and fifth paragraphs of said answer.

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2—It has no knowledge or information sufficient to form a belief as to the allegations of paragraphs one, two, three, four, five and six of the counterclaim, which, under paragraph six of said answer, is made a part of said answer.

3—It denies paragraphs seven and eight of the counterclaim, which by paragraph six of said answer, is made a part of said answer.

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*Replication to Answer and Answer to Counter-claim of Defts. Gollin*

4—It is a mortgagee for value without notice or knowledge of the alleged rights of said defendants, Betsey Gollin and Max Gollin. It made a loan of \$6600.00 to the defendant, Anson Realty Company, and said Anson Realty Company agreed to give to the complainant, as security for said loan, a first mortgage affecting the premises described in the third paragraph of the bill of complaint filed in this cause, and did execute and deliver to the complainant a bond, secured by a mortgage on said premises, which said mortgage was dated and recorded as stated in paragraph two of the bill of complaint, and after the execution and delivery of said bond and mortgage the complainant advanced the \$6600.00 on said bond and mortgage by paying taxes on said premises described in said mortgage for the years 1925 to 1929, both inclusive, amounting to \$1786.20; by paying water rents existing on said premises amounting to the sum of \$305.74, including interest; by paying a mortgage which had been held by the complainant on said premises, which mortgage was made by Betsey Gollin and Max Gollin, her husband, to the complainant, to secure the payment of the sum of \$2000.00, dated November 10, 1924, recorded December 24, 1924 in the Hudson County Register's Office in Book 1277 of Mortgages, on page 106, on which mortgage, at the time of payment, the complainant paid the sum of \$1219.90, and said mortgage was surrendered by the complainant for cancellation and duly cancelled of record; complainant also paid the sum of \$316.94 for shares and dues on the book representing said mortgage loan from the beginning of the series of stock in which said loan was taken, and the sum of

*Replication to Answer and Answer to Counterclaim of Defts. Gollin*

\$92.23 fees for the legal expenses due to its attorney in the placing of said mortgage loan. It also paid the sum of \$789.08 taxes for the years 1928 and 1929 on the property at No. 772 Avenue C, Bayonne, New Jersey, being other property on which this complainant held a mortgage made by the defendant, Anson Realty Company to this complainant, and the sum of \$32.85 water rents on said premises at No. 772 Avenue C, Bayonne, New Jersey. It paid the sum of \$2057.06, the balance of said mortgage loan of \$6600.00, to the Anson Realty Company, the defendant in this suit. By reason thereof, the mortgage of the complainant is a valid and existing lien on the premises described therein, prior and paramount to any right, title, interest or estate of the defendants, Betsey Gollin and Max Gollin.

ANSWER TO COUNTERCLAIM.

In answer to the counterclaim of the defendants, Betsey Gollin and Max Gollin, the complainant says:

1—It has no knowledge or information sufficient to form a belief as to the allegations in paragraphs one, two, three, four, five and six of the counterclaim.

2—It denies the allegations of paragraphs seven and eight of the counterclaim.

3—Further answering said counterclaim, the complainant says that it repeats paragraph four

*Replication to Answer to Counterclaim*

in the replication to the answer hereinbefore set forth and makes the same a part hereof, with the same force and effect as if it were repeated verbatim herein.

10 Complainant therefore prays that the answer and counterclaim be dismissed, with its reasonable costs and counsel fees.

BRENNER & KRESCH,  
Solicitors for and of counsel with  
the complainant.

20 **Replication to Answer to Counterclaim**

(Filed *Nov. 23, 1932* .)

IN CHANCERY OF NEW JERSEY

92/332

30	Between CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation, etc. <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;">and</p> ANSON REALTY COMPANY, a corporation, etc., <p style="text-align: right;"><i>Defendant.</i></p>	On Bill &c. } Replication to Answer to Counterclaim
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40 The defendants, Betsey Gollin and Max Gollin, by way of replication to the answer to counterclaim, filed by the complainant herein, say that:

*Order of Substitution of Solicitor*

The defendants, Betsey Gollin and Max Gollin, join issue with the complainant, on its answer to the counter-claim filed by them.

HIRSCHBERG & NASHIEL,  
Solicitors for Defendants,  
Betsey Gollin and Max Gollin.

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**Order of Substitution of Solicitor**

(Filed *Nov. 19, 1932* .)

IN CHANCERY OF NEW JERSEY

92—332

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Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,  
*Complainant,*

and

ANSON REALTY COMPANY, a cor-  
poration, &c.,  
*Defendant.*

On Bill &amp;c.

Order of Substitu-  
tion of Solicitor

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It appearing to the court that Horace K. Roberson, solicitor of the complainant, the Centreville Building and Loan Association, in the above entitled cause, consents hereto;

It is, on this 17th day of November, 1932  
ORDERED that Brenner & Kresch, be and are

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*Petition of Appeal*

hereby substituted as solicitors for the said complainant in the place and stead of the said Horace K. Roberson.

I hereby consent to the entry of the foregoing Order.

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HORACE K. ROBERSON.

**Petition of Appeal**(Filed *Sept. 13, 1934*)NEW JERSEY COURT OF ERRORS  
AND APPEALS

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92-332

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,  
*Complainant-Appellant,*

*v.*

BETSEY GOLLIN & MAX GOLLIN,  
*Defendants-Appellees,*

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and

ANSON REALTY COMPANY, a corporation,  
*Defendant.*

Petition of Appeal

On Appeal from  
Court of  
Chancery

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

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The petition of Centreville Building & Loan Association, the complainant in the above entitled cause, respectfully shows that:

*Petition of Appeal*

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of the State of New Jersey on advice of John J. Fallon, Advisory Master, bearing date August 9th, 1934, in a certain cause in said Court of Chancery wherein the said Centreville Building & Loan Association, a corporation was complainant and the said Anson Realty Company, a corporation, Betsey Gollin and Max Gollin were defendants, in this respect, to wit, that the said decree adjudges that the said complainant, Centreville Building & Loan Association, a corporation surrender its said mortgage properly endorsed for cancellation to the defendant, Betsey Gollin within ten days after service of a copy of the decree and further adjudges that the mortgage of the complainant, Centreville Building & Loan Association, a corporation, be cancelled of record and be no longer a lien upon the lands and premises described in the Bill of Complaint filed in said cause and further adjudging that the complainant, Centreville Building & Loan Association pay to the defendants, Betsey Gollin and Max Gollin the costs of suit to be taxed including a counsel fee of One hundred and Fifty (\$150.00) Dollars and that execution issue for the collection thereof and adjudging that fraud was perpetrated upon the defendants, Betsey Gollin and Max Gollin participated in and with knowledge of the complainant, Centreville Building & Loan Association in the execution of a mortgage in the sum of Sixty-six hundred (\$6600.00) Dollars described in the Bill of Complaint filed in the said cause.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the

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*Petition of Appeal*

ground that the same is erroneous in that no fraud was perpetrated by the complainant, Centreville Building & Loan Association, nor did said Centreville Building & Loan Association participate in or have any knowlege of any fraud being perpetrated in the acceptance of a mortgage in the amount of Sixty Six Hundred (\$6600.00) Dollars on premises described in the Bill of Complaint filed in this cause and in that it was error to adjudge and decree that the Centreville Building & Loan Association should surrender the said mortgage endorsed for cancellation and in that it was adjudged and decreed that the said mortgage should be cancelled of record so as to be no longer a lien upon the lands and premises described in the Bill of Complaint filed in said cause.

And in that it was adjudged and decreed that costs and counsel fee be paid by the complainant, Centreville Building & Loan Association.

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

BRENNER & KRESCH,  
Solicitors for Appellant.  
ALFRED BRENNER,  
Of Counsel.

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

ALFRED BRENNER,  
Of Counsel with Appellant.

## Memorandum

## IN CHANCERY OF NEW JERSEY

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,  
*Complainant,*  
and

ANSON REALTY COMPANY, a cor-  
poration, *et al.,*  
*Defendants.*

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92/291

On Bill Answer  
Counterclaim &c.  
On Final Hearing

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,  
*Complainant,*  
and

ANSON REALTY COMPANY, a cor-  
poration, *et al.,*  
*Defendants.*

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92/332

On Bill, Answer  
Counterclaim &c.  
On Final Hearing

(Not to be published in any report.)

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MESSRS. BRENNER & KRESCH, for complainant.  
MESSRS. HIRSCHBERG & NASHIEL for defendants  
and counterclaimants, Max and Betsey  
Gollin.

FALLON, A. M.

Complainant seeks a decree to foreclose two  
mortgages made to it by Anson Realty Company,  
one of which dated April 11, 1928 in the prin-  
cipal sum of \$14,000.00 relating to property

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*Memorandum*

known as 772 Avenue C, Bayonne, New Jersey, mentioned in the bill of complaint filed in the first suit hereinabove entitled (docket 92, page 291) and the other dated January 13, 1930, in the principal sum of \$6600.00 relating to property known as 501 Boulevard, Bayonne, New Jersey, mentioned in the bill of complaint filed in the second suit hereinabove entitled (docket 92, page 332). The bill of complaint in the first suit was filed September 14, 1932, by Horace K. Roberson as solicitor for the complainant. On October 24, 1932, an order was made admitting Betsey Gollin and Max Gollin as parties defendant and allowing them to plead to the bill of complaint. On November 9, 1932, an answer to complainant's bill and counterclaim was filed in behalf of the defendants Gollin. On November 19, 1932, an order was made substituting Brenner & Kresch as solicitors for the complainant, and on the same date said solicitors filed a replication to the answer of the defendants Gollin and an answer to their counterclaim. On December 16, 1932, an answer was filed in behalf of the defendant Ethel M. Ardrey (nee Ethel M. Joy) to the counterclaim of the defendants Gollin. On December 27, 1932 because of the failure of the defendant Anson Realty Company to answer the complainant's bill of complaint in the first suit a decree *pro confesso* was entered against said defendant. The bill of complaint in the second suit was filed September 16, 1932, by Horace K. Roberson as solicitor for the complainant. On October 24, 1932, an order was made admitting Betsey Gollin and Max Gollin as parties defendant and allowing them to plead to the bill of complaint. On November 9, 1932 an answer to

*Memorandum*

complainant's bill and counterclaim was filed in behalf of the defendants Gollin. On November 19, 1932 an order was made substituting Brenner & Kresch as solicitors for the complainant and on the same date said solicitors filed a replication to the answer of the defendants Gollin and an answer to their counterclaim. The defendants Gollin by their answers deny the allegations of the bills of complaint and allege that the mortgages sought to be foreclosed by complainant are invalid, are not liens on the premises on which they purport to be liens and do not affect the paramount right, title and estate of said defendants, in and to the lands described in said mortgages. By way of counterclaim said defendants set out a statement of facts indicative of the perpetration of a fraud upon them which if substantiated, vitiates the mortgages sought to be foreclosed, by complainant, and said defendants pray that the property described in said mortgages be decreed free thereof; and in the first suit mentioned, that the complainant and defendant Ethel M. Ardrey (nee Ethel M. Joy) be directed and commanded to deliver up for cancellation the mortgages aforesaid, and that said counterclaimants may have such other and further relief as may be equitable and just in the premises. In the second suit mentioned the defendants Gollin, as counterclaimants, pray the same relief against complainant as claimed by them against it in the first suit. By replication to answer and answer to counterclaim of the defendants Gollin complainant alleges it is a mortgage for value without notice or knowledge of the defendants' alleged rights. It appears quite significant to me, and—as bearing on the allegations of fraud urged in behalf of the de-

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*Memorandum*

10 defendants and counterclaimants Gollin, that the bill of complaint in the first suit indicates by its endorsement that Roberson and Roberson were first intended to be named as solicitors for the complainant. The endorsement evidences that the name Roberson & Roberson was typewritten thereon. The name Horace K. Roberson appears typewritten over said firm name. The fact that the Gollins were not named by complainant as defendants in either of the bills filed to foreclose the mortgages in question appears significant to me on the matter *sub judice* in view of the facts disclosed herein. Matters set forth in the counterclaim of the defendants Gollin were to some extent aired in this court in a suit previously instituted against the Gollins by Annett-Mahnken Realty Company and Anson Realty Company. See docket 72, page 304. The decree entered in this suit, upon my opinion (unreported) which was filed July 14, 1931 was reviewed by the Court of Errors and Appeals and affirmed with slight modification. See 110 N. J. Eq. 469. My aforesaid opinion manifests that it was conceded in said suit that Anson Realty Company (complainant therein and a defendant in the cases 20 *sub judice*) disclaimed any beneficial right of interest in property conveyed to it by Annett-Mahnken Realty Company which was trustee of the defendant Gollin, the same property mentioned in complainant's mortgages sought to be foreclosed herein. I stated in my aforesaid opinion:

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40 "Inasmuch as it is conceded in the case *sub judice* that Anson Realty Company disclaims any beneficial right or interest in the property, such coveyance to it

*Memorandum*

may be regarded as of little moment; but it seems to me that the trustee should require Anson Realty Company to forthwith reconvey said property to Annett-Mahnken Realty Company and thus put an end to any question legal or equitable which the Anson Realty Company or its successors might hereafter urge with respect thereto, and thus also insure that judgment creditors of Anson Realty Company if any may not cause trouble and expense to the trustee or to the defendants by levy upon the property. The Anson Realty Company should account to the Annett-Mahnken Realty Company for receipt and disbursements while it has had the legal title to and the management and maintenance of the apartment house."

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Not one word was said throughout the hearing of the aforesaid suit (72/304) to indicate or intimate to the defendants Gollin or to the court, that Anson Realty Company one of the complainants named therein had previously arrogated to itself the right to mortgage said property. Inasmuch as it was conceded in said suit that Anson Realty Company had no beneficial right, title or interest in the property conveyed to it by the Annett-Mahnken Realty Company (a trustee of the Gollins) on or about April 1, 1929 (which was at or about the time when application was made in behalf of the Anson Realty Company to complainant for the mortgage dated April 11, 1928) without consideration and merely as a dummy, its failure to disclose in said suit that it had obtained mortgage loans on the property so conveyed to it, property which it knew was the

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*Memorandum*

subject matter of the claim of fraud by the defendants Gollin against Annett-Mahnken Realty Company their trustee, in said suit is incomprehensible to me, and particularly considering that some of the parties in interest in both the Annett-Mahnken Realty Company and the Anson Realty Company stockholders and officers were Messrs. Horace Roberson and Charles E. Annett, both of whom were sworn and testified as witnesses in said suit. Horace Roberson testified that the main purpose of Annett-Mahnken Realty Company transferring property held by it as trustee of the Gollins to Anson Realty Company (both companies were controlled by Horace Roberson and Charles E. Annett) was to simplify book-keeping of Annett-Mahnken Realty Company with respect thereto. This Court a court of conscience cannot disregard the facts elicited in the aforesaid suit which warranted the determination that the Annett-Mahnken Realty Company, trustee of the defendants Gollin under a declaration of trust bearing date May 16, 1924, had failed to fulfill the obligations assumed by it under and by virtue of said declaration of trust, and was recreant to its trust. The Court must take judicial notice herein of the aforesaid suit, and the records thereof which are evidence herein. I am convinced that palpable fraud was committed by Annett-Mahnken Realty Company and Anson Realty Company affecting the rights of the defendants Gollin relating to the property in question herein, and that if the complainant, Centreville Building and Loan Association had exercised reasonable diligence in its consideration of the applications for mortgage loans made to it in behalf of the Anson Realty Company such fraud would have been frustrated. Horace

*Memorandum*

Roberson was closely identified with the Centre-ville Building and Loan Association for many years prior to the aforesaid mortgage transactions when such transactions were effected, and since said time. He has acted as counsel for said Association for a great many years. The proofs show that the complainant in making the \$14,000.00 mortgage loan exacted that Horace Roberson personally guarantee a part thereof. The fact that complainant exacted such a guarantee from Horace Roberson manifests that complainant knew that he was interested in procuring the mortgage loan. If reasonable diligence were exercised by complainant it would not have permitted Horace Roberson or his nephew Horace K. Roberson, both of whom were engaged in the practice of law under the firm of Roberson and Roberson, to have anything whatever to do with the mortgage loans aforesaid, or with the examination of title to the property upon which the Anson Realty Company sought such mortgage loans from complainant, property which complainant readily have ascertained upon due inquiry, was not the property of Anson Realty Company, notwithstanding it appeared of record as to be. If complainant had employed a disinterested lawyer to look after its interests with respect to such mortgage transactions the fraud upon the Gollins and complainant would not have been accomplished. The proofs herein manifest culpable negligence attributable to the complainant in its dealings with Horace Roberson and Anson Realty Company with respect (1) to the applications for mortgage loans to Anson Realty Company (2) to the consideration of said applications (3) to the examination of title of

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*Memorandum*

property to be mortgaged and (4) to the distribution of the mortgage moneys through the law office of Roberson and Roberson. The cases *sub judice* are in some respects similar to *Clawans v. Ordway Building & Loan Association* (docket 74, p. 477) in which I filed an opinion (unreported) on July 15, 1931. The decree entered therein was reviewed by the Court of Errors and Appeals: See opinion filed by me; see also, opinion of the Court of Errors and Appeals as reported in *112 N. J. Eq. 280*. In such case as *sub judice* where, in considering the relationship of the parties litigant with the subject matter of the litigation, and the surrounding circumstances of the transaction, the Court finds an atmosphere of fraud permeating the transaction, it will not only cautiously scrutinize the acts and conduct of the parties who are alleged to have conceived and perpetrated the fraud, who had it in their power so to do, but as well the acts and conduct of the parties who had it in their power to frustrate such fraud by means of the exercise of due negligence with respect to the transaction. As stated in the *Clawans* case, *supra*: "Whatever puts a party on inquiry amounts in judgment of law to notice provided the inquiry becomes a duty, and would lead to a knowledge of the facts by the exercise of ordinary intelligence and understanding." See also *Camden Securities Co. v. Azoff*, *112 N. J. Eq. 270, 277*. In *Parkview Building & Loan Association of Newark v. Rose*, *90 N. J. Law 614*, it is said, "where one through negligence gives another power to practice a fraud upon innocent parties, the court will not interfere in his protection at the expense of the one who has been deceived." The principle of

*Memorandum*

law thus stated actuates me in the opinion that this court should not permit complainant to take advantage of the defendants Gollin and deprive them of their property by means of the foreclosure of the mortgage in question, the Gollins being entirely innocent parties with respect thereto. Complainant may look to Anson Realty Company and Horace Roberson to recover moneys paid out by it in the mortgage transactions in question which were effectuated by them. If complainant had exercised reasonable diligence in the matter *sub judice* it would readily have ascertained that the Gollins not only claimed equitable ownership of the property upon which the mortgage loans were sought by Anson Realty Company, but that they were the actual owners thereof and that the Annett-Mahnken Realty Company which held legal title to the property for them under a declaration of trust, had without authority conveyed said property to the Anson Realty Company as a dummy for said trustee; and it would also readily have ascertained that the \$3,000.00 mortgage on the property at 772 Avenue C, Bayonne, New Jersey, in the name of Ethel M. Joy, was really a mortgage of Horace Roberson, said Ethel M. Joy merely holding same as a dummy for him. The testimony of Horace Roberson evidences such to be the fact, and it evidences also that neither he or Ethel M. Joy gave any consideration whatever for said mortgage. I am convinced that complainant by the exercise of reasonable diligence and particularly because of *lis pendens* which the Gollins filed in the Hudson County Register's office affecting the property in question could have readily ascertained that the Gollins claimed ownership of such property. The Robersons

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## Memorandum

whom complainant allowed to act for it in its aforesaid mortgage transactions with the Anson Realty Company not only well knew that the Gollins claimed ownership of the property on which the Anson Realty Company sought to obtain the aforesaid mortgage loans from complainant, but were really the owners thereof. Horace Roberson well knew that a fraud was being perpetrated upon complainant and the Gollins by means of the application for mortgage loan which he presented to the complainant in behalf of the Anson Realty Company on property which said company concededly did not have *bona fide* legal title to. His knowledge in such respect is chargeable to complainant, particularly because if the complainant had acted for itself in the mortgage transaction in question, or had had a disinterested lawyer act therein in its behalf, it would have been informed of matters known to its officer and agent Horace Roberson and to its lawyers Roberson and Roberson. It appears from the proofs herein that several members of complainant's Board of Directors among whom Messrs. Johnson and Keegan preceding the granting of the mortgage loan in question, had heard of a controversy between Horace Roberson and Betsey Gollin with respect to the ownership of the property in question. Director Johnson, testifying herein, is admitting that he heard of such controversy, characterized same as rumors, and stated that he did not consider such rumors involved either the premises at 772 Avenue C or 501 Boulevard, Bayonne, New Jersey, but that they related to an apartment house. The suit 72/304 hereinbefore referred to involved not only an apartment house but also the prem-

*Memorandum*

ises 772 Avenue C and 501 Boulevard, Bayonne, New Jersey, as well as other property of the Gollins. Notwithstanding the proofs herein show that Horace Roberson was the real owner of the \$3,000.00 mortgage which stood in the name of Ethel M. Joy as mortgagee, he was not made a party defendant in the mortgage foreclosure suit 92/291. Although Horace Roberson and Horace K. Roberson well knew that the Gollins claimed ownership of the property in question, notwithstanding record title thereto appeared in the name of Anson Realty Company, and particularly were well informed to such effect as a result of the claim of the Gollins to the aforesaid suit 72/304, the Gollins were not named as parties defendant in the bills of complaint filed in either of the aforesaid mortgage foreclosure suits. The Ethel M. Joy mortgage is invalid as a lien against the property 772 Avenue C, Bayonne, New Jersey and I determine it so to be. I will advise that said mortgage be cancelled and delivered up to the defendants Gollin for cancellation of record. The proofs herein show that the complainant's Directors Johnson and Keegan who were informed of the controversy between Horace Roberson and the Gollins as to the property in question were present at meetings of complainant's Board of Directors when applications for mortgage loans on said property were presented by complainant's attorney Horace Roberson for and in behalf of the Anson Realty Company and also when such applications were considered and passed upon by said Board. There is ample proof in the instant cases to evince that the aforesaid Directors were chargeable with knowledge when acting upon such ap-

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*Memorandum*

10 plications for mortgage loans of the Gollins claim of equitable ownership of the property upon which mortgage loans were sought by Horace Roberson for and in behalf of the Anson Realty Company. It is significant in the matter *sub*

20 *judice* that the minutes of the proceedings of complainant's Board of Directors with respect to such mortgage transactions were not produced in Court or offered in evidence or their non-production accounted for, although counsel for the defendants Gollin commented during the hearings on the legal significance of their non-production in court. Failure to produce such minutes in evidence must be regarded most

30 strongly against said complainant and indicative that the minutes contained information detrimental to its interests if produced in evidence. See *Parsella Petroleum Products, Inc. v. White*, 109 N. J. Eq. No. 364 at page 365. In *Vulcan Detinning Co. v. American Can Co.*, 72 N. J. Eq. 387, our Court of Errors and Appeals held that knowledge of an agent casually obtained, is chargeable to a principal by whom he is afterward employed whenever the principal if acting himself, or (if a corporation) when acting

40 throughout some other agent would in the natural course of events have acquired the knowledge or have been put upon such inquiry as was the equivalent of notice. The court in said case approved the rule promulgated in *State v. Sooy*, N. J. Law 304, "The knowledge of the agent is chargeable upon its principal whenever the principal if acting for himself, would have received notice of the matters known to the agent." Said rules of law are applicable herein against complainant. The proofs herein show that at the

*Memorandum*

very time complainant entertained the application of the Anson Realty Company for a mortgage loan of \$6,600.00 on the premises 501 Boulevard, Bayonne, New Jersey, complainant had then two mortgages which were open of record against the same property which mortgages were made to it by the Gollins. The proofs show also that shares of stock of the complainant association owned by Betsey Gollin were assigned by her to complainant as collateral security for a mortgage loan made to her. Such mortgages and shares of stock were cancelled by complainant in the aforesaid mortgage transactions without consulting with or notice to Betsey Gollin, and the value of the cancelled shares as determined by complainant was credited by it to the Anson Realty Company instead of to Betsey Gollin, the owner of said shares. Complainant's checks for moneys advanced in the mortgage transactions in question were made payable to the order of Roberson and Roberson, solicitors and said firm deposited such checks in its bank account and moneys realized therefrom were commingled with its own funds, and they made payments by their own separate checks to various parties; in other words Roberson & Roberson were entrusted by complainant with the mortgage moneys in question and distributed same. Horace K. Roberson testifying herein, acknowledged that before commencing the foreclosure suits he knew from information which came to him as a result of the litigation in the case of Annett-Mahnken Realty Company v. Gollin, *supra*, that Betsey Gollin claimed an interest in the property in question, yet having knowledge thereof, he did not make said Betsey Gollin a party defendant to the mortgage foreclosure suits. Whereas, in the in-

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*Memorandum*

stant case officers and the attorney of complainant had knowledge of facts which should at least have put them on inquiry, it was equivalent to notice, and whereby reason of failure to make such inquiry a fraud was perpetrated on a third party, an innocent party (the Gollins) complainant cannot be regarded as a purchaser for value. *Tantum v. Green*, 21 N. J. Eq. 364. The rule of law stated in the *Tantum-Green* case held operative against a grantee, is by analogy operative also against a mortgagee. When facts are brought to the knowledge of a person (or corporation) contemplating the making of a mortgage loan on realty which are sufficient to apprise the intending mortgagee of the existence of an outstanding claim of title, and a reasonable investigation of such facts would disclose the existence of such outstanding title, the intending mortgagees are put upon inquiry and charged with notice of the facts, which a reasonably diligent inquiry would have disclosed. *Ninners v. Banville*, N. J. Eq. 348.

I will advise a decree herein dismissing complainant's bills of complaint in both cases in so far as they pray a decree for the sale of the mortgaged premises; and granting to the defendants and counterclaimants Betsey Gollin and Max Gollin the relief prayed by them in their counterclaim. If the prayers for relief be insufficiently set out to warrant a decree for the full measure of relief which I conclude the aforesaid defendants and counterclaimants are entitled to, I will advise an order permitting said parties to amend their pleadings to conform to the proofs.

Dated, Hoboken, N. J.  
April 11, 1934.

**Final Decree**

(Filed August 9, 1934.)

In CHANCERY OF NEW JERSEY

92-332

Between

CENTREVILLE BUILDING AND LOAN  
ASSOCIATION, a corporation,*Complainant,*

and

ANSON REALTY COMPANY, a cor-  
poration, *et als.,**Defendants.*On Bill &c.,  
Final Decree

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This cause coming on to be heard in the presence of Brenner & Kresch, Esquires, solicitors for the complainant, and Hirschberg & Nashel, Esquires, solicitors for the defendants Betsey Gollin and Max Gollin, and Louis Rubenstein, Esquire, of counsel with said defendants, and the court having examined the pleadings and having taken proofs orally and in open court, and having heard and considered the arguments of counsel, and being satisfied that the complainant, Centreville Building & Loan Association, a corporation, is not entitled to the relief prayed for in its bill of complaint, and being satisfied that the mortgage made and executed by the defendant Anson Realty Company, a corporation, to the said complainant mentioned and set forth in the bill of complaint and counterclaim filed herein, dated January 13, 1930, in the principal sum of \$6600.00.

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*Final Decree*

and recorded in the Register's Office of Hudson County in Book 1583 of Mortgages for said County, at pages 546 &c., was executed by fraud and imposition perpetrated by the defendant Anson Realty Company, a corporation, upon the defendant Betsey Gollin, in which the complainant participated by acts of culpable negligence and that the said complainant was chargeable with knowledge of the fraudulent acts of the defendant Anson Realty Company, a corporation, and of the equitable ownership of the property described in the bill of complaint by the defendant Betsey Gollin and that the said complainant was not a *bona fide* mortgagee for value without notice, and the court being satisfied that the aforesaid mortgage is invalid and that the defendants Betsey Gollin and Max Gollin are entitled to the relief prayed for by them in their counterclaim:

It is thereupon, on this 9th day of August, 1934, ORDERED, ADJUDGED and DECREED that the Complainant's bill of complaint be and the same is hereby dismissed.

It is further ORDERED, ADJUDGED and DECREED that the said complainant Centreville Building & Loan Association, a corporation, surrender its said mortgage properly endorsed for cancellation to the defendant Betsey Gollin within 10 days after the service upon said complainant or its solicitors of a true but uncertified copy of this decree.

It is further ORDERED, ADJUDGED and DECREED that the said mortgage of the complainant Cen-

*Final Decree*

treville Building & Loan Association, a corporation, hereinbefore referred to be cancelled of record and be no longer a lien upon the lands and premises therein described.

It is further ORDERED, ADJUDGED and DECREED that the complainant Centreville Building & Loan Association, a corporation, pay to the defendants Betsey Gollin and Max Gollin, the costs of suit to be taxed, including a counsel fee of One Hundred and Fifty (\$150.00) Dollars, and that in default of the payment of said taxed costs within 10 days after the service upon said complainant or its solicitors, of a true copy of said taxed costs and of this decree, execution issue against the goods and chattels, lands and tenements, hereditaments and real estate of said complainant Centreville Building & Loan Association, a corporation, to make said taxed costs, according to the practice of this Court.

LUTHER A. CAMPBELL,  
C.

Respectfully advised,  
JNO J. FALLON,  
A. M.

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## Case

## IN CHANCERY OF NEW JERSEY

10 Between  
 CENTREVILLE BUILDING & LOAN  
 ASSOCIATION, etc., a corpora-  
 tion, etc.,  
*Complainant,*  
 and  
 ANSON REALTY COMPANY, *et als.*,  
*Defendants.*

92—291  
 On Bill &c.

20 Between  
 CENTREVILLE BUILDING & LOAN  
 ASSOCIATION, etc., a corpora-  
 tion, etc.,  
*Complainant,*  
 and  
 ANSON REALTY COMPANY, *et als.*,  
*Defendants.*

92—332  
 On Bill &c.

30 Transcript of stenographic record of final hear-  
 ing in the above entitled causes before His Honor,  
 John J. Fallon, Vice Chancellor, at the Chancery  
 Chambers, Jersey City, New Jersey—October 19,  
 1933.

LOUIS F. BEACHNER,  
 Official Stenographer in Chancery,  
 1 Exchange Place,  
 Jersey City.

40

*Horace K. Roberson, direct*

APPEARANCES:

ALFRED BRENNER, of BRENNER & KRESCH, for  
Complainant.

LOUIS RUBENSTEIN, appearing for HIRSCH-  
BERG & NASHIEL, for defendants Betsey  
Gollin & Max Gollin. 10

BURGESS A. CRUDEN, of BENNY & CRUDEN,  
for defendant Ethel M. Ardrey.

CASE FOR THE COMPLAINANTS

HORACE K. ROBERSON, being sworn:

*Direct examination by Mr. Brenner:*

Q. Judge Roberson, are you a member of the  
Bar of this State? A. I am. 20

Q. And have been for how many years? A.  
Since 1913.

Q. And you are a member of the firm of  
Roberson & Roberson. A. I am.

Q. You are a resident of Bayonne. A. I am.

Q. And for how long? A. Since 1910.

Q. And you are at present Recorder of the  
City of Bayonne. A. I am.

Q. And have been such for how long? A. 30  
Since June 16th of this year.

Q. Did you on April 11, 1928, represent the  
Centreville Building & Loan Association? A. I  
did, sir.

Q. And did you represent them in a transac-  
tion in which a loan was made to the Anson  
Realty Company? A. I did.

Q. And did you witness a bond executed by  
the Anson Realty Company to the Centreville  
Building & Loan Association? A. I did. 40

*Horace K. Roberson, direct*

Q. I show you a paper that purports to be such bond and ask you if that is the paper which you witnessed. A. That is the paper.

10 Q. I note that George E. Griswold signed as secretary for the Anson Realty Company. Is Mr. Griswold now dead? A. He is.

Q. Do you know his signature? A. I do.

Q. And is that his signature on the bond? A. Yes.

Mr. Brenner: I offer the bond in evidence.

Mr. Rubenstein: No objection.

(Bond marked Exhibit C-1 in evidence.)

*By Mr. Brenner:*

20 Q. At the time of the execution of the bond was there also executed a mortgage as security? A. There was.

Q. And that covered property on Avenue C in the City of Bayonne. A. It did.

Q. What is the number of that property? A. 772 Avenue C, Bayonne.

Q. Was that mortgage recorded? A. It was.

30 Q. I show you what purports to be such mortgage and ask you if that was the mortgage which was executed and recorded at that time. A. That is the mortgage.

Mr. Brenner: I offer the mortgage.

Mr. Rubenstein: No objection.

(Mortgage marked Exhibit C-2 in evidence.)

*By Mr. Brenner:*

40 Q. And did you also on a subsequent date, to wit, on January 13, 1930, represent the Centreville Building & Loan Association? A. I did.

*Horace K. Roberson, direct*

Q. And was a bond at that time executed by the Anson Realty Company to that association?

A. There was.

Q. I show you a paper and ask you if that is the bond. A. That's the bond.

Mr. Brenner: I offer the bond. 10

Mr. Rubenstein: What's the date?

Mr. Brenner: January 13, 1930.

The Court: These bonds are in different suits.

Mr. Brenner: Yes, separate suits.

The Court: Put in the docket and page when you are offering them.

Mr. Brenner: 772 Avenue C property, the first bond and mortgage which I offered, is Docket 92, page 291. The second bond which I am now offering, and I will offer the mortgage, is on 501 Boulevard, Docket 92, page 332. I offer the bond. 20

(Bond marked Exhibit C-3 in evidence.)

Q. And as security for the loan was a mortgage executed on property on the Boulevard in Bayonne? A. There was.

Q. And what is the number of that property? A. 501 Hudson Boulevard. 30

Q. And I show you what purports to be such mortgage and ask you if that was the mortgage which was executed at that time. A. That's the mortgage.

Mr. Brenner: I offer that in evidence.

(Mortgage marked Exhibit C-4 in evidence.)

