

Notice of Appeal

NOTICE OF APPEAL.

(Filed Oct. 18, 1912.)

IN CHANCERY OF NEW JERSEY.

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BETWEEN

THE PAULSBORO LOAN
AND BUILDING ASSOCIA-
TION,

Complainant,

AND

ANNIE E. LUMMIS and
LEWIS LUMMIS, her
husband,

Defendants.

ON BILL TO FORE-
CLOSE.

NOTICE OF APPEAL.

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The complainant hereby appeals from so much of the final decree made in this court in the above stated cause as adjudges and decrees that the relief prayed for by the complainant, in its bill of complaint is denied, and that the complainant upon payment to it, by the defendants, of the sum of seven dollars and eighty cents with interest from January 18th, 1910, for taxes, on the mortgage set out in complainant's bill, the complainant shall give up and deliver to the said defendant the bond and mortgage described in the bill of complaint for cancellation, to the

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Notice of Appeal

Court of Errors and Appeals in the last resort in all causes.

Dated October 17, 1912.

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A. H. SWACKHAMER,
*Solicitor for and of Counsel
with Complainant.*

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

A. H. SWACKHAMER,
Of Counsel with Complainant.

A true copy.

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SAMUEL K. ROBBINS,
Clerk.

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Petition of Appeal

PETITION OF APPEAL.

(Filed Nov. 11, 1912.)

NEW JERSEY

COURT OF ERRORS AND APPEALS,

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IN THE LAST RESORT IN ALL CAUSES.

BETWEEN

THE PAULSBORO LOAN
AND BUILDING ASSOCIA-
TION,*Complainant,*

AND

ANNIE E. LUMMIS and
LEWIS LUMMIS, her
husband,*Defendants.*

PETITION OF APPEAL.

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ON BILL, &c.

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The petition of The Paulsboro Loan and Building Association, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin R. Walker, Chancellor of New Jersey, bearing date the thirteenth day of October, nineteen hundred and twelve, wherein the said The Paulsboro

Petition of Appeal

10 Loan and Building Association was complainant and the said Annie E. Lummis and Lewis Lummis, her husband, were defendants, in this respect, to wit: that the said decree adjudges that the relief prayed for by the complainant in its bill of complaint, is denied and that the complainant upon payment to it by the defendants of the sum of seven dollars and eighty cents, with interest from the eighteenth day of January, nineteen hundred and twelve, for taxes on the mortgage set out in the complainant's bill, the complainant shall give up and deliver to the said defendant the bond and mortgage described in the bill of complaint for cancellation.

20 And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid upon the grounds, that the same is erroneous, for that the said Chancellor should have granted the relief prayed for by the complainant in its said bill of complaint and dismissed the bill of the said defendant.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

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A. H. SWACKHAMER,
Solicitor for and of Counsel
with Appellants.

Answer to Petition of Appeal

ANSWER TO PETITION OF APPEAL.

NEW JERSEY

COURT OF ERRORS AND APPEALS.

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THE PAULSBORO LOAN AND BUILDING ASSOCIATION, <i>Appellant,</i>	}	ANSWER TO PETITION OF APPEAL. ON BILL, &C.
AND		
ANNIE E. LUMMIS and LEWIS LUMMIS, her hus- band,		
<i>Respondents.</i>		

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The answer of the above named respondents to the petition of appeal of the above named appellant.

These respondents, not acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the tenth day of October, nineteen hundred and twelve, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity, and they

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Bill of Complaint

pray that the same be affirmed, with costs to be adjudged to these respondents.

W. EARLE MILLER,
Solicitor for Respondents.

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JOHN BOYD AVIS,
Of Counsel with Respondents.

BILL OF COMPLAINT.

(Filed Sept. 15, 1911.)

IN CHANCERY OF NEW JERSEY.

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*To the Honorable Mahlon Pitney, Chancellor of the
State of New Jersey:*

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Your orator, "The Paulsboro Loan and Building Association", a corporation consisting of more than five persons, created and existing under and by virtue of an act of the Legislature of the State of New Jersey, entitled "An act to encourage the establishment of mutual loan, homestead and building associations," of the Borough of Paulsboro, in the County of Gloucester and State of New Jersey, humbly complaining shows unto your Honor as follows:

1. That on or about the twentieth day of November, in the year of our Lord one thousand nine hundred and seven, Annie E. Lummis, of the Township of Logan, in

Bill of Complaint

the County of Gloucester and State of New Jersey, being indebted to your orator in the sum of nine hundred dollars, did execute and deliver to your orator her certain bond or writing obligatory, bearing date the twentieth day of November, nineteen hundred and seven, in the penal sum of eighteen hundred dollars, lawful money of the United States of America, conditioned for the payment by the said Annie E. Lummis, her heirs, executors, administrators or any of them, to your orator, its certain attorney, successors or assigns of the interest on the principal sum of nine hundred dollars, together with the regular monthly instalments of fifty cents per share on nine shares in the thirty-fifth series of the capital stock of said association then owned by the said Annie E. Lummis, on the third Tuesday of each and every month thereafter, the said interest at the rate of one-half of one per cent. monthly and every month thereafter, until the surplus assets of said association shall be sufficient over and above its debts and liabilities to pay on each unredeemed share in said thirty-fifth series the sum of one hundred dollars; and in case the said Annie E. Lummis should neglect to pay the said regular monthly instalments of fifty cents per share, on each share of stock aforesaid, for the space of six calendar months, or in case six months' interest, or that amount of interest at the rate aforesaid on said principal sum of nine hundred dollars, should be at any time in arrears and unpaid, if the said Annie E. Lummis should immediately pay to your orator, its certain attorney, successors or assigns, the whole of the principal sum of nine hundred dollars, with interest thereon as aforesaid, without any fraud or other delay, then the said bond or writing obligatory should be void, or else to be and remain in full force and

Bill of Complaint

virtue, as in and by the said bond or writing obligatory now in the custody of your orator and ready to be produced and proved when and where this Honorable Court may direct, and to which for greater certainty your orator prays leave to refer if it be necessary so to do, may
 10 more fully and at large appear.

2. And your orator further shows that afterwards, to wit, on or about the twentieth day of November, in the year of our Lord one thousand nine hundred and seven, the said Annie E. Lummis being or pretending to be seized in fee or some other good and sufficient estate or inheritance of, in and to the tract or piece of land hereinafter particularly described and set forth, in order to secure the payment of the said sum of nine hundred dollars mentioned in the condition of the said bond or
 20 writing obligatory and the interest that might accrue thereon, to your orator, its successors and assigns, together with the instalments as aforesaid, did together with Lewis Lummis, her husband by a certain deed or indenture of mortgage, under their hands and seals duly executed bearing date the twentieth day of November, nineteen hundred and seven, as well in consideration of the aforesaid debt or sum of nine hundred dollars, as for the better securing the payment thereof, with the interest and the said instalments, unto your orator, its suc-
 30 cessors, certain attorney or assigns in discharge of the said bond or obligation above recited, grant, bargain, sell, release and confirm unto your orator, its successors and assigns, all that certain lot, tract or parcel of land situate in the Township of Logan in the County of Gloucester and State of New Jersey, bounded and described as follows: Beginning in the public road lead-

Bill of Complaint

ing through South Bridgeport at the corner of Peter Carey's lot and twenty-eight links from a stone in said road at the corner of Merrick Stanton's lot and John D. Norton's lot and runs (1) south fifteen minutes east three chains and thirty-six links along the line of said lot of John D. Norton in said road to the line of a 10
 twenty foot lot of land of said Peter Torbert, thence (2) along said land of Peter Torbert east two chains and seventy-six links to a corner, thence (3) still along land of Peter Torbert north thirty minutes west two chains and twenty-six links to the corner of Peter Carey's lot, thence (4) north sixty-eight degrees and thirty minutes west two chains and ninety-nine links to the place of beginning. Being the same premises Peter Torbert and wife by deed dated January 25, 1904, and recorded in the Clerk's office of Gloucester County, in Book 197 of Deeds, folio 189, &c., granted and conveyed unto said Annie E. Lummis in fee. Together with all and singular, the buildings, improvements, woods, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion, reversions, remainder and remainders, rents, issues and profits thereof: To have and to hold the said hereditaments and premises above granted, or intended so to be, with the appurtenances, unto the said party of the second part, its successors and assigns forever. 20

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 Provided always and the said indenture of mortgage was therein declared to be upon the express condition, that if the said parties of the first part to the said indenture of mortgage, their heirs, executors, administrators or assigns, should well and truly pay or cause to be paid unto your orator, its certain attorney, successors or as-

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signs, the said interest together with the said regular monthly instalments as aforesaid, or in default of said payments should pay the whole of the said principal sum of nine hundred dollars, together with lawful interest thereon at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, then the said indenture of mortgage and the estate thereby granted should cease, determine and from thenceforth be null and void.

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20 3. And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Annie E. Lummis and Lewis Lummis, her husband, on the twentieth day of November, in the year of our Lord one thousand nine hundred and seven, before William J. Adamson, one of the commissioners of deeds of New Jersey, and the said indenture of mortgage was duly recorded in the office of the Clerk of the said County of Gloucester, at Woodbury, in Book 102 of Mortgages, pages 583, &c., as by the said certificate of the Clerk of the said County of Gloucester endorsed on the said indenture of mortgage more fully appears, and to which record and certificate thereof so as aforesaid endorsed on the said indenture of mortgage, your orator for greater certainty prays leave to refer if it be necessary so to do.

30 4. And your orator further shows that the said Annie E. Lummis or Lewis Lummis, her husband, have not, nor has either of them or any other person or persons whomsoever paid unto your orator or to any person or persons whomsoever for its use the interest on the principal sum of nine hundred dollars mentioned in the condition of the aforesaid bond or writing obligatory,

Bill of Complaint

and in the proviso of redemption of the aforesaid deed or indenture of mortgage, nor have they or either of them or any other person or persons whomsoever, paid or offered to pay unto your orator or to any person or persons whomsoever, for its use, the said regular monthly instalments of fifty cents per share on the said nine shares in the thirty-fifth series of the capital stock of said association. 10

5. And your orator further shows that there has not been paid to your orator, or to any person or persons whomsoever, for its use, by the said Annie E. Lummis or Lewis Lummis, her husband, or by either or any of them or by any other person or persons whomsoever, for the space of six calendar months and upwards, the said regular monthly instalments of fifty cents per share on the said nine shares in the thirty-fifth series of the capital stock of the said association, then owned by the said Annie E. Lummis; and that six months interest and upwards, and that amount of interest and upwards on the said principal sum of nine hundred dollars is now in arrears and due unto your orator and is unpaid, and that neither the said Annie E. Lummis or Lewis Lummis, her husband, or either of them or any person or persons whomsoever have paid or offered to pay unto your orator, or to any person or persons whomsoever, for its use, the whole of said principal sum of nine hundred dollars with arrears of interest due thereon; and that the surplus assets of the said association are not sufficient over and above its debts and liabilities to pay on each unredeemed share in said thirty-fifth series the sum of one hundred dollars. 20 30

6. And your orator further shows that there is now

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due unto your orator the whole of the principal sum of nine hundred dollars mentioned in the condition of the aforesaid bond or writing obligatory, and in the promise of redemption of the aforesaid deed or indenture of mortgage, with large arrearages of interest thereon; and the estate of your orator in the said mortgaged premises has become absolute.

10 7. And your orator further shows that the said Annie E. Lummis and Lewis Lummis, her husband, or one of them have at all times since the execution and delivery of your orator's said mortgage, possessed and enjoyed and still do possess and enjoy the said mortgaged premises and every part thereof, and have at all times received and still do receive the rents, issues and profits thereof.

20 8. And your orator further shows that it has frequently and in a friendly manner applied to the said Annie E. Lummis and Lewis Lummis, her husband, and requested them to pay and discharge the said regular monthly instalments and the said interest, or that they would pay and discharge the whole of the principal and interest money so due as aforesaid to your orator on the aforesaid bond or writing obligatory and the aforesaid deed or indenture of mortgage, and your orator well hoped that they would have complied with such reasonable requests as in justice and equity they ought to have done, but which they have wholly failed and neglected so to do.

30 In tender consideration whereof, and for as much as your orator has not a complete remedy in the premises at the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the principal and interest moneys without the aid of this Honor-

Bill of Complaint

able Court, where matters of this nature are properly cognizable and relievable:

To the end therefore, that the said defendants hereinafter named, may, without oath, to the best and utmost of their respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and each of them distinctly interrogated thereto; and that an account may be taken under the direction of this Court of the amount due upon your orator's said mortgage. 10

That the said defendants or some or one of them, may be decreed to pay unto your orator the amount so found due upon its said mortgage with interest thereon, and your orator's costs in this suit, by a short day to be appointed by this Court; that in default thereof, they and each of them do stand debarred and foreclosed of and from all equity of redemption in the said mortgaged premises. 10

That the said premises may be sold by the order of this Court and out of the proceeds of sale, your orator may be paid the amount so found due upon its said mortgage with interest thereon and its costs in this suit.

That your orator may have such further or other relief in the premises as the nature and circumstances of the case may require and as shall be agreeable to equity and good conscience. 30

May it please your Honor, the premises considered, to grant unto your orator the State's writ or writs of subpoena issuing out of and under the seal of this Honorable Court to be directed to the said Annie E. Lummis

Bill of Complaint

and Lewis Lummis, her husband, commanding them and each of them by a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this honorable court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to
10 your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

A. H. SWACKHAMER,

*Solicitor for and of Counsel
with Complainant.*

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ANSWER.
IN CHANCERY OF NEW JERSEY.

BETWEEN

THE PAULSBORO LOAN
AND BUILDING ASSOCIA-
TION,

Complainant,

AND

ANNIE E. LUMMIS and
LEWIS LUMMIS, her
husband,

Defendants.

ON BILL TO FORE-
CLOSE.

ANSWER.

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The joint and several answer of Annie E. Lummis and Lewis Lummis, her husband, defendants in the above stated cause, to the bill of complaint exhibited therein.

1. These defendants answering, deny that on or about the twentieth day of November, in the year of our Lord one thousand nine hundred and seven, they, or either of them were indebted to the Paulsboro Loan and Building Association in the sum of nine hundred dollars or any other sum, but admit that on that day, at the solicitation of one William J. Adamson, the secretary of said association, and in the manner and under the circumstances hereinafter recited, that she, the said defendant, Annie E. Lummis, did execute and deliver unto the said William J. Adamson a bond or writing obligatory, bearing date on the said twentieth day of November, and for the penal sum and containing the conditions and facts

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Answer

alleged in paragraph 1 of complainant's said bill of complaint.

10 2. These defendants further answering admit that on or about the twentieth day of November, nineteen hundred and seven, the said Annie E. Lummis was seized in fee of a good and sufficient estate of inheritance of in and to the tract or piece of land particularly described and set out in the said bill of complaint in said paragraph 2, and that she did, together with her husband, on the date last aforesaid, execute and deliver unto the said William J. Adamson a certain mortgage on said real estate, containing the terms and conditions set out in paragraph 2 of complainant's said bill of complaint; and that the same was delivered to the said William J. Adamson, secretary of the said complainant, for the purpose
20 of securing the payment on the bond aforesaid, when the money was paid over by the said complainant to this defendant, Annie E. Lummis.

3. These defendants further answering admit that the said indenture of mortgage was in due form of law acknowledged by both of these defendants as set out in paragraph 3 of complainant's said bill of complaint, and was recorded as set out in said paragraph.

30 4. These defendants further answering say that it is true that neither of them ever paid any sums of money to the said complainant on account of the said bond and mortgage, because of the fact that the said sum of nine hundred dollars was not advanced and paid by the said complainant, to either of the said defendants. No stock was ever issued to either of the said defendants in accordance with the rules and regulations of the said building association, and no monthly instalment was ever de-

Answer

manded or asked for on the part of the said complainant, and no book of any character was issued to the said defendants by the said complainant in accordance with its custom.

5. These defendants further answering admit that they, nor either of them, for the space of six months and upwards, have paid the monthly instalments of fifty cents per share, or any interest to the said complainant. 10

6. These defendants further answering deny that there is now due unto the said complainant the whole of the principal sum of nine hundred dollars mentioned in the condition of the aforesaid bond or writing obligatory, and deny that there are any arrearages of interest due thereon, and deny that the estate of the said complainant in the mortgaged premises has become absolute.

7. These defendants further answering admit that since the execution of said mortgage they have possessed and enjoyed, and still do possess and enjoy the said premises and every part thereof. 20

8. These defendants further answering deny that the said complainant has frequently and in a friendly manner, or in any other way applied to the said defendants and requested them to pay and discharge the said regular monthly instalments and the said interest, or to pay and discharge the whole of the principal and interest money so alleged to be due to the complainant on the said bond or writing obligatory, and the said deed or indenture of mortgage, but allege the fact to be that in the year nineteen hundred and seven the defendant, Annie E. Lummis, was the owner of the lands and premises described in the said bill of complaint, and that the improvements thereon were not in good condition, and 30

Answer

these defendants being desirous of rebuilding the dwelling house on the said premises, applied to one William J. Adamson, of Paulsboro, New Jersey, a contractor and builder, and also secretary of the said complainant corporation; that at the time of making said application
10 there was an incumbrance against said real estate amounting to the sum of one hundred and fifty dollars in the shape of a mortgage, and that these defendants agreed with the said William J. Adamson that he, the said Adamson, should put the buildings on said premises in good repair, and, for the purpose of paying for the said repairs and also to cancel and satisfy the mortgage of one hundred fifty dollars as aforesaid, it was arranged that a mortgage should be given to the complainant in
20 this cause for the sum of seven hundred dollars, and that in pursuance of said arrangement, these defendants signed and executed, before the said William J. Adamson, on or about the twentieth day of November, in the year of our Lord one thousand nine hundred and seven, a certain bond and mortgage which was not carefully read by these defendants, but which they believed to be for the sum of seven hundred dollars; the said Adamson afterwards made certain repairs and improvements on the premises of said defendant to the value of about
30 four hundred fifty dollars, and these defendants paid to the said Adamson the sum of one hundred fifty dollars thereof so that the actual clear improvements received by these defendants from the said Adamson amounted to the value of about three hundred dollars; that although this bond and mortgage was executed in November, nineteen hundred and seven, these defendants were unable to get any settlement from the said Adamson or

Answer

from the said building association, never receiving a certificate of stock or a book for the crediting of dues and interest, and were never notified by the said association that there were any dues or interest owing from these defendants to the said complainant until after the death of the said William J. Adamson, which occurred some- 10
 time in the summer of the year nineteen hundred and eleven, when the said complainant made demand upon these defendants for the payment of said principal on said mortgage, together with interest for the payment of dues and interest from the date of the same up to and until the time of making said demand. These defendants are advised, and believe it to be true, that no sum of money was ever drawn from the said building association by anyone on account of said mortgage and say that they never received any money or signed or endorsed any 20
 vouchers for the same, and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

And the said defendants, by way of cross-bill exhibited against the complainant, say that the facts set forth in the bill of complaint as to the execution of the bond and mortgage stated therein, are true, but these defendants say that no consideration was ever given by the said complainant to these defendants for the same, and no 30
 money ever paid by the said complainant, or received by these defendants therefor, and these defendants therefore pray that by order and decree of this Honorable Court the said complainant may be ordered to give up and deliver to the said defendants the bond and mort-

Answer

gage aforesaid for cancellation. And these defendants will ever pray.

