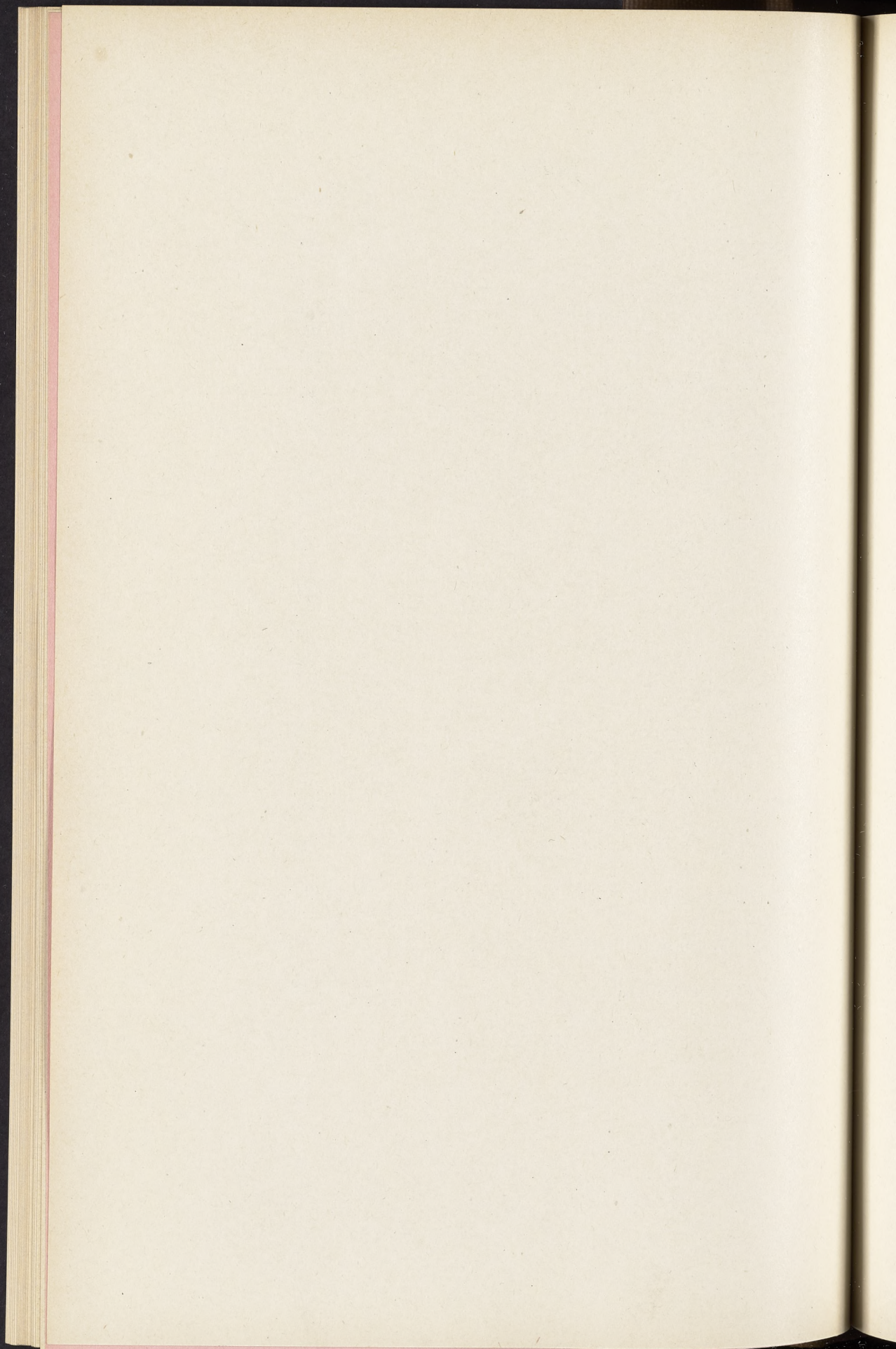


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IN CHANCERY OF NEW JERSEY

*Between*  
WILLIAM A. STEVENS, Attorney  
General of the State of New  
Jersey,  
Complainant,  
v.  
ASSOCIATED MORTGAGE COMPANY  
OF NEW JERSEY,  
Defendant.

On Bill, etc.  
Order to Show  
Cause and Prelim-  
inary Restraining 10  
Order.

