

New Jersey Court of Errors and Appeals.

FANNIE L. RYLE,

Defendant in Error.

vs.

THE MANCHESTER BUILDING AND
LOAN ASSOCIATION,

Plaintiff in Error.

On Contract.

BRIEF FOR PLAINTIFF IN ERROR.

The general features of this case are similar to the case of *Belcher vs. The Manchester Building and Loan Association*, which is also submitted on brief at this time. The brief in the latter case contains the authorities and propositions of law which are applicable to this case, to which we refer instead of repeating them in this brief. 10

The trial Judge in this case also directed the jury to find for the plaintiff, to which exception was taken and gives rise to this writ of error.

In this case the pass book for five shares of the defendant was taken out in the name of plaintiff in 1893, case p. 9. The book was taken out for plaintiff by Wm. H. Belcher personally. Wm. H. Belcher always kept the book in his possession, and always paid the dues. 20

By the contract between plaintiff and defendant, the shares matured October 1, 1904, that is to say, the contract was ended, the plaintiff was to pay no more dues, and the whole transaction was then closed and

plaintiff was entitled to draw the \$1,000 being the total amount due to her, and the book was to be surrendered. Case p. 38, 39.

In this case Wm. H. Belcher collected or superintended the collecting of rents of houses belonging to the plaintiff. Belcher sometimes advanced the payment of the dues for plaintiff when the rents were not collected in time or for other reasons and afterwards retained such advancements from the rents.

- 10 When the book matured on Oct. 1, 1904, at which time plaintiff was entitled by the contract to the sum of \$1,000, Belcher directed a check to be made payable to plaintiff and cashed it, by endorsing it as her Attorney. George W. Allee, the Secretary, testified on the trial, **without objection from plaintiff**, that Belcher told him and Mr. Roe, the Treasurer of defendant, that he was Attorney for plaintiff to endorse the check and was Attorney for plaintiff to transact **all her business**. (Case p. 40, 41). Al-
- 20 though this evidence was admitted **without objection**, the plaintiff did not expressly deny that Belcher had authority to transact all her business and have authority to draw this money as it was drawn.

These facts, according to the principles fully discussed in the case of Amherst W. Belcher v. The Manchester Building and Loan Association, were sufficient for the jury to draw the inference that there was in fact an understanding between plaintiff and Belcher going to show an actual or apparent author-

30 ity. But the additional fact, in this case that Belcher's statement of his authority was admitted in evidence, without objection, and that such authority was not contradicted by plaintiff, in itself makes the case one for the jury.

SECONDLY.—The fact that the shares matured in October, 1904, and that plaintiff never herself col-

lected the money or said anything to Belcher about it, is some evidence to say the least, that it was expressly or tacitly understood between them that Belcher was to draw the money and invest it or otherwise use it for her. The plaintiff is to be presumed to know when the shares would mature, and the defendant had a right to rely upon her knowledge of that provision in her contract.

But the plaintiff admits that she knew when the shares matured. She is asked "Q. This money of 10 yours had matured on the first of October, 1904, it could not draw interest after that; you did not pay any dues after that; why didn't you go to Mr. Belcher and ask for the money on the first of October, 1904? Can you give us any reason any more than you have given? A. No, sir." It is unreasonable to suppose, that the plaintiff would have left this money lie with the defendant without interest or earning anything, from Oct. 1, 1904, till August, 1905, when Belcher disappeared, without making any 20 provision for its use or investment.

From her failure to take any action respecting the money due, the inference is fair that she knew that Belcher had drawn the money, which would be either evidence of authority to draw it or a ratification by the plaintiff of Belcher's act in drawing it.

If her testimony is to be taken as meaning to say that she did not know that the money would not earn anything after her shares had matured, we hold that it is unreasonable to suppose that the plaintiff or any 30 person of ordinary intelligence could suppose, that after her contract had matured and she was entitled to the money, the defendant would use the money or allow her interest or earnings on it.

But any explanation which plaintiff may make to explain away the natural inference that she knew

that the money had been drawn, from the circumstances stated, is not conclusive, but was for the jury to believe or reject.

In taking these questions from the jury the trial Judge erred.

Respectfully submitted,

J. W. DEYOE,

GRIGGS & HARDING,

Attorneys for Plaintiff in Error.

New Jersey Court of Errors and Appeals

FANNIE L. RYLE,

Defendant in Error,

vs.

THE MANCHESTER BUILDING AND

LOAN ASSOCIATION,

Plaintiff in Error.

On Error.

Brief for Defendant in Error.

Statement of Facts.

The defendant in error in this action, Fannie L. Ryle, is, and at all of the times referred to in the complaint in this action, was a resident of the city of Paterson in the County of Passaic.

The Manchester Building and Loan Association, the plaintiff in error in this case, is a corporation, that has, from its organization, existed and had an office in the city of Paterson, aforesaid.

In January, eighteen hundred and ninety-three, Peter Ryle, the husband of this defendant in error, took out five shares of the capital stock of the Manchester Building and Loan Association, the plaintiff in error, in the name of Fannie L. Ryle, defendant in error.

The regular dues upon said shares were paid upon the same until the time of their maturity,

which occurred in the month of October in the year nineteen hundred and four, at which time the plaintiff in error drew a check for the full value of said shares, to wit : the sum of one thousand dollars, to the order of the defendant in error, and delivered the same to William H. Belcher, who was at the time the president of The Manchester Building and Loan Association, the plaintiff in error, who endorsed it in the name of " Fannie L. Ryle, by William H. Belcher, Attorney "; presented the same at the First National bank upon which it was drawn and received the money thereon.

Subsequent to the taking out of the said five shares of The Manchester Building and Loan Association in the name of Fanny L. Ryle, the defendant in error, the said Peter Ryle, husband of the said Fannie L. Ryle, died in the month of October in the year eighteen hundred and ninety-three, leaving a last will and testament, of which the said Fannie L. Ryle, the defendant in error, and John H. Reynolds, were the executors (page 31, folio 10).

The estate of said Peter Ryle owned certain houses in the village of Haledon of which the rents were collected by Samuel Barbour for a long period and afterwards by Absalom Grundy ; that the executors of the said Peter Ryle instructed the said agent for the collection of said rents, to pay over the same to William H. Belcher, who was the President of The Manchester Building and Loan Association, each month to be applied upon the payment of dues upon the five shares of the stock of the plaintiff in error, together with other shares that were taken out at the same time by the said Peter Ryle in his life time (page 32, folio 10).

The rents received from said buildings amounted to sixteen dollars per month and in addition there- to the estate of Peter Ryle, deceased, paid to Mr. Belcher four dollars per month as dues upon all of the shares taken out by the said Peter Ryle as aforesaid.

The records of the Manchester Building and Loan Association, as testified from by the secretary of the association, show that the said account with the defendant in error was opened in January, 1893, upon which the dues had been paid in full, to and including the month of October, 1904, at which time the account was closed, and the full value of the shares at that time, one thousand dollars, was credited. (Page 9, folios 10, 20 and 30).

A check dated November 7th, 1904, was made by The Manchester Building and Loan Association, the plaintiff in error, to the order of Fannie L. Ryle, the defendant in error, for the sum of one thousand dollars and endorsed "Fannie L. Ryle, William H. Belcher, Attorney," which check was presented by the said William H. Belcher to the First National bank, upon which the same was drawn and was paid to him. (Page 38, folios 9 and 10).

The defendant in error never received the said money nor any part thereof due upon those checks. (Page 14, folios 20 to 30).

The defendant in error did not know that the five shares standing in her name had matured and were paid, until after the departure of William H. Belcher from the city in August, 1905. (Page 20, folios 10 and 20, and page 33, folio 10).

William H. Belcher was never the attorney of the defendant in error and never was authorized to act as her agent nor did he ever collect any money

for her and never did any legal business for her. (Page 16, folios 10-20).

The case was tried at a term of the Circuit Court at Paterson in and for the county of Passaic June 27th, 1906, before Hon. Wilbur A. Heisley and the Court directed the jury to find a verdict in favor of the defendant in error for the sum of one thousand dollars with interest from March 14th, 1906, the time of the beginning of said suit.

The plaintiff in error assigns as error committed on the trial the following :

The said Manchester Building and Loan Association comes by J. W. DeYoe, its attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said Bill of Exceptions and also in giving the verdict and judgment aforesaid there is manifest error in this, to wit :

1. That the said Judge of the said Circuit Court before whom said cause was tried at and upon the aforesaid trial of said cause, over an objection of plaintiff in error allowed the following questions and answers to be asked and answered by Absalom Grundy, a witness produced by plaintiff below :

Q. Do you know of your own knowledge as to the payment of dues at the Paterson office of the Association ?

A. I do.

Q. Are you a member of the Board of Directors of the Association ?

A. I have been for several years ; yes, sir ; several terms.

Q. Are you a stockholder in that Association ?

A. Yes, sir.

Q. And as stockholder did you pay dues there ?

A. Yes, sir.

(Vide said bill of exceptions.)

2. That said Judge of said Circuit Court refused to grant the motion of plaintiff in error to direct a verdict for the defendant below. (Vide said bill of exceptions.)

3. That said Judge of said Circuit Court granted the motion of defendant in error to direct a verdict for the plaintiff below and directed said verdict for the plaintiff below and thereby directed the jury to bring in a verdict for the plaintiff for the sum of one thousand dollars with interest from March 14th, 1906.

(Vide said bill of exceptions.)

POINT I.

The testimony of the witness, Absalom Grundy, as to the payment of dues at the Paterson office of the Association was properly admitted.

The point involved in this case is not whether the dues in question were paid to some unauthorized person, although it does appear that they were paid to the president of the Association, Mr. William H. Belcher, and not to George W. Allee, the secretary, who was the person designated by the by-laws to receive the dues.