W. EARLE MILLER,
Solicitor for Defendants.

JOHN BOYD AVIS,
Of Counsel.

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CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

BETWEEN 20 THE PAULSBORO BUILD- ING AND LOAN ASSOCIA- TION, <i>Complainant,</i> AND ANNIE E. LUMMIS and LEWIS LUMMIS, her husband, <i>Defendants.</i>	}	ON BILL TO FORE- CLOSE, &c. FINAL HEARING. CONCLUSIONS.
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30 AUSTIN H. SWACKHAMER, for Complainant.
 JOHN BOYD AVIS and W. EARLE MILLER, for Defend-
 ants.

LEAMING, V. C. (orally):

In this case I am entirely satisfied that this mortgage cannot be enforced against these defendants in ac-

Conclusions

cordance with its terms. There is one element that counsel for complainant, and his witnesses who have testified and who have been permitted even to speak argumentatively, have apparently overlooked from beginning to end. The contract between the defendants and Mr. Adamson was purely personal; it involved the building of a house, or the repairing of a house, and when that work was terminated or discontinued the defendants were entitled to make their own settlement with Mr. Adamson as to the amount which might be found due to him. When the building association allowed this loan as they were entitled to have the amount of prior liens against the property discharged from the money so to be loaned; this necessarily included such money as was due from defendants to Adamson for work performed by Adamson on the building; but neither the building association nor Adamson had the right or authority by either direction or implication to ascertain without the consent or co-operation of defendants that any specific amount was due from defendants to Adamson and to charge an amount so ascertained to defendants; nor was the building association either directly or impliedly privileged to handle the matter in such manner that the proceeds of the proposed loan would not be applied to discharge the prior mortgage. Mr. Adamson never had the privilege from defendants for himself, nor did the building association have the privilege from defendants for itself, of determining what the relations were and how the accounts stood between the defendants and Adamson. The building association had no right to consider the proposed loan consummated until the draft which they made payable to Mrs. Lummis for the amount of the proposed

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Conclusions

loan should receive her proper endorsement. If Mr. Adamson assumed the privilege, as counsel suggests, to turn this \$900 draft-voucher back to the building association as cash without the endorsement of Mrs. Lummis, in doing so he denied Mr. and Mrs. Lummis the privilege of making their own settlement with him. If the building association assumed to take the draft-voucher which was drawn to the order of Mrs. Lummis without the endorsement of Mrs. Lummis, in doing so the building association deprived Mrs. Adamson of any defence against the amount Mr. Adamson might claim to be due for that work. That element seems to have been entirely overlooked. But aside from that I am unable to see how we are justified, under the evidence, in making a finding of fact that the item of \$1,220 "receipts of the evening", contained in the cash book, included this voucher of \$900. It may be that this voucher passed at that time to the treasurer and was accepted by him as so much cash, that is, the treasurer may have cashed the draft for Mr. Adamson, and it may be that the draft has come from the treasurer's custody to this court; but the evidence of all that is very slight indeed, if any at all exists. The treasurer's own testimony was to the effect that he had never seen this \$900 draft-voucher since it was issued until today. That testimony he now thinks may not have been accurate, he now thinks that he may have received it as cash and have turned it over to the building association examiner, but he is not sure of that. What the facts in this respect may be is necessarily more or less a conjecture. This voucher-draft may have still been in the hands of Mr. Adamson at the time of his death. Indeed I am not at all inclined

Conclusions

to believe it was not still in his hands at the time of his death; I am inclined to think from all the evidence in the case that at the time he was stricken with his last sickness he had not abandoned the idea of consummating this building association loan in the manner it had been intended; that the consummation of the transaction had been simply held in abeyance by him and that he had been reporting to the mortgagor from time to time that he would fix it up but had deferred doing it for reasons of his own; that the transaction never had become a consummated transaction with the building association, from either the standpoint of that association or of Adamson or of defendants. But be that as it may the building association was at no time empowered, directly or indirectly, by any conduct upon the part of the defendants, to appropriate or apply, without their endorsement or sanction, a voucher-draft, payable to their order, and in that manner deny them the right to make their own settlement with their own contractor who happened to be the secretary of the association. 10 20

On the faith of this proposed mortgage loan the building association undoubtedly paid these taxes and are entitled to the return of the money they paid, and the mortgage probably could be appropriately declared a lien for their protection to that amount; but so far as the \$900 is concerned there is no evidence to satisfy me that that money has ever been paid by them, or if it was paid by them to Mr. Adamson that it was paid to him with any adequate authorization upon the part of the defendants. From the standpoint of the defendants this mortgage does not exist as a security for that \$900. It may exist as a security for the taxes. They anticipated that this 30

Conclusions

- loan would be made and executed the mortgage as a part of that anticipated plan, and upon the faith of that the building association paid and probably appropriately paid those taxes, and I think the mortgage may be declared a lien to that amount, but I do not think that they should be charged with the costs of this foreclosure for the purpose of collecting that infinitesimal item of taxes which no doubt would have been paid if defendants had been made aware of the expenditure or if any special demand had been made for it.

- I will advise a decree denying the relief sought except as to the amount of taxes paid by the building association. For that payment the defendants have received benefits and they should recompense the association to that amount and the mortgage may stand as a lien to secure the building association and enable it to enforce the payment. No costs, however, should be taxed in favor of either the building association or the defendants. That I believe to be a just and proper disposition of the case. The defendants will owe to the Adamson estate whatever amount Mr. Adamson would be entitled to receive for the value of the work performed by him on defendants' building, but they cannot, I think, under the circumstances of the case, be said to owe the \$900 to the building association.

- Mr. Avis: If your Honor please, there is a cross-bill asking that the bond and mortgage be delivered up for cancellation.

The Vice-Chancellor: I will grant the prayer of the cross-bill upon the terms that they pay the amount of the taxes.

Mr. Avis: Being in the nature of a voluntary payment I suppose it will not carry interest?

Conclusions

The Vice-Chancellor: The defendants got the benefit of the taxes and I think they should pay the amount of the taxes back with interest; the taxes were paid on the property of the defendants by the building association pending a proposed loan, and I think defendants should refund it with interest from the date of payment. 10

Mr. Avis: Your Honor will advise a decree directing that the bond and mortgage be handed up for cancellation upon the payment of the \$7.80 with interest?

The Vice-Chancellor: Yes, and no costs to be taxed on either side.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY. 20

BETWEEN

THE PAULSBORO LOAN
AND BUILDING ASSOCI-
TION;

Complainant,

AND

ANNIE E. LUMMIS and
LEWIS LUMMIS, her
husband,

Defendants.

ON BILL TO FORE-
CLOSE.

FINAL DECREE.

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This cause coming on to be heard at the present regular term of the Court of Chancery held at the Chancery

Final Decree

10 Chambers in the Court in the City of Camden in the presence of A. H. Swackhamer, of counsel with the complainant, and W. Earle Miller, solicitor for, and John Boyd Avis, of counsel with the defendants, and the pleadings having been read and the proofs having been heard, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by it in its bill of complaint, but that the defendants are entitled to the relief sought and prayed for by them in their cross-bill filed in said cause, upon conditions hereinafter stated:

20 It is on this thirteenth day of September, nineteen hundred and twelve, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the relief prayed for by the complainant in said bill of complaint is hereby denied; and it is further ordered, adjudged and decreed that the said complainant, upon payment to it by the said defendants of the sum of seven dollars and eighty cents, with lawful interest thereon from January 18, 1910, being the amount paid by the said complainant as taxes upon the property of the said defendants described in the mortgage set out
30 in the bill of complainant in this cause, give up and deliver to the said defendants the bond and mortgage described in the bill of complaint in this cause, for cancellation. No costs to be taxed in favor of either party.

E. R. WALKER,
C.

Respectfully advised,
E. B. LEAMING,
V. C.

*Offer of Bond and Warrant of Attorney
and Mortgage*

IN CHANCERY OF NEW JERSEY.

BETWEEN

THE PAULSBORO LOAN
AND BUILDING ASSOCIA-
TION,

Complainant,

AND

ANNIE E. LUMMIS and
LEWIS LUMMIS, her
husband,

Defendants.

10

ON BILL TO FORE-
CLOSE, &C.

FINAL HEARING.

20

Before his Honor, E. B. LEAMING, Vice-Chancellor, at
the Chancery Chambers, Camden, N. J., on Wednesday,
September 25th, 1912.

APPEARANCES:

HON. AUSTIN H. SWACKHAMER, for Complainant.

30

JOHN BOYD AVIS, ESQ., and W. EARLE MILLER, ESQ.
for Defendants.

Mr. Swackhamer: The complainant offers in evi-
dence the bond and warrant of attorney, which is ad-

*Offer of Bond and Warrant of Attorney
and Mortgage*

mitted by the answer filed by the defendants, dated the 20th day of November, 1907, signed by Annie E. Lummis, for \$900.

10 (Said paper marked Exhibit C1.)

Mr. Swackhamer: I also offer the mortgage given by Lewis Lummis and Annie E. Lummis, his wife, to the Paulsboro Loan and Building Association, the complainant, for the same amount, dated November 20th, 1907, acknowledged before W. J. Adamson, commissioner of deeds, and recorded on the 6th day of May, 1908, in the clerks' office of the County of Gloucester, in Book 102 of Mortgages, folio 583; the amount of the
20 mortgage is \$900, the same as the amount of the bond.

The Vice-Chancellor: In the ordinary form of a building association mortgage?

Mr. Swackhamer: Yes, sir; printed form.

(Said paper marked Exhibit C2.)

30 The Vice-Chancellor: Now, have you any evidence to offer touching the amount of payments that have been made? Was stock assigned as collateral?

Mr. Swackhamer: There was no assignment of the stock.

The Vice-Chancellor: Well, was this an original loan with stock taken at the time the loan was made, or was

*Offer of Bond and Warrant of Attorney
and Mortgage*

there already stock on which this loan was made?

Mr. Swackhamer: The books will show that in October or November, or just before this mortgage was executed, the borrower, mortgagor, paid some dues, two months' dues, \$9.

The Vice-Chancellor: Now then, have you the evidence of what dues have been paid since? 10

Mr. Swackhamer: There have been no dues paid since that time. Those are the only dues that have been paid.

The Vice-Chancellor: And no stock was assigned as collateral?

Mr. Swackhamer: No, sir. 20

The Vice-Chancellor: Does the mortgage refer to the stock assigned as collateral?

Mr. Swackhamer: Well, it does not say stock was assigned.

Mr. Avis: Was there any stock issued, Judge?

Mr. Swackhamer: No; there was no stock issued. 30

The Vice-Chancellor: (After reading mortgage and hearing argument.) It seems to be a mortgage conditional for the payment of interest and dues, but so far as you know the stock on which the dues were to be paid was not assigned as collateral?

*Offer of Bond and Warrant of Attorney
and Mortgage*

Mr. Swackhamer: It was not assigned.

The Vice-Chancellor: I do not see any use of compelling a person to pay dues on his stock unless the stock
10 is assigned to the association as collateral.

Mr. Swackhamer: The records will show—I suppose that would be our answer to their defence—that the money was brought by her at the meeting of the association in November and the first two months' dues were paid.

The Vice-Chancellor: Well, I will hear the defence.

20 Mr. Avis: If your Honor please, it seems to me—I do not know whether I am right in my proposition, but it seems to me that the mere offer of the bond and warrant is not sufficient on the part of the complainant. We are ready to meet anything that we are by the rules or practice compelled to meet, but, as I understand building association matters, even where there is absolutely no defence, there must be some proof as to the amount due. The bill alleges that the bond and mortgage was made, that they were indebted and that the amount due at the
30 present time is a certain amount. As I understand it we are not compelled to show that we did not get anything on the mortgage until the complainant shows that the amount is due; it is up to them to show the amount due.

The Vice-Chancellor: Well, I think the *prima facie* case made by the complainant is that there is \$900 due with interest on the amount.

*Offer of Bond and Warrant of Attorney
and Mortgage*

Mr. Avis: They have not proven that, if your Honor please, and it is a building association mortgage on which there have been some dues admittedly paid and interest due.

The Vice-Chancellor: I think they have made a *prima facie* case. Here is the mortgage. 10

Mr. Swackhamer: I should have explained to the Court that Adamson, the secretary of the building association, by whom we might prove it, is dead.

The Vice-Chancellor: I will hear the case. I think a *prima facie* case exists. It really makes no difference; we will get at the merits perhaps easier this way. 20

Annie E. Lummis—Direct

ANNIE E. LUMMIS, one of the defendants, being duly sworn according to law, on her oath says:

By Mr. Miller:

10 Q. Mrs. Lummis, you are the defendant in this suit, are you?

A. Yes.

Q. And you are the owner of the property against which this foreclosure is brought?

A. Yes, sir.

Q. Will you just explain to the Court the circumstances of the case and just what dealings you had with Mr. Adamson?

A. How that I was to get the property, you mean, fixed?

20 Q. Yes.

A. Just how I was to get it fixed?

Q. Yes.

A. Well, it had to be remodelled and I wanted to know how much it would cost.

By the Vice-Chancellor:

Q. Wanted to know of whom?

A. What say?

30 Q. Wanted to know of whom?

A. Mr. Adamson.

Q. Well, who is Mr. Adamson?

A. Mr. William Adamson of Paulsboro.

By Mr. Miller:

Q. What was his business?

A. Well, I guess he was a contractor; mayor of the

Annie E. Lummis—Direct

borough.

Q. Did he hold any official position?

A. Yes, sir.

Q. What was that?

A. He was the mayor.

Q. I mean in relation to the building and loan association? 10

A. Yes.

Q. And what was he there?

A. Well, that I don't know, I don't know what he was there.

Q. Do you know whether or not he was connected with the building and loan association?

A. Yes, I know he was.

Q. But you don't know what his position was with the association?

A. I don't know what it was. 20

The Vice-Chancellor: Well, go ahead. I interrupted you.

A. (Resuming) And he told me my property would cost probably about four to five hundred dollars.

By the Vice-Chancellor:

Q. That is to have it remodelled?

A. To have it remodelled. It would be according to 30 what lumber he could use, it might be less, and he said that he would leave the first mortgage, I had a mortgage and that they would have to leave this first mortgage and put me in the loan.

Q. He said what?

A. He would have to leave the first mortgage and put me in the loan, and I told Mr. Adamson that I

Annie E. Lummis—Direct

didn't understand anything about loan papers. "Well," he says, "I am your friend, Mrs. Lummis, and when I get ready," he says, "I will take this on my own shoulders to start it without letting the building and loan know anything about it."

10 Q. Without what?

A. Without letting the building loan know anything about it, he said he would start to remodel.

Q. That is, he would begin work?

A. Yes, he would begin work.

Q. And later would arrange the matter of getting a mortgage to pay him for the work?

A. Yes, that was right, and when he got it half finished —

20 Q. When he got what?

A. When he got it half finished, when he got half of the work done he came to me in a very big hurry and he said, "Mrs. Lummis," or "Mr. Lummis," rather, he said "Mr. Lummis," he says, "now I would like you to sign building and loan papers so that I could go down and pay Mr. Talbot, the one that holds your first mortgage, the \$150 with interest."

Q. There was already a mortgage of \$150 on it?

30 A. One hundred and fifty dollars of my own left there. "Well," he said, "Mrs. Lummis, you sign those papers." Well, I looked at Mr. Adamson a great while. He says, "Mrs. Lummis, aren't you going to sign those papers?" I says, "Mr. Adamson, I don't know anything about those papers and I am not a very good reader, and I don't know anything about the loan any way." Well, Mr. Lummis said, "Look here, he isn't going to do you dirty, sign those papers." Well,

Annie E. Lummis—Direct

I stood a while. He says, "Come, hurry, Mrs. Lummis, sign those papers." So I says, "I will do this, Mr. Adamson," and he started right on out.

By Mr. Miller:

Q. What was the amount of the mortgage that you were to sign?

A. Well, he said it would be \$700 including the mortgage and all, that would be \$550. 10

Q. He was to cancel that first mortgage?

A. Well, I don't know.

By the Vice-Chancellor:

Q. The first mortgage was how much?

A. He said it would be seven hundred all together.

Q. And that was to take up the first mortgage of how much? 20

A. One hundred and fifty.

Q. And that would leave out of seven hundred, one hundred and fifty would leave five hundred and fifty?

A. Yes, that was the way he said, as near as he could come at it.

Q. What was to be done with the five hundred and fifty?

A. Well, it was to put on new weather boards but not all the way around, and just raise it up, it dropped, it was an old style house. 30

Q. Well, the balance, five hundred and fifty, was to pay for this improvement, I suppose?

A. Yes, and he didn't know whether it would take it all or not, he said he couldn't tell.

By Mr. Miller:

Annie E. Lummis—Direct

Q. Was the work ever completed, Mrs. Lummis?

A. No, sir, never was completed.

Q. Were you ever placed in the loan that you know of?

A. Never was.

10 Q. When was this work done?

A. Well, it was done about—what time, you mean, in the month?

Q. Yes, and the year.

A. I don't know whether it was December, it was 1907.

Q. It was in 1907?

A. I think 1907.

Q. Have you ever paid any dues to the building and loan association?

20 A. Not a dollar, never was asked.

Q. And did you ever get any money from the building and loan association?

A. Not a dollar; no, sir.

Q. Were you ever given a check ——

A. No, sir.

Q. From the building and loan association to sign, to endorse ——

A. No, sir.

Q. For the payment of the money?

30 A. No, sir.

Q. Did you ever get a book ——

A. No, sir.

Q. Of any kind from the association?

A. No, sir.

Q. Did you ever pay any dues at all to them?

A. No, sir.

Q. Were you ever called upon to pay any dues?

Annie E. Lummis—Direct

A. No, sir.

Q. Well, have you been called upon to pay any dues at all?

A. Not until after he died.

Q. And when was that about?

By the Vice-Chancellor:

10

Q. After who died,—Mr. Lummis?

A. Mr. Adamson. Then Mr. Flowers sent for me, that I was a member.

By Mr. Miller:

Q. And about when was that?

A. I guess right away after—shortly after he died, I don't know exactly.

By the Vice-Chancellor:

20

Q. When did he die?

A. I don't know when he died now, I don't know how long he has been dead.

Mr. Avis: I guess we can agree that he died about a year ago last June.