This matter being opened to the Court by PHILIP L. COFFIN, JR., Esq., Special Assistant Attorney General of New Jersey, Solicitor of Complainant, and the Court having read and considered the bill of complaint filed in this cause, as well as the affidavits and exhibits thereunto annexed:

20

It is on this 31st day of July, 1930, ORDERED that the defendant show cause before the Chancellor at the Chancery Chambers, at State House, Trenton, New Jersey, on the 12th day of August, 1930, at the hour of ten o'clock in the forenoon, day-light saving time, (nine o'clock, Eastern Standard Time) or as soon thereafter as counsel can be heard, why an order should not be made restraining and enjoining, pending the final disposition of this cause and per- 30 manently thereafter, the said defendant, its agents, depositories, employees, brokers, officers, directors, stockholders and all persons acting in aid or assistance of them from:

a. Issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, adver-

tising or distributing any stocks, bonds, notes, debentures, evidences of indebtedness, certificates of interest or participation, interim certificates or receipts, foreign currency orders or calls or options therefor or other instruments commonly known as securities of any kind or description whatsoever within or from this State.

b. Removing any of their property from the State  
10 of New Jersey and from disbursing any of the funds of the defendant, Associated Mortgage Company of New Jersey.

c. Continuing the practices described in the bill of complaint or engaging therein or doing any acts in furtherance thereof within this State.

It is further ORDERED that the defendant, Associated Mortgage Company of New Jersey, show cause  
20 at the time and place hereinbefore designated why a receiver or receivers should not be appointed to take into his or their possession all of the real and personal property of the said corporation and all of its respective franchises, rights, privileges and effects, to settle the estate and distribute the assets under the direction of this Court in accordance with the statute in such case made and provided.

It is further ORDERED that the defendant, Associated Mortgage Company of New Jersey, show cause  
30 at the time and place hereinbefore designated why a receiver or receivers should not be appointed by this Court to take into his or their possession, all the goods and chattels, rights and credits, documents, papers, choses in action, bills, notes and property of every description whatsoever of the said defendant, derived by it by means of any practices declared to be illegal and prohibited by an Act of the Legislature

of the State of New Jersey, commonly known and designated as the "New Jersey Securities Act," as amended and supplemented, including also all property with which said property has been mingled, if such property cannot be identified in kind because of such co-mingling, and dispose of the property so taken over under the direction of this Court in accordance with the statute in such case made and provided.

It is further ORDERED that in the meantime and 10  
pending the final hearing of this cause and until the further order of this Court the defendant herein, its agents, depositories, employees, brokers, officers, directors, stockholders and all persons acting in aid or assistance of them be and they hereby are restrained and enjoined from :

a. Issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising, or distributing any stocks, bonds, notes, debentures, evidences of indebtedness, certificates of interest or participation, interim certificates or receipts, foreign currency orders or calls or options therefor or other instruments commonly know as securities of any kind or description whatsoever within or from this State. 20

b. Removing any of their property from the State of New Jersey.

30

It is further ORDERED that a true copy of this order, together with the bill of complaint and affidavits and exhibits attached, which may be certified as true copies by the Solicitor of the Complainant, be served on the defendant herein by leaving the same at its registered office or principal place of business with the person in charge thereof or by mailing the

*Order to Show Cause*

same by registered mail to its last known place of business or registered office within five days from the date hereof.

It is further ORDERED that the complainant may file further affidavits in support of this application or before the return date hereof, provided the same are served on the defendant in the same manner as hereinbefore described.

Respectfully advised,

J. C. BIGELOW,  
Vice Chancellor.

E. R. WALKER,  
Chancellor.

IN CHANCERY OF NEW JERSEY

---

TO HIS HONOR EDWIN ROBERT WALKER,  
CHANCELLOR OF THE STATE OF NEW JERSEY.

The complainant, William A. Stevens, Attorney General of the State of New Jersey, respectfully shows that:

10

1. He prosecutes this suit pursuant to the authority contained in the New Jersey Securities Act, approved March 19th, 1927, the amendments thereof and supplements thereto.

2. The defendant herein is ASSOCIATED MORTGAGE COMPANY OF NEW JERSEY, a corporation of the State of New Jersey, having its principal office in Burlington, New Jersey.