Mr. Brenner: Take the witness. 40

*Horace K. Roberson, cross**Cross examination by Mr. Rubenstein:*

Q. You are connected with Roberson & Roberson. A. I am a member of the partnership of Roberson & Roberson.

10 Q. And who searched this property? A. A clerk in my office.

Q. Who made the charges to the building and loan for the legal work in these mortgage transactions? A. The building and loan didn't pay any charges for the legal work. The buyer always pays the charges.

Q. To whom did the buyer pay the charges?

Mr. Brenner: I object as improper cross examination.

20 The Court: I think I will allow it Judge Brenner because in reading the counterclaim I see there are a lot of ramifications.

Mr. Brenner: If they do that they have to make him their own witness.

30 The Court: No, I think they have the right. I have in the back of my head another case which was tried before me in which there were some differences between the Anson Realty Company, the Annett-Mahnken Realty Company and the Gollins, and my recollection is that these various properties were involved in that suit. Now, I note that the answers set out that the parties claim to have had no knowledge of what is charged by the bill, and I presume it is intended by these parties to put themselves in a position as innocent parties. It does seem to me that  
40 if this witness represented any of those parties in any transactions he having

*Horace K. Roberson, cross*

knowledge, as they claim, of the declaration of trust as was made between Mr. Roberson, the father of the witness——

Mr. Brenner: His uncle.

The Court: His uncle rather, and the Gollins, he may be chargeable with notice of that transaction.

10

Mr. Brenner: I am objecting now to the disorderly procedure in subjecting this witness to cross examination on something he was not asked on direct, and he is not a party to the suit. I say they have a perfect right if they see fit to contradict this witness to the fullest extent if they make him their own witness.

The Court: What have you to say?

20

Mr. Rubenstein: To avoid a discussion at the present moment I will withdraw the question Judge Brenner.

The Court: All right.

*By Mr. Rubenstein:*

Q. Judge, do you know who made the application for these loans? A. The applications are here.

30

The Court: He wants to know who the party was that dealt with it.

The Witness: In one case Horace Roberson signed the application as president of the Anson Realty Company.

The Court: Which case?

The Witness: The earlier mortgage on 772 Avenue C.

*By Mr. Rubenstein:*

40

Q. Who made the application in the other loan

*Horace K. Roberson, cross*

on the Boulevard? A. The other application was signed by George E. Griswold, secretary of the Anson Realty Company.

*By the Court:*

10 Q. Who was George E. Griswold? A. He was the secretary of the Anson Realty Company.

*By Mr. Rubenstein:*

20 Q. Can you tell us why Horace Roberson signed the bond C-1 individually? A. It states in the bond why Horace Roberson signed the bond. Horace Roberson joined in the execution of the bond to guarantee the payment of that bond in excess of \$13,000 and the interest thereon, and his liability was to be limited to the payment of said sum in excess of \$13,000 and interest thereon from the date thereof.

30 Q. What brought about that guarantee? A. The appraisal committee of the Centreville Building & Loan Association recommended a loan of \$13,000 even though the appraisal of the property would permit a larger sum, and at the meeting of the board of directors the directors authorized the loan for \$13,000 provided Horace Roberson would sign the bond to guarantee the payment for the excess.

Q. What members of the board of directors were present at that meeting? A. Well, I can tell you I have been informed by the secretary. He gave me a list of them.

Q. Were you present? A. I think I was present, yes.

40 The Court: Give us your recollection if you can.

*Horace K. Roberson, cross*

The Witness: I can't recall from my own memory. I have to depend on what the secretary gave me from the minutes.

*By Mr. Rubenstein:*

Q. Have you a copy of the secretary's memorandum? A. He has given me a memorandum, yes, sir. 10

The Court: The present secretary?

The Witness: Yes, and he was the secretary then. At the meeting of April 9, 1928, when the loan of \$14,000 was passed the following officers and directors were present. William C. Oliver, Ernest B. Conrad, Harry E. Bockoven, Horace Roberson, Horace K. Roberson (myself), George Seymour, Alfred B. Beling, James Y. Burnett, Louis N. Creighton, Doctor Archibald C. Forman, J. Edsall Johnson, John G. Keegan, Samuel A. Roberson, Chester S. Smith, Porter H. Smith, Daniel R. Sweeney and Herman Weinrich. 20

*By Mr. Rubenstein:*

Q. Can you tell us the directors who were present at the meeting who passed the loan on the Boulevard property? A. Yes, the secretary has given me that also. William C. Oliver, Ernest B. Conrad, Horace Roberson, Harry E. Rockoven, Alfred B. Beling, James Y. Burnett, Doctor Archibald C. Forman, Doctor J. Howard Gould, John G. Keegan, Samuel A. Roberson, Horace K. Roberson, George Seymour and Herman Weinrich. 30

Q. Now, in your examination of the title of the property located on the Boulevard didn't you 40

*Alfred B. Beling, direct*

find two mortgages held by the Centreville Building & Loan Association?

10 Mr. Brenner: That is objected to if the court please at this time on the ground it is improper cross examination.

Mr. Rubenstein: I will withdraw the question. That's all.

---

ALFRED B. BELING, being sworn:

*Direct examination by Mr. Brenner:*

20 Q. Mr. Beling, you are connected with the Centreville Building & Loan Association? A. As secretary.

Q. And how long have you been the secretary of that association? A. About eighteen years.

Q. And did you as secretary have charge of the books of that association on April 11, 1928 at the time that a loan was made to the Anson Realty Company? A. I did.

30 Q. In what book of the association is the record of that loan kept? A. In the shareholders ledger.

Q. Any particular number ledger? A. There are four of them. Number 3 ledger, page 73, the Anson Realty Company.

Q. And is that the loan on the property 770 Avenue C? A. Right.

Q. And that shows that loan made as of what date. What is the book you are now referring to? A. That is a record of the minutes.

40 The Court: I think you had better not refer to that book yet. You were referring to that other book. If there is no

*Alfred B. Beling, direct.*

record in that book say so and you can refer to some other book.

*By Mr. Brenner:*

Q. Ledger Number 3 does not show the date of the loan made to the Anson Realty Company by the Centreville Building & Loan Association. 10

A. It does not. It shows it in a previous ledger. That was the up-to-date ledger I had reference to.

Q. What previous ledger is that shown in? A. In Book 4 on folio No. 66 dated April 9, 1928.

Q. That shows a loan of how much money? A. \$14,000.

Q. Now, does that book show payments made on account of that loan, and if so, the time when and the amount? A. It does not. It is in a previous ledger which I haven't here but I have a record of the amount and when paid. 20

Q. All right, will you give us the amount that has been paid on account of the loan of \$14,000?

A. On June 13, 1932, \$557.80 was paid on the loan of \$14,000 leaving a balance of \$13,442.20.

*By the Court:*

Q. Does that record show by whom paid? A. No, it does not. It is just a memorandum. It was received from Roberson & Roberson. 30

Q. I observe you are reading from what appears to be a letterhead, or the like. Where did you get the information from which was taken from the ledger? A. From the previous ledger.

Q. Which you have not here. A. No.

Q. You made the entry yourself? A. Yes.

*By Mr. Brenner:*

Q. Was that paid in one lump sum or an accumulation of payments? A. One lump sum. 40

*Alfred B. Beling, direct*

Q. And was that credited on some shares of stock or something like that? A. It is a credit against the straight mortgage loan of fourteen thousand.

10 Q. And left a balance which you stated. A. \$13,442.20.

Q. Has anything been paid on account since June, 1932? A. Nothing.

Q. Are there accumulated taxes on the property? A. There are.

Q. Accumulated water rents? A. Yes.

Q. And can you tell us for what years there is an accumulation of taxes and water rents?

Mr. Rubenstein: I object to the witness testifying. It is hearsay.

20 The Court: Why not let him testify and take it subject to the production of the tax and water bills.

Mr. Brenner: I have the Tax Assessor here.

A. I don't know.

*By Mr. Brenner:*

30 Q. Was there any action taken toward authorizing the foreclosure of the mortgage on the Avenue C property? A. There was.

Q. When? A. The particular date I do not know but it was ordered foreclosed by the directors.

*By the Court:*

Q. How long ago? A. Well, I couldn't say definitely.

40 Q. Have you a record of it? A. There is a record in the minutes but I haven't them here.

*Alfred B. Beling, direct*

*By Mr. Brenner:*

Q. Now, as to the Boulevard property, can you tell us when payment was made to the association on that mortgage? A. A payment was made on January 14, 1933 of \$1219.90 cancelling a two thousand dollar mortgage in book No. 12815, 10 shares of the 45th series. 10

Q. Is that the only payment that was made? A. Other payments were made. New shares taken out and a new loan of \$6600.00 granted January 14th, and also interest on a straight mortgage loan of \$70.00 and an appraisal fee of \$10.00.

Q. I am talking now Mr. Beling of payments made by the Anson Realty Company on account of the loan of \$6600.00. Possibly I didn't make myself clear. Now, has there been anything paid on that loan? A. There has. 20

Q. What has been paid on that loan? A. They paid for shares on January 14, 1930, \$165.99. Another payment made on both loans of sixty-six hundred and fourteen thousand of \$150.95.

Q. What is the balance due on this loan of sixty-six hundred to the Centreville Building & Loan Association? A. The balance as of November 13th is \$6158.97. 30

Q. November 13th of what year? A. 1933.

Q. And do you know whether foreclosure proceedings were authorized and directed on this property? A. They were.

Q. And since the foreclosure proceedings on both properties were instituted have there been any payments of any kind made? A. Nothing paid.

Q. Now, referring back again to the Boulevard property, do you know whether or not there are 40

*Alfred B. Beling, cross*

any charges for municipal liens that are unpaid?  
 A. I would say no offhand for the reason I don't  
 have charge of that.

Mr. Brenner: Take the witness.

10 *Cross examination by Mr. Rubenstein:*

Q. The directors of the building and loan  
 passed a resolution authorizing the foreclosure  
 of these two mortgages. A. They did.

Q. Have you the resolutions here? A. No.

Q. Why didn't you bring them with you? A.  
 I wasn't asked to bring them. I was asked to  
 bring the record of the directors.

20 The Court: I can't pay much attention  
 to it. If it isn't verified his statement  
 won't be very evidential. It is the fact  
 there are resolutions.

The Witness: Yes.

The Court: Counsel can see them if he  
 wishes.

The Witness: Right.

*By Mr. Rubenstein:*

30 Q. You mentioned in your direct examination  
 an item of \$1219.90, credit on January 14, 1933,  
 am I right? A. Right.

Q. What was that for? A. That was for can-  
 celling of a loan on 521 Boulevard, book 12815,  
 10 shares in the 45th series.

Q. Was the original building and loan book  
 produced at the building and loan association?

The Court: You mean when the loan  
 was made?

40 Mr. Rubenstein: When the credit was  
 made.

*Alfred B. Beling, cross*

A. The book in which the shares were issued?

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

Q. How could you give them credit without the book? A. It isn't always necessary to have the book.

Q. It is customary to have the book, isn't that right? A. It has been customary. 10

Q. You knew that the Gollins had the book. A. No, I did not.

*By the Court:*

Q. Who made the credit, you or some other officer, A. I made the credit.

Q. What is the number of the book?

Mr. Rubenstein: 12815. 20

The Court: Let him identify it.

*By Mr. Rubenstein:*

Q. Is that the book? A. That's our association's book.

The Court: Let it be marked for identification.

(Book marked D-1 for Identification.)

*By Mr. Rubenstein:* 30

Q. Now, it is customary to produce the book marked D-1 for Identification to secure the credits, am I not right? A. No, you are not right.

Q. Did you ask the Anson Realty Company for the book Number 12815 before giving the credit?

A. I did not.

Q. Why didn't you ask for it? A. No particular reason.

Q. Isn't it customary to ask for the book be- 40

*George H. Kramer, direct*

fore you cancel a mortgage and give the credit?

A. We generally do.

Q. You didn't in this case. A. There are similar cases where we haven't done it.

10 Q. Can you name any other case where you didn't ask for the book? A. Not offhand, no.

Q. So this is the only case you know of at the present time that you didn't ask for the book.

A. I wouldn't say that.

The Court: You are after saying it. You said offhand you couldn't tell.

20 The Witness: There may be other cases. When we receive our money and the bond and mortgage is countersigned by the treasurer and president we consider the deal closed.

Mr. Rubenstein: That's all.

*Redirect examination by Mr. Brenner:*

Q. Do you know Mr. Beling that at the time of the granting of the mortgage loan that the bond particularly provided for the assignment of the share book or the shares of stock?

30 The Court: I think the paper will have to speak for itself. He may say yes, and he may be mistaken.

Mr. Brenner: That's all.

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GEORGE H. KRAMER, being sworn:

*Direct examination by Mr. Brenner:*

40 Q. Mr. Kramer, are you connected with the tax office of the City of Bayonne? A. I am the Collector of Revenue.

*George H. Kramer, direct*

Q. And as such have you charge of the records showing the taxes due against properties?

A. I have.

Q. Referring to property 772 Avenue C, have you your record showing the accumulated tax liens against that property? A. I have.

10

Q. Will you produce your record please? A. Yes.

Q. As of September 14, 1932, what taxes were due against the property 772 Avenue C? A. That is comprised of Block 177, Lots 7, 8 and 9, separately. Now, against Lot Number 8 the taxes for 1930 is \$266.94. Taxes for 1931 is \$261.25. Taxes for 1932—Do you want 1932, inclusive?

Q. 1932. A. \$358.78.

20

Q. And was there accumulated interest on those taxes? A. Yes.

Q. Had any part of those taxes been paid prior to September 14, 1932? A. Not for those years.

Q. Have any payments been made since on those taxes? A. No.

Q. So that the amount of those taxes and interest are still due and owing against the property 772 Avenue C. A. Right.

30

Q. Now, referring to Lot Number 9, what is there against that lot? A. 1930, \$120.96. 1931, \$118.38 and 1932, \$162.57.

Q. And was there accumulated interest on September 14, 1932, as against the taxes on that lot? A. Right.

Q. Had any part of the principal or interest of the taxes for those years been paid up to September 14, 1932? A. No.

40

*George H. Kramer, direct*

Q. Has any payment been made since that date? A. No.

Q. Now, referring to property 501 Boulevard, does that appear in the same book or a different book? A. No, in another book.

10 Mr. Brenner: May I offer the record without having it marked?

The Court: Yes.

The Witness: That property is known as Block 327, Lot Number 14 C, 501 Boulevard.

*By Mr. Brenner:*

20 Q. What does your record show as to taxes against that property? A. For the year 1930, \$325.34. 1931, \$318.40. 1932, \$437.27.

Q. Was there accumulated interest against those taxes as of September 16, 1932? A. Yes.

Q. Had any part of the principal or interest been paid up to September 16, 1932? A. No.

Q. Has any portion of the principal or interest been paid since that date? A. No.

30 Mr. Brenner: I offer those records, if the Court please.

The Court: They will be noted but not marked.

The Witness: The first one is Number 6, Delinquent Ledger and the other one is Number 9, Delinquent Ledger.

(Ledgers referred to as Exhibits C-5 and C-6.)

The Court: Any questions?

40 Mr. Rubenstein: No questions.

*William C. Cassidy, direct*

WILLIAM C. CASSIDY, being sworn.

*Direct examination by Mr. Brenner:*

Q. Mr. Cassidy, you are the chief clerk of the water department of the City of Bayonne? A. Yes, sir.

10

Q. And as such have charge of the records of the water department of that city? A. I have.

Q. Referring to property 772 Avenue C, do your records show nonpayment of water charges to and including September 14, 1932? A. Yes, sir.

Q. And will you tell us the amount of water charges and the time when those water charges started and the date to which they ran as shown by your books? A. It started from November 6, 1929 to February 2, 1932, and the amount is \$82.98.

20

Q. February was the last reading previous to September 14, 1932. A. Yes.

Q. And in what book is that record shown? A. We have loose-leaf accounts in the water department and we go by account numbers. It is known as Account Number 5346.

*By the Court:*

30

Q. Taken from what book? Is it a ledger? A. Yes, a ledger.

*By Mr. Brenner:*

Q. A loose-leaf ledger. A. Yes.

Q. And that is the sheet which you are now reading from. A. Yes.

Mr. Brenner: I offer that in evidence without being marked.

40

(Sheet referred to as Exhibit C-7.)

*William C. Cassidy, direct*

Q. Now, referring to property 501 Boulevard, have you your record showing the water charges against that property? A. I have.

Q. Delinquent as of September 16, 1932? A. As of February—

10 Q. As of September 16, 1932. A. Yes, September 6th is the closest I have.

Q. As of September 6th. That was the last reading. A. Yes.

Q. That was the year 1932. A. Yes.

Q. From what time did those charges run? A. From December 6, 1929.

Q. And what were the amount of those charges? A. The total over that period?

Q. Yes. A. \$108.91.

20 Q. Now, as to both properties, were there any payments made on account up to and including September 14th and September 16th, 1932? A. From December 6th?

Q. No, the balance that you gave as being due. A. No.

Q. Were any payments made on that balance from the last reading up to September 14th as to 772 Avenue C and September 16th as to 501 Boulevard? A. No.

30 Q. Have any payments been made since those dates on either properties? A. No.

Q. Is there accumulated interest on both items? A. Yes.

*By the Court:*

Q. At what rate? A. At seven per cent.

Mr. Brenner: Take the witness.

Mr. Rubenstein: No questions.

40 Mr. Brenner: I ask that the second

*Horace Roberson, direct*

sheet as to 501 Boulevard be offered in evidence without being marked.

(Sheet referred to as Exhibit C-8.)

Mr. Brenner: That's our case if the Court please.

Mr. Cruden: I would like at this time to prove the subordinate mortgage made by the Anson Realty Company to Ethel M. Joy, now Ethel M. Ardrey.

10

The Court: All right.

---

CASE FOR THE DEFENDANT ETHEL M. ARDREY

HORACE ROBERSON, being sworn.

20

*Direct examination by Mr. Cruden:*

Q. Judge Roberson, on April 12, 1928, were you the president of Anson Realty Company?  
A. I was Vice-President. That's a mistake. It should be Vice-President.

The Court: When he says that's a mistake what is he referring to?

Mr. Cruden: Referring to the signature on the mortgage to which reference will be made in a moment.

30

Q. Did you on that date as Vice-President of that company execute a mortgage to Ethel M. Joy? A. Yes.

Q. I show you a paper and ask you whether that is the mortgage. A. It is.

Q. Did you at the same time execute on behalf of the company a bond to Ethel M. Joy? A. Yes.

40

*Horace Roberson, direct*

Q. And the paper that I show you is that the bond? A. Yes.

Mr. Cruden: I offer them in evidence.

The Court: Who was the mortgagee?

10 Mr. Cruden: Ethel M. Joy, one of my clients. She has since married. I offer in evidence a mortgage made by Anson Realty Company to Ethel M. Joy dated April 12, 1928, and recorded in Book 1498 of Mortgages, page 205, to secure the payment of the sum of \$3,000.

(Mortgage marked Exhibit D-J 1 in evidence.)

20 Mr. Cruden: I also offer the bond made by the same company to Ethel M. Joy on the same date accompanying same.

(Bond marked Exhibit D-J 2 in evidence.)

Q. Mr. Roberson, do you know whether or not Ethel M. Joy has married since the making of that mortgage?

Mr. Rubenstein: I object to that question.

30 The Court: I will allow it.

A. Yes.

*By Mr. Cruden:*

Q. What is her present name? A. Ethel M. Ardrey.

40 Q. Now, since the date of the execution of the bond and mortgage in evidence have you had charge of the collection of the moneys due thereon? A. Yes.

*Horace Roberson, cross*

Q. And will you state to what date the last interest payment was made? A. August 12, 1929.

Q. Has any part of the principal of that mortgage been paid? A. No.

Q. Have you calculated the interest to date?  
A. Yes. The interest from August 12, 1929 to October 19, 1933, is \$753.50.

10

Q. So that the total amount is what? A. \$3,753.50.

Q. Any part of that been paid? A. None.

Mr. Cruden: That's all.

*Cross examination by Mr. Rubenstein:*

Q. Judge, you are the Vice-President of the Anson Realty Company. A. Yes.

20

Q. How long have you been Vice-President?  
A. Since its organization.

Q. When was it organized? A. I think in April, 1929. I am not sure, but I think so.

Q. Of what year? A. April 29, 1929.

Q. Judge, if I show you the mortgage Exhibit D-J 1 which is dated April 12, 1928, made by the Anson Realty Company, would it change your answer? A. Yes, it must have been before that. I haven't any recollection.

30

Q. Well, it was organized before the execution of this mortgage. A. If you will permit me to explain it I will tell you when we first began to do business.

Q. Yes. A. The first transaction we had with the Anson Realty Company is March 30, 1928.

The Court: So it was some time before that.

The Witness: Yes.

40

*Horace Roberson, cross**By Mr. Rubenstein:*

Q. Who is the president of the Anson Realty Company? A. Charles E. Annett.

10 Q. Who is the secretary? A. At first it was George E. Griswold and after he died Ethel M. Joy became secretary.

*By the Court:*

Q. Who was George E. Griswold? Was he an employee of yours too? A. Yes, he was a clerk in our office.

*By Mr. Rubenstein:*

20 Q. Was Ethel M. Joy employed by you? A. Yes.

Q. For how many years? A. Oh, six or seven years.

Q. And is she now employed by you? A. No.

Q. When did she leave your employment? A. Last February.

*By the Court:*

30 Q. Has she any beneficial interest in that bond and mortgage? A. No.

Q. Why was it made to her? A. Merely a convenience. An office convenience.

Q. A convenience for what? A. Me.

Q. You personally? A. Yes.

*By Mr. Rubenstein:*

Q. Did Ethel M. Joy give any consideration for this mortgage? A. No.

40 *By the Court:*

Q. Why was it made? What I have in mind

*Horace Roberson, cross*

here is property of the Anson Realty Company that is being mortgaged for \$3,000 to this woman acting for you. In other words, you are the real party in interest. Now, how did that come about? A. It is rather a long story.

The Court: I think I will withdraw my question. I suppose I am interested in finding out but I won't put the question as long as you say it is a long story. 10

Mr. Cruden: We have no objection, if your Honor please.

The Court: All right.

A. Originally Max Gollin and Betsey Gollin made a mortgage to John L. Dalrymple for \$3,000. 20

Mr. Cruden: Now, if your Honor please, I have that mortgage and I would like to offer it in evidence.

Mr. Brenner: May it be understood I don't consider any of this testimony binding upon us?

The Court: I don't know. I can't tell until it is in. It can't be unless there is some knowledge chargeable to your client with respect to it. I see in the counterclaim there is an indication your client is chargeable with knowledge of these transactions. 30

Mr. Brenner: Yes. May I for the purpose of the record note my objection to the testimony insofar as it may be binding upon the Centreville Building & Loan Association?

The Court: Yes, that will be done. 40

*Horace Roberson, cross*

A. This mortgage was my money but I expected Mr. Dalrymple to advance the money. He didn't do so. It was then transferred to Myrtle A. Reed on January 2, 1925, by an assignment which I have here unrecorded.

10 *By the Court:*

Q. You mean the man to whom the mortgage was made did not advance any money under it?

A. I advanced it. I offered him to take it.

Q. But he never advanced any money. A. No, he never did.

20 Q. Yet he assigned the mortgage. A. I had to have him do it to Myrtle A. Reed, one of my clients. On July 20th, Myrtle A. Reed assigned it to the Annett-Mahnken Realty Company—on July 20, 1925. The mortgage was then foreclosed and the Annett-Mahnken Realty Company purchased the property under the foreclosure sale. I never received any money for it. Later the Anson Realty Company was organized solely as a holding company to hold title to the Gollin properties so as not to entangle them anywhere in the transaction with the Annett-Mahnken Realty Company. After the mortgage was made  
30 by the Anson Realty Company to the Bayonne Trust Company I asked Mr. Annett, who was the president of the Annett-Mahnken Realty Company and also the president of the Anson Realty Company, to give to me something to secure the \$3,000 which I had originally advanced as a lien on that property. Then the Anson Realty Company gave the mortgage for \$3,000 to Ethel M. Joy, the one that has been offered in  
40 evidence.

*Horace Roberson, cross*

Q. You have stated that the Anson Realty Company was organized solely for the purpose of dealing with the Gollin property. A. Yes.

Q. My recollection is you testified in the suit of Annett-Mahnken Realty Company against the Gollins it also dealt with other property. A. No other property.

10

Q. My present recollection is in a memorandum opinion I filed I indicated because thereof the Anson Realty Company should reconvey to the Annett-Mahnken Realty Company some property which was conveyed to it because there might be some claims against the Anson Realty Company for which this property would be taken in satisfaction. Do you recall that? The only reason I am asking is to see whether you are right in saying it was formed to take charge of the Gollin property. Who is right? A. I am correct.

20

The Court: All right.

Mr. Cruden: I think I will offer these in evidence.

The Court: It isn't time to do it but you can offer them for identification. When you get into the defense you can offer them if there is no objection.

30

Mr. Cruden: I think it is the logical thing at this time in view of the testimony that is offered.

The Court: All right, it isn't objected to.

Mr. Brenner: Of course I make my objection on the record as to any of this testimony being binding upon the Centre-ville Building & Loan Association.

40

The Court: Your objection will be noted.

*Horace Roberson, cross*

Mr. Cruden: I offer these in evidence. (Bond marked Exhibit D-J 3. Mortgage marked Exhibit D-J 4. Assignments marked Exhibits D-J 5 and D-J 6.)

*By the Court:*

10

Q. You say the Anson Realty Company was organized solely to take over the Gollin property. What interest did Mr. Annett have in that? A. Well, he hadn't any interest there except whatever interest he might have had in the Gollin property.

Q. What interest did he have in the Gollin property? A. The Annett-Mahnken Realty Company had foreclosed all the Gollin property.

20

Q. And he was a stockholder of the Annett-Mahnken Realty Company. A. Yes.

Q. Who formed the Anson Realty Company? A. Mr. Annett, myself and Mr. George E. Griswold, who was our clerk.

*By Mr. Rubenstein:*

30

Q. How many shares of stock did Mr. Annett have in the Anson Realty Company? A. I couldn't tell you.

Mr. Cruden: I don't see the pertinency of the question.

The Court: The books ought to show it.

The Witness: I didn't bring them. I am perfectly willing to do so.

The Court: The counterclaim in this matter sets forth charges of fraud.

40

Mr. Cruden: We are not on the counterclaim. I am merely proving the mortgage. If he wants to call Mr. Roberson

*Horace Roberson, cross*

as his own witness it is another thing, but at this time I think it is entirely improper.

The Court: I will overrule your objection and allow it. He has not the books with him.

*By Mr. Rubenstein:*

10

Q. Judge, isn't it a fact that John Dalrymple advanced the purchase money for the mortgage made by Betsey Gollin and Max Gollin to him? A. No, John L. Dalrymple didn't advance the money. I expected him to do so but he didn't. He didn't have it.

*By the Court:*

Q. Who is he? A. He is my nephew and lives in Plainfield.

20

*By Mr. Rubenstein:*

Q. Do you remember testifying in the suit of Annett-Mahnken Realty Company against the Gollins that John L. Dalrymple was the owner of this mortgage? A. He was the owner of it at that time, I think.

Q. Do you remember testifying to that? A. I don't remember.

30

The Court: What is the question and what is the answer so we will get it right.

*By Mr. Rubenstein:*

Q. Do you remember this question being asked "On the second page of Exhibit D-2 there is an item here of Myrtle R. Reed mortgage 772 Avenue C \$3,000," and your answer was yes. A. I don't remember it, but it is true.

40

*Horace Roberson, cross*

Q. Do you remember this question was asked in that trial "Who did own it?", referring to this mortgage, and you said "John L. Dalrymple." A. I don't remember my testimony.

10 *By the Court:*

Q. But you say it is the fact. A. Yes.

Q. Except as qualified by the statement you made. A. Yes.

*By Mr. Rubenstein:*

Q. Now, did the Annett-Mahnken Realty Company pay any consideration for the assignment of this mortgage? A. None of the consideration at all. They owe it to me.

20 Q. And the Annett-Mahnken Realty foreclosed this mortgage, is that right? A. Yes.

Q. And who represented the Annett-Mahnken Realty Company at the foreclosure sale? A. Judge Carrick.

Q. Did your nephew Horace K. Roberson participate and cooperate with Judge Carrick in the foreclosure suit? A. I do not remember what happened. I don't remember.

30 Q. Do you remember testifying in the suit referred to before in answer to this question "And that payment was made in connection with the transaction between Annett-Mahnken Company and the Gollins—the present transaction?", and your answer was "I don't know its relation. My partner had charge of this matter, he and Judge Carrick, at the time the suits were started. I didn't have anything to do with it." A. I don't remember saying it.

40

*Horace Roberson, cross**By the Court:*

Q. Does that refresh your recollection as to whether or not your nephew had anything to do or cooperated with Judge Carrick in the conduct of the foreclosure? A. I believe that he had but I don't remember anything he had to do with it. He never appeared in court. 10

Q. What he asked you was did that question and answer that was read to you from another case refresh your recollection of it. A. No, it does not.

*By Mr. Rubenstein:*

Q. Who is your partner? A. Horace K. Roberson. 20

Q. Did Horace K. Roberson cooperate with Judge Carrick in the foreclosure of the Dalrymple mortgage of \$3,000? A. I do not know.

*By the Court:*

Q. The Dalrymple mortgage was foreclosed in the name of Myrtle A. Reed. A. No, it was transferred to the Annett-Mahnken Realty Company. 30

Q. He wants to know if Horace K. Roberson cooperated with Judge Carrick in the proceedings. A. I don't remember. He never appeared in court when I was in court.

*By Mr. Rubenstein:*

Q. Did your partner have any knowledge of the foreclosure proceedings?

Mr. Cruden: I object to that.

The Court: I will sustain the objection. 40

*Horace Roberson, cross*

*By the Court:*

Q. Why did you go outside of your own firm to employ Judge Carrick? A. I think I testified in the original case—

10 Q. I mean in this case. A. What case do you refer to?

Q. I am asking you in view of what has gone on why did your law firm go outside of your own office and employ Judge Carrick to foreclose a mortgage? A. Mr. Annett, the president of the Annett-Mahnken Realty Company told Judge Carrick, I think I testified in the other case, that I was too friendly with the Gollins; that I had always been their counsel in the matter and he didn't want me to have anything to do with it and he went voluntarily to Judge Carrick.

20

Q. What interest did Mr. Annett have in it? A. He was the president of the Annett-Mahnken Company and they had their money in the Gollin transaction.

Q. My recollection is there is some reference in the counterclaim you were the trustee for the Gollins of this property. A. I was not. I had no interest in it.

30 Q. The Annett-Mahnken Realty Company? A. Yes.

Q. They say they dealt with you and you represented the Annett-Mahnken Realty Company, the trustee. A. Yes.

Q. If the Annett-Mahnken Realty Company was trustee of the Gollins property why did the Annett-Mahnken Realty Company as trustee deed that property over to the Anson Realty Company? A. Because we wanted to separate the properties from the other properties of the Annett-Mahnken Realty Company.

40

*Horace Roberson, cross*

*By Mr. Rubenstein:*

Q. Judge, when the conveyance was made to the Anson Realty Company you did know that the property was being held for the Gollins as trustee, isn't that right? A. No.

The Court: Not the Gollins as trustee. You had better get it right. The Gollins were not the trustees.

10

*By Mr. Rubenstein:*

Q. Did you convey all the Gollins' property to the Anson Realty Company?

The Court: He didn't convey anything. You had better get your question straight. The company transferred it.

20

*By Mr. Rubenstein:*

Q. Did the Annett-Mahnken Realty Company convey all the properties acquired through the foreclosure suits formerly owned by the Gollins to the Anson Realty Company?

Mr. Cruden: I object to that question. He is not the one to testify to that. Mr. Roberson had no connection whatever with the Annett-Mahnken Realty Company and never was interested in it.

30

The Court: This man?

Mr. Cruden: Yes, sir.

The Court: Is that so?

The Witness: Yes.

Mr. Cruden: Absolutely.

The Court: Who was the Annett-Mahnken Realty Company, if you know?

40

The Witness: The late John Mahnken

*Horace K. Roberson, direct*

and Charles E. Annett, and I think some third party who was the third member of the corporation. I don't remember who it was.

10 Mr. Rubenstein: That's all for the present from this witness. I intend to use the judge as my own witness.

The Court: All right.

CASE FOR THE DEFENDANTS BETSEY GOLLIN AND  
MAX GOLLIN

HORACE K. ROBERSON, recalled:

*Direct examination by Mr. Rubenstein:*

20 Q. Judge, in examining the property at 772 Avenue C did you find two mortgages of record held by the Centreville Building & Loan Association? A. No, sir.

Q. Now, in examining the property known as 501 Boulevard, Bayonne, did you find any mortgages formerly held by the Centreville Building & Loan Association? A. I think there was a mortgage of \$2,000.

30 The Court: I understood this witness to say he didn't examine the title but a clerk in his office did.

The Witness: And the clerk reported to me.

Mr. Brenner: He has full knowledge of it.

*By Mr. Rubenstein:*

40 Q. And by whom was title held before the placing of the new mortgage made under fore-

*Horace K. Roberson, direct*

closure? A. When the new mortgage was placed the title was held by the Anson Realty Company.

*By the Court:*

Q. What are you talking about a new mortgage? A. He said the one now under foreclosure. 10

Q. In whom was the title at the time the \$2,000 mortgage was made? A. The \$2,000 mortgage had been made by Betsey and Max Gollin in 1924.

*By Mr. Rubenstein:*

Q. And what sort of a mortgage was that, the mortgage made by Max and Betsey Gollin in 1924? A. It was a monthly installment mortgage. 20

Q. And there was a share book issued to the Gollins on that mortgage. A. I think so.

*By the Court:*

Q. Were you counsel for the building and loan association? A. Yes, sir.

*By Mr. Rubenstein:*

Q. How long have you been counsel for the building and loan? A. Horace Roberson was counsel I think from the beginning, but sometime after 1920 when my uncle and I made the partnership each member of the firm was made attorney for the building and loan. At that time I believe I was one of the counsel for the building and loan in 1924. 30

Q. And when you say your uncle you refer to Judge Roberson? A. Yes. 40

Q. And he was counsel at the time the mort-

*Horace K. Roberson, direct*

gage now under foreclosure was made? A. I believe he has always been counsel for the building and loan since it started.