The objection to this testimony, as urged by the counsel at the trial of the case, was, that the defendant in error being a member of the Associa-

tion, was bound by the constitution and by-laws, and therefore could not make payment to any one else so as to bind the Association. Any objection of that sort to the testimony was overcome by the testimony of Absalom Grundy, at that time the secretary of the plaintiff in error, and the production of the books of the Association, by which it was shown that the dues in question had been received by the defendant in error and entered on their books (page 9, folios 10-20-30); and by the testimony of George W. Allee, a witness produced on behalf of the defendant below, who was the secretary of the said Association up to the time of the maturity of the shares in question, that he had received the dues on these shares as such secretary from Mr. Belcher the president (page 37, folio 10), and that on October 1st, 1904, the book matured and a check for one thousand dollars, dated November 7th, 1904, payable to the order of this defendant in error, was issued by the plaintiff in error to close the account (page 38, folios 10 and 20).

The action of William H. Belcher in accepting payment for these dues, even if unauthorized was therefore ratified and confirmed by the Association:

POINT II.

There was no dispute as to the facts, the question here presented is purely a question of law; the Court did not err in directing a verdict for the plaintiff below.

“When the facts are undisputed, the question whether the agent has a

requisite authority to bind his principal is a question of law for the Court, whether such authority is sought to be sustained by a previous authorization or by subsequent ratification. Under the admitted or uncontroverted facts in these cases, the judge properly instructed the jury that the plaintiffs could not recover on these notes."

Gulick & Holmes vs. Grover, 4 Vroom, 463 at 473.

The only question in the case and the real question at issue is whether or not William H. Belcher, the president of the plaintiff in error was authorized to endorse and receive the money on a certain check drawn by the plaintiff in error to the order of the defendant in error and endorsed "Fannie L. Ryle by William H. Belcher, Attorney."

The check was made payable at the First National bank at Paterson, New Jersey, and so endorsed was presented at the bank by William H. Belcher and paid to him. William H. Belcher was not the attorney for the defendant in error ; was not the agent of the defendant in error and never transacted any business for her (page 16 folios, 10 and 20). The defendant in error never received the money due upon the shares or any part thereof (page 14, folios 20 and 30).

The oral evidence is on the part of four witnesses. Absalom Grundy, the present secretary of the Association, was first sworn on behalf of the defendant in error and testified to the account between the Association and the defendant in error.

The defendant in error was then sworn in her own behalf. John H. Reynolds, attorney for the defendant in error was then sworn in her behalf and George W. Allee, ex-secretary of the Association was produced in behalf of the plaintiff in error. The testimony of the present secretary of the Association, Grundy, also the testimony of the defendant in error and of her counsel, John H. Reynolds, was not contradicted in any part and there was therefore no question of fact for the jury to determine. This case does not rest upon the credibility of a witness who is a party to the action, as the testimony of the defendant in error was corroborated and supplemented by the testimony of her attorney and agent, John H. Reynolds, and there was no attempt of the plaintiff in error to contradict the testimony of these witnesses by the only witness which they produced.

The principle is well established that where the facts are not in dispute, the testimony of the witness, not in its nature surprising and suspicious, the question presented is purely a question of law and it is the duty of the Court to direct the jury to find the verdict.

Hull vs. Littauer, 162 N. Y., 569.

In the case at issue there was no conflict of testimony, the facts were practically conceded and there was therefore no question to submit to the jury.

The plaintiff below was entitled to the verdict as directed by the Court. Defendant below relied solely upon an implied authority given to William H. Belcher, the president of the Association, the

nature of which would authorize the defendant below to pay the checks upon the endorsement of William H. Belcher. To establish such authority the defendant below relied upon the fact that the dues on these shares were paid through William H. Belcher, and that, therefore, William H. Belcher was the agent of the plaintiff below and had authority to receive payment on account of the shares.

It is evident that it did not rely upon his having authority to receive the money due, as it elected to deal with the principal and made its check payable to her and by having so elected is bound by its acts.

To justify the payment upon the endorsement of W. H. Belcher, it must show authority to endorse and receive money, and such authority cannot be inferred from the circumstances, or established by statements of the alleged agent.

“A letter to ask, demand and receive of the East India Company all money that might become due the principal on any account whatsoever, and to transact all business, will not authorize the attorney to endorse away a bill taken by him under this power. The words ‘all business’ must be confined to all business necessary for the receipt of money.”

Hay vs. Goldschmidt, cited in *Hogg vs. Smith*, 1 Taunt., 349, and cited in *Gulick and Holmes vs. Grover*, 33 N. J. Law. 463.

Hogg vs. Smith, 1 Taunt., 349.

Atwood vs. Munnings, 7 B. & C., 278.

Chitty on Bills, Sec. 29.

The plaintiff by power of attorney constituted one English to "ask, demand, recover and receive from the commissioners of his Majesty's navy all such salary, wages, etc., as there was, or thereafter should be due to him for his services in any of his Majesty's ships and acquittances, releases and other discharges in his name to make with the usual clause of general ratification and all general power in the premises. English received from the commissioners of his Majesty's navy, on account of the plaintiff, two bills payable to plaintiff's order. English endorsed the drafts in the plaintiff's name and issued them to the defendant. The action was trover; it was held that the authority was strictly confined to receiving the debt and that the attorney, by receiving the bills, performed all that he was to do and ought to have kept them in his possession for the plaintiff."

Hogg vs. Smith, supra.

There was a power of attorney to ask payment and receive from the East India Company all moneys that might be due, etc., and to transact all business, with the usual general power and clause of ratification. The attorney received an India bill payable to plaintiff's order, endorsed it in his name, and procured it to be discounted by the defendant and received of the India company the money due on the bill. The action was to recover the money, and the Court was of the opinion that

the instrument gave no authority to the agent or attorney to endorse the bill and that the words "all business" must be confined to "all business necessary for the receipt of the money."

Hay vs. Goldsmith. Cited in *Hogg vs. Smith, supra.*

Where the power is to ask, demand, receive and receipt for any and all pay and allowances due me from the government of the United States on account of my services in the army, etc., and sign my name to any receipt, pay roll, voucher or other acquittance of said due, with full power to execute and deliver all needful instruments and papers and to perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises with the usual ratifying and confirming clause, it does not authorize an attorney to endorse drafts payable to his principal or order upon the assistant treasurer of the United States.

Halsinger vs. Natl. Corn Exchange Bank, 37 How., Pr. (N. Y.) 203.

The same rule was applied in

Jacoby & Co. vs. Payson, 91 How. Pr. (N. Y.) 480.

It would, therefore seem that if a power of attorney as broad as that referred to in the cases cited above will not warrant the payment of moneys due on a check by the agent, that the plaintiff in error cannot successfully urge here that the payment of the money due on the check in question to W. H.

Belcher, president of the plaintiff below was in any manner warranted or justified.

The testimony of George W. Allee, as to the declarations of William H. Belcher that he was the attorney for Mrs. Ryle, constituted no evidence of the extent of his authority, if he had any.

(Page 37, folios 10-20 and 30).

(Page 38, folio 10).

(Page 40, folio 20),

It has been held that :

“The declaration of an agent, although accompanying his acts, constituted no evidence of the extent of his authority.”

Story on Agency, Sec. 126.

Brigham vs. Peters, 1 Gray, 139.

Baker vs. Gerish, 14 Allen, 201.

Gifford vs. Ladrine, 10 Stew., Eq., 127, 628.

Farmers' Bank vs. Butchers' Bank, 16 N. Y., 134.

“An agency can neither be created nor proved by the acts or declarations of the assumed agent alone.”

Peoples Bank vs. St. Anthony Roman Cath. Church, 109 N. Y., 512.

An agent's authority cannot be shown by his own declarations.

70 Hun., 568.

27 *N. Y. Sup.* 255.

Same case in 7 *Misc. (N. Y.)* 165.

79 *Hun.*, (N. Y.) 541.

30 *N. Y. Sup.*, 224.

Same case in 9 *Misc. (N. Y.)* 496.

“Neither the declarations of a man nor his acts can be given in evidence to prove that he is the agent of another or the extent of his authority.”

Stringham vs. St. Nicholas Ins. Co.,
37, *How. Pr. (N. Y.)* 365 at 374.

“The declarations of an agent though accompanying his acts constitute no evidence of the extent of his authority”.

Dowden vs. Cryder, 55, *N. J. Law*,
329.

Wolf vs. Benedict, 65 *Hun.*, 624,
N. Y.

Same case in 20 *N. Y. Sup.*, 585.

It was urged on the trial below that the principal or defendant in error ratified the acts of William H. Belcher in receiving payment upon the check in question on the ground that the check was paid in November, 1904, and “that until the summer of 1905 she made no effort or inquiry and did nothing with reference to this money.” This argument is based upon the statement of Mrs. Ryle, the defendant in error, on cross examination, that she

knew "the book became matured on October 1st, 1904."

There is no statement in Mrs. Ryle's testimony, either on direct or cross-examination, which shows when she did become aware that the shares in question had matured, but it appears that she was not present at the transaction with reference to the taking out of the shares and paying of the dues; that the dues were paid through Mr. Reynolds, her attorney (page 15, folios 20 and 30) that she never had any talk with Mr. Belcher, the president of the Association, about the Building and Loan Association (page 23, folio 10) and it appears by the testimony of John H. Reynolds, who was her attorney, since the death of her husband, and co-executor with her of his estate, that he attended to the details of making payments of dues in question (page 32, folios 10-20 and 30), and that although the shares matured in the month of October, 1904, he was not notified and he did not learn that they had matured until Mr. Belcher went away, which was in the summer of 1905 (page 33, folio 10).

The defendant in error also testified that she had never received notice of the maturity of the shares. (Page 19, folio 30.)

It is true that "a subsequent ratification of an act done by another assuming to act in the capacity of agent, though without any precedent authority, creates the relation of principal and agent and after such ratification the principal is bound by the act to the same extent as if it had been done by his previous authority, *but in order to (constitute) a ratification a full knowledge of the facts and*

circumstances attending the transaction is essential."

Owings vs. Hull, 9 Pet., 608.