20

3. The defendant, Associated Mortgage Company of New Jersey, was incorporated on December 2nd, 1927, with an authorized capitalization of 10,000 shares of 7% cumulative preferred stock with a par value of \$100.00 per share and 20,000 shares of no par value common stock. The holders of preferred stock are not entitled to any voice or vote in the management or affairs of the corporation and the voting power is confined exclusively to holders of the com- 30  
mon stock. Both classes of stock may be issued at any time and for any consideration that the Board of Directors may determine and the vote or assent of the stockholders is not necessary for such issuance. The incorporators of the enterprise were Clinton D. Evans, Howard L. Hildebrand and T. Philips Brown. These individuals, however, were merely "dummy

incorporators" and did not own any substantial interest in the corporation at any time. Shortly after the organization of the company, the real organizers and promoters of the enterprise assumed their official positions. They were: Joseph R. Cheesman, President; Glen A. Lindabury, Vice-President; William E. Taylor, Secretary and Treasurer. In addition to these names aforementioned, E. R. Dickson and Harry I. Perrine were active in the promotion  
10 and organization of the corporation.

4. At the time of the organization of the corporation, Messrs. Perrine and Dickson appeared at the first meeting of the Board of Directors and stated that they were entitled to a large number of shares of common stock for work, labor and services in the organization of the corporation. The officers of the corporation, acting under orders from the Board of Directors, thereafter issued 3,000 shares of the corporation's no par value voting stock to Perrine and  
20 Dickson as payment in full for organization expenses. The Board of Directors neglected, however, to establish the actual money value of the services which Perrine and Dickson had performed and nothing appears on any of the corporation's records to indicate the actual capital stock indebtedness so assumed by the issuance of the aforesaid 3,000 shares of common stock. Several weeks later, a special meeting of the Board of Directors of the corporation  
30 was held, at which time Mr. Perrine stated that he was attempting to procure capital with which to operate the business. Mr. Perrine offered to sell the securities of the corporation and with that end in view procure members of an advisory board consisting of men of wide acquaintanceship and esteem, so that he might thereby, by virtue of the corporation's association with such a group of well known and

highly regarded individuals, be able to more readily dispose of the corporation's securities. Mr. Perrine, in consideration of such offer, was issued 6,000 shares of common stock to be used in the procurement of members of the aforesaid advisory board. The Board of Directors neglected, at this meeting, as well as at the previous meeting, to establish the value of the 6,000 shares of common stock to be so issued, and there is no method by which the capital stock indebtedness of the corporation on these 9,000 shares of common stock can be determined. 10

5. Ever since the incorporation and organization of the defendant, Associated Mortgage Company of New Jersey, up to the present time, the defendant herein has been engaged in, is now engaging in and is about to engage in the issuance, sale, offer for sale, promotion, negotiation, advertisement and distribution within and from this State of the capital stock and other securities of the defendant, Associated Mortgage Company of New Jersey, and in connection therewith the defendant has used and employed, is using and employing, and is about to use and employ deception, misrepresentation, concealment, suppression, fraud, false pretense, false promise and fictitious and pretended purchase and sale in violation of the provisions of the New Jersey Securities Act, as amended and supplemented, said violation being described as follows: 20

6. Shortly following the organization and incorporation of the defendant, Associated Mortgage Company of New Jersey, a contract was entered into between the defendant corporation and Marquis T. Perkins, wherein Perkins was to act as the fiscal agent of the corporation in the sale of its securities. Under the terms of this contract, Perkins was to receive a commission of 25% on all stock subscriptions. 30

7. On divers occasions subsequent to the organization and incorporation of the defendant corporation, it caused to be printed, issued and circulated within and from this State to divers persons, the particular names of whom are unknown to this complainant, and also to the public at large, a certain circular, a true copy of which is attached hereto and made a part hereof and designated as "Schedule A." Said circular stated:

10

"There is a strong Financial Institution managed by a group of prominent New Jersey Men—"

The Statement continues:

"You are cordially extended an invitation to become associated with the following gentlemen in furthering the program of this institution."

20

There was thereafter listed a group of prominent individuals, together with their connections with various financial institutions and banking houses. This statement was prepared in such a way as to make it appear that the men whose names appeared therein were active in the management of the corporation, either as directors or officers. Notwithstanding such natural implication, it is a fact that a great number of the names that were listed in the  
30 circular had no interest whatsoever in the corporation, except from the point of view of a stockholder. A great number of these men had not assumed any duties of a managerial or administrative nature. It is furthermore the fact that several of the men whose names were listed were the recipients of various quantities of common stock of the corporation which had been originally issued to Perrine and Dickson,

without the receipt of any valuable monetary consideration by the corporation therefor. It is furthermore the fact that considerable quantities of common stock had been issued to several of the individuals whose names had been listed in the circular above referred to, so that these individuals' names might be used to further the sale of stock.

8. The circular mentioned in paragraph 7 hereof, printed, issued and distributed by the defendant in the manner and for the purposes described in said paragraph, characterized the defendant, Associated Mortgage Company of New Jersey, in the following manner: 10

“There is a strong Financial Institution— which has been functioning for some time, and has proven to be one of the safest and most profitable enterprises in the State of New Jersey. 20

---

This institution is State wide in its aspect, operations will cover the whole State of New Jersey.”

