THE SOMERSET GAZETTE STEAM PRINTING HOUSE, SOMERVILLE, N. J.

# N. J. Court of Errors and Appeals.

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| THE CITIZENS' BUILDING LOAN AND SAVINGS ASSOCIATION OF PLAINFIELD, Respondent, *v.* ISAAC W. PANGBORN, et ux., Appellants. | On Bill. |

## Appellants' Points.

### I.

The defendant, if he has paid up the instalments of stock and interest on his loan as required by the constitution and rules of the complainant, has paid his bond and is entitled to it, and to the cancellation of his mortgage. The complainant passed a resolution deferring payment in this series, after February, 1878.

See evidence. P. 31, l. 8-10, l. 15-25.

Again, Appleton, the Secretary, on P. 34, l. 35, says that borrowers in this series, in order to terminate their membership and get back their securities were required to pay to and including October, 1878. The defendant paid instalments on his stock up to and including May, 1878, P. 42, l. 25, and interest on his bond up to November 13, 1877. He also had a bill against the complain-

ant of $66.58, for labor, which was admitted by it. P. 4, l. 20.

That would pay his instalments up to and including August and part of September. The Secretary computes the deficiency at the time of taking the evidence to be $110. This sum, and the costs of suit, up to the time the evidence was being taken, the defendant tendered himself ready and willing to pay. He further tendered himself ready to surrender his ten shares of stock to the complainant upon the return or tender of the bond and mortgage in question.

This was refused. P. 44, l. 15-30.

## II.

The association was practically closed and wound up by payments made to and including February, 1878.

No member, except the defendant, paid any instalment after the February instalment. The roll was not called for any payments after that date. P. 31, l. 24-26.

This demand for eight months' additional instalments appears to have been an arbitrary requirement without any solid reason but on a fanciful notion, that it might be needed to redeem the unborrowed stock. But when the question, whether it might ever be needed at all, was pressed on the Secretary, he evaded answering directly, though the question was three times repeated, and finally he expressed his belief that such payments would be needed in a fair equitable winding up of the association. P. 38, l. 30-40, and P. 39, l. 1-25. If the borrowing member was content to let his securities remain, he was not required to pay, except to February, 1878. It is confidently submitted that if the bond and mortgage in question are to be regarded as a "building loan" bond and mortgage, the debt has been paid, or very nearly paid.

## III.

Was such an agreement substantially as set up in the answer made between the complainant and defendant?

Compactly expressed, that agreement was this: The defendant might buy at auction in the usual way ten loans, or $2,000, on his ten shares of stock, and in lieu of securing them by the ordinary building loan bond and mortgage, he might give the association a common bond and mortgage, payable one year from date, with interest semi-annually, at seven per cent., which so far as payment of the same was concerned should be regarded precisely the same as if he had secured the loans by giving the usual building loan bond and mortgage; and upon the payment by defendant of his monthly instalments of ten dollars, and his interest half-yearly, until the first series of stock should be wound up, he should be entitled to his bond and mortgage for cancellation, or for assignment, to any one he might select, upon surrendering to the association the ten shares of stock.

I submit without extended remark, that such an agreement, substantially, was made. The witness, Appleton, who lives near Philadelphia, and who became the complainants' Secretary in June, 1878, labors to show from the complainants' books and records that "no such agreement was made, but that the loan was "an investment" precisely the same as if the complainant had loaned this $2,000 to any person not a member of the association.

Against that theory are the sworn statements of four conscientious citizens of Plainfield, Ayers, Coward, Pope, and Pangborn, this defendant: all disinterested except the latter, and one of them (Pope) the very person who kept the books and made the records. If Appleton's theory, deduced from records, which he did not make, be true, these four men are guilty of corrupt perjury, because there is no suggestion or even possibility of mistake.

Mr. Pope was, perhaps, negligent in his book-keeping and minute making, but he shows how that negligence occurred, in his testimony, on pages 57-60, but in any event the defendant's interests should not be

prejudiced by Pope's carelessness, and he swears emphatically and directly to the agreement.