Pitts & Steubenville R. R. Co. vs. Gazzam, 32 Penna. St. R., 340.

Nixon vs. Palmer, 4 Seld., 398, cited in Gulick & Holmes vs. Grover, 4 Vroom, 463 at 471.

Of the transaction in question the defendant in error was at the time of its occurrence entirely ignorant ; it first came to her notice after the departure of William H. Belcher from the city of Paterson in August, 1905, at which time she disavowed his authority. (Page 20, folios 20 and 30.) (Page 21, folios 10-20 and 30.)

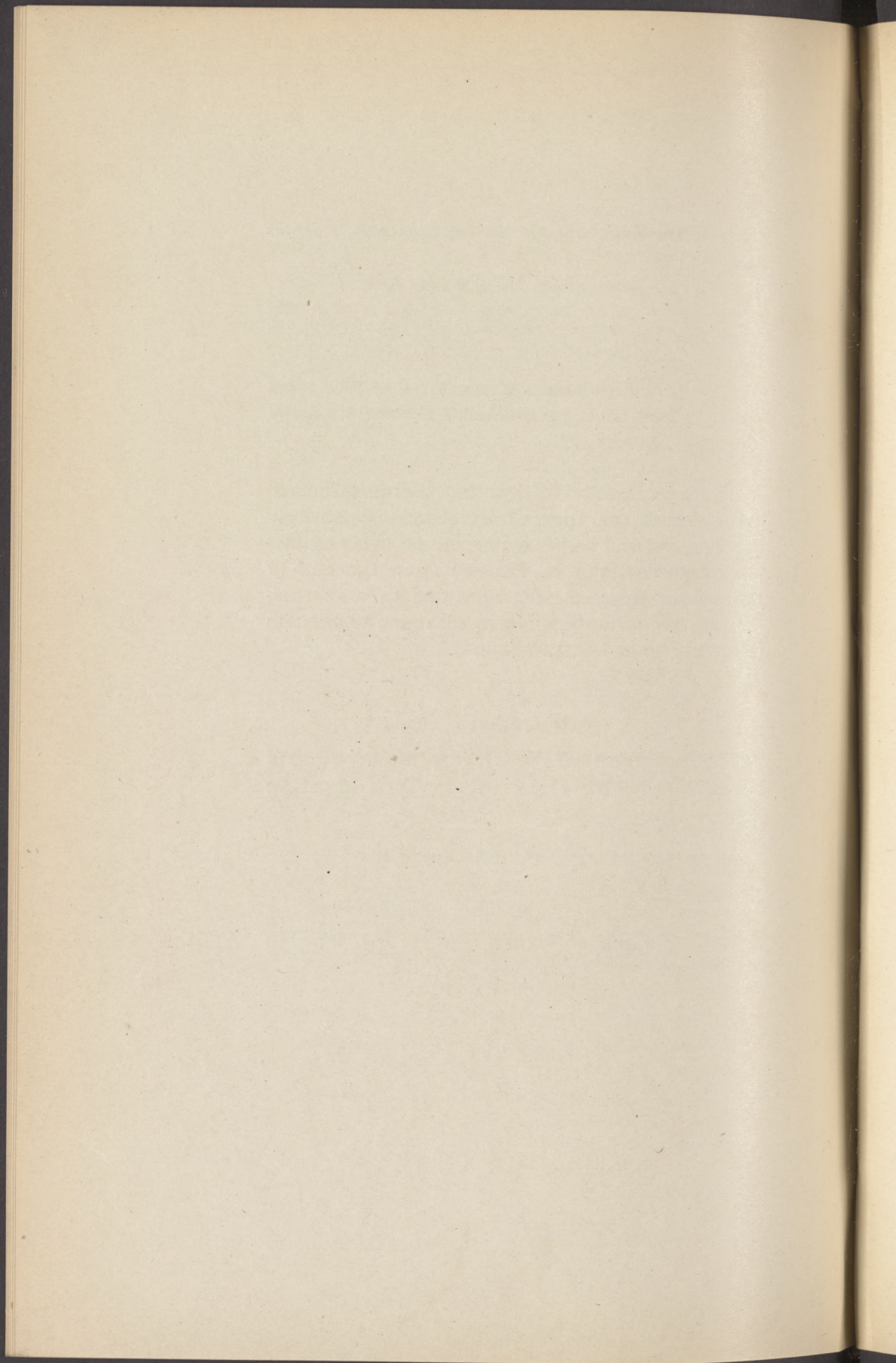
POINT IV.

The Judgment of the Circuit Court should be affirmed with costs to the Defendant in Error.

All of which is respectfully submitted.

JOHN H. REYNOLDS,

Attorney for and of Counsel with the Defendant in Error.



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New Jersey Court of Errors and Appeals.

THE MANCHESTER BUILDING AND

LOAN ASSOCIATION,

Defendant-Appellant,

v.

FANNIE L. RYLE,

Plaintiff-Respondent.

On Contract.

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Writ of Error.

NEW JERSEY, SS. :

The State of New Jersey, to Wilbur A. Heisley, Esq., Judge of our Circuit Court, at Paterson, in and for the County of Passaic, or such Justice of the Supreme Court of the State of New Jersey as shall hold such Circuit Court, Greeting :

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[SEAL]

Because in the record and proceedings, and also in the giving of judgment in a plaint, which was in our Circuit Court, holden at Paterson, in and for the County of Passaic, between Fannie L. Ryle, plaintiff, and the Manchester Building and Loan Association, defendant, of an action upon contract, manifest error hath intervened to the great damage of the said defendant, as it is said ; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy jus-

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tice done to the parties aforesaid in this behalf, do command you distinctly and openly to send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fourth Tuesday of July, inst., together
 10 with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to the law and custom of the State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, the fifth day of July, , nineteen hundred and six.

J. W. DEYOE,

Att'y.

S. D. DICKINSON,

Clerk.

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Return.

STATE OF NEW JERSEY, }
 COUNTY OF PASSAIC. } ss.

I, Wilbur A. Heisley, Judge of our Circuit Court in and for the County of Passaic, do hereby in the schedule hereto annexed send to our Judges of our Court of Errors and Appeals in the last resort in all causes, the record and proceedings mentioned in the within Writ of Error, with all things touching and concerning the same, as I am within commanded. 10

In testimony whereof, I have hereunto set my hand and affixed
 [SEAL] the seal of the said Court this eighteenth day of July, A. D., nineteen hundred and six.

WILBUR A. HEISLEY.

PASSAIC COUNTY CIRCUIT COURT. 20

On the thirteenth day of March, in the year of Our Lord, nineteen hundred and six.

Passaic County, ss.

The Manchester Building and Loan Association, a corporation under the laws of the State of New Jersey, the defendant in this suit, was summoned to answer Fannie L. Ryle, the plaintiff therein, in an action upon contract, and thereupon the plaintiff, by John H. Reynolds, her attorney, complains for that whereas the defendant, heretofore, to wit, on the first day of March, in the year of Our Lord, one thousand nine hundred and six, at Paterson, in 30

said county, became and was indebted to the plaintiff in the sum of two thousand dollars for money lent by the plaintiff to the defendant at its request ; and in the like sum for money paid by the plaintiff for the use of the defendant at its request ; and in the like sum for money received by the defendant for the use of the plaintiff, and in the like sum for interest for the forbearance by the plaintiff at the defendant's request of money
10 due and owing from the defendant to the plaintiff ; and in the like sum for money due and owing from the defendant to the plaintiff on an account stated between them, the same to be paid by the defendant when it should be thereunto afterwards requested. Yet the said defendant though often requested so to do has not as yet paid the said sum of two thousand dollars above demanded, or any part thereof, to the said plaintiff, but has hitherto wholly refused and still does refuse to the damage
20 of the said plaintiff of two thousand (\$2,000) dollars, whereby and by reason of the same remaining unpaid an action has accrued to the plaintiff to demand the said monèys from the said defendant and therefore she brings her suit, etc.

Notice is hereby given that this action is brought to recover the amount due to the plaintiff from the defendant of the value of five shares of the stock of the said defendant, being the sixth series, 1893, which stock matured October 1st, 1904, and
30 which stock at that time was of the value of the sum of one thousand dollars, which shares were, on the said last mentioned date, cancelled by the said defendant, but the said defendant has refused and still continues to refuse to pay the value there-

of to the plaintiff, although often requested so to do.

The plaintiff will claim judgment for the sum of one thousand dollars, together with interest thereon from the first day of October, 1904.

And the said defendant, by J. W. De Yoe, its attorney, comes and defends the wrong and injury, when &c., and saith that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country, &c. 10

Samuel Rogers, being duly sworn according to law, on his oath says: that he is the President of the Manchester Building and Loan Association, the defendant in the above entitled action; that the foregoing plea is not intended for the purpose of delay and that the affiant believes that the defendant has a just and legal defense to the action on the merits of the case.

Therefore let a jury thereupon come before the Court hereon the fourth Tuesday of April then next ensuing, by whom &c., to recognize &c., because as well as &c., and the same day is given to the parties aforesaid at the same place. 20

And the jurors of the jury whereof mention is within made are respited from day to day until Wednesday the twentieth-seventh day of June, A. D. nineteen hundred and six, being of the term of April for said year. 30

At which last mentioned day before the Court aforesaid, at Paterson aforesaid, come the said parties aforesaid, by their respective attorneys

aforesaid, and the jurors of the jury whereof mention is above made being summoned also come, who to speak the truth of the matters and things contained being chosen, tried and sworn upon their oaths, under the direction of the Court retain their seats and say that the said defendant is guilty in the manner and form as the said plaintiff hath above complained against it and that they assess the damages of the plaintiff as against the defendant at the sum of one thousand and ten dollars and
 10 eighteen cents.

Therefore it is considered that the said plaintiff do recover against the said defendant his said damages and also the sum of forty-one dollars and ninety-seven cents for costs and charges by her about her suit in this behalf expended and now here taxed and by the Court here adjudged to her with her assent.