These sentences were meant to convey to persons who read the same that the defendant was then and there a well established institution, with a business sufficiently large to be state wide in its scope and extending over the entire State of New Jersey. Said statement was deceptive, false and fraudulent because the defendant did not then and there have sufficient business on hand to be state wide in its scope. It did not have funds in sufficient quantity to justify the statement “Strong Financial Institu- 30

tion," but on the contrary was, in fact, insolvent from the date of its organization and incorporation and has been up until the present time. It is a fact, moreover, that the corporation since its organization has engaged in only a limited number of mortgage transactions, wherein it has loaned money at excessively high rates to a few individuals in Burlington County. Aside from twenty-two mortgage loans which it has made, the corporation has confined its activities to the sale of its stock.

9. The circular mentioned in paragraph 7 hereof, printed, issued and distributed by the defendant in the manner and for the purposes described in said paragraph, states on its last page:

"Dividends being paid quarterly."

Such statement was used to provoke an interest in the purchase of stock of the defendant corporation by the public. Its chief purpose was to induce sales. The circular above referred to concealed and suppressed the fact, however, that dividends had been paid out of capital and not out of earnings or surplus of the corporation. Complainant charges the fact to be that the corporation has never earned sufficient money to pay a dividend, but has at all times paid such dividends out of the capital of the corporation, which acts were and have been contrary to the statutes made and provided relative to the payment of dividends.

10. On divers occasions since the organization of the defendant corporation, it has caused to be printed, issued and circulated, within and from this State to divers persons, the particular names of whom are unknown to this complainant, and also to the public

at large, a certain circular, a true copy of which is attached hereto and made a part hereof and designated "Schedule B". Said circular offered for sale and advertised the capital stock of the defendant, ASSOCIATED MORTGAGE COMPANY OF NEW JERSEY, in units of one share of preferred stock and two shares of common stock, at \$150.00 per unit. That circular contained under the heading "Directors and Advisory Board" the names of eighteen different prominent men, with their vocation and title specifically set forth. The connotation to be placed upon the use of that list of names could only be that the men listed thereunder were active in the direction and management of the defendant corporation. Such, however, was not nor has not at any time been the case. Several individuals had been listed in said circular who have had no interest nor voice in the management or direction of the corporation; they being, in fact, stockholders and nothing more. The use of such names was a deliberate attempt on the part of the defendant corporation to exploit the reputation and prestige their names would spell out, so as to induce the purchase of stock on the part of the gullible public whose reliance upon the reputation and association of prominent men in such an enterprise was well known to the defendant corporation.

11. At all times during the negotiation and sale of the corporation's capital stock, defendant concealed and suppressed the fact that 9,000 shares of an authorized capitalization of 20,000 shares had been issued to various individuals without the receipt of any valuable monetary consideration by the corporation. Such suppression and concealment was fraudulent.

12. The defendant, in its negotiation and sale of the capital stock of the defendant corporation concealed and suppressed the fact that the actual book value of the common stock which it was selling at prices up to \$25.00 a share was less than nothing. Such suppression and concealment was fraudulent.

10 13. The defendant, in its negotiation and sale of the capital stock of ASSOCIATED MORTGAGE COMPANY OF NEW JERSEY concealed and suppressed the fact that \$37.50 of every unit so sold at \$150.00 per unit was being used to defray the selling expenses of that security offering. Such concealment and suppression was contrary to the provisions of the New Jersey Securities Act.

20 14. Complainant further charges the fact to be that notwithstanding that under the terms of the contract between defendant corporation and M. T. Perkins, he was to receive a commission of 25% on all securities sold under his jurisdiction, the amount of money disbursed for selling and organization expenses has exceeded 46%. Up and until April 30th, 1930, \$111,110.00 worth of stock of the corporation had been sold. The cost of organizing the business and of selling the stock totaled, as of that date, \$51,882.28. Complainant charges that defendant corporation, Associated Mortgage Company of New Jersey, suppressed and concealed the fact that this  
30 considerable sum of money had been disbursed by the organization for the establishment of defendant's business. The New Jersey Securities Act specifically defines the procurement of any commissions so large as to be considered excessive and unconscionable as a fraud.