Pangborn's evidence, pp. 3, 4 and 8; Pope's evidence, pp. 11, 12 and 13; Ayers' evidence, pp. 18, 19 and 20, and Coward's evidence pp. 24, 25 and 27, prove this agreement, and while such evidence may not agree in all its minute details, it will be remembered that the witnesses testify to conversations five years prior to the date of their testimony, and they all agree as to the substance of the agreement.

## IV.

Was the evidence as to this agreement competent?

The rule excludes "parol contemporaneous evidence "to contradict or vary the terms of a written instru-"ment," but courts of equity exercise more liberality in admitting evidence in order to reach the equity of the case than courts of law.

*Stoutenburgh* v. *Tompkins*, 1 Stock. 336.

Wherever the active agency of a court of equity is invoked specifically to enforce an agreement, it admits parol evidence to show that the claim is unjust, although such evidence contradicts that which is written.

1 *Greenleaf's Ev.* 431.

Parol evidence is competent to show facts which control the operation of a written instrument.

*Sweet* v. *Parker*, 7 C. E. Gr. 457.
*Crane* v. *Bonnell*, 1 Gr. Ch'y 264.
*Canal Co.* v. *Mathiesson*, 2 C. E. Gr. 385.
*Homer* v. *Leeds*, 1 Dutch. 106.
*Havens* v. *Thompson*, 11 C. E. Gr. 383.

In *Bell* v. *Fleming*, 1 Beas. 13, the court said parol evidence is competent to show the purpose and intent for which the bond and mortgage were executed.

In *Tiffany* v. *Crawford*, 1 McCarter 278, Chancellor Green said: "Admitting the competency of parol evi-"dence to prove a contract in conflict with the terms

"of the mortgage, the evidence should establish the "existence and terms of the contract beyond all reason-"able doubt," and in that case parol evidence was admitted to show that, at the time the mortgage was given as *additional security*, the creditor agreed to exhaust another mortgage on Wisconsin lands before resorting to the debtor's lands.

The true consideration of a deed may be shown by parol although it may vary from that expressed in it; and so it may be shown that a deed absolute on its face was intended as a mortgage. If a writing is part only of the evidence of a contract, and not the entire contract, it may be explained, and the other portions proved by extrinsic evidence; and extrinsic evidence may show the total discharge of a contract.

2 *Pars. on Con.* 65 note Y.
*Ibid* 67.
*Chetwood* v. *Brittin*, 1 Gr. Ch'y 439.
*Munroe* v. *Perkins*, 9 Pick. 298.

Courts of equity will not lend their aid to enforce unjust, unconscientious bargains, where under all the circumstances such decree would be inequitable.

2 *Story Eq.* 1531.
1 *Ibid* 769.
*Sufferns* v. *Butler*, 4 C. E. Gr. 202.
*Society* v. *Butler*, 1 Beas. 498.
*Brewer* v. *Wilson*, 2 C. E. Gr. 180.
*Merritt* v. *Brown*, 4 C. E. Gr. 286

In *Green* v. *M. & E. R. R.*, 1 Beas. 165, the court gave relief to a party who had signed a deed under mistake of *law*, and said the case formed an exception to the general rule, and one principal reason was the mistake of law was the mistake of both parties to the contract, and was to be attributed to the agent of the party now endeavoring to take advantage of it. See also 1 Story's Equity, "Mistake" § 138.

It is insisted that to enforce this contract, this bond and mortgage against this defendant would be unjust,