20 Which said damages, costs and charges in the whole amount to the sum of one thousand and fifty-two dollars and fifteen cents.

And the defendant in mercy, &c.

| | |
|-------------------|------------|
| Damages | \$1,010.18 |
| Costs | 41.97 |

 \$1.052.15

Judgment entered and signed June 30th, A. D. 1906.

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WILBUR A. HEISLEY,

J.

STATE OF NEW JERSEY, }
 COUNTY OF PASSAIC. } SS.

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true transcript of the record and proceedings in the case of Fannie L. Ryle vs. The Manchester Building and Loan Association, a corporation, etc., lately pending in our Circuit Court in and for said county, as the same is taken from and compared with the original recorded in Book "W" of Circuit Court Judgments on pages 160, etc., and now remaining on file and of record in my office. 10

[SEAL]

In testimony whereof, I have hereunto set my hand and affixed the official seal of said Courts and County this seventeenth day of July, A. D., nineteen hundred and six.

JOHN J. SLATER,
 Clerk.

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PASSAIC CIRCUIT COURT.

FANNIE L. RYLE

vs.

THE MANCHESTER BUILDING AND

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LOAN ASSOCIATION.

On Contract.

Transcript of testimony taken before Hon. Wilbur A. Heisley and a jury, at the Passaic County Court House, June 27, 1906.

APPEARANCES.

20 JOHN H. REYNOLDS AND D. L. CAMPBELL,
for plaintiff.

MR. J. W. DE YOE AND JOHN W. HARDING,
Esquire, for defendants.

MR. ABSALOM GRUNDY, sworn in behalf of
the plaintiff, testified as follows :

Direct Examination by Mr. Reynolds :

Q. Are you the Secretary of the Manchester
Building and Loan Association ?

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A. I am.

Q. Have you charge of the books of account of
that Association ?

A. I have.

Q. Have you the individual ledger?

A. I have.

Q. Do you know whether, in there, there is any record of an account in the name of Fannie L. Ryle?

A. Yes, sir.

Q. Will you turn to it, please?

A. On page 294, of the individual ledger, is the account Fannie L. Ryle.

Q. What does the account show generally?

A. It shows that five shares of the series 1893, that is, the 6th series, were taken out in February.

Q. February, 1893?

A. Yes, sir.

Q. And then what?

A. And then that the payments of \$5.00 per month are regularly made for nearly all through its history.

Q. Any dividends declared?

A. Yes, sir.

Q. Are those shown on the book?

A. Yes, sir; these figures at the end are the dividends.

Q. What was the value of these shares in October, 1904?

A. October, 1904, in lead pencil figures under that month, \$969.15; then there is another number added to that in ink; I don't know why that is put there—making it—I suppose it is the amount of profit for that portion of the year—making it \$1,000.

Q. In what month?

A. In November, 1904.

Q. (By the Court) Do you mean by that that the

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shares matured at that time ?

MR. REYNOLDS.—Yes, sir ; the shares matured in this case.

Q. (Further Direct) Who was the president of the association at the time the shares matured.

A. William H. Belcher.

Q. Who was the secretary ?

A. George W. Allee.

10 Q. Did the association have an office in Paterson ?

A. Yes, sir.

Q. Where was it ?

A. In the office of William H. Belcher, counsel for the association also.

Q. Were payments on shares made there ?

A. Yes, sir.

Q. To whom were they paid ?

20 MR. HARDING.—Objected to—that is immaterial.

THE COURT.—If he does not know, of course, it is not competent ; if he knows of his own knowledge, it is competent.

Q. Do you know of your own knowledge as to the payment of dues at the Paterson office of the association ?

30 MR. HARDING.—Objected to upon the ground that it is immaterial whether this witness knows it is the payment of dues in general or not ; if he refers to dues that relate to this subject, that is a different thing.

THE COURT.—Of course, it is immaterial unless in this way the plaintiff seeks to show that this plaintiff made claim to the person who generally received for the company.

MR. DEYOE.—We are bound by the constitution and by-laws ; she was a member of this association ; they will have to show the by-laws because she could not pay some other person than that specified in the by-law ; it is not like a corporation where a third party is dealing with the corporation ; it is a member of the corporation dealing with this corporation, and therefore would be bound by the by-laws and could not make payment to any one else so as to bind the Association ; neither could any of the other members. 10

THE COURT.—Suppose the by-laws did designate a certain person to receive the moneys ; but suppose that the Board of Directors—I suppose there is a Board of Directors—suppose the Board of Directors allowed some other person to receive it and the association got the benefit of it, would not that be a ratification of the association so as to make them responsible ? 20

MR. DE YOE.—The members have entered into this stipulation as to who is to receive the money, and who is to enter into bonds for that purpose ; the 30

Board of Directors as between the members of the association, cannot abrogate anything in the constitution.

THE COURT.—Objection overruled.

To which ruling of the court the defendant's counsel prays an exception. Exception allowed. Let it be sealed, and it is sealed accordingly.

[SEAL] WILBUR A. HEISLEY,
J.

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Q. (Question read)

A. I do.

Q. Are you a member of the Board of Directors of the Association?

A. I have been for several years, yes, sir; several terms.

Q. Are you a stockholders in that Association?

A. Yes, sir.

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Q. And as such stockholder did you pay dues there?

A. Yes, sir.

MR. HARDING.—Objected to on the ground that it is immaterial; I ask that the answer be struck out.

THE COURT.—I admit it on the theory that it is going to be shown that the corporation ratified it.

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To which ruling of the Court the defendant's counsel prays an exception. Exception allowed. Let it be sealed, and it is sealed accordingly.

WILBUR A. HEISLEY, [SEAL]
J.

Cross Examination by Mr. Harding.

Q. I notice on page 295 of this book that you have before you, which is called the individual ledger, at the bottom of this account, I see the word written at the end of \$1,000, matured October the 1st, 1904, that is on the right hand, page 295; (that is another one; that is wrong)—it is on page 294—it says “Matured and paid off October 1st, 1904;” under that it says “See K, 1988;” it means the check of the Building and Loan Association, the check number?

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A. Yes, sir.

Q. Well, when you say matured, I suppose you mean to say the amount is due to the holder?

A. That the shares of stock have earned enough profits to equal the amount at which—

Q. It means the contract has then been completed and the money is payable?

A. Yes, sir; as far as I understand.

Q. The matter is then closed up and settled and the party takes the money?

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A. After the Board of Directors has declared a series of stock.

Q. And that had been done on the 1st of October, 1904?

A. Yes, sir.

Q. And after that the matter is closed after the 1st of October?

A. That is correct.

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MRS. FANNIE L. RYLE, sworn in her own behalf, testifies as follows :

Direct Examination by Mr. Reynolds.

Q. Are you the plaintiff in this suit ?

A. Yes, sir.

Q. Were you the owner of five shares of the stock of the Manchester Building & Loan association ?

10 A. Yes, sir.

Q. Did you pay the dues regularly upon those shares ?

A. Yes, sir ; they were regularly paid.

Q. Did you know that those shares matured on October 1, 1904 ?

A. Yes, sir.

Q. When did you first know that ?

20 MR. HARDING.—If the Court pleases I object to that on the ground that the plaintiff is suing on a contract which has been made; by the terms of the contract it is admitted—

Question withdrawn.

Q. Did you ever receive the money due upon those shares, Mrs. Ryle ?

A. I never did.

Q. Did you ever receive any part of the money ?

A. No, sir.

30 Q. Have you received any money up to this present day ?

A. I have not.

Q. And the amount is still due to you from the Manchester Building and Loan Association ?

A. Yes, sir.

Cross Examination by Mr. Harding :

Q. When did you understand that you first became a member of the defendant company ?

A. Peter Ryle took these shares out himself in his lifetime, and attended to all the legal matters.

Q. When were your shares taken out ?

A. Mr. Peter Ryle took them out.

Q. For whom—I am talking now about the five shares which you are suing for ?

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A. For me.

Q. You merely heard that, I suppose ?

A. Yes, sir ; that they were taken out for me.

Q. Were you ever present at any of the transactions with reference to taking out the shares and the paying of the dues ?

A. No, sir.

Q. You say the dues had been paid, how do you know they had been paid ?

A. Through Mr. Reynolds, my attorney.

Q. You got it, then, from the statement of your attorney ?

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A. Yes, sir.

Q. You never paid these yourself ?

A. They were paid through Mr. Reynolds, my attorney.

Q. Do you mean to say you gave Mr. Reynolds particular amounts of money every time the dues were due, to pay ?

A. He had charge of paying the dues.

Q. What account did you ever have between yourself and Mr. Reynolds with reference to payment of the dues ?

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A. We had money coming in to pay it, money coming from real estate to pay these dues.

Q. Who had the money coming in from real estate?

A. The estate of Peter Ryle.

Q. Did you ever have any dealings yourself with Mr. William H. Belcher with reference to this book?

A. No, sir.

Q. Any other dealings of any kind with him?

A. No, sir, Mr. Belcher has never done anything for me.

10 Q. Were you acquainted with him?

A. Yes, sir, but he never did any legal business for me.

Q. Were you ever in his office transacting any kind of business?

A. I have been in his office, but he never transacted any business for me.

Q. Did he ever rent any property for you?

A. No, sir.

Q. Did he have the collection of any kind of rent for you?

20 A. No, sir.

Q. Did he ever collect any money for you?

A. No, sir.

Q. Not any of any kind?

A. No, sir, it was done through an agent.

Q. What agent?

A. Mr. Barbour.

Q. Well, do you mean to say that you understand that Mr. Reynolds—what were the dues every month?

30 A. \$5.00.

Q. Do you understand that your counsel, Mr. Reynolds, paid every month these dues for you?

A. I signed the checks for them, so I know they

were paid; Mr. Reynolds is co-executor of the estate with me.