*By the Court:*

10 Q. Is he counsel yet with you? A. Yes, sir.

*By Mr. Rubenstein:*

Q. Now, did you request the Anson Realty Company to produce the building and loan book on the old mortgage? A. I don't recall whether I did or not, but it isn't necessary.

The Court: Don't say it isn't necessary.

20 The Witness: I don't recollect that I did.

*By Mr. Rubenstein:*

30 Q. Well, can you tell us how the mortgage made by the Gollins in 1924 was cancelled when the shares of stock were still outstanding in the Gollins? A. Yes. When the bond and mortgage is executed the buyer signs the assignment of shares of stock as soon as they are issued, and they did in this case.

Q. The assignment is as collateral security, isn't that right? A. Yes, as collateral security for a loan of \$2,000.

40 Q. Now, referring to the mortgage of 1924, the shares of stock were assigned to the building and loan association. How did the building and loan cancel the shares of stock without the permission of the Gollins? A. When the mortgage is paid off whoever pays it off, even if the property is sold or anything else happens to it, they will always cancel the stock.

*Horace K. Roberson, direct*

The Court: I will strike that out. He is referring to this particular \$2,000 mortgage.

The Witness: I had nothing to do with the cancelling of the shares.

The Court: You mean you don't know.

The Witness: Yes.

10

*By Mr. Rubenstein:*

Q. Well, didn't you make any inquiry for the book? A. I have no recollection.

*By the Court:*

Q. Were the shares sold and the amount credited to the mortgage? A. They weren't sold but the amount was credited. The building and loan in all cases credits the value of the shares when the mortgage is paid off.

20

Q. My recollection of reading the bill is there is a recital that the shares were forfeited. It might not refer to these shares. A. When a resolution for the foreclosure of a mortgage is made they include in that resolution that the shares are forfeited.

Q. How can they forfeit the shares? A. In order that they can give the credit on the mortgage.

30

*By Mr. Rubenstein:*

Q. Now, the mortgage in 1924 represented by book Number 12815 was never foreclosed, am I not right?

The Court: You are referring to the \$2,000 mortgage.

Mr. Rubenstein: Yes.

40

*Horace K. Roberson, direct*

A. The \$2,000 mortgage which was recorded in Book 1277, page 106, was not foreclosed. It was cancelled.

*By the Court:*

10 Q. By whom was it cancelled? A. The receipt was signed by the president and treasurer and cancelled by our firm at the Court House.

*By Mr. Rubenstein:*

Q. Did the building and loan turn over the proceeds of that mortgage to you as counsel for distribution? A. The new mortgage that is under foreclosure, yes.

20 Mr. Brenner: There are two mortgages under foreclosure.

*By Mr. Rubenstein:*

Q. In both cases? A. Yes.

Q. And you distributed it. A. I distributed it.

Q. As counsel for the building and loan. A. That's right.

30 Q. How was that money distributed? A. Which mortgage do you refer to first?

Q. The mortgage on 772 Avenue C. A. \$20.10 was paid to the Centreville Building & Loan Association.

*By the Court:*

Q. What was that for? A. That was for ten shares of stock of the Anson Realty Company.

40 Mr. Brenner: Might I suggest if the Court please as the witness is reading from checks may we have those checks marked for identification?

*Horace K. Roberson, direct*

The Court: Yes.

(Check marked D-2 for Identification.)

The Witness: \$7,749.60 was paid to the Bayonne Building & Loan Association in payment of a mortgage on the property.

(Check marked D-3 for Identification.)

10

The Witness: \$66.21 to the City of Bayonne in payment of water bill.

(Check marked D-4 for Identification.)

The Witness: \$1,681.31 to the City of Bayonne in payment of taxes.

(Check marked D-5 for Identification.)

The Witness: \$800.00 to Ethel M. Joy for a debt due from the Anson Realty Company to her.

(Check marked D-6 for Identification.)

20

The Court: What was the consideration for that debt, if you can tell us?

The Witness: I do not know. \$3,642.48, part of balance to the Anson Realty Company.

(Check marked D-7 for Identification.)

The Witness: And \$40.30, the balance of loan to the Anson Realty Company.

(Check marked D-8 for Identification.)

30

Mr. Rubenstein: Will you give the distribution of the property known as 501 Boulevard?

The Witness: \$1,786.20 to the City of Bayonne for taxes.

(Check marked D-9 for Identification.)

The Witness: \$305.74 to the City of Bayonne for water rent.

(Check marked D-10 for Identification.)

The Witness: \$1,219.90 to the Centreville Building & Loan Association in pay-

40

*Horace K. Roberson, direct*

ment of mortgage heretofore referred to which was paid and cancelled.

(Check marked D-11 for Identification.)

10

The Witness: \$165.99 to the Centreville Building & Loan Association for shares for that new loan.

(Check marked D-12 for Identification.)

The Witness: \$3.30 to the Collector of Internal Revenue for revenue stamps on the bond.

(Check marked D-13 for Identification.)

The Witness: \$789.08 to the City of Bayonne in payment of taxes on 772 Avenue C.

20

(Check marked D-14 for Identification.)

The Witness: \$32.85 to the City of Bayonne in payment of water rent on 772 Avenue C.

(Check marked D-15 for Identification.)

The Witness: \$5.00 to the Centreville Building & Loan Association for appraisal fee on this loan.

30

(Check marked D-16 for Identification.)

The Witness: \$150.95 to the Centreville Building & Loan Association for dues.

(Check marked D-17 for Identification.)

The Witness: \$83.93 to Roberson & Roberson for fees in the matter.

(Check marked D-18 for Identification.)

The Witness: \$2,057.06, balance to the Anson Realty Company.

(Check marked D-19 for Identification.)

The Witness: That's all.

40

*By Mr. Rubenstein:*

Q. Judge, can you explain why D-6 for Identi-

*Horace K. Roberson, direct*

fication, a check made to Ethel M. Joy for \$800.00, was deposited to the account of Roberson & Roberson, Special Account? A. The Judge informs me now that was interest due to him on the mortgage which was money which went through the account which was not money belonging to the firm.

10

*By the Court:*

Q. Have you books of account that will show that? A. It will only show a deposit probably.

Q. Wouldn't it show what the payment out was for? A. It will show to whom the check was given but not for the purpose.

*By Mr. Rubenstein:*

20

Q. Judge, have you all the papers in connection with these two mortgage transactions before you now? A. What papers do you want?

Q. All the legal papers. A. The search notes you mean?

Q. Yes. All the legal papers which you prepared in connection with the loans. A. I don't know what you mean. I only have the search notes in the file. Ask me a question.

30

Q. At the time you closed these mortgage loans, the two mortgages now under foreclosure I am referring to, did you obtain an affidavit of title? A. I think so, yes, sir.

Q. Can I see it? A. Yes.

Mr. Brenner: The difficulty is we are referring to a lot of papers without being offered.

The Court: He called for them and examined them. Let them be marked.

40

(Affidavits of title marked Exhibit D-G1 and D-G 2 in evidence.)

*Horace K. Roberson, direct*

*By Mr. Rubenstein:*

10 Q. Now, Judge, did you cooperate and assist Judge Carrick in the foreclosure of the mortgages of the Annett-Mahnken Realty Company against the Gollins affecting the property 772 Avenue C and 501 Boulevard, Bayonne? A. I have no recollection of doing anything with Judge Carrick in either matter.

Q. Do you remember those foreclosures? A. I only know the search showed a foreclosure.

Q. Do you know there was a foreclosure? A. The search showed that the deed was derived from a foreclosure.

20 Q. And were you familiar with those proceedings before you searched the property? A. No, I was not.

*By the Court:*

Q. You were familiar with the transactions between your uncle and the Gollins relating to that property? A. No.

Q. As a partner don't you know you would be chargeable with knowledge? A. I didn't know what the transactions were.

30 Q. But you did know of the relationship in some respect. A. I heard of it.

Q. Now, what investigation did you make when passing on these properties as to what the interest was that the Anson Realty Company had in the properties? A. I made the search of the title.

40 Q. You didn't make any inquiry of the parties in possession. A. I did. The building and loan examined the property.

Q. You were examining the title. A. I also examined the property at 772 Avenue C. That

*Horace K. Roberson, direct*

property was occupied by a tenant. The property on the Boulevard was occupied by a tenant.

Q. When you examine titles do you merely rely on the county records? A. No, but both properties were occupied by the tenants.

Q. Did you make any inquiry from the tenants as to what interest they may have in the property? A. I didn't.

10

Q. What inquiry did you, if any, make? A. I did not.

Q. How would you know that the parties in question may be the equitable owner of the property? A. I never do.

Q. You say you never do? A. No.

*By Mr. Rubenstein:*

20

Q. Now, Judge, when you commenced the foreclosure suits, the present foreclosure suits, why didn't you make the Gollins a party defendant? A. Nothing appeared in the record to show they had an interest in the property.

Q. But you knew there was an accounting suit pending. A. No, sir, I did not know what suit was pending.

*By the Court:*

30

Q. You mean you didn't know there was an accounting suit pending between your uncle and the Gollins at that time? A. I did not.

Q. Didn't you inquire? A. I did not because I didn't know anything about it.

Q. Didn't you know your uncle and the Gollins were in controversy with reference to these properties? A. I didn't know what properties were affected except they had controversy over the apartment house on the Boulevard.

40

*Horace K. Roberson, direct*

Q. Didn't you know that some young lady who was a clerk in your office bought them under foreclosure for your uncle? A. No.

Q. This Miss Joy you knew title was taken in her name? A. It was not taken in her name.

10 Q. There was title taken in some young lady's name. A. No, sir, the search didn't show anything of the kind. It showed the Annett-Mahnken Realty Company foreclosed the mortgage and took title to the property.

Q. All right. I have a pretty strong recollection in each case that some young lady who worked in your office bought the property in as a dummy for your uncle. A. No, sir, the search didn't show it.

20 Q. Do you mean to tell me you didn't have any knowledge that the property went through some young lady in your office? A. I don't think any such thing happened.

The Court: I think between now and this afternoon I would like to see a copy of the opinion which I filed in that case.

*By Mr. Rubenstein:*

30 Q. Did you know anything about the accounting suit pending in the Court of Errors and Appeals? A. Yes, sir, I knew that there had been a case before the Court of Errors and Appeals.

Q. And did you know about the case before it reached the Court of Errors and Appeals? A. I may have. I don't remember that.

*By the Court:*

40 Q. Don't you know your uncle and the Gollins

*Horace K. Roberson, direct*

have been in controversy respecting property for a number of years past?

Mr. Brenner: If your Honor please—

The Court: I will withdraw the question but before the case is through I will inquire into it. 10

Mr. Brenner: I ask your Honor to refer to your opinion.

The Court: I will do it.

*By Mr. Rubenstein:*

Q. Now, Judge, do you remember making an affidavit in this case?

The Court: Let him see it. Have you the original? 20

Mr. Rubenstein: Your Honor has the original.

Mr. Brenner: I have no objection to the copy.

*By Mr. Rubenstein:*

Q. Judge, in your affidavit filed in this cause you say "I paid the sum of \$800.00 to Ethel M. Joy at the direction of the Anson Realty Company to pay a debt due from them to said Ethel M. Joy." Now, can you explain to us and the Court how the check went into the account of Roberson & Roberson? A. I told you before Horace Roberson has since told me that represented interest that was due to him. 30

Q. Is that how you made the statement in your affidavit? A. I had not talked to him about it.

*By the Court:* 40

Q. In your examination of title did you ascer-

*Horace K. Roberson, direct*

tain that the deed through the sheriff went through some ladies? A. No, sir.

Q. Did you ascertain the property was bought in the name of any lady from the sheriff? A. No, sir.

10

Mr. Brenner: I think a lot of time could be saved if counsel would ask him how title was derived in the name of the Anson Realty Company as to both of these properties.

*By Mr. Rubenstein:*

20

Q. Will you trace the title to 772 Avenue C from the time the Gollins owned it to the time of the mortgage now under foreclosure on that property? A. Betsey Gollin acquired title in January, 1923. A mortgage was made by Betsey Gollin and Max Gollin to John L. Dalrymple in November, 1923.

Q. Does that mortgage cover other property? A. No. Then there was a foreclosure of that mortgage by the Annett-Mahnken Realty Company and a sheriff's deed from the Sheriff to Annett-Mahnken Realty Company in May, 1926.

30

Q. Does your record show how the Annett-Mahnken Realty Company acquired title of that mortgage? A. I have an examination of the proceedings and that shows an assignment of mortgage from John L. Dalrymple to Myrtle A. Reed and from Myrtle A. Reed to the Annett-Mahnken Realty Company.

Q. Were those assignments ever recorded? A. They were not.

40

Q. Did you inquire why they were not recorded? A. I did not. The bill of complaint recites the assignment and that put title in the complainant.

*Horace K. Roberson, direct*

Q. Who represented the complainant in the foreclosure proceedings? A. Carrick & Wortendyke represented them in that suit.

Q. Were you associated with Carrick & Wortendyke in the foreclosure proceedings? A. No, sir.

Q. Did you ever have any knowledge of it before you searched the property? A. I may have. I don't recollect now.

Q. Well, your firm represented the Annett-Mahnken Realty Company, am I not right? A. In what manner?

Q. Counsel for the Annett-Mahnken Realty. A. Not always. We have represented them at times.

*By the Court:*

Q. Who else represented them? A. Benny & Cruden.

Q. That was only lately. A. No, they formerly did all the business.

*By Mr. Rubenstein:*

Q. Now, will you continue tracing the title to date? A. Next, a deed from Annett-Mahnken Realty Company to the Anson Realty Company in March, 1928.

Q. Did you know that the Anson Realty Company was a holding company for the Annett-Mahnken Company? A. No, sir.

Q. Did you know anything about it? A. I had nothing to do with it.

*By the Court:*

Q. No talks with your uncle about that? A. I don't remember doing it.

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*Horace K. Roberson, direct*

*By Mr. Rubenstein:*

Q. Who incorporated the Anson Realty Company? A. My uncle may have but I don't remember.

10 Q. You don't remember anything about the Anson Realty Company. A. I had nothing to do myself with incorporating it. He may have done it.

*By the Court:*

Q. Was it done through the firm? A. If he did it it was.

Q. You don't know whether he did or not. A. No.

20 Q. Do you know whether your books show any payment for the filing of the certificate? A. I don't know but I can find out.

Q. You don't know anything about it. A. I don't know now. I would have to consult the books to see whether that was so.

*By Mr. Rubenstein:*

30 Q. Will you continue tracing the title? A. The next is the mortgage from Anson Realty Company to the Centreville Building & Loan.

Q. For how much? A. \$14,000.

Q. That is the mortgage under foreclosure. A. Yes.

40 Q. Now, will you trace the title on the other property known as 501 Boulevard, Bayonne, from the time the Gollins had it until the mortgage was foreclosed? A. I don't see a copy of the Gollins deed here but I do see a mortgage from the Gollins to the Kay Bee Investment Company. Let's see. A mortgage to the Kay Bee Investment Company in January, 1924.

*Horace K. Roberson, direct*

Q. What property does that mortgage cover besides the property now under discussion? A. Well, I don't know what the first tract is. The second tract is the property at Broadway and Tenth Street, Bayonne, and the third tract is this property. Then there is an assignment of that mortgage to Mildred J. Smith in 1924. Then there is a mortgage from the Gollins to the Kay Bee Investment Company in December, 1923, and an assignment of that mortgage to Mildred J. Smith in June, 1924, and then the mortgage to the Centreville Building & Loan in November, 1924, for \$2,000, and a deed from the Sheriff to the Annett-Mahnken Realty Company in November, 1926. 10

Q. That's all? A. Then there is a deed to the Anson Realty Company. 20

Q. Judge, you knew about the accounting suit between the Gollins and the Annett-Mahnken Realty Company and the Anson Realty Company, isn't that right? A. I knew there was a case before the Court of Errors from the last hearing.

Q. And didn't you know about the case while it was pending in the Court of Chancery? A. No, I didn't. 30

Q. You didn't know anything about it at all? A. I have no recollection of it.

*By the Court:*

Q. It didn't occur to you it might be well for you to inquire from your uncle as to the litigation which was in this Court between the Gollins and your uncle? A. This is only recently. 40

Q. No, it was going on for years. A. The one he is talking about is the one in the Court of Errors.

*Horace K. Roberson, direct*

Q. He also mentioned the Court of Chancery—the accounting case. A. Yes, within the last couple of years.

10 Q. How long would you say it was? It was more than the last couple of years. A. The accounting case? Counsel referred to the Court of Errors and Appeals, and I think it was last year in the Court of Errors and Appeals.

*By Mr. Rubenstein:*

Q. Did you know about the case in the Court of Chancery? A. I don't recollect now. I have a faint recollection it was before the Court of Errors and Appeals.

20 *By the Court:*

Q. Did you ever read the opinion in the case of Annett-Mahnken Realty Company against Gollin? A. I don't think so.

Q. Did you read the opinion of the Court of Errors and Appeals with reference to that case? A. I read that.

Q. Did you speak to your uncle about it? A. I may have.

30 Q. You said you had a faint recollection. A. I said I may have spoken to him about it.

Q. Did you or did you not. A. I don't recollect that I ever did. I don't know.

*By Mr. Rubenstein:*

Q. Now, you do remember about the case going to the Court of Errors and Appeals. A. Yes.

40 Q. Well, do you remember when it was decided? A. I don't know exactly when it was decided, no.

*Horace K. Roberson, direct*

The Court: For the purpose of the record when was the Court of Chancery case decided?

Mr. Rubenstein: July 16, 1931.

Mr. Brenner: The Court will take notice of the fact that date is long after both of these mortgages were made.

10

*By Mr. Rubenstein:*

Q. Now, you knew about the opinion of the Court of Errors and Appeals.

Mr. Brenner: I object to it if the Court please.

The Court: He said he knows.

20

*By Mr. Rubenstein:*

Q. Why didn't you make the Gollins parties defendant in these foreclosure proceedings?

Mr. Brenner: I object to it if the Court please. As I understand it in a foreclosure suit the persons whom you make parties defendant are those who have an interest as of record.

The Court: No, that is not so. Many a man might be walking around with a deed in his pocket. A man don't have to record his deed. There is no law requiring him to record it.

30

Mr. Brenner: We must have knowledge of it.

The Court: You get knowledge sometimes by investigating it. I will overrule your objection.

Mr. Brenner: The question now pend-

40

*Horace K. Roberson, direct*

ing is "Why didn't you make the Gollins a party defendant to this suit."

The Court: That is a proper question. He might give some reasonable explanation as to why he did not.

10

Mr. Brenner: It is immaterial as to whether or not the Gollins were made a party to the foreclosure suits because the only purpose of making them a party is to cut off any interest they may have. Now, there is no obligation to make even a party of record a party to the suit if you don't intend to cut him off.

20

The Court: No, but it is very pertinent as to the allegations in the counterclaim as to the bona fides of the transaction with the Centreville Building & Loan Association as to which Mr. Horace Roberson and this witness were counsel. It may be chargeable to the association. I don't know whether it will in this case. I decided it in some case.

30

Mr. Brenner: Your Honor held in that case there was notice because there was actual possession and that inquiry at the place would have brought knowledge to the party making the loan.

The Court: In some specific case I held that knowledge of the attorney was chargeable to the principal. There may be a limitation in some of the cases as to how the knowledge was acquired and to what extent.

40

Mr. Brenner: Unless it is acquired in the same transaction.

The Court: No matter how it is ac-

*Horace K. Roberson, direct*

quired. I have already ruled on the question.

The Witness: What is the question?  
(Last question read by stenographer.)

A. The record didn't show any interest in them. 10

*By Mr. Rubenstein:*

Q. You knew about the matter pending in the Court of Errors and Appeals?

Mr. Brenner: Objected to as immaterial.

The Court: I will overrule your objection. I am going to allow the greatest latitude in this case because this witness does not seem to have a good recollection about some things and perhaps he wants to jog his recollection. 20

A. I had known about it, yes.

*By Mr. Rubenstein:*

Q. And notwithstanding your knowledge of that opinion of the Court of Errors and Appeals you didn't make the Gollins a party defendant. 30

A. That's right.

Q. And what was your reason for not doing so? A. There was nothing on the record of the search showing they had an interest in the property.

*By the Court:*

Q. I understood you to say before you didn't inquire or your uncle or any one else as to 40

*Horace K. Roberson, cross*

whether or not the Gollins had any interest in the property. A. Not at that time.

Q. When you started the foreclosure proceedings. A. I don't remember.

10 *By Mr. Rubenstein:*

Q. Now, in searching these properties for the building and loan mortgages now under foreclosure you relied solely upon the records as they appeared at the Court House, is that right? A. Yes, and the committee that appraised the property.

Mr. Rubenstein: That's all.

20 *By the Court:*

Q. Did it ever come to your knowledge prior to your having to do with the Centreville Building & Loan Association mortgages that your uncle was a trustee for the Gollins with reference to property? You knew nothing about the declaration of trust? A. I knew they were having some controversy over the apartment house at 34th Street and the Boulevard. I didn't know what the thing was all about.

30 Q. Didn't you know your uncle was required by that declaration of trust to pay all the debts of the Gollins? A. I didn't know he was a party to the proceeding.

The Court: All right.

*Cross examination by Mr. Brenner:*

40 Q. Judge Roberson, on the property 772 Avenue C with the exception of the check of \$800.00, marked D-6 for Identification and payable to

*Horace K. Roberson, cross*

Ethel M. Joy, a check of \$40.30, marked D-8 for Identification paid to the Anson Realty Company, and a check of \$3,642.48, marked D-7 for Identification and made payable to the Anson Realty Company, the entire amount of the loan of \$14,000 went to pay indebtedness against the property on the mortgages originally made by the Gollins and for accumulated water rents and accumulated taxes. A. I believe that is so.

10

Q. Look at the checks and see whether that isn't so. A. Yes, the two checks to the City of Bayonne and the one to the Bayonne Building & Loan Association #2 paid taxes, water rents and an existing mortgage.

Q. And the mortgage to the Bayonne Building & Loan #2 was a mortgage which had been executed by Betsey and Max Gollin. A. That is right, yes.

20

Q. So that that was an encumbrance that existed at the time of the foreclosure of the Dalrymple mortgage. A. Yes.

*By the Court:*

Q. What was the date of that mortgage of the Bayonne Building & Loan? A. May 22, 1923.

30

Q. The Dalrymple mortgage was 1928. A. The Dalrymple mortgage was November 2, 1923.

*By Mr. Brenner:*

Q. Now, out of the loan of \$6,600.00 made on 501 Boulevard check marked for Identification D-15 of \$32.85 which went to the City of Bayonne, that was for a municipal lien, was it not? A. Yes.

40

Q. Is the same true of check marked D-14 for

*Horace K. Roberson, cross*

Identification made payable to the City of Bayonne in the amount of \$789.08? A. Yes.

*By the Court:*

10 Q. What transaction are you referring to? A. On the \$6,600.00 mortgage.

*By Mr. Brenner:*

Q. Is the same true of check D-13 for Identification of \$3.30 made to the Collector of Internal Revenue? A. That was for revenue stamps on the bond accompanying the complainant's mortgage.

20 Q. A check of \$1,219.90 made to the Centreville Building & Loan Association. That was in payment of a mortgage that had been executed by the Gollins on that property. A. That is right.

Q. And that still remained an encumbrance against the property at the time the new mortgage of \$6,600.00 was made. A. It was open when the loan was made.

30 Q. Check D-10 for Identification in the amount of \$305.74. That was in payment of liens due to the City of Bayonne against the property. A. Yes.

Q. And is the same true of check D-9 for Identification in the amount of \$1,786.20? A. I am not sure which is which. One of the checks as I recollect was for an accumulation of taxes which was due on 772 Avenue C.

40 Q. It was for taxes that were due on a Gollin property. A. On this property at 772 Avenue C. One is one property and one is the other. I think the smaller one was for 772 Avenue C and the larger one was for this property.

*Horace K. Roberson, cross*

Q. Now, getting back to the time of April 11, 1928, when the mortgage was placed on 772 Avenue C. Did you at that time know of any controversy existing between the Anson Realty Company or the Annett-Mahnken Realty Company and the Gollins? A. I don't think so. You mean any controversy of any kind?

10

Q. Covering property 772 Avenue C. A. No.

*By the Court:*

Q. Did not know or you don't think so. A. I didn't know whether he meant this property.

Q. You say no? A. No, I didn't know.

*By Mr. Brenner:*

Q. Did you on January 13, 1930, at the time that a mortgage was made to the Centreville Building & Loan Association in the amount of \$6,600.00 on property 501 Boulevard, have any knowledge of any controversy existing between the Anson Realty Company or the Annett-Mahnken Realty Company and the Gollins concerning property 501 Boulevard? A. Excepting they foreclosed the mortgage on that property. The search shows that was the same thing on 772.

20

Q. Excepting the foreclosures that brought title to the Annett-Mahnken Realty Company did you know of any accounting suit or any other litigation which would affect the title to the property 501 Boulevard? A. No, sir.

30

Q. Did the Centreville Building & Loan Association get any knowledge from you as a result of your search or private investigation as to any controversy existing between the Anson Realty Company or Annett-Mahnken Realty Company and the Gollins? A. No.

40

*Horace K. Roberson, cross*

Q. Concerning either of these properties? A. No.

Q. On the dates when the mortgages were placed? A. No.

10 Q. In your partnership with your uncle does your partnership with him extend to his properties or only in the conduct of your law business? A. I have nothing to do with any of his private affairs, any of his investments or anything of that kind.

Q. Were you in any way concerned in any interest that he may have had in the placing of loans for the Annett-Mahnken Realty Company with Max or Betsey Gollin? A. No.

20 Q. Did you have any knowledge concerning it? A. I don't know anything about it.

Q. Did you have any knowledge concerning the security that had been given to the Annett-Mahnken Realty Company for the loans that they may have made to the Gollins? A. I knew nothing about the transaction.

Q. At any time? A. I know now something about it.

30 Q. I mean at any time up to the time these mortgages were placed on these properties? A. No.

40 Q. In referring to the decision of the Court of Errors and Appeals concerning which you have been interrogated and the decision of the Court of Chancery as to the relationship between the Gollins and the Annett-Mahnken Realty Company or the Anson Realty Company or both, were those decisions subsequent to the time that the mortgages were placed by the Centreville Building & Loan Association? A. They were afterwards.

*Horace K. Roberson, redirect**By the Court:*

Q. But they related to the subject matter of the property involved in this mortgage. A. I don't know whether the Court of Errors and Appeals decision mentioned the property specifically.

10

Q. How about the Court of Chancery decision?  
A. I don't remember reading that.

Q. You knew some check transactions were going through your firm through your uncle that had no relation to the law office. A. I do know it now.

Q. A thirteen hundred dollar check which went through your firm?

Mr. Brenner: An eight hundred dollar check. 20

A. I don't know whether it went through our firm or his own bank account.

*By the Court:*

Q. You knew about the eight hundred dollar check. That related to his private affairs. A. Yes.

30

The Court: Anything else?

Mr. Brenner: That's all.

*Redirect examination by Mr. Rubenstein:*

Q. And you knew about the Dalrymple mortgage before you placed the building and loan mortgage on the property. A. I knew the mortgage was on record and had been foreclosed.

*By the Court:*

40

Q. That is the one my previous question re-

*Horace K. Roberson, redirect*

lated to. A. No, I didn't know about the money involved in that because I don't know whether it went through our account.

10 Q. My recollection of your uncle's testimony is that Dalrymple was his nephew. There had been a mortgage made to him but he didn't advance any money on it. A. That is what the Judge said.

Q. However, when it came to pay off that mortgage it went through your firm's books. A. It wasn't paid off. It was foreclosed.

*By Mr. Rubenstein:*

20 Q. Do you know that your firm paid \$3,000 for the Dalrymple mortgage?

Mr. Brenner: I object to that. There is no testimony in the case on that.

The Court: I would like to have some information on it. My recollection is that some of that money went through the books of the firm. That is what is in my mind.

Mr. Brenner: I would be perfectly willing to have it read.

30 The Court: I will overrule your objection and we will try to get it if we can.

A. No, I don't think our firm did. The Judge may have paid it and the money may have went through the firm account.

*By the Court:*

40 Q. Don't you know in your office what moneys go through your accounts? A. I don't always.

Q. You mean if three thousand went through your account you wouldn't know about it? A.

*Horace K. Roberson, redirect*

We have handled many of thousands of dollars in like money—of other peoples' money, and if he had one of those transactions he deposited it and disbursed it. If he did I wouldn't know anything about it.

Q. At the end of the year don't you make it your business to find out? A. That is not our account. That would be in an account where we handle other peoples' money. 10

*By Mr. Rubenstein:*

Q. Now, Judge, in examining the titles for the mortgage loans now under foreclosure did you find a lis pendens against the property? A. There was a lis pendens when the Annett-Mahnken Realty Company foreclosed their mortgage. 20

*By the Court:*

Q. When was that filed? A. Filed in July, 1925.

*By Mr. Rubenstein:*

Q. Now, did you find a lis pendens filed by the Gollins? A. And there was a lis pendens on file on March 30, 1927, and the suit had been dismissed before we had placed our mortgage. 30

Mr. Rubenstein: I move to strike out his answer.

The Witness: A lis pendens was filed by the Gollins.

*By the Court:*

Q. What does that relate to? A. A suit to compel the defendant to convey to Betsey Gol- 40

*Horace K. Roberson, redirect*

lin upon receipt of certain moneys mentioned in the bill of complaint certain properties.

*By Mr. Rubenstein:*

10 Q. What properties were referred to? A. The property on the Boulevard south of 19th Street, the affected property 772 Avenue C, and 10th Street and Broadway.

Q. 10th Street and Broadway? A. 10th Street and Broadway and Boulevard south of 19th Street.

*By the Court:*

20 Q. Were any of those properties mentioned mentioned in your mortgages? A. Yes, sir.

*By Mr. Rubenstein:*

Q. Was that lis pendens open at the time you searched this property? A. It was.

Q. So you knew there was some controversy between the Gollins and the Annett-Mahnken Realty Company and the Anson Realty Company at the time you placed the mortgage loans. A. As disclosed by the record.

30

*By the Court:*

Q. Did you make any inquiry? A. I inquired from the Court of Chancery and found that the suit had been dismissed.

Q. Did you make any inquiry from the parties? A. No.

Q. When was it dismissed? A. The 15th of March, 1928.

40

*By Mr. Rubenstein:*

Q. Did you find another lis pendens of record?

*Horace K. Roberson, recross*

A. In the same suit another lis pendens yes, on the same day, on March 15, 1928 in the same suit.

*By the Court:*

Q. You mean a new lis pendens? A. Yes.

10

*By Mr. Rubenstein:*

Q. And was that lis pendens open when you placed the mortgage on the property? A. Yes, they were both on record.

*By the Court:*

Q. Do you mean it was entered the same date? A. Yes.

Q. March 15, 1928? That suit was not dismissed? A. On that day, yes.

20

Q. You mean it was dismissed the same day the lis pendens was entered? A. Yes, that is what the record shows.

Q. By whom was it dismissed? Does the record show it? A. By an order of the court.

Mr. Brenner: We have the files here your honor.

*By the Court:*

30

Q. Who was that suit between? A. Betsey Gollin and husband and the Annett-Mahnken Realty Company.

The Court: Anything else?

Mr. Rubenstein: That's all.

*Recross examination by Mr. Brenner:*

Q. Now, there were two lis pendens, the first of which was put on when? A. On March 30, 1927.

40

*Horace K. Roberson, recross*

Q. And the second was put on when? A. March 15, 1928.

10 Q. Did you make an inquiry at the time of your search for the placing of this first mortgage which was on 772 Avenue C as to whether there were any suits pending in the Court of Chancery?

Mr. Rubenstein: I object to the question. This witness testified he never made any investigation.

The Court: I will let him state it again.

A. In the Chancery Clerk's office I made an inquiry.

20 *By Mr. Brenner:*

Q. Was that inquiry made in the office of the Clerk in Chancery? A. Yes.

Q. How many suits do their records disclose had been started under these two *lis pendens*? A. One suit.

30 Q. And had that one suit been dismissed prior to the time that you placed the mortgage for the Centreville Building & Loan Association on 772 Avenue C.? A. Yes.

Q. So that at the time of the placing of that loan there was no suit pending in the Court of Chancery between the Gollins and the Annett-Mahnken Realty Company or the Anson Realty Company? A. That's right.

Q. Now, when you placed the loan on 501 Boulevard at the subsequent date were those two *lis pendens* still of record? A. They were discharged before the mortgage was signed.

40 Q. I am talking about the time the search was

*Horace K. Roberson, redirect*

made for the placing of that mortgage were they still both of record? A. They were.

Q. Was there any other suit at that time excepting the one suit which had been started and had been dismissed prior to the time the mortgage on 772 Avenue C had been placed? A. There was no other suit, no.

10

Q. Was that the suit that was dismissed prior to the placing of the mortgage on 772 Avenue C? A. That suit had been dismissed on March 15, 1928.

Q. Now, did you have anything to do insofar as the two lis pendens were concerned? A. We procured a discharge of the lis pendens and recorded them.

Q. Both of them? A. Yes.

20

Q. And both of them were discharged on what date? A. On January 11, 1930.

Mr. Brenner: That's all.

*Redirect examination by Mr. Rubenstein:*

Q. Judge, you said a minute ago that you procured the discharge of the lis pendens. Do you mean that you did it? A. I got it through Judge Carrick. He was the one that done it. He got the discharge and sent it to me to be recorded.

30

Q. In other words, you requested Judge Carrick to get a discharge of the lis pendens for you. A. I asked for a discharge of the lis pendens of those suits and he got them and sent them to me.