inequitable, and against conscience, and this parol evidence was introduced not for the purpose of contradicting the written instrument, but to show that the same has been paid in the manner stipulated by the parties to it, and that it would be unjust to enforce payment. What are the circumstances! Pangborn was a member of the association, with all the rights and privileges attaching thereto; the owner of 10 shares of stock full paid, upon which he might borrow in the usual way $2,000. For reasons given in his testimony, he wanted to secure the loan he was about making of the association, by giving an ordinary or common bond and mortgage in lieu of the Building Loan bond and mortgage, if his privileges and rights would thereby be the same. He consulted the solicitor and some of the directors before buying the loans, on the subject. They saw no difficulty about it. They saw that the association would thereby receive fully as much money as it would if the usual association mortgage was given. In good faith, Pangborn at the meeting bought 10 loans at $200 each, making $2,000, paying a bonus of 2 per cent. and got $1,960. The board sanctioned the arrangement, and the bond and mortgage in the bill mentioned were prepared and executed by defendants, they supposing that their rights and privileges were precisely the same as if the other form of security had been given. Pangborn continued to pay up his $10 monthly and the interest of $140 per annum until the 1st series was substantially wound up and closed. No more money was called for or received after February, 1878.

The new board of directors affect to disbelieve the existence of any such agreement or understanding, and ignore it and are here trying to enforce payment of the bond and mortgage according to its literal terms.

They have a pretended examination of the case before a committee, the defendant not being present, and they report the books contradict his claim and at once order the foreclosure. The 10 shares of stock are worth only $1,560. The bond and mortgage the directors consider worth $2,400 and over: hence this suit.

This is an unjust and inequitable demand. Because:

1. The bond and mortgage are evidence of a part only of the original agreement, and the whole may under the rule be shown by extrinsic evidence.

2. The bond and mortgage were made and delivered by defendant under ignorance of his rights and obligations, and the mistake was mutual and chiefly attributable to the complainants and their solicitor.

3. The complainants will not be injured, if the agreement set up in the answer and proved by the testimony be carried out in good faith. If Pangborn had secured this loan by the usual building loan bond and mortgage, they admit it would now be paid off.

4. Both parties to this parol agreement concur in their testimony as to the effect to be given to the bond and mortgage, and what should be deemed payment of same. Will a court of equity decree the strict perperformance of a contract in a case in which both parties to it concur in testifying that in a parol agreement, of which the contract was part, the defendant might perform or discharge it in a manner different from that expressed in it?

5. The complainant altered fundamentally its constitution, by winding up the first series, when the stock was worth but $156 a share, instead of $200, as was provided in its constitution.

6. The defendant has faithfully and honestly performed his part of this agreement without objection or protest, until the series was wound up, and the complainant received the benefit.

The Vice-Chancellor evidently regarded this as a loan to an outsider—an "investment loan," and not one made to a borrowing member; but the conclusive answer to that is, that Pangborn bought out the money in the regular way, at auction, and paid a bonus of two per cent., and received only $1,960, at most.

Now that is precisely the way that all borrowing mem-

bers got their loans; and loans for investments were not only not made that way, but could not be so made, because such loans were always made to persons, not members, and Pope, the Secretary, swears that this bond and mortgage was the only one of the kind taken in the ten years he was Secretary.

## V.

The Vice-Chancellor, in his opinion, seems to assume that the appellant was to gain some special advantage over the association by giving the bond and mortgage in question, rather than the kind usually given by borrowing members; that he was not required as other borrowing members were to pay interest monthly at the rate of one-half of one per cent. per month, nor to assign his ten shares of stock as collateral security for the $2,000 loan, but it is respectfully insisted that the assumption is unwarranted.

He might have secured the loan by giving the usual special form of mortgage, in which case it would now be entirely paid off. As a member, he had a perfect right to do that. When he bought the loans in September, 1875, he had paid in $10 a month for ninety-one months, commencing in February, 1868. If he had secured them by the usual special form of mortagge, his future payments would have been $20 a month, viz., $10 a month on stock, $10 a month, or $120 a year for interest. In the case before us, after the loan he paid $10 a month on stock, and $140 a year for interest. If the appellant gained any advantage in this transaction it consists in the difference between paying $70, half-yearly, and $10 monthly, for nearly three years. I think that on computation it will be seen that the advantage is in favor of the complainant to the amount of about $50. As to Pangborn assigning his stock as collateral security, the proof was, the mortgaged premises were worth double the amount of the loan, and there was no necessity for it, and he was not asked to do it, because the security was unquestionably ample.