The Vice-Chancellor: Died about June, 1910?

Mr. Avis: 1911.

30

By Mr. Miller:

Q. Who is Mr. Flowers, Mrs. Lummis?

A. Mr. Flowers?

Annie E. Lummis—Direct

Q. Yes.

A. Well, he sits right there (indicating).

Q. Is he connected with the Paulsboro Loan and Building Association?

10 A. Well, he told me he was only put in there for a short time.

Q. How was he put in there?

A. Well, he said until they re-elected someone else.

Q. In what capacity was he put in there? In what position? What was his position?

A. Why to collect all bills, I believe he told me, I believe, or something of that sort.

Q. Now, you say that you never received any book from the association?

20 A. No, sir.

Q. That you never paid any dues?

A. No, sir.

Q. Did you ever pay the association \$9.00 —

A. No, sir.

Q. Being the amount of dues?

A. No, sir.

Q. And you were never called upon —

A. No, sir.

30 Q. Until you were called upon by Mr. Flowers,—is that right?

A. By Mr. Flowers and Mr. Maurer there, (indicating).

Q. Mrs. Lummis, was there anything ever paid on account of this mortgage,—I mean to say on account of the work that was done on your property to Mr. Adamson?

A. Did I pay him anything?

Annie E. Lummis—Direct

Q. Yes, was he ever paid any amount of money on account of the work?

A. Yes, I paid him so much money.

Q. How much was it?

A. Well, I paid him \$50 at a time.

Q. Well, how much did it amount to in the whole? 10

A. One hundred and fifty.

Q. You paid him three different times?

A. Three different times.

Q. Fifty dollars each time?

A. That is when I commenced to know he was doing me dirty.

Q. What did he say to you at the time this was paid?

A. He says "Mrs. Lummis, you get what cash you have and then we will fix it up to pay the balance," but he owned up before he died he had wronged me and he laid out to cancel this mortgage and it laid with the Adamsons that it wasn't done. 20

Q. Now, did he ever say anything to you after the time that the mortgage was executed with relation to the mortgage? Did you ever talk to him about the mortgage?

A. Did I?

Q. Yes.

A. Well, I should say; I am a nervous wreck from it, running after him. 30

Q. Just go ahead and tell.

A. After him all the time, after he got this mortgage, I said, "Mr. Adamson, I wonder what you mean by getting me to sign this for to pay off my first mortgage and here it lays." Am I to go on talking?

Q. Yes. Just turn towards the Court.

Annie E. Lummis—Direct

A. And he had nothing to say, he seemed to be nervous, and I came about three times of a week and my house wasn't finished.

Q. Just a minute, now. Was the first mortgage ever paid?

10 A. Never was paid, I left it.

Q. That was the Talbot mortgage?

A. The Talbot. I left three years' interest on it by him saying "In three days I will be down, in three days I will be down." Every time I came to his office, "Three days I will be down to pay it off." Finally he left it go three years and I seen what had to be done, I had to go and pay it, and then one day when I went to him I said "Mr. Adamson, I am not going to come to you any more, I am just going to get a lawyer and see what I can do." He looked at me, said "Well, 20 Mrs. Lummis, if you sue you can't do anything."

By Mr. Swackhamer:

Q. Can't do what?

A. "If you sue me you can't do anything." "Well," I says, "I will try it for a settlement."

By the Vice-Chancellor:

30

Q. In the meantime he had done some work on the building, had he?

A. He had done some, yes.

Q. Do you know how much he did?

A. Well, that I don't know. Well, you mean to have it finished,—what was unfinished?

Annie E. Lummis—Direct

Q. Yes. How much in value was done on the building?

A. Well, that I don't know, because he used up so much old lumber that I couldn't tell.

Q. Well, did he finish the building?

A. It has never been finished.

10

Q. Did he almost finish it? Was it practically finished?

A. Well, he called it so, but after we got to quarreling and having a time over it he said he guessed it was finished all he could finish it. I suppose he got angry at me but it was a thing that I had to do, I just practically had to just go after him all the time. I just took his promise, says I "Mr. Adamson, I have trusted you as my father." So I had lots of trouble with him, and as for a settlement I could never get it.

20

By Mr. Miller:

Q. Mrs. Lummis, did Mr. Adamson ever give you any idea as to the value of the work that he did on the premises for you?

A. Well, I don't know that he did.

Q. Did you ever get a bill from him?

A. No, sir.

30

Q. Or anything of the kind to show the amount of work that he had done?

A. No, sir, nothing at all, no account of anything.

Q. And it rested that way up until the time of his death?

A. Nearly four years, going on five, I guess, it was fully four years.

Q. Have you made any inquiries as to the amount of the work?

Annie E. Lummis—Direct

A. I did of Mr. Platt, of George Platt, the lumber man.

Q. As to the value of the repairs placed on the building?

A. No, just the lumber.

10 Q. But you haven't made any inquiries as to the value of the repairs?

A. I don't know who to go to unless I went to Henry Adamson, his brother.

Q. Well now, Mrs. Lummis, you said that for a long time you didn't pay the interest on the mortgage that was already on the premises. How long was that before the interest was paid? How long did that run?

A. I let him go about nearly three years, it wasn't quite, it was about two years and a half, and when I
20 paid it I paid the full three years.

Q. And why did you pay it?

A. What say?

Q. And why did you pay the interest on that?

A. Well, I had to or lose the property.

By the Vice-Chancellor:

Q. You paid off the whole thing, didn't you?

A. What say?

30 Q. I thought you said you paid off the whole thing?

A. The three years' interest.

Q. You didn't pay the principal?

A. No, he didn't want the principal, he said it was such a small amount and he was still waiting for Mr. Adamson to come down, which he promised, to pay it off, and finally he said he wouldn't bother with him any more because he didn't mean to pay it off, so he said "Mrs. Lummis, you will have to pay the interest."

Annie E. Lummis—Cross

By Mr. Swackhamer:

Q. Now, Mrs. Lummis, do you remember when it was that Mr. Adamson commenced the repairs on this house?

A. I don't know whether it was in October or November, somewheres along there.

Q. Well, you had an arrangement with Mr. Adamson about the payment of the repairs that he was going to put on the house, didn't you? 10

A. About the payments?

Q. Yes.

A. Nothing said about payments, only about what it would amount to, he thought about five hundred, he would say five hundred.

Q. He thought the repairs to your house that you wanted done would cost about five hundred dollars? 20

A. He said he thought it would.

Q. He was a contractor and builder, wasn't he?

A. That is what he told me he was.

Q. Well, I say, you understood in the neighborhood that he was a contractor and builder?

A. Yes, he said he was a contractor and builder.

Q. And you entered into a contract with him to make these repairs?

A. Yes.

Q. How much were you to give him for the repairs? 30

A. How much was I to give him for the repairs?

Q. Yes.

A. Well, I don't know whether I was to give him anything until I found out what it was to cost.

Q. You say that he told you it would be about five hundred dollars?

Annie E. Lummis—Cross

A. About five hundred dollars.

Q. Now, was there any agreement, either in writing or otherwise, that he should make these repairs for a specific sum?

10 A. Nothing only witnesses, that was all, I had no writings.

Q. How much did you understand you were to pay Mr. Adamson for making these repairs?

A. Well, I understood him to say it would be five hundred, he thought it would be five hundred, it would be according to what old lumber he used.

Q. Now, were you living in the house while he was making these repairs?

A. No, sir; I wasn't.

20 Q. How long after he had the repairs made was it before you moved in?

A. Well, I don't know, he hadn't it quite finished and I moved in; I don't know whether it was in December or when, I have it set down.

Q. Well, now, after you moved in then did you have a settlement with Mr. Adamson as to how much you were to pay him?

A. No, he never had any.

30 Q. Did you and he agree as to how much he was to have for the work that he had done there?

A. Well, when he got ready he said come to his office, when he sent for me I went there.

Q. When you went there what did he say? Did he say how much it was that he wanted for the work?

A. He didn't say, he says "I haven't got it ready, and when I get ready, Mrs. Lummis, we will have a settlement." "Well," I says, "I want you to get ready right away," but he never did get ready.

Annie E. Lummis—Cross

Q. You continued to live in the house?

A. I did.

Q. Now, as I understand you, the arrangement that you had with Mr. Adamson in reference to the repair of the house included the payment of the one hundred and fifty dollar mortgage that was held by Mr. Talbot, —is that so?

10

A. Yes.

Q. Mr. Adamson was going to pay that off, was he?

A. Going to pay that off.

Q. Now, where was Mr. Adamson going to get the money to pay off that one hundred and fifty dollar mortgage?

A. I don't know where he was going to get it, out of the loan, I suppose, for me, I don't know.

Q. Then you understood, did you, that you were going to be put in the loan?

20

A. I was going to be.

Q. And you wanted to be put in the loan, didn't you?

A. I certainly was going to go in the loan if he lifted that mortgage there.

Q. And you were to execute a mortgage, weren't you, to the building association?

A. I was to go in the loan.

Q. That was part of the arrangement?

A. That was part of the arrangement.

Q. And how much was the mortgage to be for?

30

A. Why, seven hundred including the first mortgage, he said it would be \$700, five hundred and fifty for the house when he got it ready, that would make it —five hundred and fifty and one hundred and fifty, of course, that would make it seven hundred.

Annie E. Lummis—Cross

Q. Then the arrangement was that he should have five hundred and fifty dollars for the work, he should pay off the mortgage for one hundred and fifty, then you were to give a mortgage to the building and loan association for \$700, is that so?

10 A. I suppose that is the way he was to fix it.

The Vice-Chancellor: The mortgage is \$900, isn't it?

Mr. Swackhamer: Yes, sir.

Q. Now, I want to show you a paper here, marked exhibit C1, and I ask you whether that is your signature there?

20 A. This is a bond, is it?

Q. Read what it says.

A. Yes, that is mine.

Q. That is your signature there, is it?

A. Yes, that is mine.

Q. And how much is this for?

A. I don't know what that is for, I don't understand this writing.

Q. You see it there; what does it say?

A. He has got it nine something; I don't know what
30 it says there.

Q. Nine hundred dollars, isn't that what it says there? You have seen that before?

A. I never seen it before.

Q. How did you get your name on it if you never saw it?

A. I don't know, I never saw it, I never read it.

Q. Well then, it isn't your name, is it?

Annie E. Lummis—Cross

A. I never read it.

Q. Oh, you never read it?

A. Never read it.

Q. Well, was it read to you?

A. Never was read to me.

Q. When you put your name there did you know 10
what you were signing?

A. No, sir.

Q. You did not?

A. I didn't know anything more about that than a
child; I never saw one before I seen it; I trusted him
like a father, I just put my name there.

Q. You didn't know then that you had executed a
mortgage for \$900?

A. No.

Q. Are you sure of that?

20

A. Certainly I am sure of that.

Q. Didn't you try to borrow from the building asso-
ciation \$900?

A. Never, never.

Q. Well, I show you the exhibit —

A. If he had lived a little longer nobody would have
seen that.

Q. I show you Exhibit C2 and I ask you whether
that is your signature?

A. Yes.

30

Q. Now, you saw this paper? You signed it, didn't
you?

A. Never read it.

Q. Didn't read it?

A. He never read it, I just signed and let him get
out; that is where I came to find out one thing, I found

Annie E. Lummis—Cross

out that—I didn't read it myself, that is where our fighting was at.

Q. Do you remember where you were when you signed this?

A. Sure.

Q. Where?

10

A. I was in Woodbury, I lived in Woodbury.

Q. At the time you signed this paper?

A. Yes, sir. I started with a sick headache, and I have had it all day, sick headache, nervous headache.

The Vice-Chancellor: Well, take things easy, now; we will get along all right.

Q. This recites that you lived in Bridgeport at that time?

20

A. Yes, sir.

Q. Didn't you live there?

A. No, sir.

Q. Didn't live there?

A. No, sir.

Q. Whose office was this signed in?

A. In my house.

Q. In your house?

A. In my house.

Q. Where were you living in Woodbury?

30

A. I lived under—well, I might say it was a—well, I can't tell exactly where.

Q. Never mind, you lived in Woodbury?

A. Yes, I lived right in Woodbury under Mr. Harrison Livermore, I rented my property.

Q. Now, when you signed that paper did you know what it was you were signing?

Annie E. Lummis—Cross

A. No, sir.

Q. When you say that do you mean that you didn't know whether it was a note or bond or mortgage or what it was?

A. I might have signed everything, I didn't know.

Q. Were you ready to sign anything he asked you to? 10

A. Yes, sir.

Q. Hadn't the amount that you were to borrow from the association been talked about between you and Mr. Adamson?

A. No, sir.

Q. Didn't he have you sign an application or something of that kind?

A. No, sir.

Q. Never signed it? 20

A. No, sir.

Q. Are you sure of that?

A. Certainly I am sure.

Q. And you never paid any interest on account of this mortgage to the association?

A. To the building and loan?

Q. Yes.

A. No, sir.

Q. Never paid any dues, I mean?

A. No, never paid him anything, he told me I wasn't in. 30

Q. The only papers that you signed were this bond and mortgage?

A. That is the only one he ever asked and he never read it to me and walked out.

Q. And that, you say, was signed in Woodbury?

Annie E. Lummis—Cross

- A. In my house.
Q. And Mr. Adamson was present?
A. Yes.
Q. And who else?
A. Mr. Lummis was all.
10 Q. Mr. Lummis was present, was he?
A. Yes, that is all.
Q. Was there any talk there at that time?
A. Very little, he came in a great big hurry.
The Vice-Chancellor: That is the answer. Who took the acknowledgment, Mr. Swackhamer?
Mr. Avis: Adamson himself.
Q. Now, did you know who the mortgage was made to, and the bond, who it was to?
A. Who it was made to?
20 Q. Yes.
A. Well, really I didn't know much about it, to tell you the truth.
Q. Well, you knew you were making a mortgage to the association, didn't you?
A. To pay Mr. Talbot, he told me he was short of money.
Q. You were to get the money out of the association?
A. I was to get it.
30 Q. And this was the mortgage that you signed?
A. I suppose that was it.
Q. And you say it was for \$700, or so represented to you?
A. Well, I supposed it was to be that but if he never drew it I didn't suppose it would be much of anything, and he never put me in and he would cancel it.

Annie E. Lummis—Cross

and that is where all my trouble come, he got sick and didn't get to cancel the mortgage.

Q. Didn't he read the mortgage to you?

A. He didn't read anything, he just told me he was in a hurry, he was going to a surprise party somewhere out in the lower end of Woodbury and I signed it and let him go, just fully trusted him. 10

Q. I show you another paper here called a report of the committee on property, and ask you whether that is your signature there?

A. I never signed no other paper but that one.

Q. Now, isn't that your signature there (indicating)?

A. I don't think that is my writing, I ain't sure, I might have written this, I don't know; he didn't read anything to me.

Q. Let me read it to you; see if you recognize this: 20
"Gentlemen: Having bid for a loan on nine shares of the stock of the association I offer you the property herein described by me as security for the payment, in accordance with the constitution and by-laws. Mrs. Annie E. Lummis." Now, isn't that your signature?

A. If I wrote that—this hardly looks like my writing here but if I have written that I didn't know what I put my name to.

Q. Didn't know what it was?

A. No; I signed once. 30

Q. Now, do you mean to say that you didn't apply for a loan of \$900 to the building association?

A. I never did, never; if I had known it I never would have signed any papers for him but I fully trusted him for that one paper.

Q. Do you remember the committee, Henry S.

Annie E. Lummis—Cross

Adamson and Isaac Stiles, coming down to your place to view these buildings at Bridgeport?

A. Never did.

Q. Never did, eh?

A. Never was there.

10 Q. Eleventh month twentieth, 1907, don't you remember that Mr. Stiles—you know him, don't you?

A. Well, Mr. —

Q. You know Mr. Stiles, don't you?

A. No, I don't know Mr. Stiles.

Q. You knew Mr. Henry S. Adamson?

20 A. I knew Henry Adamson when I saw him and Mr. Stiles but they was never down to my place, there never was a man there; just about—I don't know whether it was a year before he died he came down there and he seen what a muss they had made and he seemed to be worried over it.

Q. Who did he have with him at that time?

A. He had no one but himself.

Q. So if you signed this application for a loan of \$900 you don't remember it?

A. Never remember it; I signed a paper, that I know, that he brought but he never read it but hurried out, and that is all there was about it.

30 Q. That is the paper you spoke about signing at Woodbury?

A. Yes, the one that you brought here.

Q. Now, Mrs. Lummis, who paid the taxes on this property?

A. I did.

Q. For the year 1909?

A. No one has never paid it but myself.

Annie E. Lummis—Cross

Q. Eh?

A. I have always paid it myself.

Q. Didn't you send to the association your tax bills?

A. Oh no; no, indeed.

Q. And have they paid the taxes for 1909?

A. No, indeed, never, never; no; no more than as
if I never knew them. 10

Mr. Swackhamer: I would like to offer this last
paper, report.

(Said paper marked Exhibit C3.)

Q. Now, I show you another paper here, a warrant
drawn to the Paulsboro Loan and Building Association,
payable to John S. Truitt, collector, \$7.80, taxes,
Annie E. Lummis? 20

A. I don't know anything about that.

Q. You don't know anything about that?

A. Nothing at all; no, sir.

Q. Didn't you send your bills to the association?

A. No, sir.

Q. So that they should pay the taxes on this prop-
erty?

A. No, sir, never did.

Q. Have you got your tax bill here for 1907?

A. I haven't but I have got it home. 30

Q. You have it home?

A. I have it home, nothing here but my deed.

Q. Do you know how much the bill was in 1907?

A. I don't, I don't know whether it was —

Q. I mean 1909?

Annie E. Lummis—Cross

A. They keep raising the taxes on me every year or so, I don't know what my taxes was last year.

By the Vice-Chancellor:

10 Q. Did you know that Mr. Adamson or the building association or somebody else had paid taxes for you for one year?

A. No, sir; I have always paid them myself.

Mr. Swackhamer: I offer this in evidence.

(Said paper marked Exhibit C4.)

By Mr. Swackhamer:

20 Q. Well, Mrs. Lummis, how soon after you moved in the house, which you say was sometime in October of 1909—are you sure of that date?

A. When did I move there? When did I take the key?

Q. Yes.

30 A. Well, I have got it in there on a piece of paper but I have got to look at the paper before I can tell you. It was in November at the time that my brother was laying at the point of death and I went down, I left my house and everything else there and took care of my brother.

Q. Well, it was sometime in the fall or winter?

A. It was late—it was in the winter, I should say, somewheres along there.

Q. Do you remember when you signed this bond and mortgage in Woodbury whether or not the re-

Annie E. Lummis—Cross

pairs had been made at that time?