Q. Judge, isn't it the fact that you knew at the time you placed these two mortgages now under foreclosure that there was some controversies between the Gollins, the Annett-Mahnken

40

*Horace K. Roberson, redirect*

Realty Company and the Anson Realty Company? A. Only what the lis pendens showed.

Q. The lis pendens showed there was some dispute in the title?

10 Mr. Brenner: I object to it as calling for a conclusion.

The Court: I think I will sustain that objection.

*By Mr. Rubenstein:*

Q. What do the lis pendens show?

The Court: I will overrule that. You can produce the lis pendens.

20 *By the Court:*

Q. Did you as a result of what you saw in the lis pendens make any inquiry as to the controversy between these parties? A. No, I found it dismissed.

*By Mr. Rubenstein:*

30 Q. You found the suit still open? A. No, I found in the Chancery Clerk's office the suit had been dismissed.

Q. Didn't you say a minute ago you found the two lis pendens open?

The Court: They were open until March 1928.

*By Mr. Rubenstein:*

40 Q. When you saw these lis pendens open of record did you make any inquiry from the Gollins? A. No, I did not.

Q. Did you inquire from your uncle, Judge

*Horace Roberson, direct*

Roberson about the lis pendens? A. I inquired of Judge Carrick to whom I was referred by Mr. Annett.

The Court: He is asking you did you inquire of Judge Roberson.

The Witness: I don't recollect I did. 10

*By Mr. Rubenstein:*

Q. He was getting a mortgage loan on 772 Avenue C. A. The Anson Realty Company was.

Q. Why didn't you ask your uncle about the matter? A. My recollection is that Mr. Annett settled the loan with me.

*By the Court:*

Q. Who made the application for the loan? A. I think Judge Roberson signed the application as president of the Anson Realty Company. 20

The Court: Anything further?

Mr. Rubenstein: That's all.

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HORACE ROBERSON, recalled:

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*Direct examination by Mr. Rubenstein:*

Q. Judge, are you a director of the Centreville Building & Loan Association? A. No.

Q. Are you the solicitor for the building and loan? A. Yes.

Q. Were you ever a director of the Centreville Building & Loan Association? A. No.

Q. How long are you counsel for the building and loan? A. Since 1889. 40

Q. Now, Judge Roberson at the beginning of

*Horace Roberson, direct*

the trial read a list of members present and he mentioned Horace Roberson. Did he mean you?  
A. Yes.

10 Q. You were present at the directors' meeting not as a director but as counsel. A. My only recollection is what I heard of it in court, I have no recollection of being present.

Q. He testified you were present at the directors' meeting? A. Yes.

Q. And that you were one of the directors of the building and loan?

The Court: No, he didn't say that.

*By Mr. Rubenstein:*

20 Q. Now, you incorporated the Anson Realty Company? A. I think so, yes.

The Court: Did you? If you don't know, say so.

The Witness: My recollection is that Griswold did, the clerk in my office.

*By Mr. Rubenstein:* \_\_\_\_\_

30 Q. Through the firm of Roberson & Roberson. What was the purpose of organizing the Anson Realty Company?

Mr. Brenner: Objected to if the Court please, as immaterial.

The Court: I will overrule the objection.

40 A. I have already testified to it. To segregate the properties of the Gollins from the other properties belonging to the Annett-Mahnken Realty Company, the properties that had been

*Horace Roberson, direct*

acquired by foreclosure from the Gollins in these suits.

*By Mr. Rubenstein:*

Q. Why was it necessary to make the segregation? A. Merely as a matter of convenience, that's all. Mr. Annett said he wanted to have his bookkeeper separate them entirely from his books. 10

Q. Did the Anson Realty Company pay any consideration for the conveyances? A. None whatever.

Q. Was the Anson Realty Company to hold the property for the Annett-Mahnken Realty Company? A. Yes. 20

Q. Now, Judge, I show you an affidavit of title Exhibit D-G 2 in which you say that the Anson Realty Company was the owner of the fee in the property referred to as 772 Avenue C. 20

Mr. Brenner: I object to that if the Court please.

The Court: He is merely asking if he made the affidavit.

A. I did. It is my signature. 30

*By Mr. Rubenstein:*

Q. But at the time you made the affidavit the Anosn Realty Company was holding this property for the Annett-Mahnken Realty Company. A. Yes.

*By the Court:*

Q. There was nothing in the deed of conveyance to the Anson Realty Company which would 40

*Horace Roberson, direct*

indicate it was merely a holding company. A. None whatever.

*By Mr. Rubenstein:*

10 Q. How many shares of stock did you hold in the Anson Realty Company?

Mr. Brenner: Objected to insofar as the complainant is concerned. It is entirely irrelevant and immaterial.

Mr. Rubenstein: I think it is very material, your Honor. I think it will go a long ways in establishing the case.

20 The Court: I think I will overrule your objection and let him answer it. I don't see it can harm any.

Mr. Brenner: The only difficulty is the record is being encumbered because of some controversy between Roberson and the Gollins and the Anson Realty Company and the Gollins. What we are interested in is the suit of the Centreville Building & Loan.

30 The Court: As to whether it is to couple up the Centreville Building & Loan as to the inquiry put upon them as to the mortgage transactions.

Mr. Brenner: What came up in the Anson Realty Company certainly wouldn't have any bearing on this situation.

The Court: I will overrule it.

A. I think twenty-two.

*By Mr. Rubenstein:*

40 Q. Who besides yourself is interested in the Anson Realty Company? A. Charles E. Annett and Mr. George E. Griswold, now dead.

*Horace Roberson, direct.*

Q. And who has Mr. Griswold's shares of stock now?

Mr. Brenner: Objected to as immaterial and irrelevant in this present suit.

The Court: I will sustain the objection for the time being.

10

*By the Court:*

Q. Did Mr. Griswold have any beneficial interest in that corporation or was he merely a qualifying stockholder? A. That's all.

Q. Whose share did he have to entitle him to qualify, yours or Mr. Annett's? A. I don't recollect that. I would have to go through my books to find out.

20

*By Mr. Rubenstein:*

Q. Now, Judge, can you tell us how Judge Carrick foreclosed the mortgages against the Gollins?

The Court: He has already told you Mr. Annett suggested the employment of Judge Carrick. He also added that Mr. Annett stated as a reason therefore that he thought that Judge Roberson, this witness, was too friendly with the Gollins.

30

*By Mr. Rubenstein:*

Q. Did your nephew, Horace K. Roberson, have anything to do with the foreclosure of these mortgages?

Mr. Brenner: Which mortgages?

Mr. Rubenstein: With Judge Carrick?

40

A. No.

*Horace Roberson, direct*

Mr. Brenner: I would like to suggest the witness has been interrogated on that entire line.

The Court: Yes, he has.

10 *By Mr. Rubenstein:*

Q. Judge, did you not testify in the accounting suit that your partner had charge of the foreclosure with Judge Carrick?

Mr. Brenner: I object to it on the ground it is the same question asked before of this same witness.

20 The Court: I don't know whether this witness was asked that question. Why not put the question as it is in the record.

*By Mr. Rubenstein:*

30 Q. Judge, do you remember this question being propounded to you in the Annett-Mahnken Realty Company against Gollin suit as follows—"And that payment was made in connection with the transaction between Annett-Mahnken Realty Company and the Gollins—the present transaction," and your answer was, "I don't know its relation. My partner had charge of this matter, he and Judge Carrick, at the time the suits were started. I didn't have anything to do with it"?

A. Yes, I have a recollection that Judge Carrick asked Horace K. to turn over the papers we had in our office relating to this matter so he could act as counsel or solicitor for the Annett-Mahnken Realty. I remember that.

40 Q. So that your nephew had knowledge about those foreclosures.

Mr. Brenner: Objected to.

*Horace Roberson, direct*

The Court: I won't let you ask that question. That is not a fair question. I will sustain the objection. The form of the question is improper.

*By Mr. Rubenstein:*

10

Q. Did your nephew have knowledge of the foreclosure of those mortgages?

Mr. Brenner: Objected to.

The Court: I will sustain the objection. That is only calling for the conclusion of the witness as to what knowledge his partner had.

*By Mr. Rubenstein:*

20

Q. Now, Judge, on the \$3,000 mortgage of Dalrymple did you place that mortgage? A. Yes.

The Court: I think he went through that before.

Mr. Rubenstein: I want to prove that money was used for the erection of an apartment house.

The Court: Ask him what you want to.

30

*By Mr. Rubenstein:*

Q. Before placing that mortgage did you have a claim against Irving Gollin?

Mr. Brenner: Objected to as absolutely immaterial.

The Court: What's the materiality of it?

Mr. Rubenstein: To show that the Dalrymple mortgage arises out of the erection of the apartment house.

40

*Horace Roberson, direct*

10 The Court: What has that to do with the indebtedness of this witness to the Gollins or the Gollins to this witness? I will sustain the objection and let you reframe the question if you want to. Suppose we take a recess until two o'clock.

---

Afternoon Session.

20 Mr. Rubenstein: If the Court please I expected Mr. Hirschberg here. I would rather have him complete the case on behalf of the defendants Gollins. I move for a continuance of this case.

The Court: Why didn't you do that this morning?

Mr. Rubenstein: I didn't want to ask for a continuance because Mr. Hirschberg might have appeared.

The Court: How do you come into this case?

Mr. Rubenstein: I am appearing for Hirschberg & Nashel in this matter.

30 The Court: I don't know. It is rather unusual.

Mr. Brenner: It is unusual. There was no explanation of why Mr. Hirschberg or Mr. Nashel didn't think it necessary to be here this morning.

The Court: And they are not here at two o'clock.

40 Mr. Rubenstein: Mr. Hirschberg is engaged in trying a case in the Essex Supreme Court.

Mr. Brenner: Both of them knew this

*Horace Roberson, direct*

suit was on today. I might say I am here at some inconvenience myself because I was advised last night that a case in the Court of Errors and Appeals would be reached today and rather than ask the Court for a continuance or ask counsel to consent to it I arranged to have a man unfamiliar with that appeal appear for me today.

10

The Court: I think I will have to deny the application. I wouldn't want the litigants to suffer by reason of the ignorance of the lawyers who represent them. The way the case is going on I don't think it will be finished today. I will see what I can do later if you renew your application. Just now I don't think I will grant it. If you had made that motion this morning I would have considered it but I don't know what action I can take now. Mr. Hirschberg knew this case was on. Inasmuch as you assumed to act for him I suppose I will have to have you continue.

20

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HORACE ROBERSON, recalled:

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*Direct examination continued by Mr. Rubenstein:*

Q. Judge, are you familiar with the state of the case in the suit of Annett-Mahnken Realty Company and Anson Realty Company against Betsey Gollin and Max Gollin in the Court of Errors and Appeals? A. I read it over.

Q. Is this a true copy of the record of the proceedings in that case? A. I couldn't say that. I don't know the record but I read this over.

40

*Horace Roberson, direct*

Q. Did you participate in preparing that record for appeal? A. No.

The Court: What is the purpose of these questions?

10

Mr. Rubenstein: I expect to offer some of the testimony in evidence in this case.

The Court: You want to offer in this case some testimony in that case? Upon what theory do you want to do that? You can use it on rebuttal. You can use it by asking questions. I don't appreciate how you expect to get that in evidence in this case. There are different counsel and a different case entirely here.

20

*By Mr. Rubenstein:*

Q. Judge, do you remember this question being asked in the accounting suit: "You were associated with Judge Carrick in the prosecution of these foreclosures", and your answer was, "I stated before I was not. My partner, Horace K. Roberson, and Judge Carrick did that."

30

The Court: He said before he remembered making that answer.

A. I said before this morning on my direct examination that I remember—

Mr. Brenner: May I be heard on an objection?

The Court: You can be heard. I suppose the purpose of the question is to test the credibility of the witness in some respect.

40

Mr. Brenner: As I understand this witness is his witness. That being so they

*Horace Roberson, direct*

cannot attack the credibility of their own witness.

The Court: They can impeach him.

Mr. Brenner: No.

The Court: They can contradict him.

Mr. Brenner: Only for the purpose to neutralize the testimony. 10

The Court: I think I will allow it. This witness is a lawyer and we won't get far astray. If he was a layman I would do differently.

Mr. Brenner: I am not interested in this particular witness at this particular time. I am interested in the protection of the rights of the complainant.

The Court: I suppose the purpose of that being asked is to couple up some knowledge chargeable against the building and loan. Horace K. Roberson in answer to a question has stated he did not make known to the building and loan association some of these things which the other side may think he was informed of. There is some proof he had knowledge of it. 20

Mr. Brenner: I am objecting to the question before the court on the ground that type of question is for the purpose of attacking the credibility of their own witness. 30

The Court: The only question now is does the witness remember that question and answer. I will let him answer that. Do you remember that question and answer?

The Witness: I remember it now. 40

*Horace Roberson, direct*

*By Mr. Rubenstein:*

Q. Was your partner, Horace K. Roberson, associated with Judge Carrick in the foreclosure of the mortgages? A. No, not to my knowledge.

10

The Court: I believe the witness has heretofore said his recollection is that he may have directed Mr. Horace K. Roberson to turn over to Judge Carrick the file of papers relating to the matter.

The Witness: I think Mr. Annett requested him to do so. That is what I testified to this morning.

The Court: There is a representative here from the Clerk in Chancery.

20

Mr. Brenner: He is here under my subpoena. It is in my case.

The Court: We can take him out of order.

Mr. Brenner: I am perfectly willing to do so.

*By Mr. Rubenstein:*

30

Q. Judge, do you remember when you filed the bill of complaint in the accounting suit? A. I don't remember that. That was done by Judge Carrick and I don't know anything about that.

The Court: The accounting suit?

The Witness: Yes.

The Court: Mr. Gough was in it too.

The Witness: Only while Judge Carrick was sick.

Mr. Brenner: If counsel will tell me the date I will gladly agree to it.

40

Mr. Rubenstein: March 7, 1929.

Mr. Brenner: All right, I will agree

*Horace Roberson, direct*

that the filing date of the bill of complaint is March 7, 1929.

The Court: When were the mortgages out on in 1928 or after that?

Mr. Rubenstein: One is 1930 and one in 1928.

Mr. Brenner: I think we ought to get it straight on the record that was a suit by the Annett-Mahnken Realty Company.

The Court: Who is the complainant in that suit?

Mr. Rubenstein: The Annett-Mahnken Realty Company and the Anson Realty Company.

The Court: Against who?

Mr. Rubenstein: Against Betsey Gollin and Max Gollin.

The Court: Oh, yes. That was an accounting and the other people applied for a cross accounting. That was a suit if I remember in which the Annett-Mahnken Realty Company had an idea they had completed the work they were engaged in and wanted an opportunity to file their account and be discharged, and the other people came in and asked for an accounting on their part.

Mr. Rubenstein: Yes. Judge Brenner will you stipulate the date of the accounting?

The Court: Show it to him.

Mr. Brenner: I am not going to dispute the date of it.

The Court: He is willing to concede the date of the filing of the paper. He is objecting to the introduction of either one of those papers in this case as against his client.

10

20

30

40

*Horace Roberson, direct*

Mr. Brenner: Yes.

The Court: Until you can show me they are material I will sustain the objection. So far as the date is concerned he won't object to that.

10

Mr. Rubenstein: It is stipulated that the answer and counterclaim in the suit of Annett-Mahnken Realty Company and the Anson Realty Company against Betsey and Max Gollin was filed on April 5, 1929.

20

Mr. Brenner: May I state for the record in conceding the dates of filing of these several papers I do not consent that either the bill of complaint or the answer and counterclaim go into evidence, and I don't understand they are being offered.

The Court: No, they are not offered yet.

*By Mr. Rubenstein:*

Q. Judge, have you had any discussion with your partner about the suit pending in the Court of Chancery—the accounting suit? A. I don't remember that I did.

30

Q. How much of an interest have you got in the Anson Realty Company?

The Court: You asked that question before.

Mr. Rubenstein: I asked him how many shares of stock.

The Court: That is an interest. All right, go ahead.

40

A. I haven't a penny of money in the—

*Leo Symanski, direct**By Mr. Rubenstein:*

Q. In the Anson Realty Company? A. As an investment in the Annett-Mahnken Realty Company and the Anson Realty Company, yes, with my money loaned to them.

10

*By the Court:*

Q. But you have shares of stock in them? A. Yes.

Q. Were they assigned to you? A. No, they were taken out in the beginning. I didn't pay any money for them.

Mr. Rubenstein: That's all.

20

LEO SYMANSKI, being sworn:

*Direct examination by Mr. Brenner:*

Q. Mr. Symanski, you are a clerk in the office of the Clerk of the Court of Chancery? A. I am.

Q. And what is your particular work in that department? A. File clerk.

Q. Now, have you under a subpoena from me produced the record of a suit in which Betsey and Max Gollin were complainants and the Annett-Mahnken Realty Company or the Anson Realty Company were defendants, involving property 772 Avenue C. and 501 Boulevard? A. I have.

30

Q. Have you the bill of complaint in that case? A. That's the only suit—March 30, 1927.

*By the Court:*

Q. What is the docket and page? A. 63 page 586.

40

*Leo Symanski, direct*

*By Mr. Brenner:*

10 Q. Now, you hand me a bill of complaint in which you have given the docket number 65 and the page 586 which appears to have been filed in the office of the clerk on March 30, 1927. Is there any other suit in the Court of Chancery in which Betsey Gollin and Max Gollin are complainants and the Annett-Mahnken Realty Company is a defendant involving property 772 Avenue C. or 501 Boulevard? A. There has been another suit started November 17, 1927. As to the title of the land I am not sure about that.

20 The Court: Why not have him produce whatever papers you want from that file instead of asking him questions as to the contents.

30 Mr. Brenner: I don't want any papers. They have no application to these proceedings. My adversary has just examined the other complaint November 17, 1927. It has no application to either of these proceedings. I would like to offer in evidence if the court please the bill of complaint which the witness has just produced Docket 63 page 586.

The Court: It will be noted on the record but not marked.

(Bill of complaint referred to as Exhibit C 9 in evidence).

*By Mr. Brenner:*

40 Q. Is there an order dismissing that suit? A. There is an order filed December 9, 1929 discharging the lis pendens.

Q. No, I am talking about an order dismissing

*Leo Symanski, direct*

the suit. A. Yes, a decree of dismissal was filed on March 15, 1928.

Mr. Brenner: I offer if the court please in evidence a decree of dismissal Docket 63 page 586, dismissing the bill of complaint filed in that action, the filing date of the decree of dismissal being March 15, 1928, received in the office of the clerk on March 19, 1928.

10

The Court: Does the decree of dismissal show a dismissal on the merits?

Mr. Brenner: No, sir. "On the 15th day of March, 1928, Ordered that the above suit be and the same hereby is discontinued without prejudice."

20

The Court: And it is upon motion of Samuel L. Hirschberg, solicitor of complainants, and in the presence of Charles L. Carrick, solicitor of defendant.

(Decree referred to as Exhibit C 10 in evidence).

*By Mr. Brenner:*

Q. Now, subsequently was there an order discharging the lis pendens? A. It was filed on December 9, 1929.

30

Mr. Brenner: Which is produced in the same cause and bearing the same docket and page number, an order discharging lis pendens filed December 9, 1929 by Vice Chancellor Fielder and received in the office of the clerk December 17, 1929. I offer it in evidence.

The Court: What was the recital as the reason for being discharged?

40

*Leo Symanski, direct*

10 Mr. Brenner: "It appearing that a lis pendens in the above cause having been filed in the office of the County Clerk of the County of Hudson by Messrs. Burnett & Murray, solicitors for the complainant on March 30, 1927, and it appearing that in an order by this court made on March 17, 1928 it is provided that said notice of lis pendens be discharged, therefore it is on this 9th day of December, 1929, Ordered that the lis pendens in Book 16 page 341 be discharged."

The Court: You are offering that in evidence.

20 Mr. Brenner: Yes, sir.  
(Order referred to as Exhibit C 11 in evidence).

*By Mr. Brenner:*

30 Q. Besides the suit, the papers in which you have handed to me, was there any other suit filed in the clerk's office involving properties 772 Avenue C. or 501 Boulevard, Bayonne? A. The only other suit in which Betsey Gollin and her husband were complainants against Annett-Mahnken Realty Company was this one here which you say does not in anywise relate to the property.

Q. The one of November, 1927 which my adversary has looked at with me and agrees does not cover items of these properties. A. Yes. Besides these two suits there are not any others in which Betsey Gollin is complainant against Annett-Mahnken Realty Company.

40 The Court: Judge, my recollection is when I was considering that case of An-

*Leo Symanski, direct*

nett-Mahnken Realty Company against the Gollins I was obliged to examine about three files of papers that came to me from the clerk's office which were returned involving properties concerning the Gollins and concerning the subject matter which I was then considering. I am only suggesting to you I have it in my mind. I know there were mortgages foreclosed I believe in which the Gollins were interested. There were proceedings before Vice Chancellor Bentley and Vice Chancellor Fielder and Vice Chancellor Lewis, if I recall right, and then the proceeding before me. So that there are quite a few suits involving the Gollins which are on file in the Court of Chancery.

Mr. Brenner: Probably your honor doesn't get the reason for my particular interest as far as this witness is concerned. At the time of the first loan which was made on the Avenue C property the testimony was that there were two lis pendens although only one suit. Now, the suit upon which those lis pendens were unquestionably predicated was a suit that had been dismissed.

The Court: In 1929?

Mr. Brenner: That was 1928. The first loan on the Avenue C property was made in April of 1928. On March 15, 1928 the only suit then pending had been dismissed but still there were two lis pendens. I wanted to find out from the clerk's office whether the second lis pendens which was

*Leo Symanski, direct*

10 put on on March 15, 1928 was put on as a result of a second suit which had been started and was then pending. Now, the purpose of this witness' testimony is to show that there was no other suit at that time. In other words, the only suit that had been started insofar as his records were concerned as to both of these properties was the suit which had been dismissed.

*By the Court:*

Q. What did you do to find out whether or not there were any other suits pending? A. I searched our records.

20 Q. What records did you search? A. The index records for any suits in which Betsey Gollin and her husband were complainants against the Annett-Mahnken Realty Company.

Q. I suppose you know that papers to your knowledge have been mislaid or misplaced in your office and placed in other files. Do you know that? A. Yes.

30 Q. Inasmuch as you only found the one bill of complaint filed there what did you do to see whether or not there was any other bill of complaint to which that second *lis pendens* might apply? A. We have indexes in which all the names of the cases are recorded.

Q. If the clerk is careful they are presumed to be recorded. A. Yes.

*By Mr. Brenner:*

40 Q. Did you search as well in suits of Betsey Gollin and Max Gollin against the Anson Realty Company as well as the Annett-Mahnken Realty Company? A. No, I didn't.

*Harry E. Bockoven, direct*

Q. Do you know whether or not your subpoena called for that? A. No, it didn't. I have the subpoena here.

Mr. Brenner: I am informed it was only against the Annett-Mahnken Realty Company. Take the witness.

10

Mr. Rubenstein: No questions.

---

HARRY E. BOCKOVEN, being sworn:

*Direct examination by Mr. Rubenstein:*

Q. Mr. Bockoven, are you connected with the Centreville Building & Loan Association? A. Yes.

20

Q. For how long? A. Well, what do you mean, as treasurer or in what capacity?

Q. Are you the treasurer of the association? A. Yes.

Q. For how long? A. About sixteen years.

Q. And what are your duties as treasurer? A. At the present time?

Q. Yes. A. To receive the moneys paid in, deposit the same and have charge of bonds and mortgages.

30

*By the Court:*

Q. Are you the custodian of them? A. Yes.

Q. You draw checks for the payment of moneys when directed so to do expressly? A. Yes.

*By Mr. Rubenstein:*

Q. And do you draw checks for mortgage loans? A. I do.

40

*Harry E. Bockoven, direct*

*By the Court:*

Q. Do you draw all checks for all disbursements? A. All checks.

*By Mr. Rubenstein:*

10 Q. Did you draw the checks for the two mortgage loans now under foreclosure? A. I did.

Q. To whom did you make the checks to? A. To the attorneys for the association.

Q. What are their names? A. Roberson & Roberson.

Q. Was the check made out to Roberson & Roberson as attorneys? A. It was.

20 Mr. Brenner: Here are the checks if you want them.

*By Mr. Rubenstein:*

Q. I show you a check dated April 30, 1928, drawn on the Mechanics Trust Company to the order of Roberson & Roberson, solicitors, for \$14,000. Was that check in connection with the \$14,000 mortgage loan? A. Yes.

30 Mr. Rubenstein: I offer the check in evidence.

(Checked marked Exhibit D-G 3 in evidence.)

*By Mr. Rubenstein:*

40 Q. I show you another check for \$6,600 made by the building and loan to Roberson & Roberson as solicitors. Is this check in connection with the \$6,600 mortgage loan on 501 Boulevard, Bayonne? A. It was.

*Harry E. Bockoven, direct*

Mr. Rubenstein: I offer this check in evidence.

(Check marked Exhibit D-G in evidence.)

*By Mr. Rubenstein:*

10

Q. Are you a director of the Centreville Building & Loan Association? A. Not a director, no.

*By the Court:*

Q. You are not a director? A. The officers are directors but not on the list as a director. The officers are all directors but they are not on the list as directors.

Q. But you are a director? A. Yes.

20

Q. If you were elected a director you were selected or designated as treasurer? A. No. The directors as officers are listed separately but the board of directors are the officers and certain other names.

Q. Is the treasurer elected from the board of directors?

Mr. Brenner: The board of directors is constituted of the directors and officers. They make up the board of directors.

30

*By Mr. Rubenstein:*

Q. Now, when you delivered over check marked Exhibit D-G 3 for \$14,000 to Roberson & Roberson, as solicitors, did you know that the Centreville Building & Loan Association had on record on that property 501 Boulevard, Bayonne, two mortgages open of record? A. When I drew that check? I probably did. Two mortgages or one mortgage.

40

*Harry E. Bockoven, direct*

Q. One mortgage. A. There was one mortgage open that I knew of at that time.

*By the Court:*

10 Q. What mortgage was that? A. The two thousand.

Q. The Dalrymple mortgage? A. No.

Q. What is the name of that mortgage?

Mr. Brenner: The Centreville Building & Loan Association on the Boulevard property.

*By Mr. Rubenstein:*

20 Q. Did you receive payment of the two thousand dollar Building & Loan Association mortgage? A. I received the payment for that, yes.

Q. At the time you received the payment did you ask for the building and loan book? A. I didn't receive the payment direct.

Q. Who gave it to you? A. The secretary.

Q. And did you make any inquiry for the building and loan book? A. No, it wasn't my business to do that.

30 Q. Whose business was it? A. The secretary's.

Q. To make inquiry for the building and loan book? A. Why, yes, I would think so.

*By the Court:*

Q. You have nothing in a building and loan shares book to show? A. No.

*By Mr. Rubenstein:*

40 Q. Now, have you the records with you relating to the book No. 12815 identified as D 1? A. Have I what?

*Harry E. Bockoven, direct*

*By the Court:*

Q. Have you the book here showing the transactions relating to that book? A. I haven't those books your Honor.

*By Mr. Rubenstein:*

10

Q. Is this book one of the Centreville Building & Loan Association's? A. Yes.

Mr. Rubenstein: I offer the book now in evidence.

Mr. Brenner: May I see it? I object to it if the Court please as having no bearing whatsoever on the present controversy.

The Court: What is the purpose of offering the book?

20

Mr. Rubenstein: For the purpose of showing that shares of stock were only assigned to the building and loan as collateral security.

The Court: What has that to do with the mortgage foreclosure suit? That might be all right on an application to require the building and loan association to account to your client for those moneys.

30

Mr. Rubenstein: It puts them on their inquiry as to the Gollins having an outstanding interest in this book.

The Court: If that is the purpose I will overrule the objection and admit it. I don't know what significance there is in it but I will admit it for that purpose.

(Book marked Exhibit D-G 5 in evidence.)

40

*Harry E. Bockoven, direct*

Mr. Rubenstein: I would like to read some portion of it in evidence.

The Court: All right.

*By Mr. Rubenstein:*

10 Q. Can you make this stamp out? A. Across here?

Q. Yes. A. Centreville Building & Loan Association collateral security for two thousand dollars, Bayonne, New Jersey. I can't make out the date. Is it 1924? I can't see the date.

20 Q. Is there another word before Centreville Building & Loan Association on top? A. I would say it is "Transferred to the Centreville Building & Loan Association as collateral security for loan of two thousand dollars." In other words, the book is pledged with the building and loan for two thousand dollars and transferred to the building and loan.

*By the Court:*

30 Q. If it was pledged how do you account for the book being in the possession of the Gollins? If the book was handed over to the building and loan association by way of pledge how do you account for it being in the possession of the Gollins? A. It is not turned over. It is a pass book to receive the entries that were made to the association.

Q. What was it that was pledged as collateral? Was it the book or the shares? A. Well, the shares of that book for two thousand dollar loan.

40 Q. I suppose the stamp is there to indicate to anybody that might be asked to buy those shares to look at that book and put them on no-

*Harry E. Bockoven, direct*

tice there had been a collateral loan against it.  
A. Already assigned to the building and loan as collateral security for the mortgage.

Mr. Brenner: It is right on the shares. It is not on the book itself. It is for the very purpose your Honor indicated.

10

The Court: Whoever put that stamp on should put it more plainly hereafter.

Mr. Brenner: Do you want the last date of payment under this book?

Mr. Rubenstein: Yes.

The Court: It is conceded the last payment made in that book is what?

Mr. Rubenstein: May 1926.

The Court: When is the first entry in that book?

20

Mr. Rubenstein: August 1924.

Q. Now, the mortgage represented by book No. 12815, Exhibit D-G 5, was paid. Why didn't you ask for the book?

The Court: He said he had nothing to do with the book.

A. I didn't get it from the parties. I got it from the secretary.

30

*By Mr. Rubenstein:*

Q. And is it usual for the secretary to get the book?

The Court: You had better ask the secretary that.

Mr. Brenner: The secretary has already testified to it.

40

Mr. Rubenstein: That's all.

*Harry E. Bockoven, cross**Cross examination by Mr. Brenner:*

- Q. Mr. Bockoven, before the loan was granted on 772 Avenue C did you go to the house at that address as a part of an examining committee? A. I did.
- 10 Q. And do you recall who was in possession of the property at that time? A. I did not go into the house myself. I examined it from the outside.
- Q. Now, who went with you on that occasion? A. Mr. Oliver, Mr. Keegan and Mr. Johnson.
- Q. Mr. Oliver is now dead? A. Yes.
- Q. Mr. Keegan is here in court? A. Yes.
- Q. And Mr. Johnson is here in court? A. Yes.
- 20 Q. That property is a one family house, is it not? A. It is a one family house.
- Q. And did you go as a part of an examining committee to the property 501 Boulevard? A. I did.
- Q. Now, did you go into that property? A. I did.
- Q. And do you know how many tenants were in the building? A. I don't recall at this time.
- 30 I don't think it was fully occupied. I am not sure.
- Q. Were the Gollins, Max or Betsey Gollin, in the property 501 Boulevard at the time that you make your examination? A. They were not so far as I know.
- Q. Were there white people or colored people as tenants in that property? A. There were some colored. I don't recall if they were all colored or not.
- 40 Q. As far as you know in examining 772 Avenue C was either Betsey or Max Gollin in

*Harry E. Bockoven, redirect*

that property at the time of your examination?

A. Not so far as I know. I wasn't in the inside of that property.

Q. Now, when the examination was made by the other members of the committee did they report to you as to who was occupying the premises? Yes or no.

10

Mr. Rubenstein: I object.

The Court: He can say yes or no.

A. No, they did not.

*By Mr. Brenner:*

Q. Did you at the time of placing of the loan on Avenue C or the placing of the loan on the Boulevard know of any controversy that existed between the Annett-Mahnken Realty Company or the Anson Realty Company and Betsey or Max Gollin or both of them involving either 772 Avenue C or 501 Boulevard? A. No, I did not.

20

Mr. Brenner: That's all.

*Redirect examination by Mr. Rubenstein:*

Q. Do you know that Betsey Gollin and Max Gollin lived at 772 Avenue C, Bayonne? A. Do I know what?

30

Q. Do you know that Betsey Gollin and Max Gollin lived at 772 Avenue C, Bayonne?

Mr. Brenner: I object unless a date is fixed.

The Court: I will let him say whether he knows first.

A. No, I don't know they lived there.

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*Betsey Gollin, direct**By Mr. Rubenstein:*

Q. Do you know whether they live there now or not?

Mr. Brenner: Objected to.

10 A. No, I do not know.

The Court: He said no.

*By Mr. Rubenstein:*

Q. Did you attend the meeting of the board of directors when two loans were granted to the Anson Realty Company? A. I was.

20 Q. Was Judge Horace Roberson present at that time? A. I don't know. I don't remember that.

Q. Was Judge Horace K. Roberson present? A. I don't know.

Mr. Brenner: We have already conceded they were. Horace K. Roberson has testified that both he and his uncle were there.

The Court: All right, the record will show that.

30 Mr. Rubenstein: That's all.

---

BETSEY GOLLIN, being sworn.

*Direct examination by Mr. Rubenstein:*

Q. Mrs. Gollin, where do you live now? A. 772 Avenue C.

40 Q. When did you move into the property? A. The first time you mean?

Q. No, the second time. A. I can't remember

*Betsey Gollin, direct*

exactly but I think about ten or eleven months. I can't tell you exactly. I don't know.

Q. Did you ever live in the property before?

A. Certainly.

Q. When? A. Seven or eight years ago. I think seven years ago they threw me out.

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Q. When was the first time you moved into the property known as 772 Avenue C? A. When was it?

Q. Yes. A. I think about eight or nine years.

The Court: Why not bring out the particular time.

Mr. Brenner: Bring it down to the specific date of either of these loans.

Mr. Rubenstein: She didn't live in the property then.

20

Mr. Brenner: I will concede at the time of the loan on 772 Avenue C neither Mr. or Mrs. Gollin were living at 772 Avenue C.

The Court: Is that so?