## VI.

Again I submit that the Vice Chancellor is under a mistake, in the statement that "by the agreement the "appellant was to be allowed to retain his stock." He did retain it, but it was no part of the agreement to do so. And it is very evident from the whole case that neither party to the agreement desired, or had any motive to conceal, the true nature of the transaction. Pangborn frankly details the reason for desiring to give this form of security, and so long as the complainant is not only not injured but actually benefitted by taking the bond and mortgage in question, instead of the other form, it should be considered as estopped from asserting that the transaction was an objectionable one, and not entitled on any ground to be enforced in equity.

I further submit, that the agreement set out in the answer was proved substantially, but I admit it was not expressed in any writing, and more's the pity for us that it was not. I also further insist, that the appellant loses no right or equity because he was one of the Board of Directors with whom the agreement was made. Why should he?

## VII.

It is as certain as anything human can be that the transaction was either as the Vice-Chancellor suggests, one between an ordinary borrower and lender, or it was as the appellant claims and testifies, a buying out of the loans under the rules in the usual way by a member of the association, and becoming the purchaser because he was the highest bidder. I claim it was the latter; but if I am mistaken as to this then I claim under the usury law of New Jersey, that the complainant can only recover the amount received without interest or costs.

The injustice to the appellant in the decree as advised by the Vice-Chancellor consists in this, viz: the loan is treated precisely as if it was an ordinary loan between the borrower and lender, except that the appellant is charged with $1,960 and interest, instead of $2,000.

The decree is for over $2,400. The 10 shares of stock are worth but $1,560. If the transaction be regarded as the appellant claims it should be, the bond and mortgage are about paid by the surrender and cancellation of the stock. The act under which this association was formed provides that no premium given for priority of loans or acquisition of a building or discount given in redemption of shares shall be deemed usurious. Rev. title "Building Loans." But if this be an ordinary case of borrowing and lending the taking of the bonus is not protected by the statute.

I do not see the force of the remark of the Vice-Chancellor, that "The intention which existed at the "time of bidding the bonus to take the loan as a mem-"ber must be regarded as having been subsequently "changed so that no corrupt or usurious agreement was "entered into, and cannot properly be charged," if I understand it. The logic of this case is inexorable. Pangborn is entitled to be regarded either as a member borrowing money in the usual form as all members borrow money; or the transaction was a loan to an outsider, a stranger, and was what is called an investment in distinction from a loan.

In the first case his liabilities cease with the close of the series, and the taking of a bonus of $40 was lawful, but if the loan was an investment loan, then the taking of a bonus by the lender is usurious, whether there was any corrupt agreement to do so or not, and I cannot comprehend by what mental alchemy the *intent* which existed when the loan was bid off, was subsequently changed so that no corrupt agreement was entered into.

There was the agreement to pay a bonus of 2 per cent. entered into by the borrower and accepted by the lenders, and the bonus was retained by the lenders. This is all admitted. How can the complainants escape the penalty of forfeiting interest and costs?

On the argument of the cause before the Vice-Chancellor, the complainants' counsel uttered not a word in defence of the transaction from the charge of usury. If the complainant is entitled to recover at all the de-

cree should have been for the amount actually received by the defendant without interest or costs.

*Bennott* v. *Hadsell*, 8 C. E. Gr. 174.
*Coult* v. *McCarty*, Ibid 126.
*Walter* v. *Lind*, 1 C. E. Gr. 445.
*Savings Inst.* v. *Mulford*, 4 Stew. 99.

## VIII.

But the decree is erroneous in another aspect. In it the interest is computed on $1,960 from November 13th, 1877, (the date of the last payment of interest on bond) to the date of the decree. By the opinion the complainant was entitled to $1,960—the sum actually loaned—but the appellant had paid interest at 7 per cent. from September 12th, 1875, to November 13th, 1877, on the whole sum $2,000. The bond shows this. He gets no allowance for this excess of interest.

The complainants took and received that excess of interest which was itself usurious under the statute.

The mistake made in computing the amount due on the decree in omitting to credit Pangborn $66.50 for his work is provided for in the stipulation at the close of the book, and is not to prejudice the complainant's case.