15. One of the recipients of the "watered" stock that had been issued as is described in paragraph 4 hereof was Joseph R. Cheesman, President of the corporation. Cheesman received several thousand shares of common stock in consideration of his work, labor and services performed in the organization of the corporation. No cash consideration was paid for this stock. Notwithstanding the fact that Cheesman was an officer and director of the corporation, and required to comport himself with the highest 10 degree of care in all negotiations with the corporation, and to completely divorce himself from any actions wherein there might be a private, personal profit to himself, he offered and sold to the corporation 745 shares of this common stock at \$5.00 per share. The corporation purchased this stock out of capital, its earnings being insufficient to pay therefor. The total amount of money received by Cheesman from this improper sale was \$3,725.00. Defendant in its promotion, negotiation, and sale of the cap- 20 ital stock of the Associated Mortgage Company of New Jersey concealed and suppressed the fact that the corporation had purchased its own stock out of capital from one of its officers. It also concealed and suppressed the fact that Cheesman had sold this stock to his corporation at a profit of \$3,725.00 to himself and a loss of a like amount to the corporation. It furthermore suppressed and concealed the fact that Cheesman, who was disenfranchised and disqualified from taking any action on such a matter 30 at a Board meeting, had formally voted at the meeting at which the transaction had been approved by the Board of Directors that such offer of sale from himself to the corporation be accepted. Such suppression and concealment was fraudulent.

16. Defendant corporation, in its negotiation, promotion and sale of the capital stock of Associated Mortgage Company of New Jersey has steadfastly and consistently represented that the corporation has paid dividends and on the basis of such history of dividend payments, has solicited and induced the purchase of additional stock from the public. Defendant corporation has suppressed and concealed, however, that such dividends have been paid out of  
10 capital and not out of earnings and or surplus, as is required by the statutes of New Jersey. Defendant corporation by its statement of dividend payments represented to the public that the corporation was solvent and earning substantial sums of money on its investments so as to enable it to meet its dividend requirements. Such statements and implications were without any basis in fact and were, in fact, fraudulent, deceptive and misleading. The net profits that had been earned by the corporation from the incep-  
20 tion of its business, December 15th, 1927, up to and including June 24th, 1930, were \$1,758.14. Dividends totalling \$3,401.02 have been paid during this period. Such dividends have not been paid out of earnings or profit, as is self-evident from the fact that earnings and net profit did not amount to that sum. It is furthermore the fact that there has been a depreciation of assets since the organization of the corporation of \$51,882.28 and that of the total capital stock investment of \$111,110.00 the corporation's net worth has  
30 depreciated to \$57,640.81. No provision was made at the time of the payments of the dividends to amortize any portion of this depreciation. The solicitation and inducement of the purchase of the capital stock of the corporation on the basis of its history of dividend payments was intended to mislead the purchasers of stock into the belief that the corporation was enjoying substantial financial suc-

cess when such was not the case.

17. Defendant in its negotiation and sale of the capital stock of Associated Mortgage Company of New Jersey has at all times suppressed and concealed the fact from the purchasers of stock that the corporation was insolvent. Complainant charges the fact to be that since the organization of the corporation it has not earned sufficient money to enable it to meet the cost of selling its securities, organization expenses and its operating overhead. Complainant charges that on June 24th, 1930, the corporation had a deficit of \$43,429.67. The suppression and concealment of this impairment of the assets of the corporation was a certain and definite infringement of the New Jersey Securities Act. Such concealment was necessary so as to enable the corporation to dispose of its securities. 10

18. During the negotiation, promotion and sale of the capital stock of the defendant, Associated Mortgage Company of New Jersey, it caused to be printed, issued and circulated within and from this State to divers persons, the particular names of whom are unknown to this complainant, and also to the public at large, a certain financial statement, a true copy of which is attached hereto and made a part hereof, and designated as "Schedule C." Said financial statement reveals a surplus of \$24,237.89. Said statement, however, fails to list as a liability the obligation of the corporation on its common stock issued and outstanding. That statement does not reveal truly and accurately the financial condition of the corporation. Its use was intended to induce further sale of the capital stock of defendant corporation. Such use, knowing that the statement did not correctly depict the true condition of affairs of the corporation, was a well-considered, and delib- 30

erate fraud upon all the purchasers of stock who relied upon the figures contained therein.

19. The statement above referred to lists at the bottom, as auditors, William C. Jones, Glenn Lindabury and W. Emory Cheesman. To the casual reader it would appear as though three disinterested individuals had examined the books of the defendant corporation and had prepared the statement to  
10 which they were then and there certifying. Such was not the true condition of affairs, however, inasmuch as the three men, whose names appeared as auditors, were all directors of the corporation. None of the men were qualified in any manner to determine the true financial condition of the corporation. None of them were auditors, nor, in fact, engaged in any business of a statistical nature or auditing nature that qualified them to certify to the verity of the financial statement. The purpose in listing the names  
20 of the men was to influence the purchasers of stock into the belief that the financial statement which disclosed an apparent healthy condition and a surplus of \$24,237.89 had been carefully prepared by experts who were willing to personally guarantee the accuracy of the figures contained therein.