A. The repairs had been made, ——

Q. They had been at that time?

A. But the house wasn't finished.

Q. There was a dispute between you and Adamson as to whether it was finished, wasn't there?

10

A. Oh, yes.

By the Vice-Chancellor:

Q. At the time this mortgage was signed?

A. After.

Q. The mortgage was signed after you had taken possession, was it?

A. Before.

Q. But was it after he had finished all the work that he did that you signed this mortgage? 20

A. No, before, before he finished it I signed.

Mr. Swackhamer: She didn't answer it that way before.

Mr. Avis: Yes, she did; at least, that is as I understood it.

By Mr. Swackhamer:

Q. Just explain to us now, Mrs. Lummis—was that property repaired—had Mr. Adamson done the work on that house at the time that you signed this bond and mortgage? 30

A. It was partly done, not all finished.

By the Vice-Chancellor:

Annie E. Lummis—Cross

Q. And the work was in progress?

A. Yes.

By Mr. Swackhamer:

10 Q. So he came to you and told you that he had the work partly done?

A. Yes.

Q. And it was now time for you to sign this bond and mortgage?

A. If I was going in the loan he wanted to pay Mr. Talbot off and he would like me to sign.

Q. If you were going into the loan it was now time for you to sign the mortgage?

20 A. I would have to sign that, that he was short of money, that is the very words he spoke, I don't know any more than what the man said to me, he was short of money.

Q. Then at the time you signed this bond and mortgage you intended to go into the building and loan association?

A. I thought really he was going to put me in, of course I didn't know any better.

Q. You understood you were going in the association?

A. I thought I was going in.

30 Q. Then didn't you know when you signed that paper you were signing a mortgage to the association?

A. I didn't understand much about it.

Q. Who did you think you were giving the mortgage to?

A. To Mr. William Adamson.

Q. To Mr. William Adamson?

Annie E. Lummis—Cross

A. That is what I thought, yes.

Q. Where did you get that idea?

A. I don't know, I thought he was doing my work and I thought he was a man of means, and he said he would fix it up; he said "You get what cash you have, Mrs. Lummis, and then if you can't get the rest I will 10
put you in the loan, you can pay the balance in the loan."

Q. When he came to you to get this paper signed he said "If you are going in the loan it is now time for you to sign the mortgage"?

A. Yes.

Q. That is what he said?

A. Then he contradicted it.

Q. Now, you knew that there was a mortgage on your property, didn't you? 20

A. I knew there was one, yes.

Q. You knew that mortgage was recorded in Woodbury, did you?

A. Did I, you say?

Q. Yes.

A. He did.

Q. You knew that that mortgage was recorded in Woodbury?

A. I knew it after I went there and looked. 30

Q. When did you go there and look and find out that there was a mortgage recorded against you?

A. Pretty soon after I found out he didn't send for me, he was to send for me in three days or three weeks, he said "Now, when I send for you you come to my office and we will go down and see Mr. Peter Talbot." I said all right. I looked for three weeks, three days

Annie E. Lummis—Cross

more, three weeks, he didn't send for me and I went to him, I said "Mr. Adamson, there is something wrong." He said "No, indeed, I am going to do justice," he says, "there is nothing wrong." I says "How is it you didn't send for me?" Well, he had other business, he always had an excuse. Well, I just kept the thing up. Says I "You haven't finished the house." "No, sir," he says, "I haven't." "Well," says I, "just supposing we drop this thing now here. Did you ever put this thing against me or are you going to get the money out of the building and loan?" He says, "I haven't." Says I "You haven't drawn anything?" He says, "I haven't yet."

10 Q. He hadn't drawn it from the association?

A. He says "I haven't drawn it from the association," and says I "Just supposing now that we just stop right where we are at, I see that you are wronging me," I says "I don't want anything more to do with you, I will go to Mr. Harrison Livermore and see what he says."

Q. He is another association man, isn't he?

A. He says "Never mind," he says "he is not doing the right thing to you and I will 'phone right to his office now."

Q. Never mind what you said to Mr. Livermore. You said a moment ago that you went to the clerk's office?

30 A. I did.

Q. After three weeks and Mr. Adamson didn't send for you then I understood you went to the clerk's office?

A. I didn't go there myself, I sent there first, and

Annie E. Lummis—Cross

the next time I went myself and my son-in-law and he read it but I didn't.

Q. Now, you went there with your son-in-law personally, you and he together?

A. Yes.

Q. And what did you find when you went to the clerk's office? 10

A. Well, a bond and mortgage for \$900, and then I didn't know what to say.

Q. There was a mortgage then on the record for \$900?

A. There is where the other comes in.

Q. Do you remember how long after the execution of this mortgage that you saw it on the record?

A. I don't know how long he had it there.

Q. You say it was about three weeks after you signed the papers that you went back to Mr. Adamson? 20

A. Yes.

Q. How long after you went back to Mr. Adamson did you and your son-in-law go to the clerk's office?

A. I don't know just exactly.

Q. Two or three weeks?

A. Oh, it was longer than that.

Q. A month?

A. Longer than that.

Q. Two months? 30

A. Maybe longer than that, I can't tell you for I went to him all the time.

Q. Two or three months you think?

A. I went to him all the time.

The Vice-Chancellor: The mortgage wasn't recorded until six months later.

Annie E. Lummis—Cross

Mr. Swackhamer: I want to test the witness' recollection.

10 A. (Resuming) I had so much trouble with the man that I just felt—trusted him. "Mrs. Lummis, I will see you in a week, three days," he just put me off that way all the time.

Q. Now, after you found that there was a mortgage there for \$900 in favor of the association did you ever go to the directors of the association or to anybody connected with the association and complain about it?

A. I never did; no, sir.

20 Q. Did you make any complaint to the association that that was wrong, that they ought not to have a mortgage against you?

A. No, I didn't.

Q. Did your husband know about this mortgage being on the record?

A. Yes, he knew it.

Q. There was a dispute between you and Mr. Adamson about the amount of work that he had done, wasn't there?

A. Yes.

30 Q. You would have been satisfied to leave this mortgage there if Adamson had done the work as he should, would you not?

A. If he had put me in the loan as he should and done the right thing but he didn't do it, he didn't put me in there; then he finally told me before he died that he intended to cancel it, he had wronged me and he intended to cancel it in one week, let him have one week, and I said all right, for he was feeling badly, I said "All

Annie E. Lummis—Cross

right, Mr. Adamson, will you make things all right?" He said "I certainly will, Mrs. Lummis, I have wronged you and I will either give you a note or my daughter."

Q. Now, when was this?

A. It was a week—this was a week before he was taken sick, he sent for me.

10

By Mr. Miller:

Q. Mrs. Lummis, did you ever send anything to Mr. Adamson after he was sick, after he was taken sick?

A. I sent a letter.

Mr. Swackhamer: I do not see how that is important, unless it is shown it was sent to him as the secretary of the association.

Mr. Miller: My only idea in that was to just show that Mrs. Lummis kept nagging at Mr. Adamson all the time for a settlement of this whole affair and she sent her check.

20

The Vice-Chancellor: She has testified to that as a fact already, I think.

Q. Mrs. Lummis, have you ever been before the building and loan directors?

A. No, sir.

30

Q. Have you ever attended any of their meetings?

A. No, sir.

Q. Did you ever bid in any shares before the directors of the building and loan?

A. No, sir, never knew anything about it, never knew

Annie E. Lummis—Cross

anything about me being a member until Mr. Flowers told me that I was a member.

Q. And when was that?

A. Right after he died.

Q. Last year?

10 A. Yes, and I told him no, sir, that I wasn't a member.

Q. Did you go to Mr. Adamson after you found that there was a mortgage on your place?

A. Well, I should say.

Q. How soon after?

A. Went all the time, three times a week to him.

Q. And you were then living at Bridgeport, were you?

A. Yes.

20 Q. And what did he say to you?

A. "I will see you in three days or next week, I am busy today, Mrs. Lummis."

Q. What did he say about the mortgage being on record, Mrs. Lummis?

A. He told me that he had wronged me and he intended to cancel it.

Q. Now, at the time that the mortgage was —

30 Mr. Swackhamer: What mortgage do you refer to?

Mr. Miller: The building and loan mortgage.

Mr. Swackhamer: Oh, the building and loan mortgage.

Mr. Miller: The building association mortgage, this mortgage here.

Annie E. Lummis—Cross

Mr. Swackhamer: I don't think she understood the question.

A. He told me he would cancel that building and loan association, he had never drawn the money nor he had never put me in and that is where he had wronged me. 10

The Vice-Chancellor: She has testified to that several times, that all the way up to the time he died he had agreed to cancel it because he hadn't drawn the money.

By Mr. Swackhamer:

Q. A question I overlooked: Did you say that you paid Mr. Adamson some money? 20

A. I paid him some money at each time.

Q. How much did you pay him?

A. Fifty dollars a time.

Q. How much?

A. Fifty dollars to a time.

Q. And how many times did you pay it?

A. I paid him \$50 and in a short while he said "Mrs. Lummis, I am short of money." Says I "Mr. Adamson, what are you trying to do?" "Well," he says, "I want all the cash that you can possibly get." Well, I let him have it. Says I "When am I going to get my receipt?" 30

The Vice-Chancellor: Don't you think it would be better for you to answer the question? You have got a headache and want to be excused and all you have to do is to answer his question and then you can go.

Annie E. Lummis—Cross

- A. (Continuing) Three times, in three payments.
Q. How much was each payment,—\$50?
A. Fifty dollars.
Q. Do you remember how long after you moved in the house it was that you made these payments?
10 A. Well, it was pretty soon after I moved there, it was before he paid the lumber bill I know, before he paid the lumber bill; he made the lumber man wait one year then he sent a check.
Q. Did you pay it in cash or by check?
A. No, I give it to him just in the money.
Q. In cash?
A. Yes.
Q. Did he give you any receipt for it?
A. No.
Q. Have you any receipts for it?
20 A. I haven't any receipts.
Q. Nothing to show for the payment?
A. No; he said when we settled up he would have it on the book.
Q. You had already begun to suspect him, hadn't you, when you paid him that money?
A. Well, not hardly, no, he was so nice and kind.
Q. The house had been completed and you had moved in?
30 A. Well, it hadn't been completed, he promised to complete it all the time, he would complete it, and if he never completed it, and there was to be three colors of paint on one side of the house—he said if he never did complete it I needn't pay another dollar.
Q. Never mind going into all that, just answer the question.

Annie E. Lummis—Cross

A. You ask me these things and I have to tell you.

Q. Now, tell me, will you, when you paid him this \$150 there was still \$400 due for the building of the house, wasn't there, according to your arrangement with him?

A. Well, I couldn't tell you what was on the house. I never got the bill of it, I didn't know. 10

Q. Where did Mr. Adamson get the \$400 from? Did you pay him the other \$400?

A. I didn't.

Q. Then you owe him, don't you, \$400?

A. Well, I don't know whether I owe him anything or not.

Q. You have never settled with him for the building of the house?

A. I never settled, that was between ourselves, I didn't know when we would have had the settlement. maybe we would never have had it. 20

Q. Wasn't the money for the settlement to come from the building association?

A. No, I don't think it ever was.

By Mr. Avis:

Q. That was your original understanding?

A. At the first start, —

Q. Well, was it or was it not your original understanding? 30

A. That I was to go in the building and loan?

Q. Yes.

A. I thought he was going to put me in the loan.

Recess until two o'clock P. M.

Lewis Lummis—Direct

LEWIS LUMMIS, one of the defendants, being duly sworn according to law, on his oath says:

By Mr. Miller:

10 Q. Mr. Lummis, you are one of the defendants in this suit, are you?

A. Yes, sir.

Q. And where is your home?

A. Bridgeport.

Q. Do you remember the time when this mortgage was executed?

A. Yes, sir.

Q. Do you remember where it was executed?

A. Yes, sir.

20 Q. Where was it?

A. In Woodbury, North Woodbury.

Q. Now, what were the facts leading up to the execution of this mortgage?

A. Mr. Adamson came in there from Paulsboro, he says "Mr. Lummis and Mrs. Lummis, I have these papers for you to sign."

Q. Just a minute. What was the arrangement with Mr. Adamson at first?

A. Well, at first off, start of the contract?

30 Q. Yes.

A. Why, he agreed to do the work for so much money.

Q. To do what work?

A. On the house, the carpenter work, and he was to use all the old lumber that he could use, he did so.

Q. What was the amount he was to do the work for?

A. Well, he was to do the whole contract for \$750.

Lewis Lummis—Direct

Q. What was that amount?

A. Seven hundred and fifty dollars, and pay the bond and mortgage off that was on the house.

Q. Seven hundred and fifty dollars, did you say?

A. All together, that paid the mortgage and all off, that completed the house.

Q. Did he do any work on the premises?

10

A. Yes, sir.

Q. Where were you when that agreement was made?

A. Sir?

Q. Where were you at the time the agreement was made?

A. North Woodbury.

Q. You were in Woodbury at the time?

A. In Woodbury; yes, sir.

Q. How did he come to go to Woodbury?

20

A. I met him at Paulsboro station, I bought the ticket for him to get on the train and go down and make the bargain, to see what the house would cost.

Q. Where did this bargain start? Where was the start?

A. Down at Bridgeport when we got on the property.

Q. Then where did you go, Mr. Lummis?

A. Eh?

Q. Where did you go from Bridgeport? You say you went to Bridgeport to show him the property?

30

A. We came home after we made the bargain.

Q. Was Mrs. Lummis there then?

A. Yes, sir.

Q. The three of you were together?

A. Yes, sir.

Lewis Lummis—Direct

Q. And then where did you go?

A. We came home to Woodbury.

Q. Was Mr. Adamson with you then?

A. Mr. Adamson came home and we did too.

Q. To Woodbury?

10 A. No, he came to Paulsboro.

Q. He got off at Paulsboro?

A. Yes, sir; and we came down to Woodbury.

Q. And that is on the line, is it?

A. Yes, sir.

Q. What was the conversation with relation to the cost of this building, Mr. Lummis?

A. Well, he would put it up as cheap as he could, the \$750 would pay the mortgage off.

Q. And what mortgage did he relate to?

20 A. One hundred and fifty dollars, the first mortgage on the property.

Q. That was already on the property?

A. Yes, sir, that was on before Mr. Adamson touched the property, has been on ever since it was bought.

Q. Just tell us what Mr. Adamson said.

A. He said if that was all there was against the property he would go ahead and do the work and when he completed the work he would put us in the loan if we desired to go in.

30 Q. What was the amount he said he would do the work for?

A. What I told you, \$750, that included everything, mortgage and all.

Q. Was there to be any difference should he use any of the old material?

A. Yes, sir; he was to use all he could.

Lewis Lummis—Direct

Q. And that would make a change in the price, would it?

Mr. Swackhamer: Now, I object to this way of leading the witness.

10

The Vice-Chancellor: Just let the witness testify to what he knows without suggesting to him.

Q. Mr. Lummis, how did he say that would affect the price if he used the old lumber?

A. He said it wouldn't make any difference to him, I suppose a contract was a contract.

Q. I understand that.

By the Vice-Chancellor:

20

Q. Was he to supply the materials?

A. Sir?

Q. Was he to supply the materials?

A. He was to do the work, yes, sir, and furnish the material and all and pay the bond and mortgage off, clear the property.

By Mr. Miller:

30

Q. Well then, when did he start the work, Mr. Lummis?

A. Well, I couldn't exactly say.

Q. How long after that arrangement, do you suppose?

A. Well, it was, I suppose, three or four weeks afterwards.

Lewis Lummis—Direct

- Q. And did everything go on smoothly then?
A. Yes, sir.
- Q. And did you have any further arrangement with him after that? Or when was the next time you saw him?
- 10 A. Well, he hasn't finished the job yet, the job isn't completed.
- Q. And when was the next time you saw him?
A. When?
Q. Yes.
A. Well, I didn't see him no more for a month.
- Q. And where was that?
A. At Paulsboro.
Q. At Paulsboro?
A. Yes, sir.
- 20 Q. And how did you come to see him at Paulsboro?
A. I stopped off there to see him.
Q. What was said then?
A. Nothing of any particular amount about the work on the building at all; I just stopped off there and that was all, I didn't stop off particularly to see him.
- Q. Well then, when was the next time after that you saw him?
A. Well, I suppose—I couldn't tell you exactly right down to the day and date, what day it was.
- 30 Q. About how long afterwards?
A. Well, I suppose maybe it was a couple of months to three.
- Q. And where was that?
A. That was at Paulsboro.
Q. And what took place then? What did he say?
A. Well, I wanted to come down and look at the

Lewis Lummis—Direct

place to see how they was fixing it up.

Q. Well, was the place completed when you looked at it?

A. Oh, no, it ain't completed yet, not according to his contract.

Q. Now, Mr. Lummis, when was this bond and mortgage signed? 10

A. When was it signed?

Q. Yes.

A. Well, I don't know, I couldn't tell you.

Q. You remember the signing of the bond and mortgage, do you?

A. Yes, I remember it was signed.

Q. And what were the circumstances that led up to the signing of the bond and mortgage, and how did that come about? 20

A. Well, I don't know as I could hardly tell the way the man came in the house, he came in the house in a big hurry and threw the papers down.

Q. Where were you at this time?

A. In Woodbury, at North Woodbury, I most forget the number of the house but it is right next to the Baptist Church on Broad Street. He threw the papers down, he says "I would like you people to sign these papers." I looked at them, I says "What papers?" He says "The same as you signed for Mr. 30 Talbot, a bond and mortgage, so when I get ready I can throw it into the building and loan and put you people in when this house is completed." That is what he said right there in the house that night.

Q. Did he tell you for what amount the bond and mortgage was drawn?

Lewis Lummis—Direct

A. No, sir, he didn't.

Q. What amount did you suppose, the bond and mortgage was for?

Mr. Swackhamer: I object to what he supposed.

10 A. I supposed it was the same.

The Vice-Chancellor: If he didn't read the bond and mortgage perhaps he could properly tell what he thought he was signing.

A. (Continuing) I supposed I was signing for what he agreed to do the property for, that is what I supposed.

Q. And what amount was that?

20 A. Sir?

Q. And what amount was that?

A. Seven hundred and fifty dollars.

Q. Was the mortgage read over to you?

A. No, sir.

Q. Can you read, Mr. Lummis?

A. No, sir, I can't read writing.

Q. You can't read writing at all?

A. No, sir; I am not a very good scholar.

Q. Now, did you sign any other papers?

30 A. No, sir.

Q. Except the bond and the mortgage?

A. The only paper I signed for William Adamson was the bond and mortgage, that is every paper that I signed.

Q. Well, did you sign one paper or did you sign two, Mr. Lummis?

Lewis Lummis—Direct

A. Well, I couldn't tell you, he brought the papers in there and he says "Here is a bond and mortgage."

Q. And you signed your name, did you?

A. I signed my name, and my wife says when I signed mine—she hesitated about signing and wouldn't have signed it if I hadn't coaxed her to sign it; I says 10
"This man is not doing us wrong, he is going to do the right thing by us."