**E. W. RUNYON,**

Solicitor and of Counsel with Appellant.

THE SOMERSET GAZETTE STEAM PRINTING HOUSE, SOMERVILLE, N. J

# N. J. Court of Errors and Appeals.

NOVEMBER TERM, 1881.

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| ISAAC W. PANGBORN,<br>*v.*<br>THE CITIZENS' BUILDING LOAN AND SAVINGS ASSOCIATION OF PLAINFIELD, N. J. | On Appeal. |

## Respondents' Brief.

### I.

The action was brought to foreclose a mortgage given by the appellant, Isaac W. Pangborn, to the respondents in the common and ordinary form, bearing date the 13th day of September, 1875, to secure the payment to the respondents of $2,000, in one year, with interest, at the rate of seven per cent. per annum, payable semi-annually, and the bond is in the usual and common form, *and the interest is endorsed thereon semi-annually to November* 13, 1877, which seems to be the annual date from which the interest was to be computed.

### II.

The appellant, Pangborn, was a director, and also a member of the Security Committee of the Building

Loan Association, the respondents, from some time in 1874, to June, 1878, *when at a special meeting* of the members of the association he and all of his co-directors went out of office at the same time, and at the same meeting a new Board of Directors was elected, and not one of the retired Board was re-elected.

Appleton's testimony, page 45, line 4, *et seq.*
Pangborn's " " 6, " 12, to 14.

The Security Committee had power to invest the funds of the association at the time of this loan.

Pope, page 15, line 10.

The testimony shows that the directors loaned the money of the Association on three kinds of security:

1. Purchased loans, to be bought *only by members*, and at six per cent. interest, *payable monthly*, with the monthly dues, and secured by a transfer of the purchasing member's shares to the Association, and a bond and mortgage on real estate, and which bond is conditioned that the borrower shall pay monthly his dues and one half of one per cent. interest monthly "until there shall be sufficient money on hand and due to the Association to divide to each share of its capital stock two hundred dollars over and above all its debts and liabilities, and the said loans become thereby in pursuance of the Constitution of the said Association fully satisfied and paid," etc. And the mortgage contains a like provision.

Defendant's Exhibits, No. 1 and 2.

2. Bonds and mortgages in the ordinary and *common form as investments.*

3. Personal bonds (unauthorized by their Constitution).

## III.

The bond and mortgage in this suit is of the second class, and the contention of the Appellant is that his liabilities under it shall be decreed to be the same as those of a purchasing member under the first class or

Building Loan bond and mortgage, because of an alleged understanding had with Ayres, Coward and Pope, *three of the Directors, before the execution and delivery of the bond and mortgage.*

Pangborn, page 9, line 10.

In this position the appellant is unfortunate, because the record is against him. The minutes of the meetings of the Association for the months of September and November, 1875—when it is alleged that the appellant purchased this loan—contain no record of such transaction. The minutes of September show a sale to Coriell of three loans. And the minutes of November show a sale of five loans to Warnock; but neither show any to Pangborn, while the entries in the cash book for November, 1875, show a payment to the appellant on a loan of $2,000, on *bond and mortgage.*

Appleton, pages 45 and 46.

And, besides, both the three directors, their Secretary and Treasurer and the appellant, treated this loan to Pangborn as an *investment* on common bond and mortgage. It was so marshalled by the Treasurer, Pope, in the annual reports of 1876, 1877 and 1878. The interest was paid and received semi-annually according to the terms of the bond, and not one of the requirements of a Building Loan bond and mortgage was demanded of or complied with by the appellant. On page 65, Exhibit E, it will be seen that this mortgage is classed as an investment bond and mortgage as distinguished from loans sold.

See Appleton's testimony, page 50, lines 8 to 40.
Pangborn's " " 9, " 12 to 18.