Q. And then you gave Mr. Reynolds your personal check, did you?

A. No, sir; the check of the estate.

Q. You signed a check for \$5.00 every time, did you, for Mr. Reynolds; who was the check payable to?

A. I suppose it was payable to Belcher for the Building and Loan book.

Q. You supposed it was payable to Belcher?

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A. Yes, sir; for the building and loan books.

Q. Who had the building and loan books?

A. Mr. Belcher.

Q. How long did he have them?

A. He had the building and loan books all the time.

Q. Why?

A. He has always had them; ever since Mr. Ryle's death, he has always had them.

Q. When was this book of five shares taken out for you?

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A. During Mr. Ryle's lifetime.

Q. What year was it?

A. 1893.

Q. When did Mr. Ryle die?

A. 1893.

Q. He died in 1893?

A. Yes, sir.

Q. You knew that the book—I mean the building and loan book, which shows the amount of shares in your name, was in the possession of Mr. Belcher?

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A. Yes, sir.

Q. And he kept this book from that time down?

A. Yes, sir.

Q. All the time until he left?

A. Yes, sir.

Q. You never had the book in your possession?

A. Never.

Q. And the checks that you speak of then were made out to William H. Belcher?

A. Yes, sir.

Q. In payment of these dues?

10 A. Yes, sir.

Q. Have you the return check that paid the dues?

A. Mr. Reynolds will tell you all about that; he had charge of that.

Q. Do you remember how the checks were endorsed?

A. John H. Reynolds and Fannie L. Ryle.

Q. That is the way they were signed when they came back to you, did you ever observe the checks?

20 A. Mr. Reynolds will tell you all about that.

Q. You don't know about that?

A. No, sir. Mr. Reynolds does.

Q. Why did you make out the checks payable to William H. Belcher; you made them out personally to William H. Belcher?

A. Mr. Reynolds made out the checks and I signed them.

Q. To William H. Belcher?

A. Is that right, Mr. Reynolds?

Q. We want you to say.

30 A. I always signed the checks at Mr. Reynolds' office.

Q. Why should you make them out to William H. Belcher?

A. Because he had charge of the books.

Q. You mean the book that was issued to you for the shares, and because he had charge of that, showing the five shares, what book do you call that—the pass book—you made out the checks to Mr. Belcher?

A. Yes, sir.

Q. Did Mr. Belcher ever pay you anything by way of check or money or otherwise, during this whole period of time?

A. No, sir.

Q. He never paid you any?

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A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. Now, the book became matured on October 1, 1904, wasn't it?

A. Yes, sir.

Q. Of course, you didn't pay any checks after the stock matured?

A. No, sir.

Q. October 1, 1904?

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A. No, sir.

Q. The money was then due to you?

A. Yes, sir.

Q. The amount of the thousand dollars was then due on the first of October, 1904?

A. Yes, sir.

Q. Did you ever make any effort to get this money on the first of October, 1904?

A. No, sir.

Q. Well, why not?

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A. It is a good investment, and was paying good dividend, so we left it in there.

Q. But the whole thing was completed then?

A. I had never been notified.

Q. But you did not pay any dues after that ?

A. No, sir.

Q. You did not pay any dues after that—the first of October, 1904 ?

A. No, sir.

Q. And when you did not pay any dues after the 1st of October, 1904, why didn't you take your money out, your thousand dollars, you did not think you would draw interest if you did not pay dues, did you ?

10 A. I don't know.

Q. In August, 1905, some time, Mr. William H. Belcher went away, didn't he ?

A. Yes, sir.

Q. You knew about that ?

A. Yes, sir.

Q. And has not been heard from since ?

A. No, sir.

20 Q. Well, did you, in any way, at that time, when you heard of Mr. Belcher going away, become apprehensive about your shares ?

A. Yes, sir ; I went to see Mr. Reynolds about the book there.

Q. Why ?

A. Because I knew I had money in there.

Q. Why did you think Mr. Belcher's going away would in any way whatever affect your interest in the Building and Loan Association ?

A. People were talking ; we all knew about his having charge of the Building and Loan Association, so I went to see about it.

30 Q. What did you ask ?

A. I asked Mr. Reynolds to look after it—to look after my interest, and how it was, and how it was left.

Q. You wanted to see whether or not your dues had been paid?

A. I knew they had been paid.

Q. How did you know that?

A. The dividends at times would pay the dues.

Q. The dividends on what?

A. On the stock.

Q. How do you know they had been paid—what did you apprehend about his going away?

A. I knew that I had this book in the Building and Loan association and I went to see Mr. Reynolds to consult with him about it, and he attended to it. 10

Q. I want to know from you what was in your mind that made you apprehensive about it, if you had paid your dues why should Belcher's absence have made you frightened about it?

A. From things I have heard.

Q. What had you heard?

A. That he went away; we all knew of the indebtedness he had left behind him. 20

Q. How did you think that would hurt your claim—you knew he had your book?

A. Yes, sir; and I was naturally interested to know how the book stood.

Q. If it had been paid you knew how the book stood?

A. But after he went away I wanted to see what shape it was in, and I went to see Mr. Reynolds about it, and he investigated it and found out that the money had been paid, that the check, the thousand dollars—that I did not have it. 30

Q. You say you had been very friendly with Belcher and called at his office, but never on business?

A. Yes, sir.

Q. You had implicit confidence in him?

A. Yes, sir.

Q. That he was an honorable man?

A. Yes, sir—I was like every one else.

Q. And when the book was left in his possession, after it was due on the 1st of October, cannot you give us any reason why you did not then go and get your money and invest it somewhere else?

10 MR. REYNOLDS.—She has already answered that question, I think.

THE COURT.—Let her answer it.

A. The institution was a good place to have your money invested.

20 Q. This money of yours had matured on the first of October, 1904—it could not draw interest after that; you did not pay any dues after that; why didn't you go to Mr. Belcher and ask for the money on the 1st of October, 1904? Can you give us any reason any more than you have given?

A. No, sir.

Q. Now, did you ever see Mr. Grundy in Mr. Belcher's office when you went there—the gentleman who was last on the witness stand?

A. Yes, sir.

Q. Didn't you talk business with Mr. Belcher when Mr. Grundy was present?

A. No, sir, I had no business with Mr. Belcher.

30 Q. How often were you there?

A. I cannot tell you that; Mr. Belcher was a friend of the family; my children were in the habit of going there.

Q. Didn't you talk with him about making in-

vestments for you?

A. I never did ; I never had any talk with him about this Building and Loan Association.

Q. Your husband, before his death, had left the whole thing with Mr. Belcher?

A. Yes, sir.

Q. There were other books that Mr. Belcher held for your children?

A. Yes, sir. And Mr. Ryle attended to that in his lifetime, and after that Mr. John Reynolds.

Q. Did Mr. Belcher do other business for your husband after that? 10

A. Mr. Belcher studied law with Mr. Ryle.

Q. Can you give any reason—

A. Mr. Reynolds was left co-executor with me.

Q. Did Mr. Reynolds, in your presence, have any consultation with Mr. Belcher about the investment of your property, or about collecting ; didn't you and Mr. Reynolds, and did not Mr. Reynolds, acting for you, have Mr. Belcher collect your rent?

A. We had an agent ; it was Mr. Barbour that collected the rent for us. 20

Q. Did Mr. Reynolds ever get—didn't Mr. Reynolds do collecting for the estate?

A. The rents were collected by this agent, Samuel Barbour, on the property at Haledon.

Q. You, or the estate of your husband, had property at 45-42 Kossuth street, Haledon?

A. Yes, sir.

Q. Who collected the rent there—didn't Mr. Grundy collect those rents? 30

A. He collected them one time, too.

Q. What time was it—about when was that?

A. You would have to ask Mr. Reynolds about that.

Q. Didn't Mr. Grundy collect those rents when he was in Mr. Belcher's office, for Mr. Belcher?

A. Yes—is that so, Mr. Reynolds—

Q. I am asking you—didn't you understand that Mr. Grundy—I think you said you did understand, was collecting rent on the house at Kossuth street?

A. Just when and how I don't know.

Q. Have you any idea when it was?

A. No, sir.

10 Q. Mr. Grundy at that time was in Mr. Belcher's office, a student at law at that time?

A. Yes, sir.

Q. You often came in the office when Mr. Grundy was there and talked about Mr. Grundy collecting the rent, didn't you?

A. No, sir ;—I knew Mr. Reynolds attended to that.

Q. You said you knew Mr. Grundy was collecting that?

A. Mr. Reynolds had all to do with it.

20 Q. Didn't Mr. Belcher take those rents and pay them to the Building and Loan association for your dues?

A. Mr. Reynolds can tell you all about that—they were used for the Building and Loan association's books.

Q. That is true?

A. Yes, sir.

30 Q. You understood that Mr. Belcher—that Mr. Grundy in Mr. Belcher's office, was collecting the rent, and that those rents were to be turned over in payment of your dues to the Building and Loan association?

A. Yes, sir.

Q. You understood that?

A. Yes, sir.

Q. And about when was that—that you understood the rents were so collected?

A. Ever since Mr. Ryle's death.

Q. How much were those rents that were collected from the Kossuth street property?

A. About \$16.

Q. A month?

A. Yes, sir.

Q. \$16 a month?

A. Yes, sir.

Q. Well, the dues for the Building and Loan Association were only \$5 a month, so that there was \$11 that was left from the rent, what was done with that \$11? 10

A. We had other books in the Association.

Q. So that all of that rent from the Kossuth street property was supposed to pay all the dues?

A. Went to the Building and Loan Association.

Q. On the different books that were held?

A. Yes, sir.

Q. Some by your children? 20

A. Yes, sir.

Q. And this one of yours?

A. Yes, sir.

Q. You never made any special directions as to how they were to be paid, you simply understood that the rents were to be collected in that way?

A. Yes, sir.

Q. Did you have any other property from which rents were taken to pay for the dues on either your book or the books of your children? 30

A. No, sir; this \$16 was the rent from this property.

Q. Then, that is the only thing that ever went

to pay dues on any of the books to the association?