Mr. Swackhamer: I do not see that that is competent, it is not responsive to the question.

Q. We don't care about that. Mr. Lummis, did you ever get anything for your mortgage? Did you ever get any money on the mortgage?

A. No, sir. 20

Q. Did you ever go with Mrs. Lummis before the building and loan directors?

A. No, sir.

Q. Make an application for a loan?

A. No, sir.

Q. Did you ever see anybody around the premises viewing the premises?

A. No, sir, nobody only them that worked there and very little I was there when they was working there. 30

Q. And you never got any money at all for the mortgage?

A. No, sir, never signed no paper nor never got nothing only that bond and mortgage is all I ever signed.

Q. And you say the work has never been completed?

A. No, sir.

Lewis Lummis—Direct

Q. What is the value of the improvement, Mr. Lummis, as near as you can tell?

A. Well, as near as I can tell you I suppose about two hundred dollars.

- 10 Mr. Swackhamer: I object to that because it does not appear that this man knows what he is talking about.

The Vice-Chancellor: I do not suppose any estimate on his part would be of any value unless he knows something about it.

Q. Now, Mr. Lummis, what is your business?

A. Carpenter.

- 20 Q. You are a carpenter?

A. Yes, sir.

Q. Well, in that connection are you in a position to state the amount—that is, make an estimate on buildings?

A. No, sir.

Q. Do you make any estimates of any kind?

A. No, sir.

Q. Well, are you in a position to say what the amount of repairs is worth on your building?

- 30 A. Well, come right down ——

Mr. Swackhamer: Now, I object.

A. (Resuming) You come down to the truth ——

The Vice-Chancellor: No; he wants to know whether you are able to estimate these things so that

Lewis Lummis—Direct

you can tell. We do not want any estimate unless you are familiar with making estimates.

A. (Continuing) Certainly, no, sir, I am not, because I consider that a man wants to make an estimate on that building who worked on that building.

10

Q. Now, Mr. Lummis, I am asking you as to whether or not you are in a position to say what the value of the repairs are on the building?

A. No, sir; oh no; no, sir.

Q. Was the building ever completed?

A. No, sir; it has never been finished, not yet.

Q. Mr. Lummis, are you able to say from your experience what amount it would take to complete the building as Mr. Adamson was to complete it?

20

Mr. Swackhamer: I object, because the witness has shown already from his testimony that he does not know the value of these repairs.

The Vice-Chancellor: He seems to have disclaimed any ability to make estimates of that kind.

A. Well, I suppose —

By Mr. Avis:

Q. Well now, the question is whether you are acquainted or not? 30

A. Eh?

By the Vice-Chancellor:

Q. Can you tell what it would take to finish the building?

Lewis Lummis—Cross

A. What it will take?

Q. Yes; I want to know whether you are able to say what it will take?

A. No, sir; I am not able to say.

Q. Well then, don't say it.

10

Cross-examination.

By Mr. Swackhamer:

Q. Well, you say, as I understand you, that in November, 1907, you were living in Woodbury; is that so?

A. Yes, sir.

Q. And while you were living in Woodbury you made a contract with Mr. Adamson?

20

A. My wife made the contract.

Q. Well, you and your wife together —

A. Yes, certainly.

Q. Made a contract with Adamson to repair the house at Bridgeport, is that so?

A. Yes, sir.

Q. Did you go down with Mr. Adamson to look at the place?

A. Yes, sir.

Q. Looked it all over?

30

A. Yes, sir.

Q. Told him what you wanted to have done?

A. Yes, sir.

Q. And asked him to give you an estimate?

A. Yes, sir.

Q. And what did he say it would cost to make the repairs such as you wanted?

Lewis Lummis—Cross

A. Why, \$750.

Q. Seven hundred and fifty dollars?

A. That would pay the mortgage off and all.

Q. Well, now, was it \$750 to make the repairs or was it \$750 for the whole business, the paying off of the mortgage included?

A. He was to give me a first-class job for \$750 and pay the mortgage off, a first-class job, that is what he was to give me. 10

Q. Now, was he to pay off the mortgage, the Talbot mortgage for that \$750?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Well now, after you went down there and looked at the premises and he made this offer did you agree to it or your wife agree to it? 20

A. We told him to go ahead.

Q. Was there any written agreement, anything in writing between you?

A. No, sir; no written agreement at all.

By the Vice-Chancellor:

Q. When you say \$750 and pay off the mortgage, the mortgage being \$150, do you mean that he would do the work for \$600 which would leave \$150 to pay off the mortgage, the two amounts making the total of \$750, estimating \$600 for the work and \$150 to pay off the mortgage, or do you mean he would do the work for \$750 and then pay off the mortgage and charge in addition to that \$750 the \$150 to pay off the 30

Lewis Lummis—Cross

mortgage? Now, which do you mean?

A. He was to do the work for \$750 and take out \$150 for the mortgage, he was to pay the mortgage off, we had nothing to do with the mortgage, we wasn't supposed to have anything to do with the mortgage—and give me a first-class job.

10 Q. Well then, that would make six hundred for the work and one hundred and fifty for the mortgage, wouldn't it?

A. Yes, I guess that was right.

Q. Well, don't you know? I want to be sure whether you are positive about that feature, whether it was six hundred for the work and one hundred and fifty for the mortgage making seven hundred and fifty, or whether it was seven hundred and fifty for the work and one hundred and fifty besides for the mortgage?

20 A. Well, no, sir.

By Mr. Swackhamer:

Q. Now, isn't that the fact?

A. Seven hundred and fifty for the work and the mortgage.

30 Mr. Avis: The witness, of course, has got it in his mind that way and, of course, he doesn't understand the other explanation.

The Witness: That is the way it was to be done.

Q. Well, you are sure he was to pay the mortgage off?

A. Yes, sir.

Lewis Lummis—Cross

Q. You didn't have anything to do with that?

A. No, sir.

Q. Who was to have that mortgage after it was paid off? Was it to be assigned or cancelled or what?

A. I don't know.

Q. You don't know about that?

A. No, sir, I don't know about that at all, where it is to go to. 10

Q. You had been paying interest on this mortgage to Mr. Talbot, had you?

A. Yes, sir, paying interest and taxes on the place.

Q. Well now, after this contract was made, as you say, at Woodbury, sometime afterward he came there with the mortgage, bond and mortgage, is that so?

A. Yes, sir.

Q. Had you been down to see how far the work had progressed? 20

A. Had I been down?

Q. Been down to Bridgeport to see how the work had progressed?

A. No, sir, not at that time; no, sir.

Q. Did you know how much work he had done on it?

A. No, sir, I didn't at that time.

Q. Now, did he tell you when he came to see you how much he had done?

A. Yes, sir. 30

Q. How much did he say he had done?

A. No, he didn't come and say how much he had done, he told me that he was going on to finish the house, and when he brought up the bond and mortgage he said the house was completed but it wasn't.

Q. Is that a fact that when he brought this bond

Lewis Lummis—Cross

and mortgage to you he told you the house was completed or did he say it was partly completed?

A. He said it was completed.

Q. And he told you he was ready to have you sign the bond and mortgage, did he?

10 A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

Q. And that he was going to put you in the association?

A. Yes, sir.

Q. Where was the money to come from to pay Mr. Adamson the \$550 of the \$750, whatever you call it—I mean the \$600 of the \$750, where was the money to come from?

20 A. Well, I don't know where that money was to come from.

Q. Well, you didn't pay it, did you?

A. Sir?

Q. You didn't pay it, did you?

A. No, sir.

Q. You didn't pay him \$600 for that work down there, did you?

A. No, sir.

30 Q. The bond and mortgage was to secure the money from the association, wasn't it?

A. I suppose it was.

Q. You understood it that way, didn't you?

A. Yes, sir, I understood it that way.

Q. That you were getting the money out of the building and loan association?

A. No, sir.

Lewis Lummis—Cross

Q. They sent you a notice, didn't they?

A. No, sir.

Q. After you had been in the association a year or two years didn't they send you a notice that your dues to the association were in arrears?

A. No, sir.

10

Q. You didn't get that kind of a notice?

A. No, sir.

Q. Well, didn't they pay the taxes on the property down there for you?

A. No, sir.

Q. Sure of that?

A. I am sure of it, I ought to know.

Q. Well, didn't you send the bill for those taxes to the association?

A. No, sir, I didn't; I didn't know the association did. 20

Q. Did you make any investigation to find out ——

A. No, sir.

Q. Just wait until I ask you the question. — whether this mortgage was on record or not?

A. No, sir.

Q. Didn't you go to the clerk's office to find out about this mortgage?

A. I didn't go, my son-in-law went.

30

Q. Well, you found out from your son-in-law that this mortgage was on record, didn't you?

A. I found out there was a mortgage there; yes, sir.

Q. For \$900?

A. Yes, sir.

Q. Was that the first you knew about there being a mortgage of \$900?

Lewis Lummis—Cross

A. Yes, sir; that was the first.

Q. You thought it was for seven hundred?

A. Yes, sir.

Q. And you found when you went there it was for nine hundred?

10 A. Yes, sir.

Q. Well now, when you found that the mortgage instead of being for seven hundred and fifty was for nine hundred did you make any complaint to the association?

A. No, sir.

Q. Didn't go near them?

A. No, sir.

Q. Well, you knew the members of the board of directors there, didn't you?

20 A. No, sir, I didn't.

Q. You knew Mr. Stetser, didn't you?

A. Who?

Q. Mr. Stetser or Mr. Jessup?

A. I didn't know any of the building and loan officers, not one.

Q. You are acquainted around Bridgeport?

A. Sir?

Q. You are acquainted around Bridgeport?

A. Yes, sir; I am acquainted around there.

30 Q. Well now, when you found that the mortgage was on record did you go to see Mr. Adamson about it?

A. I had supposed—to see him?

Q. Did you go to see him?

A. I seen him lots of times.

Q. Did you complain to him that the mortgage was for more than it ought to have been?

Lewis Lummis—Cross

A. Yes, sir.

Q. What did you tell him?

A. "I will be down, I will make it right with you."

Q. That is what he said to you?

A. Yes.

Q. Now, can you remember when it was—the first 10
time you went to see him after you discovered that this
mortgage was on the record?

A. No, sir.

Q. Can't remember that?

A. No, sir.

Q. Let me show you Exhibit C2: Is that your hand-
writing?

A. No, sir.

Q. That isn't your handwriting?

A. No, sir, it don't look so to me although I have 20
got no glasses on.

Q. Well, you remember signing the mortgage, don't
you?

A. Yes, sir, bond and mortgage.

Q. Did you read it over?

A. No, sir, I can't read that.

Q. Why didn't you read it over before you signed
it?

A. I couldn't read it.

Q. Can't you read this? 30

A. No, sir, I cannot.

Q. Just try it; just read that.

A. I can't read it, it is no use for me to undertake
it.

Q. Sure you can't do it?

A. Yes, sir, I am sure I can't do it.

William Flowers, Jr.—Direct

Q. Do you read the newspapers?

A. No, sir.

Q. If anyone writes you a letter can't you read it?

A. You can ask my wife if I can read a letter.

Q. I don't want to ask her, I am asking you.

10 A. I come here to tell the truth.

Q. I am not questioning that, Mr. Lummis, at all; don't get excited about it. Do you look after your wife's business in any way for her?

A. Sir?

Q. Do you look after your wife's business in any way for her?

A. Yes, sometimes I do and sometimes I don't, sometimes she does her own business.

20

Mr. Miller: We rest.

WILLIAM FLOWERS, JR., a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

30 By Mr. Swackhamer:

Q. Mr. Flowers, where do you live?

A. Paulsboro.

Q. What is your business?

A. General merchant.

Q. Have you any connection with the Paulsboro Loan and Building Association?

William Flowers, Jr.—Direct

A. I have.

Q. What is it?

A. Secretary.

Q. How long have you been the secretary?

A. Since July, 1911.

Q. Was that before or after the death of Mr. Adamson? 10

A. After the death.

Q. Did you have any connection with the association in the lifetime of Mr. Adamson?

A. Only as a stockholder.

Q. Now, did you know anything about these transactions?

A. None whatever.

Q. Prior to your becoming secretary of the association?

A. None whatever. 20

Q. Have you got charge of the books of the association?

A. I have.

Q. Have you examined them?

A. I have.

Q. Do you find any reference to this transaction in the books of the association?

A. I do.

Q. Will you refer to the books and show what they are? 30

A. I find at the directors' meeting —

Q. First, minutes, quoting from what page? Just tell us what book this is, Mr. Flowers.

A. This is a minute book.

Q. Of the association—in the handwriting of whom?

William Flowers, Jr.—Direct

A. Yes, sir; of the former secretary, W. J. Adamson.

Q. Well now, what page do you refer to?

A. Page 189, November 19th, 1907.

Q. Now, read what the minute is.

A. The part pertaining to this?

- 10 Q. "On motion \$900 was sold to Annie E. Lummis at ten cents. Draft ordered on the treasurer for the amount when the committee reports. On motion draft was drawn on the treasurer for \$900, Annie Lummis loan."

Q. Ten cents, at a premium of ten per cent?

A. At a premium of ten cents.

By the Vice-Chancellor:

- 20 Q. Per share, does that mean, or for the whole thing?

A. Per share.

By Mr. Swackhamer:

Q. Now, do you find any other reference?

A. Page 217, January 18th, 1910.

Q. That is page two hundred and what?

A. Two hundred and seventeen.

Q. Of the same book?

- 30 A. Yes. "On motion the following bills were ordered paid,"—among them, "Annie Lummis, for taxes, \$7.55."

Q. Well now, do you know anything about the custom of the association in paying the taxes of the borrowers? Is it a custom of the association to do that?

A. It is, yes.

Q. Universally?

William Flowers, Jr.—Direct

A. I can't answer that only for our own association.

Q. I mean ever since you have been there?

A. Yes.

The Vice-Chancellor: He has only been there since this transaction.

10

A. (Continuing) I have borrowed on a loan myself and they have always paid me my taxes for the loan five or six years.

Q. Then you have been a borrower yourself and they have paid your taxes?

A. Yes, sir.

Q. Does that minute that you have there show the payment of taxes for anybody else besides Annie Lummis?

20

A. Yes, sir. Mary Adamson, Emma Williams, Bruno Flach, Orville Mattson, Annie Lummis, Enos W. Bates, James O'Reilly, W. H. Flowers, Jr., Martin Roonoe and Mary Myers.

Q. Now, what other minute have you that refers to this transaction?

A. Page 226.

Q. Of the same book?

A. Same book, October 18th, 1910: "On motion the secretary was instructed to collect back arrearages of George A. Adamson, Mary E. Neusir, Annie Lummis, Samuel Reeves, Benjamin Gill." 30

Q. Now, what is the next reference?

A. That is all I believe I have.

Q. Are there any other books that you have that refers to the transaction besides this book?

A. Yes.

William Flowers, Jr.—Direct

(Said book offered and admitted in evidence and marked Exhibit C4.)

Q. Now, what other book have you?

A. I have here secretary's cash-book, showing the
10 receipts.

By the Vice-Chancellor:

Q. This was kept by Mr. Adamson?

A. Yes. Receipts and disbursements. November,
Annie E. Lummis —

Q. That is 1907, November?

A. Yes, November, 1907, Annie E. Lummis, war-
rant number 301, loan on mortgage, \$900.

Q. That is put down there as a disbursement, as
20 money paid?

A. Paid out as a loan on mortgage.

Q. Have you got the warrant?

Mr. Swackhamer: We have the warrant; we will in-
troduce that.

The Vice-Chancellor: Just as you choose, but I
thought while we have the item let us follow it out to
see where it went to.

30 A. I have the warrant.

By Mr. Swackhamer:

Q. You look at it now and tell me whether that is
the warrant that was issued.

By the Vice-Chancellor:

William Flowers, Jr.—Direct

Q. Is that warrant number 301?

A. Number 301, yes.

Q. What does it show? Just state so that the record will have it.

A. Draft on the treasurer to pay to Annie E. Lummis \$900 in payment of loan, signed by Dayton Corson, 10 president, William J. Adamson, secretary.

Q. How is it endorsed?

A. "Accepted and payable at the First National Bank, R. A. Jester, treasurer," no endorsement.

The Vice-Chancellor: Have you got the evidence that it was ever paid?

Mr. Swackhamer: It did not go through bank, no.

20

The Vice-Chancellor: Never been used, then?

Mr. Swackhamer: No; our theory is it was turned back by Adamson to the association as so much cash. He had the warrant which he could have turned over to Mrs. Adamson and given her the money and had her pay for the work that he did or he could retain the voucher and go ahead and do the work and put the voucher into the association for so much money, which he did. 30

The Vice-Chancellor: If he turned this voucher into the association as so much money, we will say, I cannot see yet how the association has ever parted with this money unless this has been used.

William Flowers, Jr.—Direct

Mr. Swackhamer: We are attempting to show that it was used by Adamson with the association in the settlement with the association, and he must have had some authority to use it in that way or he could not have done it.

10

By Mr. Swackhamer:

Q. Now, what do you find at that point, Mr. Flowers?

A. In this book?

Q. Yes. Is there anything further?

A. No, excepting that there are taxes.

The Vice-Chancellor: Well, that appears in the
20 cash-book as cash paid out, does it?

Mr. Swackhamer: Yes, sir.

Mr. Avis: Not in the cash-book of the treasurer, if your Honor please.

By the Vice-Chancellor:

Q. Is this the cash-book of the treasurer?

30 A. No. Have you the number of that warrant for taxes? "January 18th, disbursements, 1910, Annie E. Lummis, warrant number 601, taxes, \$7.80."

By Mr. Swackhamer:

Q. Now, any other book that you have?

A. The roll book where we keep the account of the

William Flowers, Jr.—Cross

stockholders. The 35th series. "Annie E. Lummis, pledge, shares, number 9; loan, \$900," and a payment made in November, 1907, of \$9 for dues. That is about all.

By the Vice-Chancellor:

10

Q. Is that a charge or a payment?

A. There is a charge made in November of dues, \$9, and a credit also the same month of dues received, \$9.

Q. Does it show in your cash-book of that date?

A. Yes, it would show only in the total of dues, receipts of the evening.

By Mr. Swackhamer:

Q. Is that all the minutes of the association that you find, those that you have read, or is there any other book here? 20

A. That is all the books that I have.

(Said voucher marked Exhibit C5, cash-book Exhibit C6 and roll-book Exhibit C7.)

Cross-examination.