The appellant in paying in his dues monthly on his stock only did what the Constitution of the Association required of every member of the Association. He never assigned his shares to the Association; but he did assign them to somebody else, and the assignee has

them yet. There is no pretence on the part of the appellant that this verbal understanding was ever ratified or sanctioned by the Board of Directors *after* this bond and mortgage was given. *Nor is there any intimation in the records of the Association that he, Pangborn, a director, had made such an arrangement with his co-directors for his special advantage, and which was contrary to the By-Laws.*

See Defendant's Exhibit "2."

The appellant, at the time he made this bond and mortgage, was a trustee of the funds of the association for the benefit of the shareholders. He ought not to be allowed in his defence to say: "True, I borrowed your money and gave you a bond and mortgage as security, and therein agreed to pay you according to their terms; but in fact I was not to pay as I had written, and the security I have given by my deed is not the security you are to have."

## V.

I submit that the terms of this plain and simple contract, under the hand and seal of the appellant, cannot be varied or altered by any parol agreement made prior to or at the time of its execution, and that any evidence in that direction and for that purpose was inadmissible in this case. The rule is clearly expressed by Vice Chancellor Van Vleet in *Van Syckel* v. *Dalrymple*, 5 Stewart 235, in these words: "When the parties to a contract have deliberately put their engagements into writing, in such terms as import a legal obligation, without any uncertainty as to the object or extent of their engagements, it is conclusively presumed that every part of their contract was reduced to writing; and all oral evidence therefore of what was said during the negotiation of the contract, or at the time of its execution, must be excluded, on the ground that the parties have made the writing the only repository and memorial of

the truth, and whatever is not found in the writing must be understood to have been waived and abandoned."

This principle is recognized in all the cases. A deed under some circumstances may be decreed to operate as a mortgage, but I know of no case in which a plain, unambiguous bond and mortgage has been changed and altered into another bond and mortgage, the terms and conditions of which are essentially different. On this subject I cite:

*Chetwood* v. *Brittan*, 3 *Gr. Ch.* 334.
*Same* v. *Same*, 1 *Hal. Ch.* 628.
*Suffren* v. *Butler*, 6 *C. E. Gr.* 410.
*Dewees* v. *Manhattan Ins. Co.*, 6 *Vr.* 366.
*Locander* v. *Lounsbury*, 9 *C. E. Gr.* 417.
*Huffman* v. *Hummer*, 2 *C. E. Gr.* 269.
*Chub et. al.* v. *Peckham*, 2 *Beas.* 208.

## VI.

If it is claimed that the respondents are estopped, the answer is that "the doctrine of estoppel, resting on parol proof, is not applicable so as to vary the legal force of written instruments."

*Dewees* v. *Manhattan Ins. Co.*, 6 Vr. 366.

## VII.

By giving to the appellant his construction, and decreeing his liability to be that of a purchasing member, the shareholders represented by the respondents would lose $560.00.

Appleton's testimony, page 31.

## VIII.

I respectfully submit that the appellant, being a director of the association, and charged with the man-

agement of its funds and investment of its money, cannot avail himself of the defence of usury on a loan made to himself by a collusive bargain with his co-directors. If such is the case, then each one of the directors could borrow on the same terms, and the entire funds of the shareholders could be absorbed by the directors by usurious contracts made by themselves, with themselves, and for *their* special advantage.

## IX.

The claim of $66.58, to which the appellant is entitled, is covered by the stipulation to be found on page 96 of the printed case.

WM. B. MAXSON,

Solicitor and of Counsel with the Respondents.

Vaughn
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EXHIBIT 1.

On the part of the defendant.