A. That is from the rent; that is all the rents there were.

Q. Those were the only rents?

A. Yes, sir.

Q. What was paid besides rent as dues?

A. When there was a shortage we sent a check.

Q. When would you learn there was a shortage—how did you learn about that?

10 A. Mr. Reynolds would send word for me to come and sign the check for the balance of the books.

Q. What would the reason for that shortage—that the rent would be inadequate to pay?

A. When the dividends on the books were not enough.

Q. Were the rents sufficient; was \$16 sufficient to pay all the dues of all the books?

A. That I don't know; ask Mr. Reynolds; he can tell you all about it.

20 Redirect Examination by Mr. Reynolds.

Q. You have referred to Peter Ryle; who is he?

A. He was my husband.

Q. And he died when?

A. In 1893.

Q. What was his business?

A. Lawyer.

Q. Did he live in Paterson?

A. Yes, sir.

ABSOLOM GRUNDY recalled for further cross examination by Mr. Harding.

Q. When were you in Mr. Belcher's office—from what time?

A. Vacation times from 1895, I think it was; either 1896, July—

Q. Do you know Mrs. Ryle?

A. Yes, sir.

Q. And did you often see her in his office?

A. Quite frequently.

Q. Would you be present in the room when they would be there sometimes? 10

A. Mr. Belcher had two rooms in his suite of offices that he used, a general room, and a private office, and I would not be in his private office when his clients were there.

Q. Did you collect some of the rents on the Kosuth street property?

A. Yes, sir.

Q. How did you come to do that?

A. When Mr. Barbour gave up the collection of those rents, Mr. Belcher asked me to take it up as I lived near the place, so I took it, and he wrote a letter for me to the tenants stating that this gave me the necessary authority to collect the rents. 20

Q. Mr. Belcher gave you that authority?

A. Yes, sir.

Q. You understood, then, you were acting for Mr. Belcher?

A. Yes, sir, he gave me a letter to show to the tenants; I showed them that letter from Mr. Belcher giving me authority to collect the rents. 30

Q. How long did you collect the rents?

A. Until some time last summer.

Q. What did you do with them ?

A. I paid them to William H. Belcher.

Q. Always, did you ?

A. Less the commission.

Q. What did he do with it—do you know ?

A. I know what he told me ; he said he applied it on their books in the Building and Loan Association.

Q. What other business relations did he have with Mrs. Ryle that you know of ?

10 A. I cannot answer that.

Q. You never heard their conversation ?

A. No, sir.

Q. Did you ever see Mrs. Ryle's book there in Mr. Belcher's possession, I mean the book from the Building and Loan Association—the pass-book ?

A. I have seen a great many books of the Building and Loan Association there ; I could not say as to that book.

Q. Did you ever see this particular book of Mrs. Ryle's there ?

20 A. Not that I can be sure of.

Q. Do you know of payments being made ; do you personally know of payments being made out of this rent that you collected from the Kossuth street property ?

A. I would not know of that, Mr. Harding, because he would attend to that in his own way.

Q. Where were the books kept that you speak of ?

30 A. To what books do you refer ?

Q. The passbooks.

A. There were several of the passbooks kept in a drawer of one of the desks in the general office—those who wished to leave them there, and others

were kept in Mr. Belcher's desk.

Q. Did you ever have access to them at all?

A. Not those that were kept in Mr. Belcher's desk, no.

Q. You say he told you that he paid Mrs. Ryle's dues out of this money that was collected, did he?

A. Yes, sir.

Q. Did he tell you anything further about any arrangement between him and Mrs. Ryle?

A. Yes, sir ; he said that the amount received as rents was not sufficient to pay all of the dues in the Building and Loan Association, and that he had to add to it to make it enough, and after that he urged me to be sure and collect the rents as promptly and as fully as I could. 10

Q. So he advanced for her?

A. That was the understanding he gave me—he added to the rent in order to make enough.

Q. He advanced his own money then for a time?

A. Yes, sir.

Q. Did he tell you when he got that back—the money he advanced for her? 20

A. He told me that Mr. Reynolds would occasionally straighten it up with him.

Q. Have you looked for this book since Mr. Belcher's departure?

A. I have seen the book since Mr. Belcher's departure.

Q. You have seen it?

A. Yes, sir.

Q. Do you know where it is? 30

A. No, sir.

Q. Where was it when you last saw it?

A. When I last saw it it was turned over to the

examiner for the banking department, Mr. Conklin.

Q. You found it in Mr. Belcher's office, did you, when you last saw it?

A. No, sir; it was among the withdrawn books, among the association's books at their Paterson office.

Q. When did you last see it in Mr. Belcher's office?

10 A. I did not say that I saw it in Mr. Belcher's office.

Q. Have you attempted to find it, and searched for it?

A. Yes, sir.

Q. You are unable to find it at present?

A. Yes, sir.

Q. I think you said it was among the withdrawn books, among the books where they had been turned back, after the money was supposed, at that time, to be paid.

20 A. I searched all through these books and it is not among them.

Re-direct Examination by Mr. Campbell.

Q. In collecting the rent for the Kossuth street property did you have any other duties in relation to the premises?

A. Yes, sir; occasionally.

Q. What was it?

30 A. To report to Mr. Belcher any urgent repairs needed, and receive from him from time to time authority to order those repairs done.

Q. Was it to Mr. Belcher you reported those?

A. Yes, sir; I have known Mr. Belcher to speak to

Mr. Reynolds as to whether these repairs should be made or not ; sometimes he would not have patience to look into the matter himself, and he would say, "Go and ask Mr. Reynolds about these matters."

JOHN H. REYNOLDS, sworn in behalf of plaintiff, testified as follows :

Direct Examination by Mr. Campbell. 10

Q. You are a member of the bar of this state ?

A. Yes, sir.

Q. Do you practice in Paterson ?

A. Yes, sir.

Q. Are you the Mr. Reynolds referred to by Mrs. Ryle ?

A. Yes, sir.

Q. You are a co-executor of the estate of the late Mr. Ryle with her ?

A. Yes, sir. 20

Q. How long have you been such executor ?

A. Ever since October, 1903, when he died.

Q. Have you since that time or any other time acted as her attorney ?

A. Yes, sir.

Q. How long have you acted as her attorney ?

A. During all that time.

Q. Until the present time ?

A. Yes, sir.

Q. Are you familiar with the manner in which these shares of stock in dispute were paid ? 30

A. Yes, sir.

Q. Kindly tell us just how that was done.

10 A. These books, comprising four, one in the name of Mrs. Ryle, and one in the name of Peter Ryle, and one in the name of Margaret Ryle, and one in the name of John Ryle, were in the possession of Mr. Belcher as part of the estate of Peter Ryle, apparently—or, at least, they were in his possession, and as one of the executors of the estate the information was given to me that the books were there in Mr. Belcher's possession, and on inquiry I found that Mr. Ryle had given instructions that the rents of these two Kossuth street houses, which amounted to \$8 each a month, should be devoted to paying the dues upon these shares—collected ; and that method was pursued from that time on. Mr. Barbour, Samuel Barbour, was the agent to collect the rents, and his instructions were to pay them to Mr. Belcher for the purpose of applying the rents so far as they would go upon the payment of dues, and any deficiency would be made up by check from the estate of Peter Ryle.

20 Q. Was the deficiency made up in that manner?

A. Yes, sir ; very regularly ; ordinarily it would be paid by check of \$4 every month ; I would ask Mrs. Ryle to sign a check.

Q. When did Mr. Belcher cease to act as agent ?

A. I think three or four years ago.

Q. After he ceased to act, what did you do about getting a new agent ?

30 A. I asked Mr. Belcher who would be a good man, and he recommended Mr. Grundy as living near the property, and knowing the circumstances.

Q. Did you authorize Mr. Belcher to speak to Mr. Grundy about it ?

A. Yes, sir.

Q. These shares matured in the month of

October, 1904; were you ever notified or did you learn in any way at that time that those had matured?

A. I did not know, and was not notified and I did not learn they had matured, until Mr. Belcher went away.

Q. The payments were kept up until Mr. Belcher went away?

MR. HARDING.—Objected to as leading. 10

Objection sustained.

Q. Did you make any payments after October 1, 1904?

A. The agent made payments after October 4th, to Mr. Belcher of the rents.

Q. Up to what time?

MR. HARDING.—You don't know that of your own personal knowledge, do you? I move to strike it out. 20

THE COURT.—Unless he knows of his own personal knowledge.

Q. Do you know that of your own personal knowledge?

THE COURT.—Strike it out. 30

Q. Were any checks drawn in that period?

A. I don't think there were, I am not positive about it.

MR. HARDING.—I object to that; they ought to be produced. What is the fact—checks drawn for what?

MR. CAMPBELL.—For part of those dues.

10 MR. HARDING.—It is perfectly evident if he drew a check for dues that the check ought to be produced.

THE COURT.—Let him answer it.

A. I don't remember.

Q. You assumed complete charge?

MR. HARDING.—Objected to as leading.

Objection sustained.

20

Cross Examination by Mr. Harding.

Q. I understood Mrs. Ryle to say that in some instances Mr. Belcher himself advanced a partial payment for these dues, and then subsequently settled, do you have that understanding?

A. Well, I don't remember exactly about that, but I think there were no advances made by Mr. Belcher that amounted to any considerable sum, although there may have been some two or three
30 months go by without our paying.

Q. The books that you have produced of the Building and Loan Association purport to show the regular payments when they were due?

A. Yes, sir.

Q. And it is probable that the rents were not always collected in time ?

A. Yes, sir.

Q. And it is quite probable that if Mrs. Ryle was credited when this part was paid, those dues were payable, that they sometimes were advanced by Mr. Belcher, as she says, and she subsequently settled with him for it ?