Mr. Rubenstein: Yes.

Mr. Brenner: At the time of the loan on 501 Boulevard Mr. and Mrs. Gollin nor any of their family lived at 501 Boulevard.

30

The Court: Is that so?

Mr. Rubenstein: Yes.

Q. Mrs. Gollin, you said a minute ago you were thrown out of 772 Avenue C. Bayonne. A. Yes.

Q. Will you tell us how that came about?

Mr. Brenner: Objected to.

The Court: How am I concerned about that because she said she was not living

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*Betsey Gollin, direct*

10 there at the time this mortgage foreclosure suit was started. I don't think she was thrown out bodily. If there was a writ of assistance put it in. You can prove it in the regular way. If you are not familiar enough to try this case why did you enter into it at all.

Mr. Rubenstein: I knew I could take care of the case in the beginning.

Mr. Brenner: Counsel has been in this matter from the very first time the papers were filed. In the preliminary motions I never met Mr. Hirschberg or Mr. Nashel. I always met Mr. Rubenstein.

20 The Court: I am observing he seems to have knowledge or information to some extent as to this case. I saw him consulting with somebody at the table but it is no concern of mine.

Mr. Brenner: I think the court will always find where a client assists too much in the trial of a case the lawyer cannot try it right. That is why I usually put my clients in the back of the room when I try a case.

30 The Court: The one that is sitting at the table is a son of his clients.

Mr. Brenner: Yes.

*By Mr. Rubenstein:*

Q. Mrs. Gollin, do you claim to have any right in the properties known as 772 Avenue C and 501 Boulevard, Bayonne?

40 Mr. Brenner: I object to that what she may have claimed.

The Court: He asked did she claim to

*Betsey Gollin, direct*

have any interest. I don't think it can hurt you. I don't know what is coming next.

Mr. Brenner: Claim to who?

The Court: That remains to be seen. I think I can save time by letting her say yes or no first. Do you know what the question is?

10

The Witness: No.

The Court: Read the question.

(Last question read by stenographer).

A. I have a right to it, sure.

*By Mr. Rubenstein:*

Q. What right have you got to that property?

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Mr. Brenner: I certainly object to that.

The Court: What is the ground of your objection?

Mr. Brenner: The ground of the objection is whatever right she may claim is not being upon this complainant unless they were informed either directly or by constructive notice of the existence of such right.

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The Court: I will sustain the objection upon the ground her statement may be a conclusion. She may be right or wrong and if she has any claim it will have to be proved some other way and not by her say so.

Mr. Rubenstein: If the court please I would like to renew my motion made at the beginning of the hearing this afternoon for a continuance for the reason that I

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*Case*

expected Mr. Hirschberg here during the course of the trial. He is actually engaged in another court. I think the defendants should have an opportunity to have Mr. Hirschberg here.

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Mr. Brenner: If your Honor please if counsel is through I don't want to stop people from having their case properly heard. I think that counsel is entirely competent to present this matter in the absence of both Mr. Hirschberg and Mr. Nashel. He has been in the matter from its very inception. I don't think he can deny my assertion in that respect. He has appeared on the various motions that were made in these suits and there is no explanation before this court as to any reason for the absence of either Mr. Hirschberg or Mr. Nashel. Now, the next fact when counsel started the case this morning he expected their appearance is no reason why at this late moment the case should not be concluded. As I said to the court earlier in the day I came here at some inconvenience to myself and inconvenience to clients in another case because I put off a case in the Common Pleas Court today that would be heard and I also had to have some one absolutely unfamiliar with an appeal before the Court of Errors and Appeals appear before the Court of Errors and Appeals. Now, certainly as to today having been specially set and counsel knowing long in advance of the date that it was set certainly counsel should have fixed their engagements as I had to to be here today to try this case.

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*Case*

The Court: I don't think I can grant the request that is made because it is the duty of Hirschberg & Nashel who appear to be solicitors of record to be here to try this case. Now, for some reason unexplained other than the short explanation made by Mr. Rubenstein in the beginning of the case he undertook to represent the defendants, what right he had to do it I don't know, but the fact he is here doing it in the presence of the defendants, it seems to me gives me the right to assume he is here by some color of right. I think I will have to deny the application. So far as the defendants are concerned if they suffer damage by reason of the negligent manner in the handling of the case, if it should be considered negligent, they have a right to sue Hirschberg & Nashel. Hirschberg & Nashel are in a very bad position in this case at the present time. I say that because I understood Mr. Rubenstein to say he was representing them and could proceed with the case until they arrived. It is not eight minutes after three and they haven't arrived yet. I don't think I can split the case up in that way. The other side have to be considered in that they have their people in court and are prepared to go on.

Mr. Rubenstein: Except what I told the court now the only witnesses we will have on the continued hearing are the Gollins.

The Court: No, I can't continue it for the reason you suggested. I can't split

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*Case*

10 the causes up. I had to tell counsel in a case the other day I couldn't try a case piecemeal. Of course it may result in somebody coming in here on behalf of the Gollins asking to reopen the case on the theory they may not have been properly represented. What will happen remains to be seen when the application is made. It is a well known rule no lawyer has a right to forego the rights of his clients and under the rule of law if he does it the Court can open up the case. I am saying that in passing although I am not in sympathy with the situation as presented to me from the defendants' case.

20 I think I will proceed under the circumstances and let the future take care of itself, whatever it might be.

Mr. Rubenstein: I would like to offer in evidence the decision made by your Honor in the accounting suit if your Honor will give me an opportunity to do that.

30 The Court: How can that in anywise bind the Centreville Building & Loan Association?

Mr. Rubenstein: To show the interest of the Gollins in this property.

40 The Court: Yes, but it is the duty of the Centreville Building & Loan Association to examine the records of the Court of Chancery as to matters of litigation. It might be their duty to examine the file in a mortgage foreclosure suit and it might be, if there was a *lis pendens* filed, requisite for them to inquire into that, but

*Case*

I can't see the competency of your offering that decision of mine in this case. I don't see the necessity of offering a decision in evidence in that case. If you think it is of any consequence offer it and see what happens.

10

Mr. Rubenstein: I offer the decree.

Mr. Brenner: I object to it as not being binding in any way upon the complainant.

The Court: I will have to sustain the objection. It is up to you to show by some means that this building and loan association should be chargeable with knowledge derived from some source no matter what source it might be as to the interest of the Gollins in this matter to put them on notice in their dealings with respect to this property. If you think you have proved any such thing that remains to be seen. You can argue it after. I can see there are a lot of differences between the Gollins and Judge Roberson and possibly the Annett-Mahnken Realty Company and the Anson Realty Company, but how can it apply to the complainant in these suits unless you show some knowledge which is chargeable to them.

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Mr. Rubenstein: I think I have the knowledge in. I rest.

The Court: Have you anything else to offer Judge Brenner?

Mr. Brenner: Yes.

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*John Edsall Johnson, direct*

JOHN EDSALL JOHNSON, being sworn:

*Direct examination by Mr. Brenner:*

Q. Mr. Johnson, you are in the real estate business in Bayonne? A. Yes, I am.

10 Q. And have been for how many years? A. Over thirty years.

Q. And you are a resident of Bayonne at the present time? A. I am.

Q. And were you part of the examining committee that went to the property 772 Avenue C? A. I was.

Q. And do you know who the tenant was in possession of 772 Avenue C at the time that you made your inspection of that property? A. Yes.

20

Q. Who was it? A. Charles Davis.

Q. Charles Davis is a builder in Bayonne. A. That's his business, or was his business at that time.

Q. You did not go to the property 501 Boulevard, did you? A. I did not.

Q. Now, was there anything about the property 772 Avenue C at that time that you went there that would give you any knowledge on your part that Max or Betsey Gollin were claiming any interest in that property? A. No.

30

Q. Any signs of any kind? A. No.

*By the Court:*

Q. Did you inquire from any parties to whom they were paying rent to or who owned the property? A. No, I did not.

Q. Why not. You were going there to try to find out not only as to the value of the property but as to the owners of the property. A.

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*John Edsall Johnson, direct*

That was not our purpose as an examining committee as I understood it. We were there to value the property and see its physical condition.

Q. That was your only purpose? A. Yes.

*By Mr. Brenner:*

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Q. The application to the building and loan was made by the Anson Realty Company. A. I knew that through the meeting of the board of directors through which the loan was passed.

Q. Was there any doubt in your mind but what the Anson Realty Company was the owner of that property?

The Court: I will overrule that question. I am not concerned about any doubts.

20

Mr. Brenner: He is a director if the Court please.

The Court: Yes, but I am not concerned about any doubts.

*By Mr. Brenner:*

Q. Was there anything about that application or the property or the property itself from which you gained knowledge of any claim made by the Gollins? A. No.

30

Q. Did the board of directors order the property searched? A. Yes.

Q. And was that searched through the regular channels of the building and loan? A. Yes.

Q. By the counsel that ordinarily acted for the building and loan? A. Yes.

Q. Were you notified by counsel for the building and loan of any record or anything else

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*John Edsall Johnson, cross*

which would indicate any claim of ownership by the Gollins to 772 Avenue C? A. No.

Mr. Brenner: Take the witness.

*Cross examination by Mr. Rubenstein:*

10 Q. Did you ever hear about any claim of the Gollins to these properties? A. Yes.

Q. So you knew the Gollins had some claims to these properties? A. It was common rumor.

Q. Where did you get this information from?

The Court: He said common rumor.

*By Mr. Rubenstein:*

20 Q. So at the time of the granting of these loans you knew about that common rumor, am I right? A. That is right.

Q. And notwithstanding that you permitted these mortgage loans to go through? A. I voted for the loan.

Q. And was it the reason you voted for the loan because Judge Roberson was getting this money? A. No, because it was a good loan.

30 Q. Who made the application for the loan? A. The Anson Realty Corporation or company.

Q. What officer of the Anson Realty Company made the application for the loan? A. I couldn't say that. I have forgotten what officer. I could tell from the application if you have it here. We read it at that time.

*By the Court:*

40 Q. Who appeared before the board if any one in behalf of the Anson Realty Company when the loan was granted? A. No one appeared before our board.

*John Edsall Johnson, redirect*

Q. Was any one in behalf of the Anson Realty Company there when the loan was passed? A. No one so far as I can remember because I remember the application was read at a regular meeting and the recommendation of the committee was also read and the loan was then acted upon.

10

*By Mr. Rubenstein:*

Q. And did the other directors know about the common rumor at that time also? A. I don't know.

Q. Was that taken up at the discussion of the meeting? A. No.

Q. But you knew about it at the time you were closing this loan.

20

The Court: He said he did.

Mr. Rubenstein: That's all.

*Redirect examination by Mr. Brenner:*

Q. What was the common rumor that you referred to which you say you had personal knowledge of which you say was not communicated to the board. A. Why, the rumor of the Gollins having borrowed money from Judge Horace Roberson and they were in trouble about it.

30

Q. Was there any common rumors at that time that the Gollins were claiming any title to 772 Avenue C? A. Not that I heard of.

Q. That is what I am referring to. The common rumor which you referred to was mainly between Judge Roberson and the Gollins over some money he had loaned them. A. That is the gist of it.

40

Mr. Brenner: That's all.

*John Edsall Johnson, recross*

*Recross examination by Mr. Rubenstein:*

Q. And that common rumor affected the properties on which the building and loan gave the mortgage on. A. I don't think that I knew it.

10 Q. You said that a minute ago. A. Well, if I did all right. The record is there.

*By the Court:*

Q. If you did are you right or wrong? A. I had particular properties in mind. The large apartment there on the Boulevard.

*By Mr. Rubenstein:*

20 Q. And you knew there was some controversy between the Gollins and the Annett-Mahnken Realty Company and the Anson Realty Company. A. No, I didn't know that.

Q. Well, didn't you investigate these common rumors before you granted the loan? A. No, I didn't think it was my business to.

*By the Court:*

30 Q. Did you know who comprised the Anson Realty Company? A. Yes, I did.

Q. How did you get that knowledge? A. I got it because I knew that Mr. Annett and Mr. Roberson were a corporation.

The Court: Anything else?

Mr. Rubenstein: That's all.

*John G. Keegan, direct*

JOHN G. KEEGAN, being sworn:

*Direct examination by Mr. Brenner:*

Q. Mr. Keegan, what business are you engaged in? A. Building.

Q. And were you part of an examining committee that went to inspect the property 772 Avenue C? A. I was. 10

Q. And was that done in pursuance of an application for a loan to the Centreville Building & Loan Association? A. Yes.

Q. When you examined 772 Avenue C who was in possession of those premises? A. Why, Charles Davis.

Q. And what business was Mr. Davis engaged in? A. Building. 20

Q. Was there anything about the property which indicated that anybody by the name of Gollin had any interest or claimed any interest in the property? A. None.

Q. When the application was made for a loan by the Anson Realty Company was there anything in the application that would call attention to any claim on the part of Mr. or Mrs. Gollin against this property? A. No. 30

Q. Now, did you subsequently make an examination of the property 501 Boulevard? A. I did.

Q. As a part of said examining committee? A. Yes, sir.

Q. And who advised with you on that committee? A. Mr. Oliver, Mr. Johnson, Mr. Bockoven and myself.

Q. Mr. Oliver is now dead, isn't he? A. Yes.

Q. Now, when you went to the property 501 Boulevard do you recall who the tenants were 40

*John G. Keegan, cross*

in that property? A. As I recall it they were all darkies.

Q. Colored people? A. Yes.

10 Q. Was there anybody by the name of Gollin at 501 Boulevard at the time you made the examination? A. Not so far as I knew.

Q. Was there anything that was ever called to your attention or the board of directors on the application for the loan on 501 Boulevard which would indicate that any member of the Gollin family had an interest or claim in that property?

Mr. Rubenstein: I object on the ground the minutes may be the best proof.

20 The Court: There may not be any minute of it. I will overrule your objection.

A. No, there wasn't.

Mr. Brenner: That's all.

*Cross examination by Mr. Rubenstein:*

Q. Now, you appraised the property known as 772 Avenue C Bayonne. A. I helped to.

Q. What appraisal did you put on it? A. On the land we put on \$14,000.

30 Q. And how much on the building? A. \$8,000.

Q. \$22,000. A. And \$800 on the garage.

Q. Can you tell us the reason why Judge Roberson signed the bond? A. I couldn't tell you anything about it.

Q. Did you hear any common rumors about the Gollins having an interest in these two properties? A. No.

40 Q. Did you know anything about the litigation? A. None, only what I saw in the papers,

Q. You saw the newspapers? A. Yes.

*John G. Keegan, cross*

Q. And you saw it quite frequently in the newspapers? A. After the loan was made.

Q. And before the loan was made you saw it in the newspapers too? A. I don't remember it.

Q. And you knew the Gollins had an interest in this property? A. I did not.

Q. Well, after the loan was made you knew the Gollins had an interest?

10

Mr. Brenner: Objected to. He didn't say they had an interest.

The Court: I will sustain the objection.

*By Mr. Rubenstein:*

Q. When did you first learn about the rumors?  
A. What?

20

Q. The rumors about the controversy between the Gollins and the Annett-Mahnken Realty Company and Anson Realty Company. A. I said I didn't hear of it. I said I saw it in the papers.

Q. When did you read about it in the newspapers? A. After the mortgage was made.

Q. After what mortgage? A. Why, the mortgage to the building and loan made by the Anson Realty Company.

30

Q. Are you referring to the mortgage on 772 Avenue C? A. Yes.

Q. Well, how soon after that mortgage did you read that in the newspapers? A. That I couldn't tell you.

Q. A month or two months? A. I couldn't tell you. I don't know.

Q. Was it a short time afterwards? A. I don't know. I don't just recall how short it was.

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*Exhibit C-1*

Mr. Rubenstein: That's all.

Mr. Brenner: That's our case if the court please.

(After argument of counsel).

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The Court: Mr. Rubenstein if you think you can sustain your counterclaim I will afford you an opportunity of submitting a brief. I can't let you hold it up to give you an opportunity of having the record written up because it will take too long. If you think you can sustain the allegations of your counterclaim I would be glad to afford you an opportunity to do it.

Mr. Rubenstein: All right, I will do it.

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Mr. Brenner: I don't have to answer it unless your Honor tells me.

The Court: No.

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**Exhibit C-1**

KNOW ALL MEN BY THESE PRESENTS:

30

That ANSON REALTY COMPANY, a corporation organized under the laws of the State of New Jersey, and HORACE ROBERSON, of the City of Bayonne, in the County of Hudson and State of New Jersey, are held and firmly bound unto CENTREVILLE BUILDING AND LOAN ASSOCIATION, a body corporate of the State of New Jersey, in the penal sum of Twenty-eight thousand (\$28,000.00) Dollars lawful money of the United States of America, to be paid to the said CENTREVILLE BUILDING AND LOAN ASSOCIATION, a body

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corporate &c., its successors or assigns: FOR WHICH PAYMENT well and truly to be made, it and he bind itself, its successors or assigns, and himself, his heirs, executors and administrators,

*Exhibit C-1*

firmly by these presents. Sealed with their seals. Dated the eleventh day of April, One Thousand Nine Hundred and twenty-eight.

THE CONDITION of the above obligation is such that if the above bounden ANSON REALTY COMPANY, a corporation &c., its successors or assigns, shall well and truly pay, or cause to be paid, unto the above named CENTREVILLE BUILDING and LOAN ASSOCIATION, a body corporate &c., its successors or assigns, the just and full sum of Fourteen thousand (\$14,000.00) Dollars on the eleventh day of April, which will be in the year One Thousand Nine Hundred and twenty-nine, and the interest thereon, to be computed from the date hereof, at and after the rate of six per cent. per annum, and to be paid monthly, on the second Monday of each and every month, ensuing the date hereof, without any fraud or other delay, then the above Obligation to be Void, otherwise to remain in full force and virtue. Horace Roberson joins in the execution of this bond to guarantee the payment of that part of the principal hereof in excess of \$13,000 and the interest thereon and his liability hereon shall be limited to the payment of said sum in excess of \$13,000. and interest thereon from the date hereof.

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become

*Exhibit C-1*

10 due and payable; and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of ninety days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of Fourteen thousand (\$14,000.00) Dollars with all arrearage of interest thereon, shall, at the option of the said CENTREVILLE BUILDING and LOAN ASSOCIATION, a body corporate &c., or its legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

20

ANSON REALTY COMPANY

(Seal)

By HORACE ROBERSON  
President.

Attest:

30 GEORGE E. GRISWOLD,  
Secretary.

HORACE ROBERSON (L. S.)

Signed, sealed and delivered  
in the presence of

HORACE K. ROBERSON

[UNITED STATES INTERNAL REVENUE STAMPS:]

40 5 Dollars—Cancelled: A R Co  
2 Dollars—Cancelled: A R Co

**Exhibit C-2**

THIS INDENTURE Made the eleventh day of April, in the year of our Lord One Thousand Nine Hundred and twenty-eight.

BETWEEN ANSON REALTY COMPANY, a corporation organized under the laws of the State of New Jersey, party of the first part; 10

AND CENTREVILLE BUILDING and LOAN ASSOCIATION, a body corporate of the State of New Jersey, party of the second part;

WHEREAS, the said party of the first part is justly indebted to the said party of the second part, in the sum of Fourteen thousand (\$14,000.00) Dollars, lawful money of the United States of America, secured to be paid by its certain bond or obligation, bearing even date with these presents, in the penal sum of Twenty-eight thousand (\$28,000.00) Dollars, lawful money as aforesaid conditioned for the payment of the said first-mentioned sum of Fourteen thousand (\$14,000.00) Dollars, lawful money as aforesaid, to the said party of the second part, its successors and assigns on the eleventh day of April, which will be in the year One Thousand Nine Hundred and twenty-nine, and interest thereon, to be computed from the date hereof, at and after the rate of six per cent. per annum, and to be paid monthly, on the second Monday of each and every month, ensuing the date hereof. 20 30

AND IT IS THEREBY EXPRESSLY AGREED that should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is made payable, as above 40

*Exhibit C-2*

expressed, or should any tax, assessment, water  
rent or other municipal or governmental rate,  
charge, imposition or lien be hereafter imposed  
or acquired upon the premises described in this  
mortgage, and become due and payable, and  
10 should the said interest or any part thereof re-  
main unpaid and in arrear for the space of  
thirty days, or said tax, assessment, water rent  
or other municipal or governmental rate, charge,  
imposition or lien, or any or either of them  
remain unpaid and in arrear for the space of  
ninety days then and from thenceforth, that is  
to say, after the lapse or expiration of either of  
the said periods as the case may be, the aforesaid  
principal sum of Fourteen thousand (\$14,000.00)  
20 Dollars, with all arrearage of interest thereon,  
shall, at the option of the said party of the sec-  
ond part, or its, legal representatives or assigns,  
become and be due and payable immediately  
thereafter although the period above limited for  
the payment thereof may not then have expired,  
anything therein before contained to the contrary  
thereof in anywise notwithstanding: and the  
holder of this mortgage may, at its option, pay  
such tax, assessment, or water rent in arrear,  
30 and the amount so paid shall be added to and  
become part of the principal sum secured by the  
said bond and by this mortgage, and shall be  
payable on demand with interest at six per  
centum per annum, as by the said bond or obli-  
gation, and the condition thereof, reference being  
thereunto had, may more fully appear.

40 NOW THIS INDENTURE WITNESSETH, That the  
said party of the first part, for the better secur-  
ing the payment of the said sum of money men-  
tioned in the condition of the said bond or

*Exhibit C-2*

obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to it in hand paid by the said party of the second part at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to its successors and assigns forever.

10

ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, which are known and distinguished on a "Map of property belonging to E. C. Bramhall, situated in the Second Ward of the City of Bayonne, surveyed and drawn by Smith & Eddy, June, 1880", as lots three (3) and four (4) in plot 2 in block eleven (11) as laid down on said map.

20

Said lots front on the easterly side of Avenue C, distant one hundred and ninety (190) feet northerly from the northerly side of West Thirty-third Street, formerly Bayonne Avenue. Each of said lots is twenty-five (25) feet wide and one hundred seventy-two and one-half ( $172\frac{1}{2}$ ) feet deep on each side, as laid down on said map. Since the making of said map, Avenue C has been widened so that said lots are now one hundred sixty-two and one-half ( $162\frac{1}{2}$ ) feet in depth on each side.

30

Said lots are now known as lots eight (8) and nine (9) in City Block one hundred and seventy-

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*Exhibit C-2*

seven (177) on the Tax Maps of the City of Bayonne in use at the present time.

10 Being the same premises described as the fifth tract in a certain deed made by Annett-Mahnken Realty Company to Anson Realty Company, dated March 22, 1928, recorded March 23, 1928, in the Hudson County Register's Office.

20 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, and remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to it and their own proper use, benefit and behoof forever. PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, 30 its successors or assigns shall well and truly pay unto the said party of the second part, its successors and assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

40 AND the said party of the first part for itself,

*Exhibit C-2*

its successors or assigns does covenant and agree to pay unto the said party of the second part, its successors and assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of the first part, its successors and assigns shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire by insurers, and in an amount approved by the said party of the second part, its successors and assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

AND THE SAID party of the first part the owner of the lands above described for itself, its successors and assigns does further covenant and agree to and with the said party of the second part, its successors and assigns, that it and they will pay in full, all taxes levied, or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of

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*Exhibit C-2*

State of New Jersey, }  
 County of Hudson, } ss.:

BE IT REMEMBERED that on this eleventh day of April, in the year of our Lord One Thousand Nine Hundred and twenty-eight, before me, the subscriber, A MASTER IN CHANCERY OF NEW JERSEY, personally appeared GEORGE E. GRISWOLD, who, being by me duly sworn on his oath, says that he is the Secretary, of the ANSON REALTY COMPANY, the mortgagor named in the within instrument; that HORACE ROBERSON, is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

GEORGE E. GRISWOLD.

Sworn and subscribed before me at Bay- }  
 onne, New Jersey, the date aforesaid }

HORACE K. ROBERSON  
 Master in Chancery of New Jersey.

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*Exhibit C-2*

[ENDORSEMENT]:

Compared

MORTGAGE

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Register's Office  
Apr 12 1 49 P M 1928  
Hudson County, N. J.

Anson Realty Company, a corpora-  
tion &c.,

TO

Centreville Building and Loan As-  
sociation, a body corporate, &c.

20

Indexed under County Block No. 235.

Dated, April 11th, 1928

RECEIVED in the Registers office of  
the County of Hudson on the 12th  
day of Apr. A. D., 1928, at 1:49  
o'clock, in the afternoon and re-  
corded in Book 1498 of MORTGAGES  
for said County, on page 199.

30

CHARLES F. X. O'BRIEN,  
Register.

ROBERSON & ROBERSON  
29 West Eighth Street  
Bayonne, N. J.

40

**Exhibit C-3**

KNOW ALL MEN BY THESE PRESENTS:

That ANSON REALTY COMPANY, a corporation of the State of New Jersey, is held and firmly bound unto THE CENTREVILLE BUILDING AND LOAN ASSOCIATION, a body corporate of the State of New Jersey, the sum of Thirteen thousand two hundred (\$13,200.00) Dollars, lawful money of the United States of America, to be paid to the said Association, its successors or assigns, FOR WHICH PAYMENT well and truly to be made it binds itself, its successors and assigns, firmly by these presents. Sealed with its seal, Dated the thirteenth day of January, one thousand nine hundred and thirty.

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THE CONDITION of the above obligation is such that if the above bounden ANSON REALTY COMPANY, its successors and assigns, shall well and truly pay or cause to be paid, unto the above named Association, its successors or assigns, the just and full sum of Sixty-six hundred (\$6600.00) Dollars, in the manner following, viz: by the payment of one dollar and 15 cents, on each of 33 shares of 55th series of the capital stock of said Association owned by said obligor and standing in its name on the books of said Association, and assigned to it as collateral security for the payment hereof and on which this loan is based; on the second Monday of each and every month hereafter, or such other time as may hereafter be appointed for that purpose, until the said shares shall attain the par value of two hundred dollars each, together with interest on said sum of Sixty-six hundred (\$6600.00) Dollars, to be computed

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*Exhibit C-3*

10 from the date hereof at the rate of six per cent. per annum, and payable monthly at the same time and in the same manner as the stock payments aforesaid, and also all fines that may become due as provided for by the constitution and by-laws of said Association, which have been duly assented to by said obligor and made a part hereof, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

20 AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest, or installment on said share or any part thereof, on any day when the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired on the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest or installment on said share remain unpaid and in arrear for the space of thirty days, or said tax, assessment or water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain  
30 unpaid and in arrear for the space of sixty days, or should said obligor refuse or neglect for thirty days after demand to produce and exhibit to the obligee the vouchers showing the payment of such tax, assessment, water rent or other lien due and payable, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid  
40 principal sum of Sixty-six hundred (\$6600.00) Dollars or the balance thereof remaining unpaid with all arrearage of interest thereon shall at the option of the said Association or its legal

*Exhibit C-3*

representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

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Sealed and delivered in presence of

ANSON REALTY COMPANY,

By CHARLES E. ANNETT (L. S.)  
President.  
(Corporate Seal)

Attest:

ETHEL M. JOY,  
Secretary.

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[UNITED STATES INTERNAL REVENUE STAMPS:]

Three for One Dollar each—Cancelled: A R Co.  
One for twenty-five cents—Cancelled: A R Co.  
One for five cents—Cancelled: A R Co.

FOR VALUE RECEIVED It does hereby assign and transfer to the CENTREVILLE BUILDING AND LOAN ASSOCIATION, of the City of Bayonne, New Jersey, as collateral security for a loan of Sixty-six hundred (\$6600.00) Dollars, 33 shares of 55th series of the said CENTREVILLE BUILDING AND LOAN ASSOCIATION, issued as Certificate No. ——— standing in its name, subject by it to all the payments due or to become due thereon under the terms prescribed in the Constitution of said Association.

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WITNESS its hand and seal this thirteenth day of January, A. D. 1930.

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ANSON REALTY COMPANY

By CHARLES E. ANNETT (L. S.)  
President.

*Exhibit C-3*

Attest:

ETHEL M. JOY  
Secretary.

Attest MYRTLE A REED

10

55th Series

Incorporated  
August 2, 1889

Maturity Value  
Each Share \$200

No. 262

CENTREVILLE BUILDING & LOAN  
ASSOCIATION

20

THIS CERTIFIES THAT ANSON REALTY COMPANY  
is the owner of thirty-three (33) shares in  
THE CENTREVILLE BUILDING & LOAN ASSOCIATION  
subject to the advantages and liabilities under  
its Articles of Association and Constitution.

Bayonne, N. J., Jan. 16 1930.

W. C. OLIVER, President  
A. B. BELING, Secretary

30

(Print of Seal)

Transferable only on the Books of the Ass'n

[STAMPED ACROSS FACE]

55th Series

Transferred to the CENTREVILLE BUILDING AND  
LOAN ASSOCIATION as collateral security for loan  
of Sixty-six Hundred (\$6600.) Dollars.

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Bayonne, N. J. Jan. 31 30

A. B. BELING  
Secretary.

**Exhibit C-4**

THIS INDENTURE, made the thirteenth day of January, in the year of our Lord one thousand nine hundred and thirty, BETWEEN ANSON REALTY COMPANY, a corporation of the State of New Jersey, party of the first part, and

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THE CENTREVILLE BUILDING AND LOAN ASSOCIATION, a body corporate of the State of New Jersey, party of the second part, witnesseth:

WHEREAS, the said party of the first part is justly indebted to the said party of the second part, in the sum of Sixty-six hundred (\$6600.00) dollars, lawful money of the United States of America, secured to be paid by its certain bond or obligation bearing even date herewith in the penal sum of Thirteen thousand two hundred (\$13,200.00) dollars, lawful money as aforesaid, to the said party of the second part, its successors or assigns, in the manner following, viz.: by the payment of one dollar and 15 cents on each of 33 shares of the 55th series of the capital stock of said Association owned by said party of the first part and standing in its name on the books of said Association, and which said shares are thereby assigned to the party of the second part hereto, as collateral security for the payment thereof, and on which this loan is based, on the second Monday of each and every month hereafter, or such other time as may hereafter be appointed for that purpose, until the said shares shall attain the par value of two hundred dollars each, together with interest on the said sum of Sixty-six hundred (\$6600.00) dollars, to be computed from the date thereof at the rate of six per cent. per annum, and payable monthly

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*Exhibit C-4*

10 at the same time and in the same manner as the stock-payments aforesaid, and also all fines and premiums that may become due as provided for by the Constitution and By-Laws of said Association, which have been duly assented to by said party of the first part and are made a part hereof.

20 AND IT IS THEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest or installments on said shares or of any part thereof, or any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired  
30 upon the premises described in this mortgage, and become due and payable, and should the said interest or dues, premiums or fines on said shares or any part thereof remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid  
40 and in arrear for the space of sixty days, or should the said party of the first part refuse or neglect for thirty days after demand to produce and exhibit to the party of the second part the vouchers showing the payment of such tax, assessment, water rent or other lien as aforesaid due and payable, then and from thenceforth, that is to say after the lapse or expiration of either of said periods as the case may be, the aforesaid principal sum of Sixty-six hundred (\$6600.00) dollars, with all arrearage of interest, premiums and fines thereon, shall, at the option of the said party of the second part or its legal repre-

*Exhibit C-4*

sentatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

10

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, for better securing the payment of said sum of money mentioned in the condition of said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to it in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part and to its successors and assigns forever, ALL that certain tract, piece or parcel of land and premises, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, described as follows:

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BEGINNING at a point on the westerly side of the New Public Road (commonly called the Boulevard), distant thereon about thirty-four (34) feet southerly from the southerly side of West Nineteenth Street measured on a line drawn parallel with the easterly line of Lot #12 in Block S on "Map of Joseph B. Close, situated in the Second Ward of Bayonne, Hudson County,

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*Exhibit C-4*

10 N. J., Smith & Weston, Civil Engineers," said beginning point being also the southeasterly corner of lands conveyed by Betsey Gollin and husband to Barnhard Pollak and another, by deed dated August 30, 1906; thence running (1) West-  
 20 erly parallel with West Nineteenth Street, ninety-seven and forty-nine one hundredths (97.49) feet more or less to the easterly line of Lot #12 aforesaid; thence (2) Southerly along the easterly line of Lot #12, thirty-two (32) feet more or less to the northwesterly corner of lands mortgaged by Betsey Gollin and husband, to Florence Pocock October 15, 1906; thence (3) Easterly parallel with West Nineteenth Street, ninety-six and seventy-three one hundredths  
 30 (96.73) feet more or less to the westerly side of said Boulevard, and thence (4) Northerly along the same, thirty-two (32) feet more or less to the point or place of beginning.

Being the same premises described as the third tract in the deed of conveyance made by Annett-Mahnken Realty Company, a corporation of New Jersey, to Anson Realty Company, dated March 22, 1928, recorded March 23, 1928 in the Hudson County Register's Office in Book 1679 of Deeds.  
 40 on page 315.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the  
 50 first part, of, in and to the same, and every part and parcel thereof, with the appurtenances.

*Exhibit C-4*

TO HAVE AND TO HOLD the above granted and described premises with the appurtenances, unto the said party of the second part, its successors and assigns, to its and their own proper use, benefits and behoof forever.

AND the said party of the first part and its successors and assigns, the above described and granted premises, and every part thereof with the appurtenances, in the quiet and peaceable possession of the party of the second part, its successors, legal representatives, and assigns against every person whatsoever, will WARRANT and forever DEFEND. PROVIDED ALWAYS, and these presents are upon this express condition, and if the said party of the first part, its successors and assigns shall well and truly pay unto the said party of the second part, its successors or assigns, the said sum or sums of money mentioned in the condition of said bond or obligation, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void.

AND IT IS ALSO AGREED by and between the parties of these presents, that the said party of the first part shall and will keep the buildings erected, and to be erected, upon said lands above conveyed, in good repair and insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, its successors or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a

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*Exhibit C-4*

lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

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AND THE SAID party of the first part, the owner of the lands above described for itself, its successors and assigns, does further covenant and agree to and with the said party of the second part, its successors and assigns, that it will pay in full, all taxes levied, or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage.