The mortgage is in the ordinary form, except the condition which is as follows:

Provided always, and it is hereby agreed by and between the parties to these presents, that whereas the said is a stockholder and member of the said the Citizens' Building Loan and Savings Association of Plainfield, and as such stockholder, hath taken from the said association loan amounting to the sum of dollars, and hath transferred to the said association share of the capital stock thereof as collateral security for the payment of the same;

Now, if the said his heirs, executors, administrators, or any of them, shall well and truly pay or cause to be paid to the Treasurer, for the time being, of the said association, interest for the said sum monthly, at the rate of one-half of one per cent. per calendar month, payable on or before the second Monday of each and every month from and after the date hereof; and also all the monthly dues or instalments hereafter to become due and payable on the said share as well as all fines and other impositions whatsoever that may be lawfully charged against him, his executors, administrators, or any of them, as the holder or holders of the said share or of the said loan until there shall be sufficient money on hand and due to the said association to divide to each share of its capital stock the sum of two hundred dollars over and above all its debts and liabilities, and the said loan, in pursuance of the constitution of the said association, be thereby fully satisfied and paid, according to the condition of a cer-

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tain bond or obligation given by the said

to

the said the Citizens' Building Loan and Savings Association of Plainfield, in the penal sum of

dollars,

and bearing even date herewith:

And shall also, during the period aforesaid, insure and keep insured the building or buildings now erected or hereafter to be erected upon the land and premises above conveyed, against loss or damage by fire, in some safe and responsible insurance company, to be approved of by the said party of the second part, to an amount not less than

dollars;

and shall assign the policy or policies of insurance to the said party of the second part:

And shall also keep the premises above conveyed free and clear from all charges for arrears of ground-rent, insurance, taxes, assessments, both ordinary and extraordinary, and all other impositions whatsoever—that then and from thenceforth these presents and the said bond or obligation, and everything herein or therein contained, and the estate hereby granted, shall cease, determine and be void and of none effect; anything herein or therein contained to the contrary in anywise notwithstanding.

And moreover, if the interest aforesaid shall be suffered to remain unpaid more than six months, then and in that case, the entire principal sum shall also become immediately due and payable without any other or further delay.

And if the said

his heirs, executors, administrators, assigns, or any of them, shall neglect to pay all or any taxes, assessments, premiums for insurance, and all or any other charges, liens or incumbrances whatsoever against the premises, on any day whereon the same shall become due and payable, and to deliver receipts for the same to the said party of the second

part, then it shall be lawful for the said party of the second part to pay the same out of the funds of the said association, and the sum or sums so paid shall be a lien on the said premises, added to the amount secured hereby, and payable with lawful interest on demand.

And the said doth hereby covenant and grant to and with the said the Citizens Building Loan and Savings Association of Plainfield, their successors and assigns, that if default be made in the performance of the proviso or condition hereinbefore expressed, then and from thenceforth the said association, their successors or assigns, shall and may from time to time and at all times, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above-granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said his heirs or assigns, or of any other person or persons whatsoever.

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## EXHIBIT 2.

On the part of the defendant, being so much of constitution of complainants, as relates to the issues in this cause.

## ARTICLE II.

### MEMBERS.

Any person, being twenty-one years of age, may become a member of this Association by subscribing to this Constitution, and agreeing to take one or more shares of Stock, and by the payment to the Treasurer of one dollar on each share subscribed.

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## ARTICLE III.

### STOCK.

SEC. 1. A share of Stock in the Association shall consist of Two Hundred Dollars, payable in monthly installments of one dollar on each share. The first installment to be paid on or before the *second* Monday in February, 1868 ; and all subsequent installments shall be paid on or before the second Monday of each and every month.

SEC. 3. When the intrinsic value of a share of Stock in this Association shall become two hundred dollars, then the holder thereof shall cease to be a member by virtue of said share, and shall be entitled to receive the full amount of the same, deducting all arrearages, interest and fines due the Association.

## ARTICLE IV.

### WITHDRAWAL OF MEMBERS.

SEC. 1. Any member wishing to withdraw from this Association may have the privilege of so doing by giving to the Treasurer a written notice of his or her intention to withdraw, to be presented at the next monthly meeting of the Association ; and on the next montly meeting thereafter, he or she shall be entitled to receive from the treasury the amount of all installments actually paid by him or her, first deducting his or her proportion of expenses, also all fines and forfeitures due from such member at the time of withdrawal, *provided*, however that all loans made by the Association to such withdrawing stockholder shall be fully paid both principal and interest into the treasury, before such withdrawal can be made ; *Provided*, also further, that should the net value of a share at the time of such withdrawal not be equal to the amount actually paid on the same,

then shall a corresponding deduction be made from the amount to be refunded as aforesaid.