20. The chief function of the corporation, according to the Certificate of Incorporation, is to engage in mortgage financing. Its usual practice has  
30 been to lend money up to and including \$10,000 on 50% of the appraised value of improved property, charging an interest rate of 6% with a bonus of 5%. Although the contract between M. T. Perkins and the corporation specified that a 25% commission was to be paid on all stock sold, he has been active in the flotation of mortgage transactions, and has received large and excessive commissions for the placing of

such loans. Complainant charges the fact to be that Perkins, on behalf of the corporation, has purchased \$14,730.60 worth of mortgages on improved property in Burlington County and paid therefor by various quantities of the capital stock of the defendant corporation. Perkins received, as commissions on these transactions, \$3,682.65. The income of the corporation from such transactions will be insufficient to take care of the cost of acquisition in less than three years' time and consequently the amount of stock so issued and delivered will not be productive of results to the treasury of the corporation for a considerable period of time yet to come. 10

Defendant has suppressed and concealed the fact that Perkins has been engaged in the purchase of mortgages, has paid therefor in stock upon which he has received an excessive commission, and that the corporation has thus jeopardized its future success by paying a fee of 25% on these mortgage loans which cannot show a return in excess of 11% per annum. 20

21. Although the chief business of the corporation has been to lend money on first mortgages, it has invested considerable sums of its money in the securities of other corporations. Complainant charges that the corporation purchased 67 shares of stock of the Burlington Real Estate Company at \$100.00 per share. Such purchase was irregular in that the Burlington Real Estate Company is dominated by Joseph R. Cheesman, its president, who is also the president of the defendant corporation. It is furthermore true that the treasurer of the defendant corporation, one Taylor, is also the treasurer of Burlington Real Estate Company. The purchase of the capital stock of the Burlington Real Estate Company by Associated Mortgage Company of New Jersey was 30

handled by Joseph R. Cheesman in dereliction of his duty as an officer and director of defendant corporation. The Burlington Real Estate Company is engaged in the same type of business as defendant corporation. There was no reason whatsoever for the investment of any money of defendant corporation in the capital stock of a competing enterprise unless it was to provide the competing corporation with funds with which to combat defendant corporation.

10

22. Complainant further charges that considerable amounts of money have been invested in the securities of corporations which will not result in sufficient returns to enable the corporation to pay its dividend at the rate of 7% per annum. It is also a fact that M. T. Perkins, who is acting as the fiscal agent of the corporation in the sale of its securities, is in an embarrassed financial condition, and as a result thereof has been forced to borrow money  
20 from the corporation, so that there is now owing by Perkins to the corporation on account of such loans and advances so made, a sum in excess of \$6,800.00. Such money so disbursed to Perkins is non-productive and the corporation cannot and does not receive any income therefrom so as to enable it to meet its dividend requirements. One instance in particular is eloquent proof of the type of investment transactions engaged in by the corporation which have prevented the payment of dividends out of  
30 earnings. Harry I. Perrine, who was a dominating figure in the enterprise and a director, purchased 95 shares of capital stock of the Wrightstown National Bank for \$9,500.00. This stock was held for a considerable time and then sold back to the bank for \$8,550.00 at a loss of \$950.00. At the same time, a commission of \$2,500.00 was paid by defendant to Perrine and an associate of his named Oliver, with

the result that the company lost \$3,450.00 on this transaction. Defendant corporation suppressed and concealed the fact that considerable sums of money of the corporation had been invested in this manner, and that the corporation was the owner of shares of stock in various corporations, which could not and would not show a sufficient return to enable it to pay its 7% dividend requirements. The fact that officers and directors of the corporation received commissions from defendant on the purchase and sale of securities of other corporations as in the case of the purchase of the Wrightstown Bank stock was suppressed and concealed from the purchasers of stock. Such suppression and concealment was fraudulent.