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IN WITNESS WHEREOF, the said party of the first part has hereunto caused its corporate seal to be hereto affixed, and these presents to be signed by its President and attested by its Secretary, the day and year first above written.

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ANSON REALTY COMPANY,

By CHARLES E. ANNETT (L. S.)  
President.  
(Corporate Seal)

Attest:

ETHEL M. JOY,  
Secretary.

40

*Exhibit C-4*

State of New Jersey, }  
 County of Hudson, } ss.:

BE IT REMEMBERED that on this thirteenth day of January, in the year of our Lord One Thousand Nine Hundred and thirty, before me, the subscriber, A NOTARY PUBLIC OF NEW JERSEY, personally appeared ETHEL M. JOY, who, being by me duly sworn on her oath, says that she is the Secretary of the ANSON REALTY COMPANY, the mortgagor named in the within instrument; that CHARLES E. ANNETT is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed her name thereto as witness.

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ETHEL M. JOY.

Sworn and subscribed before me at Bay- }  
 onne, New Jersey, the date aforesaid }

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MYRTLE A REED  
 Notary Public of New Jersey.

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*Exhibit C-4*

[ENDORSEMENT]:

Compared

Dated January 13th, 1930.

10

Register's Office  
 Jan 14 12:22 PM '30  
 Hudson County, N. J.

Anson Realty Company, a corpora-  
 tion etc.

TO

THE CENTREVILLE BUILDING AND  
 LOAN ASSOCIATION.

20

Indexed under County Block No. 142

## MORTGAGE.

Received in the Register's Office of  
 the County of Hudson on the 14th  
 day of Jan. A. D. 1930 at 12.22  
 o'clock P. M., and Recorded in Book  
 1583 of MORTGAGES for said County,  
 on pages 546.

30

CHARLES F. X. O'BRIEN  
 Register

ROBERSON & ROBERSON  
 Counsellors-at-Law  
 29 West 8th St.  
 Bayonne, N. J.

40

**Exhibit D-J 1**

THIS INDENTURE Made the twelfth day of April, in the year of our Lord One Thousand Nine Hundred and twenty-eight.

BETWEEN ANSON REALTY COMPANY, a corporation organized under the laws of the State of New Jersey, party of the first part: 10

AND ETHEL M. JOY, of the City of Bayonne, in the County of Hudson and State of New Jersey, party of the second part;

WHEREAS, the said party of the first part is justly indebted to the said party of the second part, in the sum of Three thousand (\$3000.00) Dollars, lawful money of the United States of America, secured to be paid by its certain bond or obligation, bearing even date with these presents, in the penal sum of Six thousand (\$6000.00) Dollars, lawful money as aforesaid conditioned for the payment of the said first-mentioned sum of Three thousand (\$3000.00) Dollars, lawful money as aforesaid, to the said party of the second part, her executors, administrators and assigns on the twelfth day of April, which will be in the year One Thousand Nine Hundred and twenty-nine, and interest thereon, to be computed from the date hereof, at and after the rate of six per cent. per annum, and to be paid semi-annually. 20 30

AND IT IS THEREBY EXPRESSLY AGREED that should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water 40

*Exhibit D-J-1*

rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or any part thereof remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of ninety days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Three thousand (\$3000.00) Dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or her, legal representatives or assigns, become and be due and payable immediately thereafter although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding: and the holder of this mortgage may, at her option, pay such tax, assessment, or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the said bond and by this mortgage, and shall be payable on demand with interest at six per centum per annum, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now THIS INDENTURE WITNESSETH, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true

*Exhibit D-J-1*

intent and meaning thereof, and also for and in consideration of the sum of one dollar, to it in hand paid by the said party of the second part at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to her heirs and assigns forever.

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ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, which are known and distinguished on a "Map of property belonging to E. C. Bramhall, situated in the Second Ward of the City of Bayonne, surveyed and drawn by Smith & Eddy, June, 1880", as lots three (3) and four (4) in plot 2, in block eleven (11) as laid down on said Map.

20

Said lots front on the easterly side of Avenue C, distant one hundred and ninety (190) feet northerly from the northerly side of West Thirty-third Street, formerly Bayonne Avenue. Each of said lots is twenty-five (25) feet wide and one hundred seventy-two and one-half ( $172\frac{1}{2}$ ) feet deep on each side, as laid down on said map. Since the making of said map, Avenue C has been widened so that said lots are now one hundred sixty-two and one-half ( $162\frac{1}{2}$ ) feet in depth on each side.

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Said lots are now known as lots eight (8) and nine (9) in City Block one hundred and seventy-seven (177) on the Tax Maps of the City of Bayonne in use at the present time.

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Being the same premises described as the fifth tract in a certain deed made by Annett-Mahnken

*Exhibit D-J-1*

Realty Company to Anson Realty Company, dated March 22, 1928, recorded March 23, 1928, in the Hudson County Register's Office.

10 This mortgage is subject and subsequent to a first mortgage of \$14,000.00 held by the Centreville Building and Loan Association, dated April 11, 1928.

20 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, and remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to her and their own proper use, benefit and behoof forever. PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, its successors or assigns, shall well and truly pay unto the said party of the second part, her heirs, executors, administrators and assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

40 AND the said party of the first part for itself,

*Exhibit D-J-1*

its successors or assigns does covenant and agree to pay unto the said party of the second part, her heirs, executors, administrators and assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

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AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of the first part, its successors and assigns shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire by insurers, and in an amount approved by the said party of the second part, her heirs, executors, administrators and assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent, per annum, from the time of payment of such premium or premiums.

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AND THE SAID party of the first part the owner of the lands above described for itself, its successors and assigns does further covenant and agree to and with the said party of the second part, her heirs, executors, administrators and assigns, that they will pay in full, all taxes levied, or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of

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*Exhibit D-J-1*

10 any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto.

AND the said mortgagor does covenant with the mortgagee that it is seized of an indefeasible estate in fee simple in said premises, and will warrant and forever defend the title thereof unto the mortgagee, her heirs, executors, administrators and assigns, against all lawful claims whatsoever.

20 All of the covenants and conditions hereinabove contained shall be for the benefit of and shall apply to and bind the said parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the said party of the first part has hereunto caused these presents to be signed by its President and attested by its Secretary, and its corporate seal to be affixed the day and year first above written.

30 ANSON REALTY COMPANY,  
By HORACE ROBERSON  
(CORPORATE SEAL) President.

Attest:

GEORGE E. GRISWOLD  
Secretary.

State of New Jersey, }  
County of Hudson } ss.:

40 BE IT REMEMBERED that on this twelfth day of April, in the year of our Lord One Thousand

*Exhibit D-J-1*

Nine Hundred and twenty-eight, before me, the subscriber, A MASTER IN CHANCERY OF NEW JERSEY, personally appeared GEORGE E. GRISWOLD, who, being by me duly sworn on his oath, says that he is the Secretary, of the ANSON REALTY COMPANY, the mortgagor named in the within instrument; that HORACE ROBERSON is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

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GEORGE E. GRISWOLD.

Sworn and subscribed before me at Bay- }  
onne, New Jersey, the date aforesaid }

HORACE K. ROBERSON  
Master in Chancery of New Jersey.

30

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*Exhibit D-J-1*

[ENDORSEMENT]:

Compared

## MORTGAGE

10

Register's Office  
 Apr 12 1 49 PM 1928  
 Hudson County, N. J.

Anson Realty Company, a corpora-  
 tion &c.,

TO

Ethel M. Joy.

Indexed under County Block No. 235.

20

Dated, April 12th, 1928.

Received in the Register's Office of  
 the County of Hudson on the 12th  
 day of Apr. A. D., 1928, at 1:49  
 o'clock, in the afternoon and record-  
 ed in Book 1498 of MORTGAGES for  
 said County, on page 205.

30

CHARLES F. X. O'BRIEN  
 Register

ROBERSON & ROBERSON  
 29 West Eighth Street  
 Bayonne, N. J.

40

**Exhibit D-J-2**

KNOW ALL MEN BY THESE PRESENTS: That ANSON REALTY COMPANY, a corporation organized under the laws of the State of New Jersey, is held and firmly bound unto ETHEL M. JOY, of the City of Bayonne, in the County of Hudson and State of New Jersey, in the penal sum of Six thousand (\$6000.00) Dollars lawful money of the United States of America, to be paid to the said ETHEL M. JOY, her executors, administrators or assigns: FOR WHICH PAYMENT well and truly to be made, it binds itself, its successors or assigns, firmly by these presents. Sealed with its seal. Dated the twelfth day of April, One Thousand Nine Hundred and twenty-eight.

10

THE CONDITION of the above obligation is such that if the above bounden ANSON REALTY COMPANY, a corporation &c., its successors or assigns, shall well and truly pay, or cause to be paid, unto the above named ETHEL M. JOY, her executors, administrators or assigns, the just and full sum of Three thousand (\$3000.00) Dollars on the twelfth day of April, which will be in the year One Thousand Nine Hundred and twenty-nine, and the interest thereon, to be computed from the date hereof, at and after the rate of six per cent. per annum, and to be paid semi-annually, without any fraud or other delay, then the above Obligation to be Void, otherwise to remain in full force and virtue.

20

30

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water

40

*Exhibit D-J-2*

10 rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of ninety days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the afore-  
 20 said principal sum of Three thousand (\$3000.00) Dollars with all arrearage of interest thereon, shall, at the option of the said ETHEL M. JOY, or her legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

ANSON REALTY COMPANY

30 (CORPORATE SEAL) By HORACE ROBERSON  
 President.

Attest:

GEORGE E. GRISWOLD  
 Secretary.

[UNITED STATES INTERNAL REVENUE STAMPS:]

40 One for One Dollar—Cancelled; A R Co  
 One for fifty cents—Cancelled; A R Co

**Exhibit D-J-3**

KNOW ALL MEN BY THESE PRESENTS: THAT WE  
 BETSY GOLLIN and MAX GOLLIN, her husband, of  
 the City of Bayonne, County of Hudson and  
 State of New Jersey, are held and firmly bound  
 unto JOHN L. DALRYMPLE, of the City of Plain- 10  
 field, County of Union and State of New Jersey,  
 in the penal sum of Six thousand (\$6000.00)  
 Dollars, lawful money of the United States of  
 America, to be paid to the said JOHN L. DAL-  
 RYMPLE his executors, administrators or assigns:  
 FOR WHICH PAYMENT well and truly to be made,  
 we bind ourselves, our heirs, executors and ad-  
 ministrators, jointly and severally firmly by these  
 presents. Sealed with our seal. Dated the sec-  
 ond day of November One Thousand Nine Hun- 20  
 dred and Twenty-three.

THE CONDITION of the above obligation is such  
 that if the above bounden BETSY GOLLIN and MAX  
 GOLLIN, her husband their heirs, executors or  
 administrators, shall well and truly pay, or  
 cause to be paid, unto the above named JOHN L.  
 DALRYMPLE his executors, administrators or as-  
 signs the just and full sum of Three thousand 30  
 (\$3000.00) Dollars. on the second day of January,  
 which will be in the year One Thousand Nine  
 Hundred and Twenty-four, and the interest  
 thereon, to be computed from the date hereof  
 at and after the rate of six per cent. per annum,  
 without any fraud or other delay, then the above  
 obligation to be void, otherwise to remain in full  
 force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED, That should 40  
 any default be made in the payment of said  
 interest, or of any part thereof, on any day

*Exhibit D-J-3*

10 whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest remain unpaid and in arrears for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of ninety days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the

20 aforesaid principal sum of Three thousand (\$3000.00) Dollars. with all arrearage of interest thereon, shall, at the option of said obligee or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

30

(Signature)  
 (Betsey Gollin in Russian)  
 MAX GOLLIN

Signed, Sealed and Delivered }  
 in the Presence of }

HORACE ROBERSON

40

**Exhibit D-J-4**

THIS INDENTURE, MADE the second day of November in the year of our Lord One Thousand Nine Hundred and Twenty-three.

BETWEEN BETSY GOLLIN and MAX GOLLIN, her husband of the City of Bayonne in the County of Hudson and State of New Jersey, hereinafter called the Mortgagors, party of the First Part; 10

AND JOHN L. DALRYMPLE of the City of Plainfield in the County of Union and State of New Jersey hereinafter called the Mortgagee, party of the Second Part;

WHEREAS, the said mortgagors are justly indebted to said party of the Second Part, in the sum of Three thousand (\$3000.00) Dollars, in gold coin of the United States, of the present standard of weight and fineness secured to be paid by their certain bond or obligation bearing even date herewith in the penal sum of Six thousand (\$6000.00) Dollars, money as aforesaid, conditioned for the payment of first mentioned sum of Three thousand (\$3000.00) Dollars, to the said party of the Second Part, his executors, administrators or assigns, on the second day of January, One Thousand Nine Hundred and Twenty-four, and interest thereon from the date thereof at the rate of six per cent. per annum, to be paid in gold coin aforesaid, 20 30

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water 40

*Exhibit D-J-4*

rent, or other municipal or governmental rate, charge, imposition, or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should said interest remain unpaid and in arrear for thirty days, and said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or either or any of them remain unpaid and in arrear for ninety days, then and from thenceforth, that is to say, after the lapse or expiration of either of said periods as the case may be, the aforesaid principal sum of money or any balance thereof remaining unpaid, with all arrearage of interest thereon, shall, at the option of said mortgagee, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for payment thereof may not then have expired, anything therein contained to the contrary notwithstanding: as by said bond or obligation, and the condition thereof, may more fully appear.

Now THIS INDENTURE WITNESSETH, That said mortgagors, for better securing the payment of said sum of money mentioned in the condition of said bond, with interest thereon, according to the true intent and meaning thereof, and also in consideration of one dollar, to them paid by said mortgagee, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain sell, alien, release, convey and confirm, unto said mortgagee, and to his heirs and assigns forever.

*Exhibit D-J-4*

ALL that certain tract, piece or parcel of land and premises, situate, lying and being in the City of Bayonne, in the County of Hudson, and State of New Jersey, described as follows: which are known and distinguished on a "Map of the property belonging to E. C. Bramhall situated in the Second Ward in the City of Bayonne, surveyed and drawn by Smith & Eddy June, 1880", as lots #3 and #4 in plot #2 in Block #11 as laid down on said map, said lots fronting on the easterly side of Avenue C, distant one hundred and ninety (190) feet from the northerly side of West Thirty-third Street (formerly Bayonne Avenue) each of said lots being twenty-five (25) feet in width and one hundred and seventy two and five tenths (172.5) feet in depth on each side.

10

20

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said mortgagors, of, in and to the same, and every part and parcel thereof, with the appurtenances.

30

TO HAVE AND TO HOLD the above granted premises, with the appurtenances, unto the said mortgagee, his heirs and assigns, to their own proper use, benefit and behoof forever.

AND the said mortgagors for themselves, their heirs, executors and administrators, do covenant and agree to and with the said mortgagee his heirs, and assigns, the above described premises,

40

*Exhibit D-J-4*

10 and every part thereof with the appurtenances  
unto the said mortgagee, his heirs and assigns  
against the said mortgagors and their heirs, and  
against all persons lawfully claiming the same  
shall and will WARRANT and by these presents  
forever DEFEND. PROVIDED ALWAYS, and these  
presents are upon this express condition, that  
if said mortgagors, their heirs, executors or ad-  
ministrators, shall well and truly pay unto said  
mortgagee, his executors, administrators or as-  
signs, the sum of money mentioned in the condi-  
tion of said bond and the interest thereon, at the  
times and in the manner mentioned therein, and  
in all other respects keep and perform said con-  
20 dition according to the true intent and meaning  
thereof, then these presents, and the estate here-  
by granted, shall cease, determine, and be void.

AND the said mortgagors for themselves their  
heirs, executors and administrators, do covenant  
and agree to pay unto the said mortgagee, his  
executors, administrators, or assigns, the said  
sum of money and interest, as mentioned above,  
and expressed in the conditions of said bond.

30 . AND IT IS ALSO AGREED, between the parties, that  
said mortgagors shall pay all taxes and assess-  
ments levied or imposed on the lands above de-  
scribed, and shall not claim, nor have any credit,  
on the interest herein made payable by reason  
of the payment of any such taxes, or assessments  
and keep the buildings erected and to be erected,  
upon said lands in good and sufficient repair, and  
insure against loss or damage by fire, by insurers,  
and in an amount approved by said mortgagee,  
40 his executors, administrators, or assigns and  
assign the policy and certificates thereof to the

*Exhibit D-J-4*

said mortgagee; and in default thereof, said mortgagee may pay such taxes, or effect such insurance, and any amount so paid for insurance premiums or taxes shall be a lien on said mortgaged premises, added to the amount of the debt secured hereby, and payable on demand, with lawful interest from the time of such payment. 10

AND the said mortgagors for themselves their heirs and assigns do further covenant and agree to and with the said mortgagee, his heirs, executors, administrators and assigns, that they will pay in full, all taxes levied, or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage. 20

IN WITNESS WHEREOF, said mortgagors have hereunto set their hands and seals the day and year first above written.

(Signature) (L. S.)  
 (Betsey Gollin in Russian) 30  
 MAX GOLLIN (L. S.)

Signed, Sealed and Delivered }  
 in the Presence of }

HORACE ROBERSON

State of New Jersey, }  
 County of Hudson } ss.:

BE IT REMEMBERED, That on this second day of November in the year of our Lord, One Thou- 40

*Exhibit D-J-4*

10 sand Nine Hundred and Twenty-three. before me, the subscriber, a Master in Chancery of New Jersey personally appeared BETSY GOLLIN and MAX GOLLIN, her husband, who, I am satisfied, are the mortgagors mentioned in the within mortgage, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

HORACE ROBERSON  
Master in Chancery of New Jersey.

[ENDORSEMENT]:

20

## MORTGAGE

Compared

Register's Office  
Nov 5 1 03 PM 1923  
Hudson County, N. J.

Betsy Gollin and Max Gollin, her  
husband,

30

TO

John L. Dalrymple

Indexed under County Block No. 235.

Dated, November 2nd, 1923.

Received in the Register's Office  
of the County of Hudson, N. J. on  
the 5 day of Nov. A. D., 1923, at  
1.03 o'clock P. M., and Recorded in

40

*Exhibit D-J-4*

Book 1193 page 517, of MORTGAGES  
for the said County, and indexed  
under County Block No.....

(Name Illegible)  
Register

10

ROBERSON & ROBERSON  
Counsellors-at-Law  
29 West 8th Street  
Bayonne, N. J.

IN CHANCERY OF NEW JERSEY

Between

Annett-Mahnken Realty Co.  
Compl't

20

And

Betsey Gollin et als  
Def't

On Bill etc #2

Ex C-2

F. W. HASTINGS, JR.  
M.C.C.

30

40

**Exhibit D-J-5**

## KNOW ALL MEN BY THESE PRESENTS

10 That I, MYRTLE A. REED, of the City of Bayonne, in the County of Hudson and State of New Jersey, party of the first part; in consideration of the sum of One dollar and other valuable consideration lawful money of the United States of America, to me in hand paid by ANNETT-MAHNKEN REALTY COMPANY, a corporation of the State of New Jersey, party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents

20 do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, its successors or Assigns a certain Indenture of Mortgage bearing date the second day of November, One Thousand Nine Hundred & Twenty-three made by Betsy Gollin and Max Gollin, her husband to John L. Dalrymple on lands in City of Bayonne, New Jersey to secure the payment of the sum of three thousand (\$3000.00) which mortgage is recorded in the Register's office of

30 the County of Hudson in Book 1193 of Mortgages, page 517. Said mortgage was assigned by John L. Dalrymple to the said Myrtle A. Reed by assignment of mortgage dated January 2nd, 1925.

40 TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD the same unto the said party of the second part, its successors or assigns forever subject only to

*Exhibit D-J-5*

the proviso in the said Indenture of Mortgage mentioned: AND I do hereby make, constitute, and appoint the said party of the second part; my true and lawful attorney, irrevocable, in my name, or otherwise, but at its proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made; AND I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said Bond and Mortgage the sum of Three thousand (\$3000.00) Dollars.

10

IN WITNESS WHEREOF, I have hereunto set my hand and seal the twentieth day of July, in the year of Our Lord One Thousand Nine Hundred and Twenty-five.

20

MYRTLE A. REED

Signed, Sealed and Delivered }  
in the presence of }

HORACE ROBERSON

30

State of New Jersey, }  
County of Hudson, } ss.:

BE IT REMEMBERED That on this twentieth day of July, in the year of our Lord One Thousand Nine Hundred and Twenty-five, before me, the subscriber, A MASTER IN CHANCERY OF NEW JERSEY, personally appeared MYRTLE A. REED, who, I am satisfied, is the grantor mentioned in the within Instrument to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the

40

*Exhibit D-J-6*

same as her voluntary act and deed, for the uses and purposes therein expressed.

HORACE ROBERSON  
Master in Chancery of New Jersey.

10 [ENDORSEMENT:]

## ASSIGNMENT OF MORTGAGE

Myrtle A. Reed,

TO

Annett-Mahnken Realty Company,  
a corporation of the State of New  
Jersey.

20

Dated, July 20th, 1925.

---

**Exhibit D-J-6**

KNOW ALL MEN BY THESE PRESENTS:

30 That I, JOHN L. DALRYMPLE, of the City of Plainfield, in the County of Union and State of New Jersey, party of the first part; in consideration of the sum of One dollar and other valuable consideration lawful money of the United States of America, to me in hand paid by MYRTLE A. REED, of the City of Bayonne, in the County of Hudson and State of New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, 40 sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign,

*Exhibit D-J-6*

transfer and set over unto the said party of the second part, her Executors, Administrators or Assigns a certain Indenture of Mortgage bearing date the second day of November One Thousand Nine Hundred and Twenty-three made by Betsy Gollin and Max Gollin, her husband, to me, as aforesaid, on lands in the City of Bayonne, New Jersey to secure the payment of the sum of Three thousand (\$3000.00) Dollars, which mortgage is recorded in the Register's office of the County of Hudson in Book 1193 of Mortgages, pages 517.

10

TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD, the same unto the said party of the second part, her executors, administrators or assigns forever subject only to the proviso in the said Indenture of Mortgage mentioned: AND I do hereby make, constitute, and appoint the said party of the second part; my true and lawful attorney, irrevocable, in my name, or otherwise, but at her proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made: AND I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said Bond and Mortgage the sum of Three thousand (\$3000.00) dollars with interest from November 2, 1923.

20

30

IN WITNESS WHEREOF, I have hereunto set my hand and seal the second day of January, in the

40

*Exhibit D-J-6*

year of Our Lord One Thousand Nine Hundred  
and Twenty-five.

JOHN L. DALRYMPLE.

10 Signed, Sealed and Delivered }  
in the Presence of }  
HORACE ROBERSON

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

20 BE IT REMEMBERED, That on this second day of  
January, in the year of our Lord One Thousand  
Nine Hundred and Twenty-five, before me, the  
subscriber, a MASTER IN CHANCERY OF NEW JER-  
SEY, personally appeared JOHN L. DALRYMPLE,  
who, I am satisfied is the grantor mentioned in  
the within Instrument, to whom I first made  
known the contents thereof, and thereupon he ac-  
knowledged that, he signed, sealed and delivered  
the same as his voluntary act and deed, for the  
uses and purposes therein expressed.

30 HORACE ROBERSON  
Master in Chancery of New Jersey.

[ENDORSEMENT:]

ASSIGNMENT OF MORTGAGE

JOHN L. DALRYMPLE,  
of the City of Plainfield, County of  
Union and State of New Jersey.

40 TO  
MYRTLE A. REED.

Dated January 2, 1925

**Exhibit D-G-1**

State of New Jersey }  
 City of Bayonne } ss.:  
 County of Hudson }

CHARLES E. ANNETT being duly sworn, says that he resides at Red Bank, New Jersey, that he is a citizen of the United States, twenty-one years of age and upwards; and that he is the president of Anson Realty Company, a New Jersey corporation, which is now in possession of and the owner in fee simple of the lands and premises known as No. 501 Hudson Boulevard, Bayonne, New Jersey, being a three story frame building on the west side of Hudson Boulevard, distant 34 feet south of West 19th Street on a plot 32 feet wide and about 97 feet deep. 10  
20

Deponent further says that the said premises have been held by Anson Realty Company since March, 1928, and that their possession thereof has been peaceable and undisturbed, and that the title thereto has never been disputed or questioned to his knowledge, nor does deponent know of any facts by reason of which said possession or title might be disturbed or questioned, or by reason of which any claim to said premises, or any part thereof, might arise or be set up adverse to said company; and that he is informed and believes that said company's grantors held the said premises for more than twenty years prior to the transfer to it; and that no person has any contract for the purchase of, or claim to or against said premises, except as hereinafter stated; and that the same are now free and clear of all taxes, incumbrances or liens by mortgage, decree, judgment, or by statute, or by virtue of 30  
40

*Exhibit D-G-1*

any proceeding in any Court, or filed in the office of the clerk of any County or Court in this State, that no work has been done or materials furnished to said premises for the past four months, that there are no outstanding claims for the furnishing of material or labor, for the erection, construction or alteration of any building on said premises whereby the same are now or might become subject to mechanic's or other liens; that there are no prospective assessments for improvements which have already been made on or about said premises and that said premises are now free and clear of all liens of every nature or description, save and except a mortgage held by Centreville Building & Loan Association for \$2000., taxes for years 1925, 1926, 1927, 1928 and 1929, besides water rents.

The premises are occupied as follows: by monthly tenants.

Deponent further says Ethel M. Joy is secretary of the Anson Realty Company; that said secretary and he, as president, have been authorized by the board of directors of said company to execute and deliver the mortgage hereafter mentioned to Centreville Building & Loan Association; and that there are no judgments, or decrees, or attachments, recognizances and bail bonds or orders of any Court or officer for the payment of money against said company, or to which it is a party, unsatisfied or not cancelled of record in any of the Courts, or before any officer of the United States, or of this State, or any suit or proceeding pending anywhere affecting said premises, to his knowledge, information or belief; and that no proceedings in bankruptcy

*Exhibit D-G-2*

or insolvency have ever been instituted by or against said Anson Realty Company.

Deponent further states that the matters and facts above contained are within his personal knowledge and are not based on hearsay, and that this affidavit is made to induce Centreville Building and Loan Association to accept a first mortgage on said premises, and pay the consideration therefor, knowing that Building and Loan Association relies upon the truth of the statement herein contained.

10

CHARLES E. ANNETT

Sworn to before me this 14th }  
day of January 1930. }

20

HORACE K. ROBERSON  
Master in Chancery of New Jersey.

---

**Exhibit D-G-2**

AFFIDAVIT OF TITLE

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

30

HORACE ROBERSON being duly sworn, says that he resides at 97 West 8th Street, Bayonne, New Jersey, and is by occupation a lawyer; that he is president of Anson Realty Company, a corporation organized under the laws of the State of New Jersey; that said company is now in possession of and the owner in fee simple of the premises commonly called number 772 Avenue C, being lots 8 and 9 in block 177 on the Tax and Assessment Map of the city of Bayonne, New Jersey, now in use.

40

*Exhibit D-G-2*

Deponent further says that said premises have been held by said Anson Realty Company, a corporation, in its own right since March 22, 1928, and that its possession thereof has been peaceable and undisturbed, and that the title thereto has never been disputed or questioned to his knowl-  
10 edge, nor does deponent know of any facts by reason of which said possession or title might be disputed or questioned, or by reason of which any claim to said premises or any part thereof, might arise or be set up adverse to Anson Realty Company that no person has any contract for the purchase of, or claim to or against said premises, except as hereinafter stated; and that the same are now free and clear of all taxes, assess-  
20 ments, water rents, mortgages, decrees, judgments or by statute, or by virtue of any proceedings in any Court, or filed in the office of the clerk of any County or Court in this State, or in any Register's office of deeds or mortgages and all other liens or encumbrances of every nature or description, save and except a mortgage for \$12,000. held by Bayonne Building Association, No. 2, which has been reduced by payments, taxes for years 1924, 1925, 1926 and 1927 amounting to  
30 about \$1491.73 besides interest and a water bill for \$66.21.

Deponent further says that George E. Griswold is secretary of said Anson Realty Company and with deponent executed the mortgage on the said premises, and that there are no judgments, or decrees, or attachments, or orders of any Court or officer for the payment of any money against said company, or to which it is a party,  
40 unsatisfied or not cancelled of record in any of the Courts or public offices or before any officer

*Exhibit D-G-2*

of the United States, or of this State, or any suit or proceeding pending anywhere affecting said premises.

Deponent further says that the execution and delivery of the mortgage from said corporation to Centreville Building and Loan Association hereafter referred to was authorized by a resolution of the board of directors of said corporation duly adopted at a meeting regularly called; that said corporation was properly incorporated under the laws of New Jersey and is authorized to buy and sell real estate in New Jersey;

10

Deponent makes this affidavit to induce Centreville Building and Loan Association to accept a first mortgage on the said premises, and advance the money therefor, knowing that said association relies upon the truth of the statement herein contained.

20

HORACE ROBERSON

Sworn to before me this 30th }  
day of April 1928. }

HORACE K. ROBERSON  
Master in Chancery of New Jersey

30

40

**Exhibit D-G-3**

No. 16225

City of Bayonne, N. J. Apr. 30 1928

THE MECHANICS TRUST  
COMPANY 55-120  
of New Jersey

10

a/c Anson Realty Co

Pay to the order of

Roberson and Roberson Solicitors

Fourteen thousand .....00 Dollars

\$14.000/00

H. E. BOCKOVEN

Treasurer

A. B. BELING—Secretary

20

CENTREVILLE BUILDING  
AND LOAN ASSOCIATION  
W. C. Oliver  
President

[RUBBER STAMP:]

2nd Teller

May 1 1928

[ENDORSEMENTS:]

30

Roberson and Roberson,  
Solicitors

PAY MECHANICS TRUST CO.

or Order

Centreville Building  
and Loan Association  
Trust Account

40

[PERFORATION:]

PAID

\* 5 \* 1 . 28

**Exhibit D-G-4**

No. 6327

55-121

City of Bayonne, N. J. Jan 14 1930

**BAYONNE TRUST COMPANY**

a/c Anson Realty Co 10

Pay to the order of

Roberson and Roberson Solicitors

Sixty six hundred ..... Dollars

\$6,600.00

H. E. BOCKOVEN  
Treasurer

A. B. BELING—Secretary

CENTREVILLE BUILDING

AND LOAN ASSOCIATION

W. C. Oliver

President

20

[RUBBER STAMP:]

N. P.

55—120

[ENDORSEMENTS:]

Roberson and Roberson,  
Solicitors

30

**PAY MECHANICS TRUST CO.**

or Order

Centreville Building

and Loan Association

Trust Account

40

*Exhibit D-G-4*

Pay any Bank or Banker  
or Order

The Mechanics Trust Co. of N. J.

55-120

Bayonne, N. J.

55-120

JAN 15 1930

10

MAX MORALLER, *Treasurer*

Pay to the Order of  
Any Bank, Banker or Trust Company  
Prior Endorsements Guaranteed

JAN 16 1930

Hanover National Bank

Hanover Bank

Central Union Trust Company

20

Central Hanover Bank and Trust Company

1-33

New York

70

RECEIVED PAYMENT

Through the Nor. N. J. Clearing House  
Prior Endorsements Guaranteed

JAN 16 1930

FEDERAL RESERVE BANK OF N. Y.

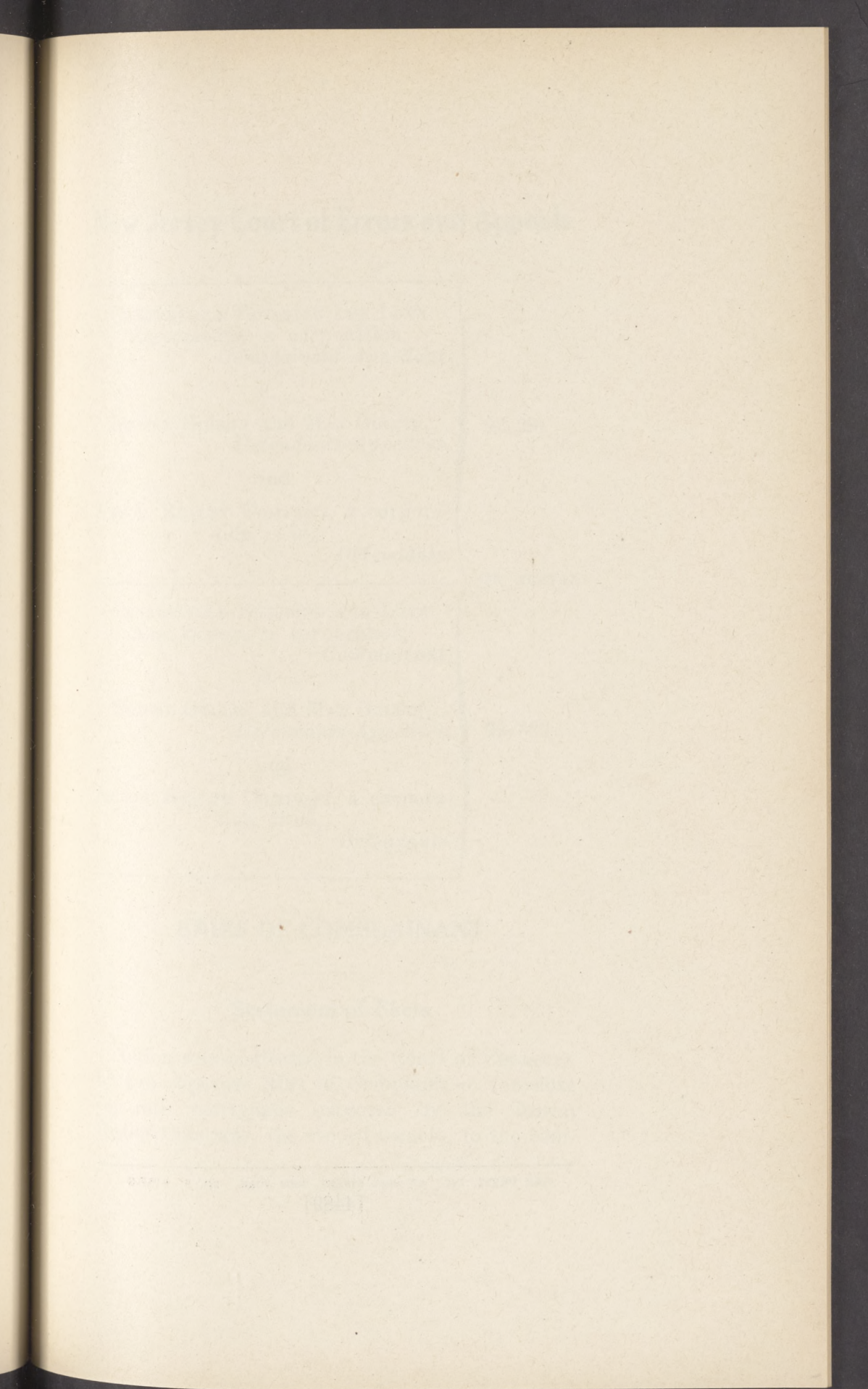
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[4489]

## New Jersey Court of Errors and Appeals

CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant-Appellant,</i>  <i>v.</i> BETSEY GOLLIN and MAX GOLLIN, <i>Defendants-Appellees,</i>  and ANSON REALTY COMPANY, a corpora- tion, <i>et al.,</i> <i>Defendants.</i>	92/291
CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i>  <i>v.</i> BETSEY GOLLIN and MAX GOLLIN, <i>Defendants-Appellees,</i>  and ANSON REALTY COMPANY, a corpora- tion, <i>et al.,</i> <i>Defendants.</i>	ON APPEAL  92/332

### BRIEF OF COMPLAINANT

#### Statement of Facts

Action was instituted in the Court of Chancery by two separate Bills of Complaint to foreclose separate mortgages executed by the Anson Realty Company, the record owners, to the com-

plainants. One of the mortgages, Exhibit C-2 (Case, pp. 185-191) was executed April 11th, 1928, in the amount of \$14,000.00 covering property designated as 772 Avenue C, Bayonne, New Jersey. The later mortgage, Exhibit C-4 (Case, pp. 197-203), was executed January 13th, 1930, in the amount of \$6,600.00 and covered property designated as 501 Boulevard, Bayonne, New Jersey.