SEC. 4. Members wishing to withdraw from the Association, and who are clear on the books, shall receive interest on their instalments paid in, at the rate of six per cent per annum, if they shall have been members of the Association one year. Should the funds on hand, and not previously set apart for another purpose, be insufficient to pay the necessary amount on the withdrawal of a share, it shall not be withdrawn until a sufficient sum shall be on hand.

## ARTICLE VI.

### DUTIES OF OFFICERS.

SEC. 3. It shall be the duty of the Board of Directors to meet on the second Monday evening in every month, at such hour and place as the Association may direct, for the purpose of receiving from the stockholders their monthly dues or installments, interest and fines, and to see that the same are paid into the treasury, and also to superintend the loaning of the funds of the Association, their safe investment, and the finances of the Association generally. They shall also audit the accounts of the Treasurer, see that his books are properly kept, and make a full and complete return of the state of the finances at all Annual Meetings of the Association. Five Directors shall constitute a quorum for business.

## ARTICLE VII.

### LOANS.

SEC. 1. Each stockholder, for each and every share of stock that he or she may hold in the Association,

shall be entitled to a loan of Two Hundred Dollars from the funds of the Association.

SEC. 2. Whenever the funds in the treasury shall warrant, one or more loans shall be disposed of, by auction, to the highest bidder, in such manner as the Directors shall determine. In the event of the funds of the Association lying unproductive for the space of one month, the Directors are empowered to loan them to others than stockholders, on undoubted security, for a time not exceeding three months.

SEC. 3. Whenever a stockholder shall be declared to be entitled to a loan or loans, he or she shall either pay or allow to be deducted the premium offered for the same; and before receiving the loan shall secure the payment thereof to the Association, by a bond and mortgage, for the full amount of the sum loaned, and by the assignment of the policy of insurance, if required; and, for every loan of two hundred dollars made to a stockholder, at least one share of stock shall be assigned to the Association as collateral security.

SEC. 4. Any stockholder owning two or more shares of stock and by his bid becoming entitled to a loan shall be allowed to take at the same rate of premium as many successive loans. *Provided* always that he gives notice at the opening of the meeting of the precise number of loans to be applied for by him and assign so much of his or her stock as the Directors shall require.

SEC. 5. Stockholders taking loans from the Association shall pay interest monthly to the Treasurer, at the rate of one half of one per cent. per month. If the interest is suffered to remain unpaid more than six months, the Directors may compel payment of principal and interest by ordinary proceedings on the bond and mortgage, according to law.

## ARTICLE VIII.

### MEETINGS.

The Annual Meeting of stockholders shall be held on the second Monday evening in February in each and every year. Fifteen members shall constitute a quorum. Special Meetings shall be called by the Treasurer when requested by ten members.

## ARTICLE IX.

### FINES.

Stockholders, Trustees, Guardians and Representatives for Minors, neglecting to pay their monthly dues, shall forfeit and pay a fine of ten (10) cents for each and every share of stock, and the like sum for each loan of two hundred dollars, by him or her held, for each and every neglect.

## ARTICLE XIII.

### REDEMPTION OF MORTGAGED PREMISES.

When any mortgagor shall desire to redeem his premises from the mortgage upon it before the close of the Association, he shall be allowed to do so by paying into the treasury the full amount of the loans taken by him, at which time the shares of stock assigned by him to the Association, as security collateral to that of his bond and mortgage, shall be reassigned to him on the Transfer Book of the Association, by the President of the Board of Directors.

## ARTICLE XV.

### BY-LAWS.

The Directors may enact By-Laws for their own government, not repugnant to this Constitution.

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## ARTICLE XVI.

### CONSTITUTION.

This Constitution shall not be altered or amended except at an annual Meeting and by a vote of the stockholders present representing a majority of the stock, or at a special Meeting of which one month's notice shall be given, each stockholder being entitled to one vote for every share.