30

By Mr. Avis:

Q. Now, Mr. Flowers, in whose handwriting is the entry in the roll book, the name of Annie E. Lummis?

A. The secretary.

William Flowers, Jr.—Cross

Q. And who was the secretary at that time?

A. William J. Adamson.

Q. In whose handwriting is the entry in the secretary's cash book—do you call it?

A. Yes.

10 Q. Secretary's cash book, is that what it is called, this other book?

A. Yes.

Q. In whose handwriting is that?

A. In the secretary's.

Q. And in whose possession was that book at that time and who was secretary at that time?

A. William J. Adamson was secretary but I could not say about the book.

Q. Where did you get the book from?

20 A. From the office of the building and loan association.

Q. Where was that?

A. Thirty-four East Broad Street.

Q. Is that William J. Adamson's office, too?

A. Yes.

Q. So that the building association office at that time was the office occupied by William J. Adamson prior to his death as a real estate office, was it not?

30 A. I don't think so.

Q. Well, the same building?

A. The same building but the rear room was the office of the association.

Q. But that rear room you know from personal knowledge was never locked up, was it, when Mr. Adamson's office was open?

A. Not that I know of.

William Flowers, Jr. —Cross

Q. So that when Mr. Adamson's office was open the back room communicated with his office and he went back and forth as he saw fit?

A. Yes.

Q. Now, will you refer to whichever book it was that had the items of money paid out for taxes and get the year 1911, the first year that you were secretary, and tell us how many members' taxes was paid by the association that year? 10

A. Nineteen hundred and eleven?

Q. Yes. That is the first year you were secretary. I don't know when it was paid.

Mr. Swackhamer: I don't see the purpose of this. It is confidential.

The Vice-Chancellor: What is the purpose of it? 20

Mr. Avis: The only purpose is to ascertain if it is the custom of the association to pay all taxes and then get the record of the mortgage loans standing on the books and see if the taxes were paid in each case.

The Vice-Chancellor: I cannot accept the custom further than the evidence goes. This witness has testified that the limit of his knowledge is a case where he made a loan and they paid the taxes, that is all he knows. 30

Mr. Avis: Very well, sir; that is all.

Robert A. Jester—Direct

ROBERT A. JESTER, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Swackhamer:

10

Q. Mr. Jester, whereabouts do you live?

A. Paulsboro.

Q. And what is your business?

A. General store.

Q. And are you connected with the Paulsboro Loan and Building Association?

A. I am.

Q. How long have you been connected with it?

A. About ten years.

20

Q. Were you its treasurer during the period that William J. Adamson was secretary?

A. Yes.

Q. Did you keep any books as treasurer?

A. Yes.

Q. Have you the books here?

A. Yes.

Q. Will you look at the books and tell me whether there is any minute there in relation to this transaction, and, if so, what is it?

30

A. "November 19th, 1907. Annie E. Lummis, draft number 301, \$900."

Q. That is on page what?

A. Page 49.

Q. What is this book called?

A. This is the treasurer's book.

Q. Treasurer's book?

A. Yes.

Q. What kind of a book?

A. Cash book, receipts and disbursements.

Q. And this appears as what?

A. As a disbursement.

10

The Vice-Chancellor: That shows a draft was issued?

Mr. Swackhamer: Yes, sir.

By the Vice-Chancellor:

Q. The entry on your book shows the draft was issued?

A. Yes.

20

Q. It doesn't show that it was paid by the bank or whether it was paid by the bank?

A. No; it was issued.

Q. Simply shows the issuance of the warrant?

A. Yes.

Q. That is the warrant that we had here a moment ago, is it?

Mr. Swackhamer: Yes, that is the same warrant.

30

Q. It is not claimed that that warrant ever went through bank, is it?

A. It did not.

Mr. Swackhamer: No.

(Said book marked Exhibit C8.)

Robert A. Jester—Direct

By Mr. Swackhamer:

Q. Do you know anything about this transaction further than is disclosed by this book?

A. No.

10 Q. You do not?

A. No, not positively.

By the Vice-Chancellor:

Q. You know you issued the warrant and that is as far as your information goes, I suppose?

A. Yes, no personal knowledge.

By Mr. Swackhamer:

20 Q. Now, have you any other book besides the one that you have just referred to —

A. No.

Q. Showing any history of this transaction?

A. I haven't.

By the Vice-Chancellor:

Q. In issuing that warrant would you, in the regular course of your practice, turn it over to the secretary?

30 A. Yes.

By Mr. Swackhamer:

Q. I show you a book here called the secretary's —

A. Secretary's receipt book.

Q. Secretary's receipt book, and I note that on the

Robert A. Jester—Cross

eleventh month 19th, 1907, your name is signed there to a receipt for—will you find the one for \$900 there? You are more familiar with the book than I am, perhaps.

A. This is evening receipts, it wouldn't appear here separately.

The Vice-Chancellor: He says he turned the warrant 10
over to the secretary.

Q. This is the receipt then for the ——

A. The evening's receipts.

Q. Signed by you?

A. Yes, sir.

Q. R. A. Jester, treasurer?

A. Yes, sir; moneys received from the secretary.

(Said book marked Exhibit C9.)

Cross-examination.

20

By Mr. Avis:

Q. Mr. Jester, in whose handwriting is the entry in this treasurer's book of Annie E. Lummis, 301, \$900?

A. To the best of my knowledge William J. Adamson's.

Q. Did you say that after that voucher was accepted by you you delivered it to Mr. Adamson, for \$900, the 30
voucher for \$900?

A. Yes.

Q. When did you next see it, Mr. Jester?

A. I don't know that I remember seeing it until to-day, I have no recollection of it.

Q. Never came back to you after that so far as you know?

Edward Henry Maurer—Direct

A. So far as I know.

Q. What is the custom with relation to these vouchers when they are paid at the bank? Are they returned to you?

A. They are.

10 By the Vice-Chancellor:

Q. And this other voucher, 601, being paid by the bank was, of course, returned to you?

A. Yes, that has been returned to me.

By Mr. Avis:

Q. Came back to you?

A. Yes.

Q. This other one did not come back to you in the
20 ordinary course of business?

A. No, sir.

By the Vice-Chancellor:

Q. Not at all so far as you remember?

A. Not at all so far as I remember.

30 EDWARD HENRY MAURER, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Swackhamer:

Q. Where do you live now, Mr. Maurer?

A. I live in Elizabeth, New Jersey.

Q. Are you now connected with the New Jersey Banking and Insurance Department?

Edward Henry Maurer—Direct

A. No, sir.

Q. How long since you were connected with it?

A. Sometime in February last.

Q. How long had you been with the banking and insurance department?

A. Perhaps seven years prior to that.

Q. Have you had experience in building association business? 10

A. Yes, sir.

Q. What was your particular duties?

A. I was an examiner of the banking department of insurance.

Q. Did you examine the Paulsboro Loan and Building Association?

A. Yes, sir.

Q. Do you remember anything about this bond and mortgage? 20

A. Yes, sir.

Q. Was it counted by you as an asset of the association?

A. Yes, sir.

Q. Do you know whether the voucher here marked Exhibit C5 has been accepted? It was signed by the president and secretary, accepted by the treasurer and has not been endorsed. Now, do you know whether it is customary or whether it ever happens that those vouchers are not endorsed by the person to whom they are made payable for building and loan association loans? 30

The Vice-Chancellor: I do not think that any custom of that kind can bind the payee of one. I do not see how it can be possible.

Edward Henry Maurer—Direct

Mr. Swackhamer: I would be inclined to think that, myself, but this is rather a singular transaction. I understand that it sometimes does happen.

10 The Vice-Chancellor: If you can show that this was turned back to the treasurer of the association as so much cash that is permissible, but how are you going to bind the defendant by any custom of the association to authorize the secretary to appropriate to himself in his own peculiar ways, under any method of his own, a warrant drawn to my order? I do not see how that can be done.

Mr. Swackhamer: Well, I am free to say that the proper course is to have the warrant endorsed by the person to whom it is made payable.

20 The Vice-Chancellor: I feel quite convinced that it cannot be introduced to bind the defendant. I would like to ask the witness a question at this time.

By the Vice-Chancellor:

Q. How were you enabled to treat this mortgage as an asset of the association if you did not find that the voucher which was issued for the mortgage had been paid and returned as a paid voucher to the treasurer of the association?

30 A. Do you want me to answer that, Judge?

O. Yes.

A. Well, this transaction happened in 1907—my examination was made sometime in August or September, 1911—altogether prior to the date of the examination, the date of the examination usually goes back a year or so, this transaction happened long before, that could not have been remedied at that time.

Edward Henry Maurer—Cross

Q. Then you simply treated it as an asset of the association because you found it there duly recorded?

A. No; I requested from the treasurer his assets so that I could check them up against the loans. Finding that this loan had been passed in a proper way on the minutes I asked him whether it was a loan in connection with all the others, he said it was, and it was handed to me and I reported as a fact that it was an asset of the association. 10

Q. But you didn't trace it up to see whether the money actually went to the payee or where it went?

A. No, I didn't, not at that time.

Cross-examination.

By Mr. Avis:

O. I would like to ask, unless Mr. Swackhamer objects to it, it probably is not cross-examination,—I would like to ask whether or not an examination was made of the stock book stubs to find out whether any stock had been issued to Mrs. Lummis? 20

A. Well, that I can't say positively about; if there was it was examined; all the books it were possible to get were examined. It is not the custom of any association to always stick to one general rule, it never has been until this law was rigidly enforced and as a matter of fact 30 some of those things are not enforced until several years after, the department has been unable to do it, as has been the case in the State Mutual and other similar associations that do business in an irregular way, different way than they should.

William Flowers, Jr.—Recalled—Direct

Q. I am asking as a matter of fact not for what an association does. I am asking as a fact whether or not you in your examination of this matter attempted to ascertain whether or not there was any stubs showing the issuance of stock in this particular case?

10 A. Now, I don't recall whether there is any issue at all to anyone, if so it has been abandoned because the by-laws of the association say that the book itself shall be the evidence.

Q. Was there any book issued?

A. Yes, I remember seeing the book.

Q. What was done with that book?

A. That I don't know; that book was among the rest of the books in the office.

20 Q. Whom did you turn them over to after you got through with them?

A. I had nothing to do with them except they came in my possession with all the other books of the association.

Q. Whom did you turn them over to?

A. I imagine Mr. Flowers, or if he did not take them they are still at that office.

30 WILLIAM FLOWERS, JR., recalled.

By Mr. Swackhamer:

Q. There has been an inquiry about the stubs, the stock. Do you know anything about that?

A. Why, I have found an old book but no present issue has been made I guess for the last—oh, several years,

William Flowers, Jr.—Recalled—Direct

nor no stock certificates were issued.

Q. Have you brought here to present in this case all the evidence we have with relation to this transaction?

A. All that I know.

Q. Do you know anything about any book of Annie E. Lummis?

10

A. No.

Q. Have you ever seen one?

A. I can't say that I have; we have got a bunch of them but I have no recollection of Annie E. Lummis' book.

By the Vice-Chancellor:

Q. Neither a book nor stock certificate?

A. No. As secretary I have never had a stock certificate, never seen one brought in that I remember, I never issued one.

Q. Don't your association issue shares of stock to parties who subscribe for them?

A. No.

By Mr. Swackhamer:

Q. You haven't done that since you have been there, you say?

A. And it has not been done as I say for—the time I guess would be four or five years, according to the old book I see some old stubs there, nothing issued though and I have never issued any.

30

No cross-examination.

Mr. Swackhamer: We rest.

William Flowers, Jr.—Recalled—Direct

The Vice-Chancellor: I would like to know more about these evening receipts. That is in evidence, isn't it?

Mr. Swackhamer: Yes.

10

WILLIAM FLOWERS, JR., recalled.

The Witness: The evening's receipts?

By the Vice-Chancellor:

Q. Yes. That is in evidence?

A. Yes.

Q. How much was it?

20 A. One thousand two hundred and twenty dollars and eighty-one cents for dues and so forth received, and the drafts paid out includes this \$900. Now, sometimes circumstances has occurred with me when I have turned the amount of a draft to the treasurer as money, taken the treasurer's receipt probably for the drafts.

Q. I do not see the connection between that draft and the evening's receipts.

30 Mr. Ayis: This is back in 1907. Mr. Flowers was not secretary and knew nothing about the association at that time, as I understand it.

Q. I thought perhaps you could explain to me what you mean by the connection between that draft and the amount of the evening's receipts?

A. The evening's receipts being twelve hundred the

Robert A. Jester—Recalled—Direct

secretary would give that to the treasurer for nine and give him three hundred dollars, the difference.

Q. That would be an unwise transaction, it would bind nobody but the association and Adamson, the defendant would not be charged with that if that actually occurred, as sometimes it might have occurred. That voucher ought to have gone back to the treasurer, ought it not? 10

A. This has went back to the treasurer.

Q. He says it was never returned to him.

A. I think the treasurer is mistaken there, because I have through the examiner—the examiner took this voucher from the treasurer along with a lot of other vouchers, and the reason that I have got it in my possession is, the examiner mailed me a half dozen or so vouchers, —

Q. He says he has never seen it until today. 20

A. And I think probably the examiner could answer that question; he got it through the treasurer.

The Vice-Chancellor: Let him come and testify, if he wants to correct anything he said. I want to get the truth.

ROBERT A. JESTER, recalled.

30

By Mr. Swackhamer:

Q. Do you remember getting that voucher?

A. I remember signing this voucher and at the time of this Lummis transaction, but when I said that I had never seen it, that I hadn't seen it I must have been mis-

Robert A. Jester—Recalled—Direct

taken. These were all turned over to me and my books show that I have received them as money, received this with others as money received.

By the Vice-Chancellor :

10

Q. Get the books and let me see where that shows.

A. November 19th, here is my receipts, receipts of the evening (indicating), \$1,220.81, that is the date, and this \$900 is included —

Q. How can you tell?

A. In that receipt.

Q. Well, how can you tell?

A. I have no positive way of telling.

20

By Mr. Swackhamer :

Q. It appears on the other side of the account?

A. It appears and balances up.

The Vice-Chancellor: I do not understand how he can tell that this nine hundred dollar voucher is a part of that eleven or twelve hundred dollars of the receipts of the evening, that is a part that has not been explained at any time to me.

30

The Witness: Well, the amount balanced up.

By the Vice-Chancellor :

Q. Well, of course the amounts balance up, but how can you tell that that voucher forms a part of that \$1,200 receipt?

William Flowers, Jr.—Recalled—Direct

A. What led me astray was that these examiners got these vouchers from me and I didn't know that they had them.

Q. Are you able to testify that that nine hundred dollar voucher forms a part of the twelve hundred and twenty dollars receipts of that evening?

10

A. I believe it did.

Q. You don't know it?

A. Not positively, no.

WILLIAM FLOWERS, JR., recalled.

By the Vice-Chancellor:

20

Q. Mr. Flowers, are you able to testify that that nine hundred dollar voucher forms a part of the twelve hundred and twenty dollars receipts?

A. No, sir.

BOTH SIDES REST.

30

Complainant's Exhibits

EXHIBIT C1.

KNOW ALL MEN BY THESE PRESENTS, That I Annie E. Lummis of Bridgeport New Jersey am held and firmly bound unto "THE PAULSBORO LOAN AND BUILD-
10 ING ASSOCIATION," a corporation existing under and by virtue of the laws of the State of New Jersey, of the Borough of Paulsboro, in the County of Gloucester and State of New Jersey, in the sum of Eighteen Hundred Dollars lawful money of the United States of America, to be paid to the said "THE PAULSBORO LOAN AND BUILDING ASSOCIATION," its certain attorney, successors or assigns; to which payment well and truly to be made I do hereby bind myself my Heirs, Executors and Administrators, jointly, severally, and firmly by these presents.
20 Sealed with my Seal. Dated the twentieth day of November in the year of our Lord one thousand nine hundred and seven

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden Annie E. Lummis her Heirs, Executors, Administrators, or any of them, shall and do well and truly pay, or cause to be paid unto the above named "THE PAULSBORO LOAN AND BUILDING ASSOCIATION," its certain attorney, successors or assigns, the interest on the principal sum of Nine Hundred Dollars together with the regular monthly installments of 50 cents
30 per share, on nine shares in the thirty fifth series of the capital stock of said Association now owned by Annie E. Lummis on the third Tuesday of each and every month hereafter, the said interest at the rate of one half of one per cent. monthly, and every month hereafter, until the surplus assets of said Association shall be suf-

Complainant's Exhibits

ficient over and above its debts and liabilities to pay on each unredeemed share in said thirty fifth series the sum of One Hundred Dollars, and in case the said Annie E. Lummis shall neglect to pay the said regular monthly installments of 50 cents per share, on each share of stock aforesaid for the space of six calendar months, or in case six months' interest, or that amount of interest at the rate aforesaid, on the said principal sum of Nine Hundred Dollars shall be at any time in arrears and unpaid, if the said Annie E. Lummis, shall immediately pay to the said Association, its certain attorney, successors or assigns, the whole of said principal sum of Nine Hundred Dollars with interest thereon as aforesaid, without any fraud or further delay; then the above obligation to be void, or else to be and to remain in full force and virtue. 10

MRS ANNA E. LUMMIS [SEAL] 20

Signed, Sealed and Delivered in the presence of
To Esq.,

Or any other Attorney of any Court of Law in New Jersey or elsewhere:

This is to authorize you to appear for me Annie E. Lummis in any court of competent jurisdiction, in case of the breach of the condition of the above Bond, and confess judgment for the penalty therein contained as of the last or any subsequent term, with cost of suit and release of errors; and this shall be your sufficient warrant. WITNESS my hand and seal this twentieth day of November Anno Domini one thousand nine hundred and seven 30

MRS ANNIE E. LUMMIS [SEAL]

Signed, Sealed and Delivered in the presence of

Complainant's Exhibits

EXHIBIT C2.