In the Bills of Complaint it was alleged that installments, interest and municipal liens had not been paid and that the principal amounts of each mortgage had thereupon been declared to be due, and such principal not having been paid, each of the Bills of Complaint prayed that the defendants named therein be foreclosed of their rights in the premises, in the mortgages and Bills described.

In the suits as originally instituted, neither Betsey Gollin nor Max Gollin, her husband, had been made parties defendant, there being nothing of record to indicate that they had any interest whatsoever in the mortgaged premises. They, however, subsequent to the institution of the two suits, petitioned the Court to be made parties defendant and an order was made accordingly. They thereupon answered the complaints and in each action filed a counterclaim in which it was alleged that the Anson Realty Company which had executed the mortgages under foreclosure had procured title to the property by fraud and that the equitable title therein was in said Betsey Gollin and Max Gollin and prayed that the mortgages under foreclosure should be declared null and void and be cancelled of record.

The complainants joined issue on the answers thus filed and answered the counterclaims deny-

ing that the Gollins had any interest in the properties and reasserting its right to foreclose the same.

The cause was heard by Advisory Master FALLON, then Vice Chancellor, October 19th, 1933. Decision was reserved and memorandum thereafter filed April 11th, 1934, in which it was concluded that decrees should be entered dismissing the Bills of Complaint and granting the prayer of the defendants, Betsey Gollin and Max Gollin that the mortgages under foreclosure should be delivered up for cancellation. Decrees to that effect were thereafter filed on August 9th, 1934, and appeals taken therefrom into this Court.

The facts and law relative to both mortgages being the same, the causes were heard in the Court of Chancery as consolidated issues and although separate appeals have been filed, the two cases will be argued together in this Court.

It is contended in this appeal that the Vice Chancellor erred in his determination in that both the legal and equitable title to the premises in question was in the Anson Realty Company at the time of the execution by it of the mortgages in question; that no fraud had been perpetrated upon the Gollins by the Anson Realty Company; that even though it be conceded that fraud had been perpetrated and by reason thereof that the Gollins had an interest in the properties in question, that the complainant was an innocent mortgagee not chargeable with knowledge of any fraud and was acting in good faith in advancing moneys upon the bonds and mortgages executed to it and that even though a fraud had been perpetrated and complainants were chargeable with either actual or constructive notice thereof that to the extent that it had advanced moneys to pay

existing liens on the properties it was entitled to reimbursement thereof and to hold liens on the properties to the extent thereof and that it should be permitted to foreclose unless such liens were paid and satisfied.

## ARGUMENT

### POINT I

**The record of the case is devoid of any testimony to the effect that fraud was perpetrated on either Betsey Gollin or Max Gollin by the Anson Realty Company in obtaining title to the mortgaged premises and likewise there is no testimony in the record indicating that the defendants, Betsey Gollin or Max Gollin, held an interest, legal or equitable, in the premises upon which mortgages were executed by the Anson Realty Company. The Vice Chancellor therefore was in error in so determining.**

During the course of his testimony, Horace K. Roberson, the attorney for the Building & Loan traced the title to both parcels from the time that same were owned by Betsey Gollin until the Anson Realty Company became the owners thereof and from thence to the execution of the mortgages in question on each parcel by the Anson Realty Company.

Concerning 772 Avenue C, it was testified (Case, pp. 116-118) that Betsey Gollin was the owner of this property in November, 1923, when she executed with her husband a mortgage there-

on to Dalrymple. This mortgage Dalrymple assigned to Myrtle A. Reed who in turn assigned it to the Annett-Mahnken Realty Company who foreclosed the mortgage through its solicitors, Carrick & Wortendyke and purchased it at a foreclosure sale, a sheriff's deed being executed to it. Thereafter, deed was made by the Annett-Mahnken Realty Company to the Anson Realty Company, admittedly a Holding Company for the Annett-Mahnken Realty Company, and by it was executed one of the mortgages in question, Exhibit C-2 (Case, pp. 185-191).

Title was likewise traced as to property 501 Boulevard, Bayonne, N. J., Horace K. Roberson testifying relative thereto that in December, 1923, Betsey Gollin was the owner of this property and executed thereon with her husband a mortgage to the Kay Bee Investment Company on that date; that later in January, 1924, another mortgage was executed to the same company, both of which were thereafter assigned by that company to Mildred J. Smith in June, 1924; that these mortgages were foreclosed and a deed executed by the sheriff to the Annett-Mahnken Realty Company, November 19th, 1926, which company in turn executed a deed to its Holding Company, the Anson Realty Company, by which company one of the mortgages in question was executed.

It will be observed from the title history of both parcels of property that any interest that Betsey Gollin or Max Gollin had, was wiped out by the foreclosure of the mortgages which they, themselves had executed, the proceeds of which, upon the execution thereof, they undoubtedly received, there being no testimony in the case to the contrary and which Mrs. Gollin, although called as a witness, did not deny.

One witness called by the defense was Horace K. Roberson, who was interrogated concerning his knowledge of a suit instituted by the Annett-Mahnken Realty Company against Betsey Gollin and Max Gollin decided both in the Court of Chancery and by the Court of Errors and Appeals subsequent to the execution of the mortgages now under foreclosure.

He testified that he knew nothing concerning such suit and had no knowledge concerning any transaction in which the Annett-Mahnken Realty Company was concerned relative to the property previously owned by Betsey Gollin (Case, pp. 112-113).

Horace Roberson, the uncle and law partner of Horace K. Roberson, was also examined as a witness by the defense and he likewise was interrogated concerning the suit of the Annett-Mahnken Realty Company, but, like Horace K. Roberson, gave no testimony from which it could be said that there was proof of any legal or equitable title in Betsey Gollin or Max Gollin in the property in question. Harry E. Bockoven, the Treasurer of the Building & Loan, was examined as a witness, but no inquiry was made of him concerning the title to the mortgaged premises. Betsey Gollin was examined and over objection was permitted to testify that she claimed an interest in the property (Case, p. 169, ll. 1-20) but when asked what right she had in the property, objection was interposed and the Court in sustaining the same stated that her statement might be a conclusion and that her claim would have to be proved in some other way and not by her say-so (Case, p. 169, ll. 20-40). Counsel did not continue his interrogation of this witness and made no further attempt to prove title or inter-

est in the property in either Betsey Gollin or Max Gollin except by the attempted introduction of the decision in the accounting suit herein referred to. Upon such attempted introduction a colloquy ensued between Court and counsel (Case, pp. 172-173) in which the Court indicated to counsel that the Building & Loan Association not being a party to that suit could not be bound by the decision and overruled the introduction of this document.

It is rather surprising that after the Court's ruling that the decision was not evidential and could not be accepted in evidence, that it nevertheless predicates a decision finding fraud on the part of the Annett-Mahnken Realty Company upon the determination of the previous suit in which the complainant was not a party. At page 58 of the record, the Vice Chancellor says that the matters set forth in the counterclaim were to some extent aired in the previous suit. At page 59, the Vice Chancellor recites a portion of his opinion in the previous suit and continues by stating in the former suit there was not a word to indicate that the Anson Realty Company had arrogated to itself the right to mortgage the property. At page 60, the Vice Chancellor says that it was testified that Horace Roberson was a stockholder and officer both in the Annett-Mahnken Realty Company and the Anson Realty Company. In this statement he was clearly in error as the only testimony concerning the connection of Horace Roberson with the Annett-Mahnken Realty Company was a denial by him of any interest in that company, he testifying that the members of that corporation were the late John Mahnken and Charles E. Annett and some third person whom he did not remember, but that he,

himself was neither officer, director nor stockholder (pp. 103-104). The Vice Chancellor concluded that he was obliged to take judicial notice of the determination of the previous suit (Case, p. 60). This statement is entirely contrary to that previously made at the time of the offer of the decision in the previous suit at which time the Court stated that it was not binding upon the complainant, it not having been a party thereto and having had no opportunity of being heard relative thereto (Case, pp. 172-173).

An examination of the records of the Court of Chancery in the accounting suit between the Annett-Mahnken Realty Company and Betsey and Max Gollin will show that the memorandum of the Vice Chancellor in that suit was labeled "not for publication in the official or unofficial reports." How could this company be bound by a decision in a case in which in the first place it was not made a party and in the second place could have no official knowledge of in view of the suppression of the decision by an order that it was not only to be kept out of the official reports, but even out of the unofficial reports?

It must further be borne in mind that the title of the properties in question should be judged as of the time of the execution of the mortgages, both of which were recorded prior to the decision in the Annett-Mahnken case, that having been decided July 14th, 1931, both mortgages having been recorded prior to that time, the last being recorded January 14th, 1930 (Case, p. 204).

Further than this, there is nothing in the decision in the case mentioned, either as decided in the Court of Chancery in an unreported decision or as later modified by the Court of Errors and Appeals, 110 N. J. E. 469, which holds that the

properties mortgaged were owned by Betsey Gollin or Max Gollin or that either held any interest therein. To the contrary, this was a suit by the Annett-Mahnken Realty Company to be discharged as trustee and to have an account filed by them and reported upon by a special master be allowed. The Vice Chancellor refused to allow the account and refused to discharge the Annett-Mahnken Realty Company as trustee. The Court of Errors and Appeals referred to the properties upon which the mortgages had been given by the Anson Realty Company and held that the trustees must account as to moneys received from those properties, but in no part of the decision is it said that these properties should be deeded back to Betsey Gollin nor in any part of the decision is it stated that she has an interest legal or equitable in the properties.

To sum up the situation in so far as title to the mortgaged properties are concerned, the legal title was in the Anson Realty Company as disclosed by the record. There is nothing in the testimony to show that title was procured by the Anson Realty Company by fraud, nor is there anything either in the testimony nor in the decision in the previous suit which we contend is not binding upon the Building & Loan Association to the effect that Betsey or Max Gollin have any interest in such properties.

For this reason alone the Bills of Complaint should not have been dismissed nor should a final decree have been made ordering the Building & Loan Association which in good faith advanced more than \$20,000.00 to surrender for cancellation mortgages given to secure that amount compelling a loss to the innocent shareholders of that institution.

## POINT II

Even though it be conceded for the purpose of argument that fraud had been perpetrated upon the Gollins by the Annett-Mahnken Realty Company, knowledge thereof could not be imputed to the complainant so as to invalidate the mortgages taken by it.

Prior to the granting of loans to the Anson Realty Company, the Holding Company of the Annett-Mahnken Realty Company, the Building & Loan engaged the services of counsel regularly employed by it to examine the title of the properties to be mortgaged.

The attorney for the Building & Loan, Horace K. Roberson was called as a witness for the defense and interrogated concerning his knowledge as to any interest held by Betsey Gollin in the mortgaged premises. He testified that he had no connection with the foreclosure of the mortgages through which the Annett-Mahnken Realty Company had obtained title; that he had no knowledge concerning any of the transactions between the Gollins and the Annett-Mahnken Realty Company regarding the property formerly owned by them and the only knowledge that he had concerning the title of the property was that gained from the searches thereof (Case, pp. 112-113). In answer to inquiries concerning knowledge of the litigation in the Court of Chancery and the Court of Errors and Appeals between the Gollins and the Annett-Mahnken Realty Company, he testified that he did not

know of the pendency of any action, nor did he learn of any decision effecting the mortgaged properties and as a matter of fact, could not learn anything relative thereto, because decision by the Court of Errors and Appeals was not rendered until July 16th, 1931, which was one year and six months after the last mortgage had been placed, this mortgage having been executed January 13th, 1930 (Exhibit C-4, p. 197; Case, p. 120). He further testified that he knew of no controversy affecting the properties No. 772 Avenue C or No. 501 Boulevard and that having no knowledge relative thereto he could not and did not convey any information concerning the same to the Building & Loan which he represented (Case, p. 127). He admitted being associated in the practice of law with his uncle, Judge Horace Roberson, but said that he was not acquainted with, nor interested in either his business transactions or investments.

An examination of the complete record will clearly show that this testimony was not controverted and therefore should have been accepted as true. If he, as legal representative of the Building & Loan, had no knowledge of any fraud, and likewise no knowledge concerning a claimed interest of the Gollins in the properties to be mortgaged, he of necessity could give no information concerning the same to his principal.

The only matter of record to which his attention was directed was a *lis pendens* which had been filed in the office of the Register of Hudson County, but an examination of the records in the office of the Clerk in Chancery disclosed that the suit which had been instituted and under which the *lis pendens* had been filed had been discontinued by the Gollins through their legal repre-

sentatives on March 15th, 1928, which was a month previous to the execution of the mortgage first accepted by the Building & Loan Association (Case, pp. 131-132). He further testified that another *lis pendens* had been placed on record the same date as the date of discontinuance of the suit, but further examination in the office of the Clerk of Chancery revealed that there was no supporting suit except the one discontinued (Case, p. 133).

This testimony was supported by Leo Syman-ski, a Clerk in the Office of the Clerk in Chancery, who produced the records of that Court and testified that the Bill of Complaint had been filed in a suit instituted March 30th, 1927 (Case, p. 151, ll. 20-30) but that the decree of dismissal had been entered in such action on March 15th, 1928 (Case, p. 153, ll. 1 & 2) and that there was no record in the Clerk's office of any other suit by Betsey or Max Gollin against the Annett-Mahnken Realty Company (Case, p. 154, ll. 20-40).

Under the *Lis Pendens* Act there is no constructive notice to an intending purchaser or mortgagee unless *lis pendens* is filed.

### 3 C. S. 3175.

The suit having been discontinued the effect of the *lis pendens* was of course lost. The second *lis pendens* filed in March, 1928, was ineffective in giving notice of any claim, it being stated by our courts:

“A notice filed under the Lis Pendens Act (3 C. S. 3175) before the suit is thus commenced is ineffectual, as suits in equity were before the act was passed; innocent purchasers being charged with constructive no-

tice of the pendency of the suit only by the filing of the bill and the service of the subpoena." *Delaware River Quarry etc. Co. v. Mercer Freeholders*, 88 N. J. E. 506, 103 A. 18.

In the opinion comment is made that by the exercise of reasonable diligence and particularly because of the *lis pendens* complainant could have ascertained that the Gollins claimed an ownership in the property. This is an illogical statement. The search revealed that the suit had been instituted. The complainants in that suit abandoned it as indicated by their voluntary discontinuance of it. Any person searching title, finding a *lis pendens* and learning that the suit in which same had been filed had been discontinued would naturally assume that the complainants therein realized that they had no cause of action. This, of course, was the natural supposition of counsel for the Building & Loan and would have been the supposition of any counsel whom they might have engaged.

For the purpose of this argument, however, let it be conceded that the solicitor for the Building & Loan had information concerning a claimed ownership on the part of the Gollins and let it further be assumed for the sake of argument that a fraud had been perpetrated by the Annett-Mahnken Realty Company and that the attorney had full knowledge thereof, all of which facts were concealed by him from his principal, still the knowledge of the fraud or claimed title is not imputed through his knowledge to the complainant. This proposition of law is well settled in this state and is no longer open to debate.

One of the earlier cases on the subject is that of *Sooy v. State*, 41 N. J. L. 394, in which it was said by our Court of Errors and Appeals that.

“Notice must come to the agent while he is concerned for the principal and in the course of the same transaction and if he have notice only by some other transaction foreign to the business in hand this will not affect the principal.”

Any knowledge acquired by Horace K. Roberson was not obtained at the time search was being made by him, there being no evidence to that effect, nor was it gained in the same transaction in which he was then engaged for his principal, the Building & Loan Association.

It was further said in the same decision that,

“The more just principle would seem to be one that aimed to award to each the benefits and burdens which would have arisen if the business had been transacted by both in person. Such a result would follow if the rule to be adopted were that whenever the principal if acting in the matter for himself would have received the notice, the knowledge of his agent shall be chargeable to him. This would ordinarily restrict the binding force of the agent’s knowledge to those cases where it was acquired in the transaction of his principal’s affairs.”

If the Building & Loan Association had itself examined the records, it would merely have found a chain of title coming through the foreclosure of mortgages into the Annett-Mahnken Realty Company and through it to the Anson Realty Company and would have found nothing of record which would have excited any inquiry with the possible exception of the two *lis pendens* previously referred to, an investigation of which would have disclosed that in one instance there was no supporting suit and in the second, there had been voluntary abandonment by the com-

plainant therein. Therefore, if it could not have gained knowledge of fraud or the claimed title through a personal investigation of the records, and, therefore, was not chargeable with knowledge acquired by its counsel in some other transaction.

The rule enunciated in *Sooy v. State* (*supra*), has been consistently followed in all of the later cases.

- Clement v. Young*, 66 Atl. 62;  
*Boice v. Conover*, 65 Atl. 191; 71 N. J. E. 269;  
*Vulcan Detinning Co. v. American Can Co.*, 67 Atl. 339; 72 E. 387;  
*Lanning v. Johnson*, 69 Atl. 490; 75 N. J. L. 259;  
*America Surety Co. v. Conway*, 102 Atl. 839; 88 E. 370;  
*Borough of Deal v. Sieling*, 133 Atl. 409; 102 L. 585;  
*Bridgeton National Bank v. Hepner*, 139 Atl. 805; 104 L. 7;  
*Barnes v. Trenton Gas Light Co.*, 27 N. J. E. 33;  
*First National Bank of Hightstown v. Christopher*, 40 N. J. L. 435;  
*Hanford v. Duchastel*, 87 N. J. L. 205; 93 Atl. 586;  
*Camden Safe Deposit & Trust Co. v. Lord*, 67 N. J. E. 489; 58 Atl. 607.

The facts in *Geyer v. Geyer*, 75 N. J. E. 124; 78 A. 449, are quite similar to those in the instant case. Therefore the rule expressed therein would be particularly applicable to that which should be followed in the present case. In that case a wife left a will devising to her husband

a life interest in property with remainder to her son, whom she made sole executor. After her death the son purchased a judgment previously recovered against the father, issued execution and sold out the life estate of the father, purchasing same in his own name, thereby giving him the fee simple. The son applied to a Mrs. Michaels for a loan of \$800.00 and employed as her attorneys the same attorneys who had previously acted for the son in acquiring the father's life estate. There was no proof that the mortgagee had actual knowledge of the son's fraud, but attempt was made to charge the mortgagee with knowledge because such knowledge had been previously gained by her attorney in representing the son in the fraudulent transaction.

In ruling that the mortgagee as principal was not chargeable with the knowledge obtained by the agent, her attorneys, the Court stated:

“Willard *v.* Denise, 50 N. J. E. 482 was overruled; Vulcan Detinning Co. *v.* American Can Company, 47 Atl. 339; 72 N. J. E. 387 and the earlier doctrine announced in Sooy *v.* State, 41 N. J. L. 394 was re-established. The rule now is the knowledge of the agent is chargeable upon his principal whenever the principal if acting for himself would have received notice of the matters known to the agent. It is quite plain that if the mortgagee had acted for herself in the transaction she would not have received notice of the matters which were known to the solicitor who acted for her. I must, therefore, declare that the knowledge of the solicitors if any they had, was not imputable to the mortgagee.”

The Vice-Chancellor in his opinion (Case, p. 62) held and the defendants will probably argue, that the decision in *Clawans v. Ordway Building*

& Loan Association, 112 N. J. E. 280, is applicable and should be followed in the instant case. It is urged, however, that the facts in that case are entirely dissimilar. There, the complainant occupied a portion of the premises and besides being in physical occupancy as stated in the opinion "manifested her attitude by several acts easily discoverable by any one who might seek information at the premises." On the front porch she had a to-let sign, giving her name as owner and her telephone number. Her name likewise appeared under the door-bell at the front door. A building contractor, from whom inquiry could be made was busily engaged making repairs and alterations. The Court held that with all of these indications of ownership in Mrs. Clawans being apparent to any person making the slightest inquiry that as between her and the innocent Building and Loan, who had made a loan to her dishonest lawyer, the Building and Loan being the least innocent must suffer because of its failure to make proper inquiry.

None of the manifestations of ownership appearing in that case are present in the one under discussion.

Before either mortgage was placed a committee from the Building & Loan visited the premises upon which the loan was to be placed. Bockoven, the treasurer, went with the committee and observed nothing which would charge the Building & Loan with knowledge of any claim of ownership by the Gollins (Case, pp. 164-165). Johnson, one of the directors found the buildings tenanted, no member of the Gollin family being in the premises, no signs of any kind, such as there were in the *Clawans* case (Case, p. 174). He testified further that the properties were

searched by the regular counsel of the Building & Loan and that nothing was brought to the attention of the Building & Loan from which it could surmise that anyone claimed an interest in the properties except the corporation making the application for a loan (Case, pp. 175-176). He was interrogated as to whether he had heard of any controversy and said that the controversy was one of common rumor. At first, it would appear, and that is commented upon in the Court's opinion, that the rumors were in connection with the properties in question (Case, pp. 176-177), but he thereafter clarifies the situation by stating that the rumor he referred to was that the Gollins had borrowed money from Judge Horace Roberson and that they were in trouble about it (Case, p. 177) and that the controversy concerned a large apartment house on the Boulevard, but not the properties involved in this suit.

John G. Keegan, likewise, was a member of the committee and inspected the property and he, likewise, testifies that the buildings were tenanted and that there was nothing which upon inspection and investigation would or could give information concerning any claim of interest or ownership in the property on the part of the Gollins (Case, pp. 179-181).

Besides testimony of these members of the visiting committee, it was conceded that at the time the loans were granted, that no member of the Gollin family lived in either property (Case, p. 167).

The Building & Loan, therefore, had no actual knowledge concerning any claimed fraud or claimed interest or ownership of the property, nor did they have constructive notice thereof

from the search made of the properties, nor is it chargeable with knowledge that might have been gained by its counsel in another or other transactions. It was, therefore, an innocent mortgagee which in good faith parted with its money and the Vice-Chancellor was therefore in error in directing that the mortgages given as security should be considered invalid and therefore delivered up for cancellation.

### POINT III

**The mortgages executed to the complainant should have been declared a lien upon the mortgaged premises at least to the extent that the proceeds thereof were applied toward the payment of liens and encumbrances existing thereon at the time that the Gollins were in possession and further applied toward the payment of municipal liens.**

The opinion of the Vice-Chancellor entirely overlooks the fact that the proceeds of the mortgages executed by the Anson Realty Company went to neither that company nor to the Annett-Mahnken Realty Company, but for the most part were used in paying off and cancelling encumbrances upon each property and the municipal liens thereon.

Horace K. Roberson testified relative to the property No. 772 Avenue C, that there was delivered to him a check by the Building & Loan in the amount of \$14,000.00, which he distributed as follows (Case, pp. 108-109):

Payment to Centreville Building & Loan Ass'n for ten (10) shares of stock .....	\$20.10
Payment of balance of mortgage executed by Gollins to the Bayonne Building & Loan Assn. ....	7749.60
Water bill due City of Bayonne .....	66.21
Taxes due City of Bayonne ...	1681.31
Paid Ethel M. Joy .....	800.00
Anson Realty Co. on account	3642.48
Anson Realty Co. balance .....	40.30
<b>Total .....</b>	<b>\$14,000.00</b>

Of the foregoing amounts it will be observed that there was paid upon indebtedness due not from the Annett-Mahnken Realty Company or the Anson Realty Company, but indebtedness of the Gollins, themselves, to the extent of \$9,497.12 made up of the following items:

Payment Bayonne Building & Loan	7749.60
Bayonne water bill	66.21
Taxes due Bayonne	1681.31
<b>Total</b>	<b>\$9497.12</b>

Concerning the distribution of the proceeds of the check received from the Building & Loan on the property No. 501 Boulevard, similar testimony was given by the same witness, he stating that distribution was made up as follows (Case, pp. 109-110):

Taxes due City of Bayonne	\$1786.20
Water bill due City of Bayonne	305.74
Mortgage executed by the Gollins to the Centreville Building & Loan Assn.	1219.90
Centreville B. & L. for shares of stock	165.99

Revenue stamps	3.30
Taxes due on No. 772 Ave. C	789.09
Water bill due on No. 772 Ave. C	32.85
Appraisal fee	5.00
Centreville B. & L. dues	150.95
Roberson & Roberson fees	83.93
Balance to Anson Realty Co.	2057.06
	<hr/>
Total	\$6600.00

Again it will be observed that from the proceeds of the check received from the Building & Loan in the total amount of \$6600.00, there was paid on liens and encumbrances due not from the Annett-Mahnken Realty Company, nor the Anson Realty Company, but for indebtedness due from the Gollins, themselves, the amount of \$4133.78, which constitutes the greater part of the check distributed as follows:

Taxes due City of Bayonne	\$1786.20
Water bill due Bayonne	305.74
Mortgage made by Gollins to the Centreville B. & L. Assn.	1219.90
Taxes due City of Bayonne	789.09
Water rents due City of Bayonne	32.85
	<hr/>
Total	\$4133.78

Even though it could be said that there is testimony in the case indicating that a fraud had been perpetrated on the Gollins by either the Anson Realty Company or Annett-Mahnken Realty Company, or both, and that the solicitor of the Building & Loan had acquired knowledge thereof and that by reason thereof the Gollins still had an interest in the properties under discussion and that such knowledge was imputed to the Building & Loan which he represented, all of which is most seriously disputed by the complainant as herein-

before pointed out, there certainly is no proof that the Building & Loan Association participated in any fraud affecting the interest of the Gollins. Under the ruling of the Vice Chancellor, the Gollins would receive the return of the property which they themselves had encumbered and upon which they themselves had permitted municipal liens to accumulate free and clear of all of these liens and encumbrances for which they were responsible. The Vice-Chancellor in his opinion makes reference to the fact that a court of equity is a court of conscience. Can it be said that the Court is acting as one of conscience when it permits parties to a suit to be unjustly enriched as the Gollins would be enriched if the Building & Loan were not permitted to recover at least that which it had paid in satisfaction of the Gollin creditors?

The leading cases of this State seem to hold to the contrary.

In *Barnett v. Griffith*, 27 N. J. E. 202, William J. Griffith, with his wife, executed a mortgage to Barnett. It was agreed in part that the proceeds of this mortgage would be applied toward the payment of two mortgages, then encumbrances against the property and same were so applied. The wife was a minor at the time she executed the mortgage and it was her claim that the rights of the mortgagee were subordinate to her right of dower in the property, the mortgage being invalid as to her. Chancellor RUNYON, however, held that the mortgage should be subrogated to rights of the wife in the property to the extent that the proceeds were applied toward the payment of the prior mortgages citing *Payne v. Hathaway*, 3 Verm. 212, stating:

“It was held, that where a lender advanced money to pay off an encumbrance on land upon which it was agreed that he should be secured by a mortgage for his advance, and after the advance and application of the money to the payment of the encumbrance, his security failed for want of title in the mortgagor he was entitled to subrogation.”

This decision followed the earlier one in *Merselis v. Vreeland*, 8 N. J. E. 575, and was followed and cited with approval in *Homeopathic Mutual Life Insurance Co. v. Marshall*, 32 N. J. E. 103, where the proceeds of a mortgage had been applied towards the payment of a mortgage and taxes previously existing against the property, wherein Chancellor RUNYON stated:

“But if the mortgage be regarded as an invalid instrument as to Mrs. Marrenner, for want of proper acknowledgment, the complainant would be, as against her, entitled to subrogation to the rights of the mortgagees whose mortgages were paid and to the rights of the City of Elizabeth to whom the assessments were paid, with the money which it loaned on the faith of the mortgage in question.”

In a more recent case of *Elmora v. West End Building & Loan Association*, 108 N. J. E. 542; 155 A. 796, it was stated:

“Generally where it is equitable that a person furnishing money to pay a debt of another should be substituted for the creditor, or in the place of the creditor, such person will be subrogated.”

In what appears to be the last case on this subject, *Jackson Trust Co. v. Gilkinson, et al.*, 105 N. J. E. 116, 147 A. 113, suit was instituted

to foreclose a mortgage in the amount of \$8,500.00, the proceeds of which had been disbursed by making payment of a first mortgage in the amount of \$7,977.04 and in paying municipal liens in the sum of \$522.96. It was intended that the mortgage being foreclosed, should be a first mortgage. Prior to the granting thereof, the mortgagor, Gilkinson had contracted with one, Bahr, for the erection of a garage, work upon which had been commenced prior to the recording of the mortgage. Although, in the affidavit by the mortgagor it had been stated that no work had been performed on the premises within a period of four months of the granting of the loan, a physical inspection of the site would have revealed the work in progress. It was held, nevertheless, that the mortgagee was entitled to subrogation in the amounts which had been paid in discharge of the previous first mortgage and the city's tax lien. The statement of the Court which is equally applicable to the facts in the present proceeding being as follows:

“The proofs show that complainant's mortgage was intended to be a first lien on the mortgaged premises, and therefore the equitable principle of conventional subrogation is applicable, but even though some principle be regarded as inapplicable, I am of the opinion that the complainant is entitled to the benefit of the equitable principle of subrogation. In 25 R. C. L. 1340, 24, it is said: The generally accepted view at the present time, however, is that it is not necessary that there should be an express agreement that the prior lien shall be kept alive for the benefit of one advancing money to pay it, or that it be assigned, but if from all the facts and circumstances surrounding the transaction it is clearly to be implied that it was the intention of the

parties that the person making the advance was to have security of equal dignity and position with that discharged then equity will so decree. In such cases, equity, speaking from the standpoint of good conscience, substitutes the person so paying the debt to the place of the original creditor, so far as to enable him to enforce the security for the purpose of reimbursement. The principle of subrogation is well recognized in this state. It is urged in behalf of Bahr that complainant was merely a volunteer; it is likewise urged that this court should refuse to award to complainant the right of subrogation because of its failure to ascertain that at the time of the execution and delivery of complainant's mortgage a garage was being erected upon the mortgaged premises for which said might be subject to a mechanic's lien. While it has been held that as a rule equity will refuse to rectify a mistake which occurred through inexcusable negligence of a party who asks to be relieved from the effect of the mistake, and the act done by mistake is one calculated to induce others to take a course of action which will put them to loss if such mistake is corrected, and it ought to clearly appear that the party asking for relief has been led into the mistake notwithstanding the exercise of due diligence, nevertheless, it has also been held that where, as in the case *sub judice*, no one is injured by the mistake, and no one has changed his position by reason of the act executed through the influence of the alleged mistake, there is no good reason why the mistake should not be corrected although the highest degree of vigilance has not been exercised. It has been repeatedly held that negligence arising out of the failure of a party to procure proper searches should be considered with reference to the effect on the rights of others. If the complainant has caused an inspection to be made

of the mortgaged premises, it would readily have ascertained that the aforesaid garage was in course of erection, and thus be put upon notice of inquiry respecting such right as the building contractor may have claimed by way of mechanic's lien, but complainant's neglect in this respect cannot operate as a bar to the equitable relief sought herein, particularly for the reason that Bahr, the mechanic's lien claimant, is not in anywise injured thereby. Such negligence as may be imputed to the complainant in examination of mortgagors' title cannot be relied upon by Bahr as a bar to the relief sought by complainant herein.

"In 25 R. C. L. 1340, 24 it is said: 'There are numerous decisions to the effect that one satisfying an incumbrance at the request of the property owner, upon the understanding that he is to have a first lien upon the property released, acting in ignorance of a junior lien on the property, although it is on record, is entitled to subrogation to the rights of the first lienholder; to substitute one creditor for another would apparently place the junior lienor in no worse position than he was. So it has been held that an agreement for subrogation in favor of one paying a prior mortgage is not necessary to effect such subrogation as against the holder of an inferior judgment lien of the existence of which he is ignorant, if he makes the advance with the understanding that the mortgage shall be satisfied and that he shall have a first lien upon the property.'"