A. I presume so.

Q. You did understand then that Mr. Belcher had the direction and control over collecting these rents through Mr. Grundy, when Mr. Grundy did collect them ? 10

A. Only by my authority.

Q. That was your understanding about it ?

A. My understanding was that Mr. Grundy or Mr. Barbour, the former collector, would pay the money directly to Mr. Belcher to be applied on these books.

Q. Well, tell me, Mr. Reynolds, why you, as a lawyer, considered it necessary, or as a business man, for the purpose of transacting that business, to have these books left in the possession of Mr. Belcher ? 20

A. As a matter of convenience surely, just as many other books were left there.

Q. You understood Mr. Belcher was to be the one who was to keep control over that book all the time ?

A. To get possession of the book.

Q. And, of course, you understood from the rules of the society that they had the right to withdraw ? 30

A. Yes, sir.

Q. And understood too, that the book would be

required from the Building and Loan Association—a transfer of the book, surrender of the book when it was withdrawn?

A. Yes, sir.

Q. And a transfer, if there was a loan made for security?

A. Yes, sir; that was understood distinctly.

PLAINTIFF RESTS.

10

GEORGE W. ALLEE, sworn for the defence.

Direct Examination by Mr. Harding.

Q. You are the former secretary of the defendant, the Manchester Building and Loan Association?

A. Yes, sir.

Q. Were you secretary continuously from 1893 down until this year?

20

A. Yes, sir.

Q. Until the beginning of this year?

A. January 1, 1906.

Q. You were acquainted with William H. Belcher, who was formerly president of the defendant?

A. Yes, sir.

Q. And do you remember when William H. Belcher—do you remember when the book was taken out for the membership of the plaintiff, Mrs. Ryle, in 1893? Do you remember the circumstances?

30

A. Yes, sir.

Q. Who acted for Mr. Ryle in taking that book out?

A. Mr. Belcher.

Q. Now, at the time when he took the book out did he state to you that he was taking it out for Mrs. Ryle?

A. I think he did. I cannot just recall the conversation—but it was for Mrs. Ryle.

Q. Who paid the dues which were paid on this book that was given to Mrs. Ryle?

A. Mr. Belcher.

Q. What way did he do it?

A. By this check—the check which, of course, was given to him—

Q. The personal check of Mr. Belcher?

A. Yes, sir.

Q. Did you ever receive a check from Mrs. Ryle payable to Mr. Belcher that was endorsed to you?

A. Not that I recall.

Q. What was the general understanding between you and Mr. Belcher with reference to payments—how they were paid?

A. That he was to make all payments on this stock, as he was acting as their attorney.

Q. Where did the payments come from so far as you know?

A. I never questioned—I did not know where they came from.

Q. Did you know anything about their coming from rent?

A. Only by hearsay; I heard them speaking about it.

Q. Hearsay from whom; did you hear Mr. Belcher speak of it?

A. Yes, sir; I guess I did.

Q. Did he speak of it coming from rent—that the dues were paid from rent?—that the dues were paid from rents?

10

20

30

A. Yes, sir ; I guess he did, yes, sir.

Q. Well, on the 1st of October, 1904, as the term is, this book had matured, that is, Mrs. Ryle was entitled to her pay, wasn't she ?

A. Yes, sir.

Q. And was a payment made by check for that amount that was then due her ?

A. Yes, sir.

10 Q. I now show you check 1988, which bears your signature as secretary for \$1,000, dated November 7, 1904, and I ask you whether or not that check was paid ?

A. Yes, sir.

Q. And that check is made payable to Fannie Ryle, and endorsed by Fannie Ryle, William H. Belcher, attorney ; how did it come to be made out that way ? Was that by the direction of Mr. Belcher ?

A. Yes, sir.

20 Q. He told you to make it up that way ?

A. Yes, sir.

Q. When it came back, afterwards endorsed as it was, did you enter it on your books as paid ?

A. Yes, sir.

Q. When all stock is paid off the book is returned the passbook is evidence of being paid off ?

A. Yes, sir.

Q. Now the passbook that was issued to Mrs. Ryle, you say that was always in the possession of Mr. Belcher ?

30 A. So far as I know.

Q. You never had any dealing directly with Mrs. Ryle ?

A. No, sir.

Q. Did she ever say anything to you, or did

any other member of the association, anything about her loss, or anything about her claim?

A. No, sir.

Q. Well, this passbook is issued to all members at the time they become members, isn't it?

A. The passbook is issued to all members.

Q. And this passbook which was issued to Mrs. Ryle, as I understand it, contains all the payment of dues which she made?

A. Yes, sir.

Q. And is the only evidence which she holds showing what her claim is against the company? 10

A. Yes, sir.

Q. And whenever the money which she put in is matured, as you say, then she is to surrender this book, which is the evidence of her collection, and you are to pay her off?

A. Yes, sir.

Q. And after it matures of course, there are no more dues—the whole transaction is closed and she is entitled to her money? 20

A. Yes, sir; and we are entitled to the book.

MR. HARDING.—I offer this book in evidence.

Marked Exhibit D-1.

Cross Examination by Mr. Campbell.

Q. Are you familiar with Mr. Belcher's handwriting?

A. Yes, sir. 30

Q. Do you recognize that writing on the back of that check, the endorsement?

A. Yes, sir.

Q. Who, in your opinion, wrote that?

A. William H. Belcher.

MR. HARDING.—Is that the one I just had?

MR. CAMPBELL—Yes.

Q. Did he write all of it?

A. Yes, sir.

Re-direct Examination by Mr. Harding.

10 Q. I forgot to ask one question—when that check was made out to Fannie Ryle at Mr. Belcher's request, and endorsed "Fannie Ryle" by William H. Belcher, I suppose you observed that Mr. Belcher had endorsed it for Mrs. Ryle?

A. I observed it when the check was returned from the bank.

Q. Did you have any conversation with Mr. Belcher in reference to that?

A. I don't recollect any.

20 Q. Why did you regard that as payment—did you regard it as properly endorsed by Mr. Belcher as her attorney?

A. I did.

Q. Did you have any special reasons why you should?

A. Because he told me he was her attorney.

Q. With reference to that?

A. And also the other statements.

Q. What other statements?

30 Q. And to Mr. Roe—he also made statements to him that he was the attorney of Mrs. Ryle to transact all her business.

Re-cross Examination by Mr. Campbell.

Q. That check was made on November 7, 1904, wasn't it?

A. Whatever date it is.

Q. Wasn't the entry made in the book as soon as the check was turned over and the book surrendered by Mr. Belcher?

A. The entry in the book would be made as soon as the check was drawn.

Q. You didn't wait until the check was returned from the bank to you to make the entry in the book, did you?

A. No, sir.

Q. When did Mr. Belcher tell you and Mr. Roe that he was the attorney for Mrs. Ryle in all her business? 10

A. On several occasions.

Q. When do you remember any particular occasion?

A. On one occasion when these checks were made out.

Q. At the same time he told you to make out the check to Fannie Ryle?

A. To the best of my recollection at that time. 20

DEFENDANT RESTS.

PLAINTIFF RESTS.

**Motion to Direct Verdict for
Defendant.**

10 MR. HARDING.—I request that your Honor direct a verdict in favor of the defendant in this case, upon the ground that by the conceded evidence in the case apparent authority was given by Mrs. Ryle to the Building and Loan Association by reason of allowing Mr. Belcher to make her payments and the way that he did, advancing as he did, keeping a general account, as he did, and taking it from the rents, together with the fact that he took the book out for her, and made all the payments for her and retained the book in his possession, that is a question of law, and apparent authority which justified the company in paying the check.

20 This case is distinguished from the preceding case in this one circumstance which seems to me, is a very important one—the book had matured. Mrs. Ryle is bound with knowledge on her own contract which she makes through her agent? In other words, she cannot allow William H. Belcher to be her agent to make this contract without being charged with a knowledge of all of its terms; one of which was that it would mature on the first of October, 1904; even if she had not said that she knew of that fact, she would have been chargeable, and it was apparent that

30

she would know it. Now, the check was paid in November, 1904 ; and it is to be presumed that she knew that it was then to be paid and was paid, and the fact that until the summer of 1905 she made no effort or inquiry and did nothing with reference to this money that she must have known was in the hands of this company, could no longer draw any interest, is evidence on her part, in the first place, that William H. Belcher had authority to collect in the way he did ; and in the second place that she had ratified it. The circumstance that nothing was done when she knew of it is evidence of her ratification, taken in connection with the other point which I make of an apparent authority shown by the possession of the books and the other circumstances. 10

If the motion should be denied it seems to me that should go to the jury on the question of agency and ratification. 20

THE COURT.—The motion is denied.

To which ruling of the Court the defendant's counsel prays an exception.

Exception allowed ; let it be sealed, and it is sealed accordingly. 30

WILBUR A. HEISLEY, [SEAL]
J.

Motion to Direct Verdict by Plaintiff.

10 MR. REYNOLDS.—On the ground that there has been not a particle of proof of the agency of William H. Belcher so far as it was necessary for him to endorse this check which they claim was given in payment of these shares, and that the check was made out to the order of Fannie Ryle, and endorsed by William H. Belcher, attorney, it is quite evident that no payment was ever made to Fannie L. Ryle, and that if the bank paid that money it was doing something which was directly contrary to the instructions of the Manchester Building and Loan Association in making the check the way they did; and I would move that the Court direct a verdict for the plaintiff in this suit.

20 THE COURT.—The motion is granted, and the jury will render a verdict for \$1,000 with interest from March 14th, 1906.

To which ruling of the Court the defendant's counsel prays an exception.

Exception allowed; let it be sealed, and it is sealed accordingly.

30

[SEAL] WILBUR A. HEISLEY,
J.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE MANCHESTER BUILDING AND

LOAN ASSOCIATION,

Appellant,

v.

FANNIE L. RYLE,

Respondent.

10

Assignments of Error.