THIS INDENTURE, made the 20th day of November in the year of our Lord one thousand nine hundred and seven BETWEEN Lewis Lummis and Annie E his wife of Bridgeport, New Jersey of the first part, and "THE PAULSBORO LOAN AND BUILDING ASSOCIATION," a corporation existing under and by virtue of the law of the State of New Jersey, of the Borough of Paulsboro, in the county of Gloucester and State of New Jersey, party of the second part:

WHEREAS, the said party of the first part in and by one certain obligation or writing obligatory, under their hands and seals duly executed, and bearing even date herewith, stand bound unto the said party of the second part, in the sum of Eighteen Hundred Dollars lawful money of the United States of America, conditioned for the payment of the interest on the principal sum of Nine Hundred Dollars together with the regular monthly installments of 50 cents per share, on nine shares in the thirty fifth series of capital stock of said Association now owned by said party of the first part on the third Tuesday of each and every month thereafter, the said interest at the rate of one half of one per cent. monthly, and every month thereafter, until the surplus assets of said Association shall be sufficient over and above its debts and liabilities to pay on each unredeemed share in said thirty fifth series the sum of One Hundred Dollars, and in case the said party of the first part shall neglect to pay the said regular monthly installments of 50 cents per share, on each share of stock aforesaid, for the space of

Complainant's Exhibits

six calendar months, or in case six months' interest, or that amount of interest at the rate aforesaid, on the said principal sum of Nine Hundred Dollars shall be at any time in arrears and unpaid, if the said party of the first part shall immediately pay to the said Association, its certain attorney, successors or assigns, the whole of said principle sum of Nine Hundred Dollars with interest thereon as aforesaid, without any fraud or further delay, as in and by the said recited obligation and condition thereof, relation to the same being had, may more fully and at large appear; NOW THIS INDENTURE WITNESSETH, that the said parties of the first part, as well for and in consideration of the aforesaid debt or sum of Nine Hundred Dollars and for the better securing the payment thereof unto the said party of the second part, and its assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid to the said parties of the first part, by the said party of the second part, at or before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm unto the said party of the second part, is successors and assigns, ALL that certain lot tract or parcel of land situate in the township of Logan in the county of Gloucester and State of New Jersey, bounded and described as follows:

Beginning in the public road leading through South Bridgeport at the corner of Peter Carey's lot and twenty eight links from a stone in said road at the corner of Merrick Stanton's lot and John D. Norton's lot and runs

Complainant's Exhibits

- 10 (1) South fifteen minutes, East three chains and thirty six links along the line of said lot of John D. Norton in said road to the line of a twenty foot lot of land of said Peter Torbert thence (2) along said land of Peter Torbert East two chains and seventy six links to a corner, thence (3) still along land of Peter Torbert North thirty minutes West two chains and twenty six links to the corner of Peter Carey's lot thence (4) North sixty eight degrees and thirty minutes West two chains and ninety nine links to the place of Beginning.

Being the same premises Peter Torbert and wife by deed dated January 25, 1904 and recorded in the clerks office of Gloucester County in Book 197 of Deeds folio 189 &c granted and conveyed unto said Annie E. Lummis in fee.

- 20 TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining, and the reversion reversions, remainder and remainders, rents, issues and profits thereof:

- 30 TO HAVE AND TO HOLD the said hereditaments and premises above granted, or intended so to be, with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

PROVIDED ALWAYS, NEVERTHELESS, that if the said party of the first part, their heirs, executors, administrators or assigns, do and shall well and truly pay or cause to be paid unto the said party of the second part, its certain attorney, successors or assigns, the said interest, to-

Complainant's Exhibits

gether with the said installments as aforesaid, or in default of said payments, shall pay the whole of said principal sum of Nine Hundred Dollars on the days and times hereinbefore mentioned and appointed for the payment thereof, together with lawful interest for the same, in like money, in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made, for or in respect of any taxes, charges or assessments whatsoever, that then and from thenceforth, as well this present Indenture and the estate hereby granted, as the said Obligation above recited, shall cease, determine and become absolutely null and void to all intents and purposes, anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

10

AND it is also agreed by and between the parties to these presents, that the said parties of the first part shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire

20

in some safe, responsible insurance company or companies, to an amount not less than dollars, and assign the policy or policies and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium or premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of said bond or obligation, and secured by these presents, to be payable on demand with legal interest.

30

Complainant's Exhibits

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals. Dated the day and year first above written.

10

LEWIS LUMMIS [SEAL]

MRS ANNIE E LUMMIS [SEAL]

Signed, Sealed and Delivered in the presence of
W. J. ADAMSON

STATE OF NEW JERSEY,
COUNTY OF GLOUCESTER,

ss.

20 BE IT REMEMBERED, that on this twentieth day of November in the year of our Lord one thousand nine hundred and seven before me, a Commissioner of Deeds personally appeared Lewis Lummis and Annie E his wife who, I am satisfied, are the grantors mentioned in the within Indenture, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed; and the said Annie E. Lummis being of full age, on a private examination apart from her said husband, before me further acknowledged that she
30 signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

WM. J. ADAMSON
Commissioner of Deeds.

*Complainant's Exhibits*EXHIBIT C₃.

Paulsboro, N. J., 11-20 1908.

To the President and Directors of the

PAULSBORO LOAN AND BUILDING ASSOCIATION OF 10
PAULSBORO.

Gentlemen:

Having bid for a loan on Nine Shares of the Stock of the Association I offer you the property herein described by me, as security for the payments in accordance with the Constitution and By-Laws.

MRS ANNA E LUMMIS

The property consists of a lot of ground situated No. 10
South Bridgeport N. J., Street, in the
of The size 20
thereof is 1 acre on which is erected one frame dwelling
house the size of which is built and
finished in the year

The property is subject to
Insured perpetually in the office of the
in the sum of

The property is rented, and brings \$
per annum.

N. B.—Send this to the chairman of the Committee on 30
Loan on or before the day of

A. D., 189

Complainant's Exhibits

Paulsboro, N. J., 11-20, 1907.

To the President and Directors of the

PAULSBORO LOAN AND BUILDING ASSOCIATION OF
PAULSBORO.

10 Gentlemen:

We have viewed the property described in the application of Mrs. Annie E. Lummis as Security for a Loan on Nine Shares and in our opinion a Loan upon Nine Shares can be safely made thereon. We therefore recommend that a Loan of nine hundred Dollars, upon 9 Shares of Stock, be made to Mrs. Annie E. Lummis upon the property described by him in the foregoing description.

20 A Policy of Insurance for the sum of nine hundred dollars being first assigned by her to the Association as collateral security for the repayment of said Loan. And also

HENRY S. ADAMSON
ISAAC STILES

Committee.

Paulsboro, N. J., 11-20, 1907.

To W J Adamson, Esq.

30 Solicitor of the PAULSBORO Loan and Building Association of Paulsboro.

Sir:—You are hereby directed to examine the Title—make searches—draw Bond and Mortgage for Nine hundred Dollars, and other necessary Papers, and if all proves correct, attest by signing Report below.

President.

WILLIAM J. ADAMSON *Secretary.*

Complainant's Exhibits

To Mr. William J. Adamson

Secretary of the PAULSBORO Loan and Building Association of Paulsboro.

I certify, that I have caused Searches to be made in the proper offices, and that there are no incumbrances on the Real Estate described in the foregoing application, except as therein mentioned, and that the said Annie E. Lummis has a good and perfect Title to the said Real Estate described by him, and that he has executed a Bond and Mortgage to the PAULSBORO LOAN AND BUILDING ASSOCIATION OF PAULSBORO, in the sum of nine hundred dollars and assigned a Policy of Insurance on the same to said Association for the sum of

Paulsboro, 11-20, A. D. 1907.

WILLIAM J. ADAMSON *Solicitor.*

[ENDORSED]

PAULSBORO

LOAN AND BUILDING ASSOCIATION
Of Paulsboro, N. J.

10
20

REPORT
of the

Committee on Property
offered as security by
Mrs. Annie E. Lummis

30

Complainant's Exhibits

EXHIBIT C4.

No. 601

Paulsboro, N. J., 1-18, 1910

Treasurer of the

PAULSBORO LOAN AND BUILDING ASSOCIATION

Pay to the order of John S. Truitt Collector Seven

10 80-100 Dollars in payment of Taxes Annie Lummis

DAYTON CORSON *President*WILLIAM J. ADAMSON *Secretary*

\$7.80

ACCEPTED

And Payable at

FIRST NATIONAL BANK

Paulsboro, N. J.

By R. A. JESTER *Treasurer*

(Endorsed on Back) :

20

JOHN S. TRUITT

Collector

Pay to the Order of

Any Bank, Banker or Trust Co.

(All Previous Endorsements Guaranteed)

MUTUAL TRUST COMPANY,

Philadelphia.

J. S. TRUITT, *Sec'y & Treas.*

All Prior Endorsements Guaranteed,

Pay Any Bank or Banker,

30

Or Order.

Jan 27 1910

THE FOURTH STREET NAT'L BANK

Of Philadelphia, Pa.

D39

R. J. CLARK, *Cashier.*

Complainant's Exhibits

EXHIBIT C5.

No. 301 Paulsboro, N. J. 11-19, 1907
 Treasurer of the
 PAULSBORO LOAN AND BUILDING ASSOCIATION
 Pay to the order of Annie E. Lummis Nine hundred 10
 Dollars in payment of Loan

DAYTON CORSON *President*
 WILLIAM J. ADAMSON *Secretary*

\$900.

ACCEPTED
 And Payable at
 FIRST NATIONAL BANK
 Paulsboro, N. J.

By R. A. JESTER *Treasurer*

20

30

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New Jersey Court of Errors and Appeals

BETWEEN

PAULSBORO LOAN & BUILDING
ASSOCIATION,

Complainant-Appellant,
and

LEWIS LUMMIS, et ux.,
Defendants-Respondents.

APPEAL FROM CHANCERY.

BRIEF FOR RESPONDENTS

W. EARLE MILLER,
Solicitor for Respondents.

JOHN BOYD AVIS,
Of Counsel.

STATEMENT

This is a foreclosure suit. The complainants produce a bond and mortgage executed by the respondents. (Exhibits C-1 and C-2, pages 108-110). The defendants admit the signing of the bond and mortgage, but deny that they ever received any consideration for it, or that any money is now due from them to the appellant. William J. Adamson, now deceased, was at the time of executing the mortgage, Secretary of Appellant. He was also a contractor, and after some negotia-

tions with defendants, agreed to make repairs to a dwelling house in Bridgeport. The testimony shows that he was to be paid about five hundred dollars for completing these repairs. (P. 33, L. 23 and 24. P. 35, L. 11, 12 and 18. P. 66, L. 37. P. 67, L. 1-6). At the time this arrangement was made, there was a mortgage against the property for the principal sum of one hundred fifty dollars, held by a Mr. Talbot, and the agreement provided that Adamson should pay off this mortgage, and obtain the money necessary to make all the payments, from the appellant. An application for a loan was signed by Mrs. Lummis, and subsequently a bond and mortgage was signed by both of the respondents. These obligations were payable to the appellant. It does appear that neither of the respondents knew at the time of executing these papers, what amount they were drawn for. It appears by the testimony that this application was granted by the appellant, and eventually a warrant, or order, for nine hundred dollars, was drawn by the Association and countersigned by the Treasurer thereof (P. 119). This order was never endorsed by Mrs. Lummis, and never came to her hands. Neither did she ever receive any money on account of it, and knew nothing about it. No certificate was ever issued to Mrs. Lummis, neither was any book ever given to her. The books of the Association show that a payment of nine dollars was made on account of dues and interest, but Mrs. Lummis testifies that she did not pay it, and that she knew nothing about it. (P. 38, L. 22, &c.) It also appears that she was never even called upon to pay any dues until after the death of Mr. Adamson. (P. 36, 37 and 49). The first demand was made four or five years after the execution of the mortgage. (P. 41, L. 36). Mrs. Lummis understood from Adamson that she had not been put into the loan, and that the mortgage which she had signed would be cancelled. (P. 63, L. 5 to 10). No book was ever issued to Mrs. Lummis, and the Treasurer of the Association testified that he had never seen such a book. The

respondents defended on the ground that there was no consideration for the mortgage, and that they had never received anything from the Association. The appellants alleged that it, on January 18, 1910, paid taxes on the property to the amount of \$7.80. This check was payable to the Collector of the Township, (P. 118) and Mrs. Lummis testified that she had always paid the taxes on the property, and that so far as she knew or had ever been informed, the Association had not paid any taxes. (P. 54, L. 10 &c.) The appellant also alleges that Adamson, the Secretary of the Association, collected the nine hundred dollars from the Association, but the entry in the Treasurer's books of November 19, 1907, at which time it was alleged this was paid to Adamson, shows total receipts of twelve hundred twenty dollars and eighty-one cents, with nothing to indicate that this nine hundred dollar voucher was a part of those receipts, and the Treasurer, on being asked the question as to his knowledge of that fact, replied "I have no positive way of telling." (P. 106, L. 19). 10

William Flowers, Jr., the Secretary of the Association since the death of Mr. Adamson, also testified that he did not positively know whether or not the nine hundred dollars was included in these receipts. (P. 107, L. 13). 20

The respondents showed in their testimony that at least one hundred and fifty dollars had been paid to Adamson in cash on account of the contract price.

ARGUMENT

I.

As we view the situation, it makes little difference whether the mortgage was for seven hundred dollars, as testified to, or for nine hundred dollars, as it actually appears. The respondents received nothing as a payment on account of it, and cannot therefore be held responsible for anything. The assertion that the payment by the Building Association of the 30

seven dollars and fifty-five cents taxes, cannot in any way bind the respondents, because the testimony is that they knew nothing about its payment, and it was made directly to the collector. It does not appear why this payment was made, or how the Building Association knew that the taxes were due, or should be paid by it. It is a significant fact that the Association only paid taxes for one year, nineteen hundred and nine, when under the testimony it appears that it was their custom to pay taxes each year, and if this is a fact, why did not the
10 Association pay taxes for the years 1908 and 1910? Mrs. Lummis, (P. 53 and 54) testifies that she never sent any tax bill to the Association or asked them to pay taxes. It is true that the respondents knew of the recording of the mortgage a short time after it was signed, and that they protested to Mr. Adamson, the Secretary of Appellant, and that he assured them that the mortgage would be cancelled.

II.

We contend that it is the duty of the appellant to properly prove their case; that they must affirmatively show that
20 the stock was issued to the respondents, or that a book was issued to them, and that the respondents knew of this fact and received some benefit from the Association. It is admitted by the respondents that they expected to get a loan, but that Mr. Adamson never complied with his promises, and they having received no word from the Association, of any character, considered that they were under no obligations to the Association. It is true that Mr. Maurer testified that he saw the Lummis pass book, but there is no testimony to confirm
30 his statement in this matter, and neither the Secretary or Treasurer of the Association ever saw it nor was it produced at the hearing in this case.

III.

Counsel for appellant contends that respondents are in

laches in not commencing some proceedings to have the mortgage cancelled of record, and quotes some cases, none of which, in our opinion, apply to the case now being argued. If there is any laches which would create an estoppel in this case, it is surely on the part of the appellant. So long as the respondents were not disturbed in the possession of their property, there was no reason why they should initiate proceedings to cancel the mortgage. As soon as foreclosure was attempted, they asserted their rights, and have consistently insisted that there was no consideration for the mortgage. As hereinbefore stated, they protested to Adamson, the Secretary of the Association, that the mortgage should not be of record against their property, and received from him the assurance that it would be cancelled. There is nothing in this case which even intimates that Adamson could be considered as the agent of the mortgagors, and as such entitled to receive from the Association any money belonging to the mortgagors. If the money was paid over to him by the Association, as we view it, it was necessarily paid to him as the agent of the Association, and not as the agent of the respondents.

The argument of counsel for appellants that respondents would only be entitled to the balance due after payment of liens, is particularly inappropriate in this case, as it does not anywhere appear that the Association ever attempted to pay or satisfy any liens against the property, nor did it ever pay or offer to pay to the respondents any balance that might be remaining.

In none of the cases stated by counsel for appellant is there anything which indicates that a failure of a mortgagor to act affirmatively and apply for relief before the commencement of foreclosure proceedings will bar him from presenting the defense that has been set up in this case. Estoppel surely cannot apply when, as in this case, the defendants were assured by the Secretary of the complainant Association that no money had been advanced by the Association, and in view of

the fact, that no demand had been made on the defendant by the Association.

The cases cited by counsel for appellants all hold that acquiescence or intentional laches estops the complainant from the enforcement of a right. Nothing of that kind appears in this case.

"Acquiescence is an intentional failure to resist the assertion of an adverse right. *Babb vs. Sullivan*, 43 S. C. 436."

16 Cyc, 793 Note

10 The proof in this case is that the defendants never were called upon by the Association to pay any dues or interest on this mortgage until after the death of William J. Adamson in June, 1911, (P. 37 and 38). This was the first time according to the testimony, that the defendants ever knew that the Association claimed to have a mortgage against them, and the bill to foreclose was filed sometime in October of the same year, only a few months later. Under these circumstances no laches can be imputed to the defendants.

20 In this relation it is true that the minutes of the Association show that a notice was ordered sent to the defendants on October 18, 1910, (P. 87, L. 29) but the defendants deny that they ever received such notice, and no proof is introduced that such a notice was ever sent.

IV.

30 The burden of proof, as hereinbefore stated, is on the appellant to show that the nine hundred dollars, which they allege was paid as a consideration for the mortgage, was actually paid, and they have utterly failed in their proof to show that the Association ever paid the nine hundred dollars to anyone on account of this mortgage. The testimony of both the Secretary and the Treasurer is that they believe it was paid. Nobody is able to testify to it as a fact, and under these circumstances it would be impossible, as we view it, for any Court to say that the money had ever been actually paid.

The fact that the Building Association allowed this mortgage to be in arrears so far as dues and interest were concerned, for a period of about three years, is also an indication that no money was ever actually advanced on it, as the books of the Association show that from the time of crediting the first nine dollars, no payment was demanded until October 18, 1910. (P. 87, L. 29).

If this mortgage had been a valid obligation for money advanced by the Association, there would undoubtedly have been a demand made before the expiration of that period. 10 The mortgage itself (P. 111, L. 1) appears to provide for the collection of the total amount due on it, when the dues or interest are six months in arrears.

The case of Kirkpatrick vs. Winans, 16, N. J. E., 407, is in no wise parallel with this case. In that case the mortgagor had recognized the mortgage by paying interest on the full amount. In this case the respondents never recognized the appellant as a mortgagee, and the mortgagee allowed the claim to rest for about three years without making any demand or attempting to assert its rights. In the Winans case, 20 it was also proven that the two thousand dollars had been paid and allowed to the agent. In the case now being argued there is no competent testimony to show that the agent ever received the nine hundred dollars, or any part thereof.

In addition to this, in the present case, notice was continually given to the Secretary of the appellant, and respondents were assured that the Association had no claim against them.

The testimony of the Secretary of the Association is that the money was sold at a premium of ten cents per share, and there is no testimony which attempts to show that the premium was ever paid or demanded. (P. 86, L. 10 and 11). 30

Another significant fact is that the certificate of solicitor states that a policy of insurance on property had been assigned to Association (P. 117), and the mortgage itself, (P. 113) pro-

vides that property shall be insured against damage by fire, and policy assigned to Association. There is no proof that a policy was ever assigned, and this fact alone indicates that the loan was never completed, and that no money was ever advanced by the Association.

10 The argument of counsel for appellants, that the officers of the Association believed the bond and mortgage to be valid securities, is not tenable in this case, as there was no duty on the part of the respondents to notify the Association of the conditions, because as a matter of fact the respondents had no knowledge that any money had ever been drawn from the Association for their benefit, or to their credit.