23. Wherefore, it appears to the complainant, who has caused an investigation to be made in accordance with the provisions of the New Jersey Securities Act, and he accordingly charges that the defendant has engaged in, is engaging in and is about to engage in the use and employment of deception, misrepresentation, concealment, suppression, fraud, false pretense and false promise in connection with the sale, offer for sale, promotion, negotiation, advertisement and distribution within and from this State of the capital stock and other securities of the defendant, Associated Mortgage Company of New Jersey; and the complainant particularly charges that the defendant has engaged in, is engaging in and is about to engage in the use and employment of fraud in that it has gained and is attempting to gain both directly and indirectly through trades in the securities of the defendant, Associated Mortgage Company of New Jersey, hereinbefore described, a gross profit so large and exorbitant as to be unconscionable and unreasonable; furthermore, that the

facts hereinbefore related constitute an artifice, device and scheme to obtain money, profit and property by practices declared to be illegal and prohibited, all of which was and is in violation of the New Jersey Securities Act as amended and supplemented.

THE COMPLAINANT IS WITHOUT ADEQUATE  
REMEDY IN THE COURTS OF LAW AND THERE-  
10 FORE PRAYS:

1. That the defendant may answer this bill of complaint and each allegation therein made.

2. That the defendant, its agents, depositories, employees, brokers, officers, directors, stockholders and all persons acting in aid or assistance of them be restrained and enjoined from continuing the practices described in this bill of complaint or engaging  
20 therein or doing any acts in furtherance thereof within or from this State.

3. That the defendant, its agents, depositories, employees, brokers, officers, directors, stockholders and all persons acting in aid or assistance of them be restrained and enjoined from:

a. Issuing, selling, offering for sale, purchasing, offering to purchase, promoting, negotiating, advertising, or distributing any stocks, bonds,  
30 notes, debentures, evidences of indebtedness, certificates of interest or participation, interim certificates or receipts, foreign currency orders or calls or options therefor or other instruments commonly known as securities of any kind or description whatsoever within or from this State.

b. Removing any of their property from the State of New Jersey and from disbursing any of the funds of the defendant, Associated Mortgage Company of New Jersey.

4. That a receiver or receivers be appointed by this Court to take charge of the assets of the defendant, Associated Mortgage Company of New Jersey, a corporation of the State of New Jersey, and dispose thereof under the direction of this Court, in accordance with the provisions of the New Jersey Securities Act. 10

5. That an order be made directing the defendant herein to show cause before this Court on a date to be fixed why it and its respective officers, directors, attorneys, agents, servants, employees, depositories and all persons acting in aid or assistance of them should not be jointly and severally restrained and enjoined in the manner and respects hereinbefore set forth, pending the final hearing of this cause. 20

6. That a writ of subpoena may be issued commanding said defendants to answer this bill of complaint and abide by such decree as this Court may make in the promises.

7. That the complainant may have such other and further relief as to this Honorable Court may seem meet and proper.

WILLIAM A. STEVENS,  
Attorney General of New Jersey, 30  
Complainant.

RICHARD C. PLUMER,  
Assistant Attorney General of New  
Jersey, Counsel with Complainant.

PHILIP L. COFFIN, Jr.,  
Special Assistant Attorney General,  
Solicitor of Complainant.

## Schedule A

Mr. Lenard Norman

10 *There is a Strong Financial Institution managed by a group of prominent New Jersey men, which has been functioning for some time, and has proven to be one of the safest and most profitable enterprises in the State of New Jersey.*

*You are cordially extended an invitation to become associated with the following gentlemen in furthering the program of this institution.*

*This institution is State wide in its aspect, operations will cover the whole State of New Jersey. It will render a distinct service to all communities in New Jersey, and for this reason is favorably regarded by all.*

20 *Information showing how you may become acquainted with the purpose of this corporation and take advantage of the valuable rights now being offered will be furnished, if you will mail the enclosed card, using the envelope supplied herewith.*

Yours very truly,

THE COMMITTEE.

Schedule A.

GRANDIN V. JOHNSON

Vice-President First National Bank, Sea Bright

THOMAS J. EARLY

President Peoples National Bank, Pemberton

MORRIS E. LAMB

President First National Bank, New Egypt

JOHN C. HURFF

10

President First National Bank, Marlton

DAVID S. H. CROSHAW

Director First National Bank, New Egypt

DR. H. E. LONGSDORF

Director Union National Bank, Mount Holly

20

Schedule A

HARRY HAWKINS, Jr.

Director Union National Bank, Mount Holly

W. G. DAVIS

Director First National Bank, Wrightstown

WILLIAM C. JONES

President Burlington City Chamber of Commerce

Director Associated Mortgage Co. of New Jersey 30

J. H. ATKINSON

Director Peoples National Bank, Pemberton

JOHN R. WILKINSON

Director First National Bank, Vincentown

JOSEPH R. CHEESMAN

Vice-President First National Bank, Wrightstown

President Associated Mortgage Co. of New Jersey

24

*Schedule B*

Page 4

Dividends being paid quarterly.