The said Manchester Building and Loan Association comes by J. W. DeYoe, its attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions and also in giving the verdict and judgment aforesaid there is manifest error in this, to wit :

20

1. That the said Judge of the said Circuit Court before whom said cause was tried at and upon the aforesaid trial of said cause, over an objection of plaintiff in error allowed the following questions and answers to be asked and answered by Absalom Grundy, a witness produced by plaintiff below :

30

Q. Do you know of your own knowledge as to the payment of dues at the Paterson office of the association ?

A. I do.

Q. Are you a member of the Board of Directors of the Association?

A. I have been for several years, yes, sir ; several terms.

Q. Are you a stockholder in that Association?

A. Yes, sir.

Q. And as such stockholder did you pay dues there?

A. Yes, sir.

(Vide said bill of exceptions.)

10

2. That said Judge of said Circuit Court refused to grant the motion of plaintiff in error to direct a verdict for the defendant below. (Vide said bill of exceptions.)

20

3. That said Judge of said Circuit Court granted the motion of defendant in error to direct a verdict for the plaintiff below and directed said verdict for the plaintiff below, and thereby directed the jury to bring in a verdict for the plaintiff for the sum of ~~\$1,052.15~~ with interest from October 1, 1904 ⁶ *10/10/18* *March 14*

(Vide said bill of exceptions.)

J. W. DEYOE,

Attorney of Plaintiff.

Joinder.

30

Joinder in error in the usual form.

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MANCHESTER BUILDING AND LOAN ASSOCIATION.

1988
No..... Paterson, N. J., Nov. 7th 1904

THE FIRST NATIONAL BANK.

W. H. Belcher,
President.

Fanny Ryle
Pay to the order of
One thousand 00 | 100 1,000 00 | 100
..... Dollars, \$.....

Manchester Building and Loan Association.

George W. Allee John C. Roe
.....

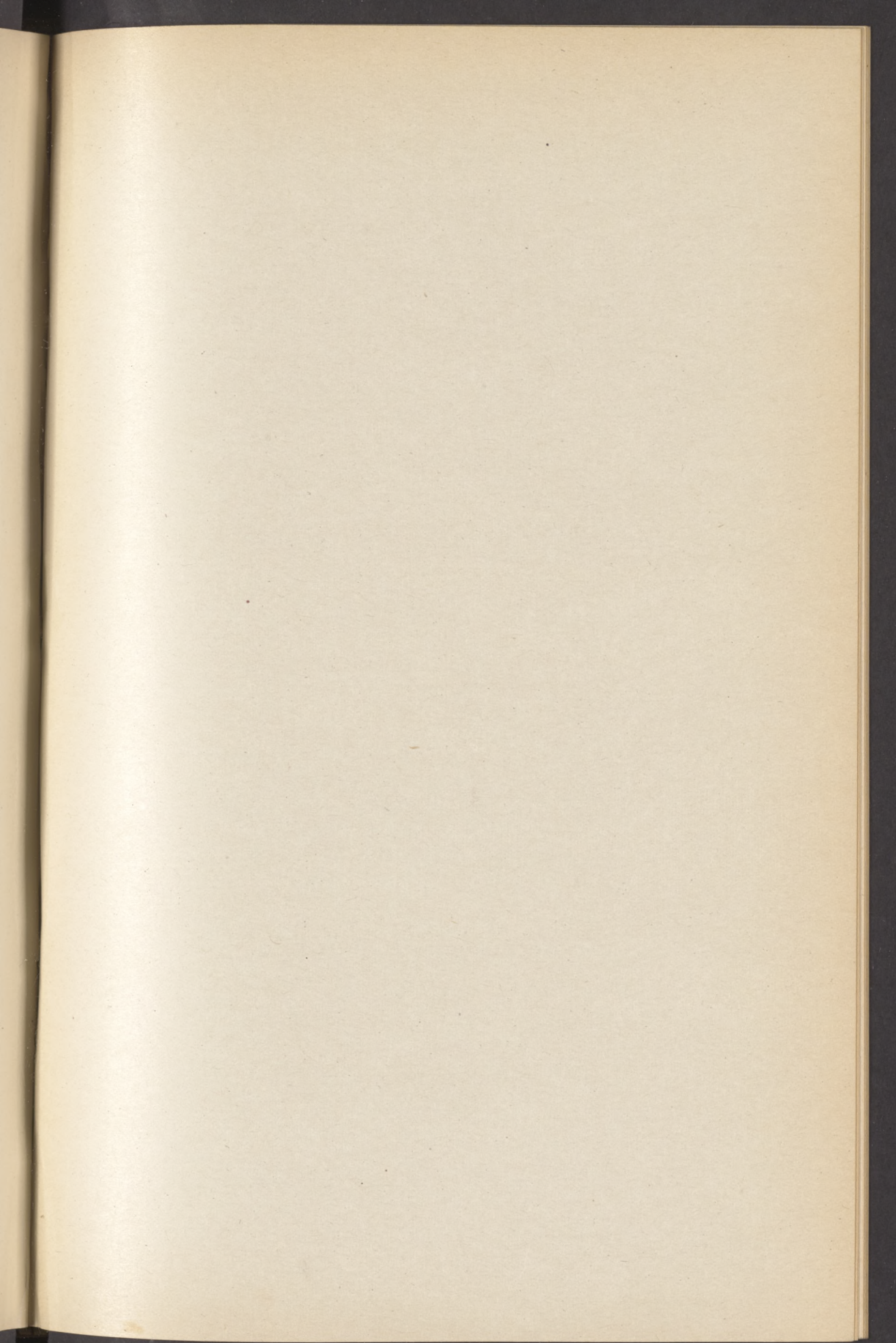
Secretary. Treasurer.

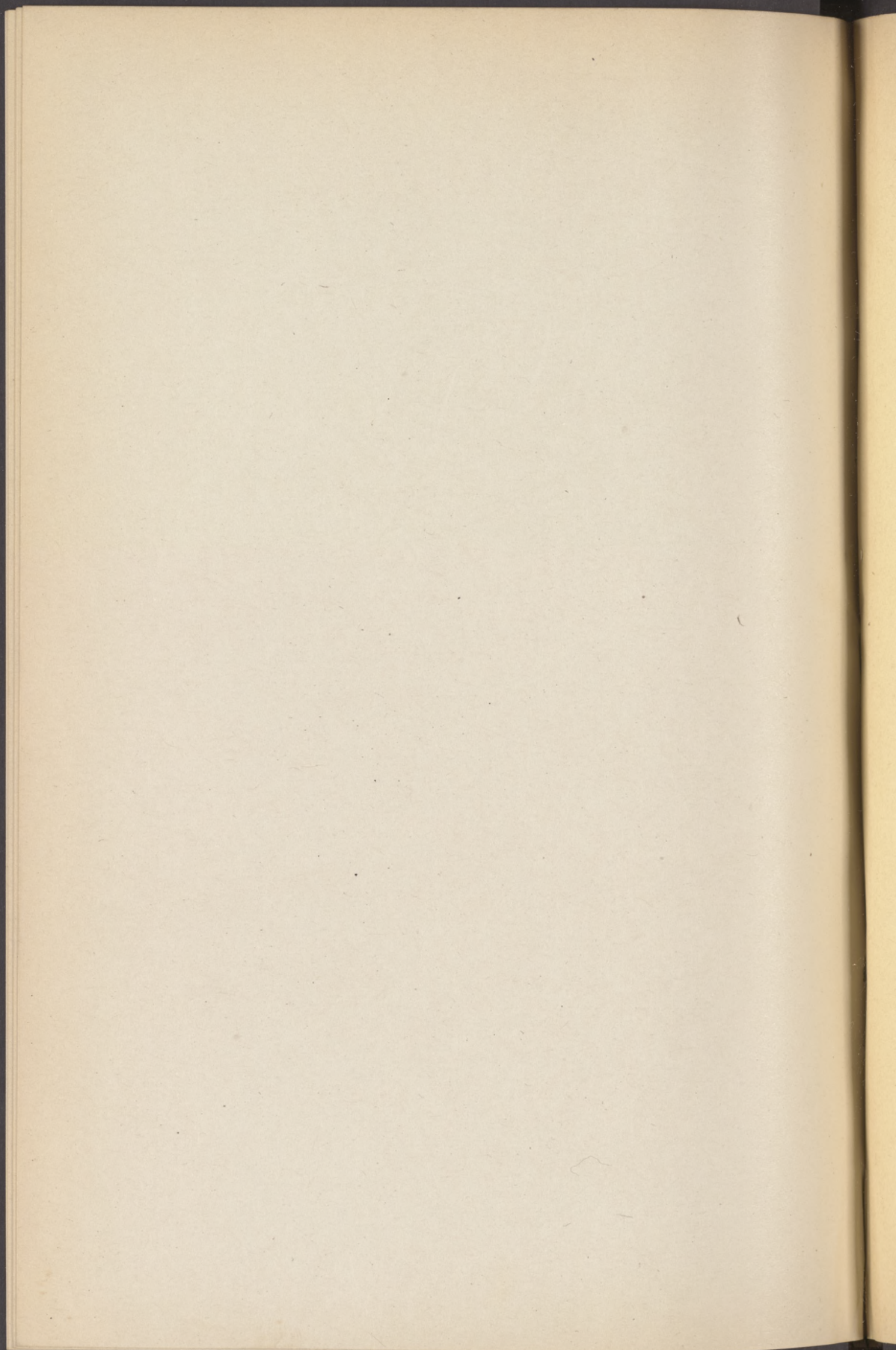
Check bears the following endorsements :

“Fanny Ryle
W. H. Belcher Atty
W. H. Belcher.”

The imprint of an oval rubber stamp, containing a large figure three (“3”) and the date “Nov 15 1904”.

Also the mark “Ex D 1”.





THE NEW JERSEY

NEW JERSEY

OF ERRORS AND APPEALS

BY

THE

STATE OF NEW JERSEY

FOR THE YEAR

1880

ASSEMBLED IN SENATE AND ASSEMBLY

AT TRENTON, N. J.

1881

PRINTED BY

THE STATE OF NEW JERSEY

AT TRENTON, N. J.