The result is that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

W. EARLE MILLER,
Solicitor for Respondents.

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JOHN BOYD AVIS,
Of Counsel.

New Jersey Court of Errors and Appeals

BETWEEN	}		
PAULSBORO LOAN AND BUILDING			
ASSOCIATION,		APPEAL FROM	
Complainant-Appellant,		CHANCERY.	
and			
LEWIS LUMMIS, <i>et ux.</i> ,			10
Defendants-Respondents.			

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

The bill in this case is filed to foreclose a mortgage made by Annie E. Lummis and Lewis Lummis, her husband, to the Paulsboro Loan and Building Association. 20

Mrs. Lummis was the owner of a house and lot at Bridgeport, Gloucester County, and applied to one William J. Adamson, a contractor and builder, who was also secretary of the complainant, building association, to submit an estimate of the cost of rebuilding the house on said lot. Just what price Adamson agreed to rebuild the house for is in doubt, as he died before this suit was brought and the defendants differ in their testimony as to the amount which they agreed to pay Adamson for the work. But it is not denied that a price was agreed upon and Adamson entered upon and completed the work to the extent that the defendants moved into the house and have occupied it ever since. The defendants claim, however, that the work was not completed according to the contract. (Case P. 44 L. 20). 30

Before the work was commenced, the subject of payment of the contract price for the work was discussed between Adamson and the defendants and it was suggested that a loan could be procured through the com-

plainant, building association, and a written application for a loan of \$900 was accordingly made by Annie Lummis, which was signed by her and delivered to complainant. (Case P. 115, L. 15). And on the twentieth day of November, 1907, she executed to the complainant a bond in the penal sum of \$1800, conditioned for the payment of interest on the principal sum of \$900, together with the regular monthly installments on 9 shares in the 35th series of the capital stock of said association, owned
10 by the said Annie E. Lummis, until the said stock should mature according to the constitution and by-laws of the said association; and on the same day, the said defendants executed to said complainant a mortgage on said premises to secure the said payments in the terms of said bond, and said mortgage was duly recorded in the Clerk's Office of the County of Gloucester (Case P. 108 to 114) and is still outstanding on said records.

Said bond and mortgage were in the possession of the Treasurer of the complainant association at the time
20 of Adamson's death and were counted among the assets of the Association by the Banking and Insurance Examiner some months afterward. (Case P. 101, L. 3).

The records of the building association show that on November 19, 1907 Annie E. Lummis bought \$900 from the Association, and a draft on the Treasurer for that amount was ordered, when the Property Committee should report favorably on the security offered. (Case P. 86, L. 10). That she pledged 9 shares of stock for the loan of \$900, and at the November meeting 1907, paid
30 \$9 dues to the Association. At the November meeting 1910, the association ordered paid the taxes on the mortgaged premises assessed in Annie E. Lummis' name, amounting to \$7.55, and on October 18, 1910, the Secretary was ordered to collect dues in arrears from certain stockholders, among whom was Annie E. Lummis. (Case P. 86 L. 30; P. 87 L. 30). The association paid the tax assessed against premises mortgaged to association, to extent of mortgage interest. (Case P. 86 L. 10).

The draft dated 11-19-1907, drawn for \$900, payable to Annie E. Lummis or order, was found among the papers of the association with other vouchers, but had not been endorsed by the payee, Annie E. Lummis. (Case P. 119 L. 10). It does appear, however, that Adamson, the secretary, in settlement with the treasurer, on November 19, 1907, turned in to the treasurer \$1230.81, of which amount there was an item of \$900, just the amount of the treasurer's draft, (Case P. 106, L. 10 to 30; P. 107 L. 10) showing that the association gave Adamson credit for the \$900. 10

The defendants still owe for the additions and repairs to the dwelling under the contract with Adamson. (Case P. 18 L. 30).

ARGUMENT.

I. 20

One of the issues raised by the answer is that the defendants were induced to sign a mortgage for \$900 when they thought they were signing one for a less amount and that Adamson failed to rebuild the house according to the terms of the contract.

The testimony of Mrs. Lummis is that she executed a mortgage for \$700 and that \$150 of this amount was to be paid to the holder of a prior mortgage for that amount. (Case P. 35 L. 10). Lewis Lummis said he thought the mortgage was drawn for \$750, the contract price with Adamson. (Case P. 72, L. 20). 30

It is inconceivable that these defendants would have signed a mortgage for \$900 if the agreement was that the mortgage should be for only \$700, according to the wife's story, or \$750, the amount at which the husband places it. They were both able to sign their names to the bond and mortgage, and if they could write, the presumption is they could read writing. Their positive denial that they

signed a mortgage for \$900, or that they knew they signed for that amount is on a par with Mrs. Lummis' denial that she signed a written application for a loan of \$900. (Case P. 51 L. 30). The signature to the application is in the same handwriting as the signature to the bond and mortgage. The fact that the signed application is for a loan of \$900 is conclusive evidence that she knew the bond and mortgage were for that amount, and it would seem that their conflicting testimony regarding the signing of the bond and mortgage, and her positive denial that she signed the loan application would render their testimony throughout wholly unreliable.

10 The application and bond and mortgage verify the entry in the minutes of the association. (Case P. 86, L. 10). The payment by the building association of \$7.55 taxes assessed on the Lummis mortgage for the year 1909, is also proof that Mrs. Lummis not only recognized the mortgage as a valid lien against her property, but that she authorized the tax collector to collect the tax from the association as a charge on her property. 20 (Case P. 86, L. 30).

The minutes of the association show that, as late as 1910, Mrs. Lummis, among other delinquent members, was notified to pay her dues in arrears to the association, and although she denies that she received it, her statement should not be believed in view of her sweeping denials of facts proved to the point of demonstration; but if there could be any doubt in the mind of the court that these obligations were executed by the defendants with their eyes open and that the mortgage was recognized by them as a valid and subsisting lien upon the premises, it is submitted that such doubt must be removed when it is proven that the defendants learned by personal examination of the records in the Clerk's Office that the mortgage was recorded there and that it called for \$900 and not \$700 or \$750, as claimed by the defendants. 30 (Case P.P. 108 to 114).

II.

The defendants further charge that, although the bond and mortgage were executed in November, 1907, the defendants were unable to get any settlement from Adamson or the building association; that they never received a share of stock or books for crediting dues and interest, and were never notified that there were dues or interest in arrears.

It will be observed that this language is far from a denial that the defendants recognized complainant as their creditor. They say they never could get a settlement with Adamson or the association. If there were no dealings between defendants and complainant, why expect a settlement or complain that the pledged stock was never formally issued to them. 10

The application for loan, made by Mrs. Lummis, shows that she had bid for a loan on 9 shares of stock. This would seem to be an acknowledgment that she was the owner of the shares. (Case P. 115, L. 10). 20

The testimony of Edward H. Maurer, an inspector for the State Department of Banking and Insurance, on page 102 of state of case, furnishes a sufficient explanation of why the stock was not formally issued, if it was not in fact issued; one of the by-laws of the association dispenses with it. On the same page, the witness says that he saw the Lummis' pass book when he was making an examination of the association's affairs, so it would appear that a book was issued to defendants. 30

III.

Referring to the opinion of the learned Vice Chancellor, the principal ground assigned for denying relief to the complainant is that it was not authorized by the defendants "to appropriate or apply" the voucher draft drawn to the order of defendants without their endorsement; and that by so doing, the defendants were denied

the privilege of making their own settlement with Adamson. (Case P. 23, L. 17). This is in answer to the theory of complainant, explaining absence of the endorsement of Mrs. Lummis on the draft. And it will not be denied that if in the settlement between Adamson and the building association whereby he turned over the draft for \$900 as cash and received credit for same in his settlement with the treasurer operated to enable Adamson to overreach the defendants, the complainant would not be
10 entitled to relief except upon terms of proper adjustment of defendant's claims under the Adamson contract; but it is the insistence of the complainant that the acquiescence by the defendants in the settlement as evidenced by the record of the mortgage for a period of 4 years operates as an estoppel against the defendants so that they cannot call in question the validity of the mortgage.

In *Van Houten v. Van Winkle*, 1. Dick. 384, Chancellor McGill, in dealing with a case where laches was
20 raised as a defense says:

“Equity requires that a suitor shall
“assert and demand his remedial rights
“with diligence and without delay.
“After he has been informed of facts
“and circumstances which apprise him
“of the wrong, it is always dangerous,
“and may be fatal, to delay in pursuing
“the remedy which is open to him in
“equity, for the lapse of time carries
30 “with it the memory and life of witnesses, the muniments of evidence
“and other means of proof, and where
“they have been lost during willful,
“negligent and unreasonable delay, that
“circumstances has uniformly been accorded great and frequently controlling weight against the complainant in
“the determination of a cause.”

In *Wilkinson v. Sherman*, 18 Stew., 414, the court makes use of this language:

"If the circumstances of the making of this deed were such as to demand explanation from those who claim under it, it becomes manifest that equity requires that that explanation should have been demanded before the death of possibly the only person who could have given it. After deliberate and intentional delay until the death of that witness and the possibility of explanation is thereby extinguished, it is most inequitable that one who so purposely delays should now be permitted to say that such explanation is necessary to ensure title under the deed."

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Cole v. Vanneman, 6 Dick., 223, is to the same effect. 20
Norfolk Hosiery Co., v. Arnold, 4 Dick., 390. *Johnston v. Dunn*, 29 At. Rep., 361.

It will first be noted that the defendants were not entitled to the possession of the draft voucher for \$900 so long as there were any outstanding liens against the property, and the secretary would have been derelict in his duty if he had delivered the draft to them. There was a mortgage against the property to be satisfied and cancelled of record and the lien which Adamson himself had against the building and curtilage under the Mechanic's Lien Law must also be satisfied so that complainant's mortgage would be a first lien upon the premises and it is wholly immaterial whether Adamson, the secretary, paid and satisfied the liens or whether the defendants paid them, but Adamson, as secretary, could not surrender the voucher draft until the liens were satisfied, and the practical method, and the one which prevails among building associations is for the secretary to

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see that the liens are satisfied out of the proceeds of the loan draft.

Vice Chancellor Leaming, in *Schaufele v. Banscher*, unreported, in speaking of a loan draft issued by a building association says:

10 “The business necessities of the
 “association required the draft to be re-
 “tained under the control of its officers
 “to whatever extent should be found
 “necessary to satisfy the prior charges
 “before the borrower should receive his
 “money. That was the plain and man-
 “ifest purpose of the transaction, other-
 “wise separate warrants would have
 “been drawn for the several amounts
 “which were intended for the several
 “parties. But the method adopted by
20 “the association was that of a single
 “warrant, and by that method it became
 “the duty of the solicitor and secretary
 “of the association to control the ap-
 “plication of its proceeds.”

Surely the borrower could not complain so long as the balance of the proceeds, if there were any, was turned over to him after settlement of claims.

30 It has already been pointed out that there could have been little or nothing coming to the defendants if Adamson was charged with the payments of the Talbot mortgage in his contract with the defendants. If the contract price for the work was \$750, the amount due on the Talbot mortgage would make the sum \$900, or the amount of mortgage debt.

It depends, of course, upon whether the court accepts as true the statements of the defendants as to the alleged payment of \$150 and the unsatisfactory condition of the work on the building. They produced no receipts and can give no satisfactory testimony as to when

the payments were made. Mrs. Lummis says she paid in cash, which is quite significant in view of the fact that the contention of the defendants is that they had to rely upon the proceeds of the Association mortgage or upon Adamson to pay off the Talbot mortgage of \$150. Why pay cash to Adamson if the mortgagee and Adamson were to be paid from proceeds of mortgage. (Case P. 65, L. 10).

The defendants produce no receipts for the said payments which are testified to by the wife only. She says she exacted no receipts, but as the payment was in cash, it is almost incredible that she would have made payments on account of the work without some receipt or acknowledgment. 10

Whether the building was completed according to contract with Adamson is better determined from the fact that it was not in a tenantable condition before the improvements were made, and after Adamson concluded the work, they moved in and have ever since lived in the house. The fact that defendants moved into the house would indicate that the work was satisfactory and if there had been any dispute between Adamson and defendants, one would suppose that there would have been some correspondence between the parties, but not a scrap is produced and the testimony of the defendants is absolutely unsupported by any other evidence in the case. Lewis Lummis says that when Adamson brought the bond and mortgage to be signed, he reported the house completed but that it was not in fact completed. It is hardly likely that the defendants would be ignorant of the progress of the work, and the fact that the mortgage was executed is evidence that the work was satisfactory. (Case P. 79 & 80). Adamson is dead and cannot be heard, therefore these facts alleged against him should be established by ample proof. 20 30

Van Houten v. Van Winkle, 1. Dick. 384, Supra.

Should it be conceded, however, that the acceptance

of the loan draft without defendants endorsement, was prejudicial to the defendants in their settlement with Adamson, that should not bar complainant from any relief. The complainant association should at least be subrogated to the rights of Adamson, and the mortgage should be allowed to stand as a security to complainant for whatever may be found to be due from defendants to Adamson.

10 Why should the complainant be denied relief and turned out of court because it became involved in the settlement between the defendants and their contractor and is the holder of a mortgage given by the defendants to complainant, which the defendants now think should have been given to the contractor, Adamson? (Case P. 56 L. 30).

20 It will hardly be contended that, if the mortgage had been executed to Adamson and assigned by him to the Association as security for the loan to defendants, the complainant could not have recovered on the mortgage in the foreclosure proceedings.

IV.

30 The Vice Chancellor expressed doubt whether the Lummis draft was turned in to the Treasurer of the association as so much cash, and whether the \$1220.81, "receipts of the evening" contained in the cash book, include this voucher. He says it may be true, but the testimony is not sufficiently convincing to enable him to find as a fact that Adamson, in his settlement with the treasurer on November 19, 1907, received credit for that \$900 draft.

A very important question from the standpoint of the complainant, therefore, has not been decided by the court. If Adamson received credit from the Association for the \$900, then it is at least certain that the complainant gave a good consideration for the mortgage. If Adamson received the consideration, then, as before pointed out, it would appear that the defendants re-

ceived the consideration from Adamson, in the rebuilding of their dwelling. That such was the agreement between Adamson and the defendants is beyond dispute. The defendants admit it and their only defence is that the work was not done in accordance with the contract.

It is submitted that the evidence produced by complainant is sufficient to warrant a finding that Adamson did receive credit for the \$900 draft in his settlement with complainant's treasurer.

The receipts of the evening referred to were the receipts of the evening on which the November meeting of the association was held, and the records of the association show that the receipts on that night were \$1220.81, and that a voucher draft for \$900 was included. The secretary got a receipt from the treasurer for that amount and the treasurer, Robert A. Jester swears that the \$900 draft was the Lummis draft. He was doubtful at first whether the draft did come back to him, but this is explained by the fact that when the building association examiner came around to examine the books, he took away with him this voucher with others and Jester had forgotten about it, but from his testimony on page 105, et seq., it clearly appears that the \$900 draft included in the receipts of the evening was the Lummis draft. When pressed by the court, the witness refused to swear positively, but that was merely due to the cautious habits of the witness and lends greater weight to his testimony than if he had shown a reckless disposition on the stand.

William H. Flowers says that the draft was taken from the possession of the Treasurer by the building and loan inspector and returned to him and it was the absence of the voucher from the possession of the Treasurer which probably caused him to forget about it. (Case P. 105, L. 15).

There can be no doubt that the draft was in the possession of the association when the examiner made his examination, and it could not have gotten back to the

association without it being paid, and as it did not go through the Bank, payment must have been made to Adamson or he was given credit for it in his settlement with the association which is the same thing.

10 There is no basis for any claim that the association came into possession of the draft illegally and no one claims that it did. The conclusion, therefore, is irresistible that the draft was returned by Adamson under an arrangement with defendants in settlement of his claim for rebuilding the house, and that he turned the draft over to the association in his settlement with the treasurer. That the draft did not contain defendant's endorsement, although irregular, is not vital and not very important in this case because it is admitted by the defendants that the rebuilding of the house was to be paid for with funds borrowed from the association. The mortgage was executed to the association and duly recorded with full knowledge of the defendants, and if Adamson had no right to deal with the draft as his own and use it in settlement with the association, it was the duty of defendants to bring the matter to the attention of the complainant in the life time of Adamson, and their failure to question the validity of the mortgage until the only person who knew anything about the transaction is dead, and four years after the mortgage was recorded, disentitles them to any relief in this court, if the familiar rules of equity jurisdiction are to be applied in dealing with the case.

30 In Kirkpatrick v. Winans, I C. E. Green, the complainant sought to foreclose a mortgage for \$2000, which mortgage was placed through an agent of the mortgagee, who handled his principal's money. The defence was that the mortgagor did not receive full consideration for the mortgage, claiming that the agent had withheld a part of the loan. The agent had died before the commencement of the foreclosure suit, and the court in disposing of the case, says:

"The bond and mortgage were evidence of so much money advanced by the agent and upon the faith of those securities the administrator was entitled to a credit for that amount upon the settlement. That settlement was effected upon the faith of securities which the defendant himself gave. He is now estopped from denying that he received the money. If he has not received the amount to which he was entitled upon the execution of the mortgage, the money is not in the complainant's hands, but in the hands of the agent. If the money was not paid over by the agent to the mortgagor, and he designed to look to the mortgagee, he should have given her notice. By failing to do so, and permitting her to settle with the agent, allowing him for the full amount advanced, he is estopped from claiming the amount as against the principal.

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"Where a person with actual or constructive knowledge of the facts induces another by his words or conduct to believe that he acquiesces in or ratifies a transaction, or that he will offer no opposition thereto, and that other, in reliance on such belief, alters his position, such person is estopped from repudiating the transaction to the other's prejudice." 16 Cyc., 791.

30

The decision of the Court of Chancery, if allowed to stand, works a great hardship upon the complainant association and its stockholders, who are largely poor people paying for their homes through this association.

The officers of this association believed this bond and mortgage to be valid securities. They regarded them as assets of the association and were counted as such, and formed a basis for the maturing of stock; and payments were made to stockholders whose stock had matured, upon the faith of these securities.

10 The defendants, by their silence, therefore, led the complainant to change its position, both in the matter of the maturing of the stock and in its settlement with Adamson, so that the equitable rule above quoted applies with great force in this case.

20 The slightest intimation from the defendants that they were not liable on the mortgage immediately after they discovered that it was recorded, or at any other time while Adamson was living, would have given the complainant an opportunity to investigate the matter and make their settlement with Adamson accordingly, and by the defendants failure to act in the matter until after the death of Adamson arouses a suspicion that they had not dared to challenge the validity of the mortgage in Adamson's life time.

It is respectfully submitted that the equitable doctrine appealed to should be applied with its full force and effect in this case, and that the decree of the Court of Chancery should be reversed.

AUSTIN H. SWACKHAMER,
Of Counsel with Appellant.