The Court concluded by saying:

"I appreciate that the right of subrogation, a matter of equitable jurisdiction is always enforced with due regard to the legal and equitable rights of others. *Gaskill v. Wales*, 36 N. J. Eq. 527. Nothing herein

militates against the granting of the relief sought by complainant herein for the benefit of itself and the Claremont Bank of Jersey City in establishing priority over the mechanic's lien of the defendant, John Bahr, if such lien be established in the proceedings now pending in the Hudson County Circuit Court."

As in the case cited the position of the defendants, Gollin, is not changed by granting subrogation. The indebtedness paid off with the proceeds of the two mortgages in question were their obligations and the payment thereof had the effect of enhancing the value of their equity, if it be finally determined that they are the owners of, or have an interest in the properties covered by said mortgages.

It may be argued that there was no prayer for subrogation in the Bills of Complaint as originally filed. Even though that be so, the Court of its own motion could and should have permitted amendment of the pleadings so as to conform with the proofs and it was so in effect stated in the case last cited, *Jackson Trust Company v. Gilkinson, et al.* (*supra*), the Court therein stating:

"If complainant's bill and the prayer for relief therein is not so framed as to effectuate the relief sought by the complainant (and for the relief also of the Claremont Bank of Jersey City as second mortgagee), it may be amended to conform with the proofs herein so as to effectuate the purpose intended."

Regardless of amendment, however, the prayer of the Bill was sufficient to warrant the Court in determining that subrogation should have

been allowed as will appear from an examination of the second and third paragraphs of the prayer of the Bill to foreclose, paragraph two seeking an account of the amount due on complainant's mortgage and three, that the defendants or one of them be decreed to pay the amount found to be due or upon failure so to do that they be debarred and foreclosed of the equity of redemption in the property mortgaged (see Bill of Complaint, p. 5, l. 40; p. 6, ll. 1-10). There was like prayer in the Bill of Complaint under which decree of foreclosure was sought on the other property involved (see Bill of Complaint, p. 36, ll. 1-15).

It will also be observed that after the Gollins were admitted as parties defendant, it was specifically set forth in the replication to the answer, and answer to their counterclaim as to the manner in which the mortgage money amounting to \$14,000.00 was disbursed, all of the items thereof being set forth at length (see Replication and Answer, pp. 19-20). In the second suit, likewise, after order admitting the Gollins to be made parties defendant, replication to their answer and answer to their counterclaim specifically set forth the disbursement of the mortgage money of \$6,600.00, stating at length the payments made therefrom (see Replications and Answer to Counterclaim, pp. 48-50).

Therefore, without amendment under the Bills of Complaint and particularly under the Answer to counterclaim and replications, the uncontradicted proof being that the disbursement of the amount loaned went in part to indebtedness previously contracted by the Gollins, decree should have been made that the Building & Loan be reimbursed at least in those amounts and upon

failure to make such reimbursement any rights which they might have in the properties under foreclosure should have been barred and foreclosed.

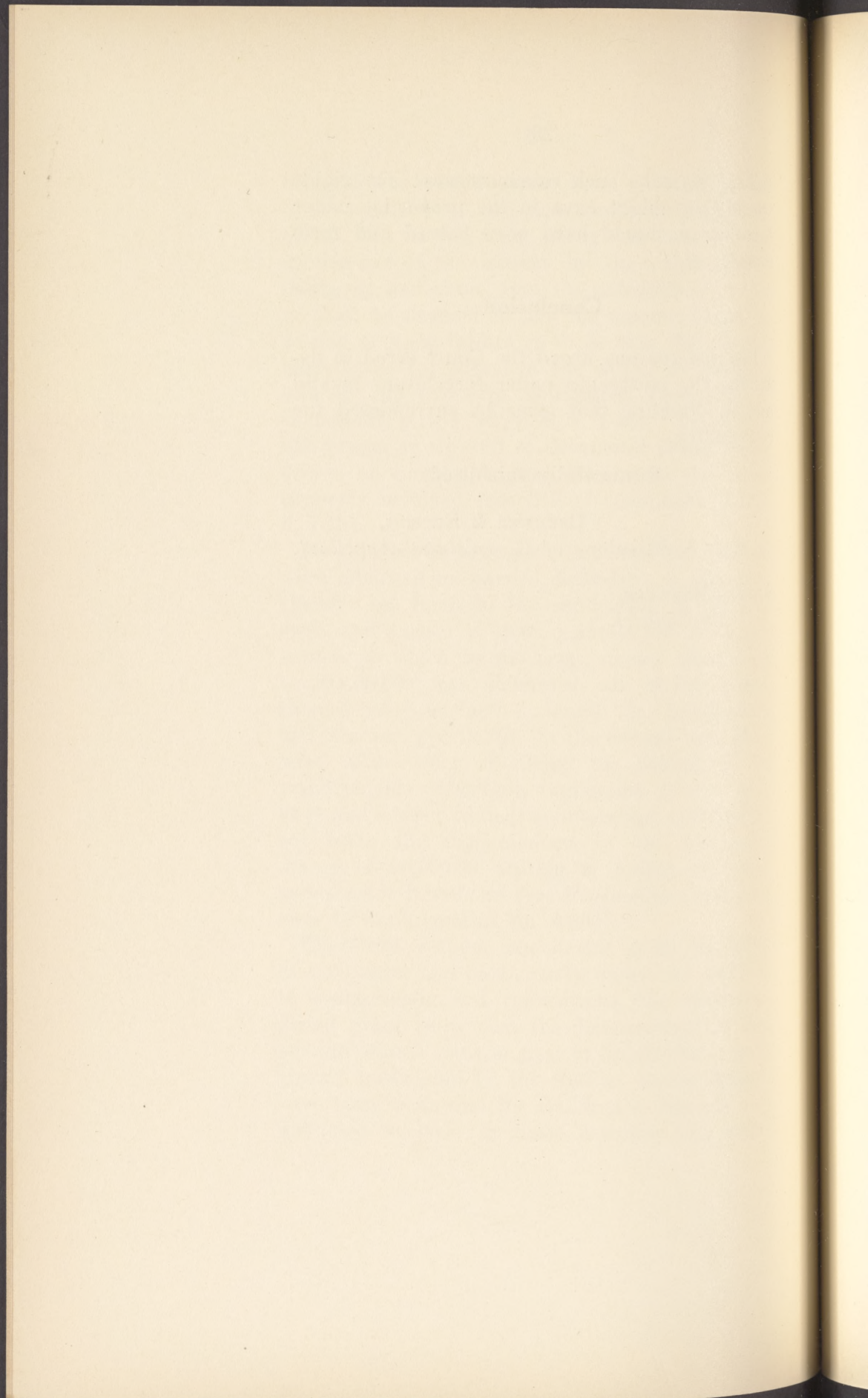
### Conclusion

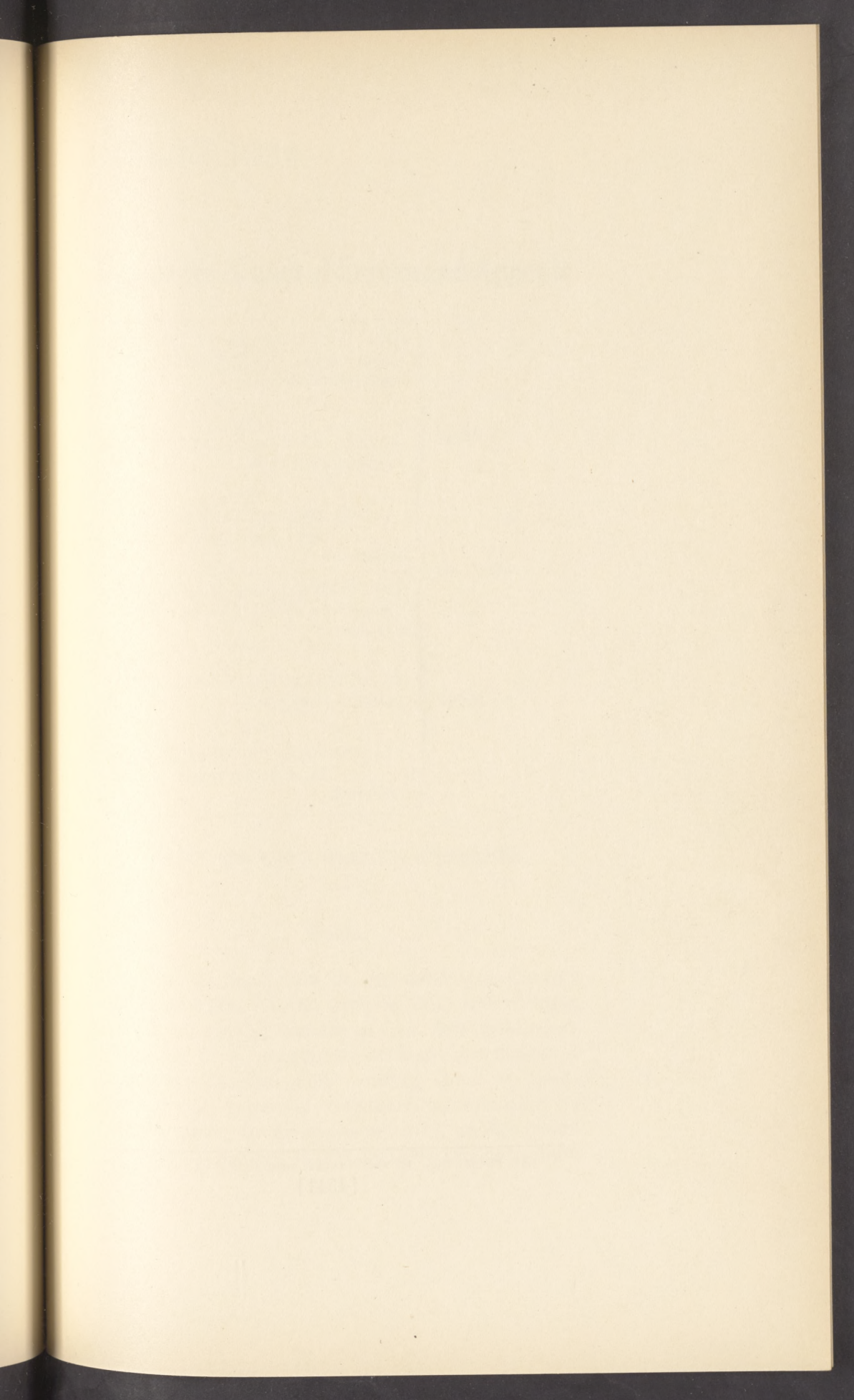
For the reasons urged the Court erred in declaring the mortgages under foreclosure invalid and in directing that same be surrendered for cancellation.

Respectfully submitted,

BRENNER & KRESCH,  
*Solicitors of Complainant-Appellant.*

ALFRED BRENNER,  
*Of Counsel.*





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### New Jersey Court of Errors and Appeals

CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation, Complainant-Appellant,	}	92/291
<i>v.</i>		
BETSEY GOLLIN and MAX GOLLIN, Defendants-Appellees,	}	ON APPEAL
<i>and</i>		
ANSON REALTY COMPANY, a corporation, <i>et al.</i> , Defendants.		
CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation, Complainant,	}	92/332
<i>v.</i>		
BETSEY GOLLIN and MAX GOLLIN, Defendants-Appellees,	}	ON APPEAL
<i>and</i>		
ANSON REALTY COMPANY, a corporation, <i>et al.</i> , Defendants.		

#### BRIEF OF DEFENDANTS-APPELLEES.

##### Facts.

Irving Gollin, a son of the defendants Betsey Gollin and Max Gollin, early in 1923 erected upon a plot of ground known as No. 880 Boulevard, Bayonne, N. J., an apartment house consisting of thirty-two families and running short of funds during the course of construction, arranged to borrow money by giving as security, mortgages on property belonging to his mother, the defendant,

Betsey Gollin. Included in these properties were No. 501 Boulevard and No. 772 Avenue C, Bayonne. To effectuate these transactions, Irving Gollin made a deed of conveyance of the premises 880 Boulevard to his mother, Betsey Gollin.

After Irving Gollin had exhausted all the funds raised on the securities of the properties belonging to his mother, he was still indebted to his creditors, and he and the defendants Gollins applied to Horace Roberson, who had for many years acted as attorney for them, for a loan of sufficient moneys to pay off all his creditors and to discharge the mortgage loans procured on the properties of the defendant, Betsey Gollin, and offered to secure the repayment of such loan by a mortgage on the apartment house known as 880 Boulevard. Horace Roberson procured a loan but instead of a mortgage, a deed to the Boulevard apartment house was given by the Gollins to the Annett-Mahnken Realty Co., for the moneys to be advanced by the company and a Trust Agreement was entered into by the Annett-Mahnken Co. and the Gollins.

Under the declaration of the trust, the Trustee Annett-Mahnken Realty Co. was obligated to pay all the debts of Betsey Gollin and Irving Gollin, which arose out of the erection of the apartment house mentioned therein, together with the debts in any wise contracted, which enabled the defendants, Betsey Gollin and Irving Gollin, to obtain moneys used and employed in such construction; and to rely upon the security of the apartment house for reimbursement for the moneys so advanced.

The Annett-Mahnken Co., pursuant to the terms of the Trust Agreement paid a mortgage covering 772 Avenue C, Bayonne, held by one Myrtle A. Ried, but actually owned by Horace Roberson.

The Company, under the provisions of the trust also paid two mortgages covering 501 Boulevard, Bayonne.

The Trustee, Annett-Mahnken Co., after paying the above mentioned mortgages, took an assignment of said mortgages and instead of cancelling the mortgages and looking to the apartment house as security for said payment as provided for in the trust agreement, instituted foreclosure proceedings thereon.

The Annett-Mahnken Realty Co., at the foreclosure sales bought in the properties 772 Avenue C, and 501 Boulevard. This gross misconduct of the Trustee, Annett-Mahnken Co. in foreclosing the mortgages and purchasing the properties at its own foreclosure sales was in flagrant violation and abuse of its duties and obligations under the declaration of trust; the properties thus acquired are held by the Annett-Mahnken Co., by a continuing trust for the benefit of the *cestui que trustent*, Betsey Gollin.

On March 10, 1927, the Gollins filed a bill in Chancery against the Annett-Mahnken Co. (62-586), claiming ownership in these properties and seeking to recover the properties wrongfully taken from them. At the same time a *Lis Pendens* was filed by the Gollins affecting 772 Avenue C, and 501 Boulevard. On March 15, 1928, the suit was discontinued *without prejudice*. *The Lis Pendens however remained open of record.*

The Annett-Mahnken Co., fearful that the Gollins would recover their properties, had in the meantime formed a dummy corporation, and passed title to the properties into the dummy corporation, the Anson Realty Co. Having divested itself of legal title to the properties, the Annett-Mahnken Co., then set out to revamp and extend

the encumbrances on the properties in such a manner, as they thought, would effectively prevent the Gollins from recovering their properties. Knowing that a resort to any financial institution with which they had no connection would be of no avail, since a search would disclose the adverse claim of the Gollins, the Annett-Mahnken Co., turned to the Centreville Building and Loan Association, for which Horace Roberson had been acting as counsel since its organization.

An application was made by the Anson Realty Co., the dummy corporation of the Annett-Mahnken Realty Co., for a mortgage loan of \$14,000 on 772 Avenue C. The handling of this mortgage transaction was placed in the hands of Horace K. Roberson of the firm of Roberson & Roberson, who was co-counsel with Horace Roberson, of the Centreville Building and Loan Association. The mortgage of \$14,000 was granted and placed by the Centreville Building and Loan Association and the Anson Realty Co., executed a mortgage in that sum, by its President Horace Roberson and its Secretary, George E. Griswold, a clerk in Roberson's Office on April 11, 1928. This mortgage was partially guaranteed by Horace Roberson. *The Lis Pendens filed by the Gollins was still open of record.* On April 12, 1928, a second mortgage made by Anson Realty Co. to Ethel M. Joy, a stenographer in Roberson's Office, was put on record, covering the property known as 772 Avenue C, Bayonne.

In December, 1929, the Anson Realty Co. made an application to the Centreville Building and Loan for a mortgage in the sum of \$6,600 on property known as 501 Boulevard. At this time the property was encumbered by two mortgages made by the Gollins to the Centreville Building

and Loan, upon which the Gollins had made substantial payments, and the shares owned by Betsey Gollin were held by the association as collateral security. Notwithstanding this, the complainant granted the application of the Anson Realty Co., and on Jan. 13, 1930, a mortgage was executed to the complainant by the Anson Realty Co., and the complainant cancelled the previous mortgages and the shares of stock without notice to Betsey Gollin and credited the value of the cancelled shares to the Anson Realty Co. instead of to Betsey Gollin, the owner of the shares.

In September, 1932, two bills of complaint were filed, by Horace K. Roberson as solicitor for the complainant seeking to foreclose the mortgage of \$14,000 covering 772 Avenue C, and the mortgage of \$6,600 covering 501 Boulevard. On October 24, 1932, orders were made admitting Betsey Gollin and Max Gollin as parties defendant and permitting them to plead to the bills of complaint.

On November 9, 1932, the Gollin defendants, filed answers and counterclaims denying the allegations of the bills of complaint and alleging that the mortgages sought to be foreclosed are invalid and do not affect the paramount right, title and estate of the Gollins in the lands described in the mortgages. The counterclaim set forth that the complainant was chargeable with knowledge of the paramount right of the Gollins to the properties at the time complainant placed its mortgages and prayed that the complainant's mortgages be decreed null and void and that the complainant be directed to deliver up the mortgages endorsed for cancellation.

## ARGUMENT.

The complainant having opened the door to the fraud perpetrated on the Gollins and being chargeable with knowledge of the Gollin's claim of ownership to the properties in question, the Court of Chancery's determination, that the complainant's mortgage be decreed null and void,, is proper.

At the outset, it should be noted that counsel for complainant, in his brief, by subtle intimation and fallacious inferences, has contorted the action of the court below in taking judicial notice of the facts that the Annett-Mahnken Co. was recreant in its trust, far beyond its actual and intended significance. Counsel attempts to ascribe to such action a gravity which the court below in no sense intended to assert. Counsel for complainant would have this court believe that the court below had predicated its determination merely by taking judicial notice of the facts constituting the misconduct of the Annett-Mahnken Co. in its relation to the Gollins. This is a wholly unwarranted assumption. The court below said:

"This Court a court of conscience cannot disregard the facts elicited in the aforesaid suit (the accounting suit between Annett-Mahnken Co. and the Gollins) which warranted the determination that the Annett-Mahnken Realty Co., trustee of the defendant Gollins under a declaration of trust bearing date May 16, 1924, had failed to fulfill the obligations assumed by it under and by virtue of said declaration and was recreant in its trust. The court must take judicial notice

herein of the aforesaid suit and the record thereof which are evidence herein.”

The thought here expressed is so clear and distinct that it requires no labored interpretation. The court did not state that it would take judicial notice that the complainant had perpetrated a fraud on the Gollins. Nor did the court say that it took judicial notice that the fraud perpetrated by the Annett-Mahnken Co. and the Anson Realty Co. was chargeable to the complainant. The court then proceeded to indicate that under the *facts in the instant case*, if the complainant had exercised reasonable diligence in its consideration of the applications for mortgage loans made to it in behalf of the Anson Realty Company, such fraud would have been frustrated.

Counsel for complainant, on page 8 of his brief poses the question, How can the complainant be bound by the decision in the accounting suit?— Here again, counsel is in error. Nowhere in the opinion of the court below is it intimated that the complainant is bound by the decision in the accounting suit. To the contrary, the court below held that the complainant was chargeable with knowledge of the Gollins claim of ownership not by reason of the decision of the accounting suit, but by virtue of its culpable negligence in its dealings with Horace Roberson and Anson Realty Company with respect to the applications for mortgage loans to Anson Realty Co.; to the consideration of said applications; to the examination of title of the property to be mortgaged and the distribution of the mortgage moneys through the law office of Roberson & Roberson.

The facts in the case of *Clawans v. Ordway Building and Loan Association*, 112 N. J. E. 280

(Court of Errors and Appeals) bear a marked similarity to the facts adduced in the instant case. In that case, Clawans employed one Morris W. Shapiro, a counsellor-at-law, to represent her in the purchase of a parcel of property. Shapiro instead of passing title through himself had the deed made, without Clawan's authority or knowledge to Max Goldberg, a clerk in Shapiro's office. Shapiro using Goldberg as a "dummy" in the transaction proceeded to obtain a mortgage from the Ordway Building and Loan Association, of which, Shapiro was Solicitor. Clawans upon learning of the mortgage made to the Ordway Building and Loan Association filed a bill praying that the mortgage be declared null and void and that it be surrendered duly endorsed for cancellation.

The Court of Errors and Appeals in affirming the decision of the Court of Chancery held that the imprudence of a mortgagee in employing, as the attorney to represent the mortgagee in making the mortgage, one, who, according to the information acted upon by the mortgagee, was the equitable owner of the property and the person for whose benefit the loan was being made, is a factor in determining whether a fraud perpetrated in the transaction by the attorney, shall be visited upon the mortgagee or upon one who at the time was the equitable owner, and later became the owner of record of the property.

The court, in its opinion said :

"Shapiro was the attorney of the defendant (Ordway Building and Loan Association). His representation to the defendant, accepted by the defendant as true, was that he was the actual purchaser and that Goldberg was tak-

ing title in his behalf. Nevertheless, the defendant, knowing that Goldberg had no interest and believing that Shapiro was the person for whose benefit the loan was to be made, employed Shapiro to represent it in the examination of the title and to attend to all the legal business. Defendant even placed the moneys allocated to the mortgage in the hands of Shapiro as the trustee for the defendant to be paid out by him at his discretion for the loan purposes. The foregoing in large part uncontradicted, constitutes the essence of the facts found by the Vice Chancellor" \* \* \*

"We are doubtful of the propriety of the defendant's course in employing Shapiro to act as its attorney, even to the point of passing upon the title and disbursing defendant's funds, in a transaction where to the defendant's knowledge, the interests of the two were opposed. The wisdom of the ages tells us that 'No man can serve two masters.' In the face of that truism defendant employed Shapiro to serve the defendant in a transaction between the company and Shapiro. In so doing the defendant acted contrary to the dictates of common prudence. We apprehend that an attorney who was unswerved by his own clashing purposes and who was not blinded by self interest to the signs of wrongdoing would have sensed the irregularity of Shapiro's undertaking and his entire lack of equity in the title." \* \* \*

"It is highly improbable that a disinterested attorney could have guided the transaction to completion without obtaining information that would have exposed and frustrated the fraud. Whether or not Shapiro's knowledge was imputable to the

defendant, we consider that the defendant, in employing Shapiro, opened the door to the fraud."

The case of *Camden Securities v. Azoff*, 112 New Jersey Equity (Court of Errors and Appeals), is also in point. In that case Azoff, who was represented by one Heine, an attorney, was the owner of certain property which was encumbered by a building and loan mortgage that had been practically paid in full. One, Manley, held a second mortgage for \$4,500 on the property and was pressing Azoff for payment. Heine by an exchange of checks with the building and loan association paid off the sum of \$76.80, and persuaded the secretary of that association to obtain an assignment to another Heine client, who was merely a dummy, of the bond and mortgage and even the building and loan stock which had matured. The dummy then sold the bond and mortgage and stock to the Camden Securities Co., which Heine also represented. Suit was then instituted by the Camden Securities Co. to foreclose the mortgage for the face value, the effect of which would have been to wipe out Manley, who was practically a first mortgagee. Justice CASE, speaking for the court said:

"The burden of the argument seems to be that the Camden Securities Company was an innocent purchaser of the bond and mortgage and is not to be prejudiced by the fraud of its solicitor in enforcing the mortgage against Manley at its original face value. One answer is that the Securities company may not enforce a contract procured by the fraud of its agent. *Reitman v. Fiorillo*, 76 New Jersey Law 815, *Mick v. Corporation of Royal Ex-*

change, 87 New Jersey Law, Walker v. Bourgeois, 88 New Jersey Equity 124. Moreover, the knowledge of the agent is chargeable to the principal whenever the principal if acting for himself, would have received notice of the matters known to the agent. Vulcan Detinning Co. v. American Can Co., 72 New Jersey Equity 387, Hanford v. Duchastel, 87 New Jersey Law 205, both cited for appellant."

Where one through negligence gives another power to practice fraud upon innocent parties the court will not interfere in his protection at the expense of the one who has been deceived. *Parkview Building and Loan Association v. Rose*, 90 New Jersey Law 614.

Here are the facts adduced in the case *sub judice* upon which the court based its findings that complainant had opened the door to the fraud perpetrated upon the Gollins. The complainant in making the \$14,000 mortgage required that Horace Roberson personally guarantee part thereof thereby indicating that complainant knew he was interested in procuring the mortgage loan. The complainant should not have permitted Horace Roberson or Horace K. Roberson, who constituted the law firm of Roberson & Roberson, and both of whom were counsel for complainant, to have anything whatever to do with the mortgage loans or with the examination of the title to the property upon which the Anson Realty Co. sought such mortgage loans from complainant. The mortgages made by the Anson Realty Co. to complainant were executed by Horace Roberson and Griswald, a Clerk in Roberson's office. The complainant's checks for moneys advanced in the mortgage transactions were made payable to the order of Roberson & Roberson, which firm deposited such

checks in their bank account, commingling the same with their own funds. The complainant cancelled the mortgages made to it by the Gollins on 501 Boulevard, and cancelled the shares of stock owned by Betsey Gollin without notice to her and credited the value of the cancelled shares to the Anson Realty Company instead of to Betsey Gollin. Several of the members of the Board of Directors of the building and loan association, before the granting of the mortgage loans had heard of the controversy between Horace Roberson and Betsey Gollin with respect to the ownership of the property in question. One of the directors, went as far as to say, that the controversy was a matter of common notoriety. In this respect it is important to point out that the minutes of the proceedings of complainant's Board of Directors regarding the mortgage transactions were not produced in Court or offered in evidence or their non-production accounted for. Failure to produce such minutes in evidence must be regarded most strongly against complainant and indicative that the minutes contained information detrimental to its interests if produced in evidence. *Parsella Petroleum Products Inc. v. White*, 109 New Jersey Equity 364. The finding of facts by the court below that the complainant had been culpably negligent and had failed to exercise reasonable diligence and had thereby opened the way to the fraud that was perpetrated on the Gollins is conclusive and is not open for argument at this posture of the case.

Not only did the complainant open the door to the fraud perpetrated on the Gollins; the complainant is also chargeable with Roberson's knowledge of the adverse claim of the Gollins to the properties in question. The Gollins, on March

10, 1927, had filed a Bill in Chancery against the Annett-Mahnken Co., claiming ownership in the properties in question and seeking to recover the properties wrongfully taken from them. At the same time the Gollins filed a *Lis Pendens* in the Hudson County Register's Office affecting 772 Avenue C, and 501 Boulevard, Bayonne. On March 15, 1928, the suit was discontinued *without prejudice*. When the application for the \$14,000 mortgage loan was made by Roberson on behalf of Anson Realty Co., and at the time the mortgage loan, guaranteed by Roberson, was placed by the complainant the *Lis Pendens* filed by the Gollins was still open of record.

In *Brown v. Columbus* (75 Atlantic Reporter 917, Court of Chancery of New Jersey, 1910) the facts were as follows: Mrs. Brown, in 1902, had conveyed certain property to her mother, Mrs. Columbus, for the purpose of providing security for her husband, Mr. Brown. Mrs. Columbus in 1908 placed the property in the hands of one Dorland, a real estate broker, for sale. Dorland negotiated a sale to one Mrs. Devoe, and on March 18, 1908 Mrs. Columbus conveyed the property to Dorland, who, on April 15, 1908, conveyed the premises to Mrs. Devoe. On November 2, 1906, Mrs. Brown had filed a Bill in Chancery to recover her property and a *Lis Pendens* was filed in the Hudson County Register's Office. On March 17, 1908 notice was given by the solicitor of Mrs. Columbus that he would apply on March 14, 1908 to dismiss the bill for want of prosecution. Dorland was in court at the time the bill was ordered dismissed, and having heard that the suit was ended, proceeded to close the transaction with Mrs. Columbus. Counsel for Mrs. Brown, however, on April

28, 1908, filed a second bill. The Court of Chancery in awarding title to Mrs. Brown held that Dorland was chargeable with knowledge of Mrs. Brown's claim and that such knowledge was imputable to Mrs. Devoe. The court in its opinion said:

"After the contract had been executed and before it was completed by the conveyance, he (Dorland) knew of the first bill and the Lis Pendens filed. He had a right then to insist that Mrs. Brown's claim should be extinguished, and to refuse to accept the title unless it was. He decided to complete the transaction and he did so at his peril."

The knowledge of an agent is chargeable upon the principal, when the principal is acting for himself, or (being a corporation) if acting through some other agent, would have received notice of the matters known to the agent. *Vulcan Detinning Co. v. American Can Co.*, 72 New Jersey Equity 387; *Sooy v. State*, 41 New Jersey Law 394.

It is readily apparent that had the complainant engaged a disinterested lawyer in the examination of title and handling of the mortgage transactions it would have received notice of the claim of the Gollins to the ownership of the properties in question. Consequently, the complainant is chargeable with the knowledge of its agent Roberson. It had the right to insist that the Gollin's claim be extinguished and to refuse to proceed with the mortgage loans. The complainant however proceeded to complete the mortgage transactions and did so at its peril.

Counsel for complainant devotes the third portion of his brief to a plea for subrogation. After

the final hearing and determination by the Court of Chancery, the complainant filed petitions for amendments to the Bills of Complaint, seeking to set up subrogation. On July 31, 1934, the court filed a memorandum denying the petitions and on August 9, 1934, the court made orders dismissing the petitions.

The petitions of the complainant, the memorandum filed by the court and the orders dismissing the petitions were not made part of state of case in the present appeal. The grounds of appeal filed by complainant do not assign any error of the court below in dismissing the petitions. The logical inference is that no appeal is being taken therefrom. It is an elementary rule that the Court of Errors and Appeals will only consider those matters which are properly brought before it. Consequently, the complainant's plea for subrogation is not a matter for consideration on this appeal.

In conclusion it is respectfully submitted that the complainant having opened the door to the fraud perpetrated on the Gollins and being chargeable with knowledge of the Gollin's claim of ownership to the properties in question, the Court of Chancery's determination that the complainant's mortgages be decreed null and void, is proper and should be affirmed.

Respectfully submitted,

HIRSCHBERG & NASHIEL,  
Solicitor of Defendants-Appellees.

LOUIS RUBENSTEIN,  
of Counsel.

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# New Jersey Court of Errors and Appeals

CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant-Appellant,</i> v. BETSEY GOLLIN and MAX GOLLIN, <i>Defendants-Appellees,</i> and ANSON REALTY COMPANY, a corporation, <i>et al.,</i> <i>Defendants.</i>	92/291
ON APPEAL	
CENTREVILLE BUILDING AND LOAN ASSOCIATION, a corporation, <i>Complainant,</i> v. BETSEY GOLLIN and MAX GOLLIN, <i>Defendants-Appellees,</i> and ANSON REALTY COMPANY, a corporation, <i>et al.,</i> <i>Defendants.</i>	92/332

## REPLY BRIEF OF COMPLAINANT-APPELLANT

This reply brief is being filed merely for the purpose of pointing out to the Court that the appellees in their brief have deviated from the testimony and are stating as facts things which appear in no part of the printed case.

On pages 1 to 3, inclusive, of such brief, a résumé is given relating to Irving Gollin, the son of the appellees and to a declaration of trust purporting to have been executed and a foreclosure of mortgages in an alleged violation of the trust agreement. On pages 3 and 4 there

is a like allegation of the formation of a dummy corporation, formed it is claimed to avoid discovery of fraud.

An examination of the printed record will at no place disclose any testimony giving warrant to the appellees to include these allegations as statements of fact.

Ordinarily, it would be unseemly, if not improper, to criticize members of the bar. In this particular instance, however, the attorneys who filed the brief or at least signed their names thereto have been admitted to practice a number of years and by this time are certainly cognizant of the fact that they are acting without right in making statements as statements of fact which at no place in the record are supported by testimony.

Under the authorities of this State, matters not appearing in the state of case should receive no consideration by an appellate court. *Mooney v. Newbern*, 5 Misc. 585, 137 Atl. 567.

Concerning situations of this kind, it is stated in one of the most recent cases, *Heinz v. Atlantic Stages, Inc.*, 113 N. J. L. 321:

“There are numerous statements and facts contained in the appellant’s brief, with respect to this point, which are not warranted or supported by the record, and therefore will not be referred to or considered in passing upon the appeal.”

Cases cited as authorities by appellees have no application to the facts in the present case. The case of *Camden Security v. Azoff*, 112 N. J. E. 270, presents an entirely different situation. There it was held that the Securities Company was charged with knowledge of the fraud of its agent by virtue of the fact that anyone purchasing a mortgage previously held

by the Building & Loan Association would have realized that the stock given as security would have after a lapse of some eleven years paid the mortgage in full and that it could not have remained for its original face amount.

The case of *Parkview v. Rose*, 90 N. J. L. 614, considered the implied powers of an agent to collect money where he had been held out by the company as having such powers. It was therein decided that where the agent had apparent authority to collect money and an innocent person had made payment to such agent that the principal must suffer for creating the impression that the agent had such general power.

In citing the case of *Brown v. Columbus*, 75 Atl. 917, appellees attempted to create the impression that the mere existence of an open *lis pendens* on record having no supporting suit or in which the supporting suit has been discontinued was notice to the purchaser of the property. A reading of the case, however, will convince the Court that this is not a fact, but to the contrary, the rightful owner of the property was actually in possession and an investigation would have satisfied those making inquiry as to the claim of right of possession. There also were other details which would charge an intending purchaser with such knowledge.

It is therefore respectfully urged that the statement of facts contained in the brief should be disregarded and that the cases cited are not in point.

Respectfully submitted,

BRENNER & KRESCH,  
*Solicitors of Complainant-Appellant.*

ALFRED BRENNER,  
*Of Counsel.*

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