10

Page 1  
Schedule B.

ASSOCIATED  
MORTGAGE COMPANY  
OF NEW JERSEY

(Incorporated Under the Laws of the State of  
New Jersey)

20

Capitalization  
ONE MILLION DOLLARS

10,000 Shares 7% Cumulative Preferred Stock,  
Par Value \$100 Each

20,000 Shares Common Stock, No Par Value  
AMC

30

ADVANCE OFFERING PRICE

Unit Price:

1 Share Preferred Stock  
2 Shares Common Stock

\$150.00

(All Subscriptions Received Subject to Allotment)

Schedule B

SECURITY BEHIND EACH MORTGAGE

---

1. Every loan granted by our Company is secured by a first mortgage on property worth nearly twice as much as the amount of the loan. 10

2. Property appraisals are made by men whose experience in valuing real estate justifies their opinion.

3. All mortgages deposited as security for our bonds must be issued only against occupied dwellings.

4. All properties against which loans are made are adequately insured. 20

5. Titles are examined by recognized authorities.

6. The character and financial responsibility of the owner must be beyond reproach.

7. The Company exercises careful supervision as regards the payment of all taxes and insurance premiums and takes care of the collection of interest and principal when due. 30

8. The Company's field of operations is confined to the State of New Jersey, which state is recognized by mortgage authorities as one of the safest and most profitable in which to operate.

9. The wide diversification of mortgages throughout the State of New Jersey offers a strong factor of safety.

10. The type of security in which the Company deals has been approved as a legal investment for Savings Banks and Trust Funds.

10 11. The Company's capital is liquid at all times and is not tied up in factories, equipment and burdensome inventories.

12. The Company renders a service which is certain to be beneficial to the communities in which it operates.

13. The management of the Company is in the hands of men who are thoroughly experienced in the mortgage business.

20 14. Securities of the modern mortgage company, such as the Associated Mortgage Company of New Jersey, offer a splendid type of investment, combining unusual profit probabilities with a satisfactory degree of safety.

Page 3

Schedule B.

30

#### DIRECTORS AND ADVISORY BOARD

JOSEPH R. CHEESMAN, President  
President Burlington Realty & Finance Corp.  
President Enterprise Publishing Co.  
Director Independent Bonding & Casualty Ins. Co.,  
Newark, N. J.

H. I. PERRINE, Vice-President

H. I. Perrine & Co., Investments, Burlington, N. J.  
Formerly with National City Company, New York  
City

Formerly with West & Co., Philadelphia, Pa.

WILLIAM C. JONES, Burlington, N. J.

Director Burlington Realty & Finance Corp.  
Coal Merchant

WILLIAM E. TAYLOR, Treasurer

Treasurer Joshua Taylor & Co., Burlington, N. J. 10  
Treasurer Burlington Realty & Finance Corp.

WARREN R. RAHN, Burlington, N. J.

HARRY J. ZIEGLER, Riverside, N. J.

Real Estate and Insurance

CHRISTIAN DICK, SR., Riverside, N. J.

Retired

CHAS. B. DURBOROW, Edgewater Park, N. J.

President Chas. B. Durborow & Co., Real Estate.  
Director Coast National Bank, Seaside Heights, N.J.

Director Indemnity Exchange of America, 1001 20  
Chestnut St., Philadelphia, Pa.

MORRIS E. LAMB, New Egypt, N. J.

President First National Bank, New Egypt

DAVID S. H. CROSHAW, New Egypt, N. J.

Director First National Bank, New Egypt

DR. H. E. LONGSDORF, Mount Holly, N. J.

Vice-President Mount Holly Mortgage & Finance  
Co.

President Northampton Textile Co., Mount Holly

Director Union National Bank and Trust Co., 30  
Mount Holly

## Schedule B

HERBERT S. KILLIE, Mount Holly, N. J.

Attorney

Solicitor Northampton Textile Co., Mount Holly

Secretary-Treasurer Mount Holly Chamber of  
Commerce

HARRY HAWKINS, JR., Mount Holly, N. J.

10 Insurance

President Mount Holly Mortgage & Finance Co.,

Director People's Building & Loan Association

Director Union National Bank and Trust Co.,  
Mount Holly

JOHN R. WILKINSON, Vincentown, N. J.

Director First National Bank, Vincentown

Treasurer Vincentown & Tabernacle Telephone  
Co.

J. H. ATKINSON, Wrightstown, N. J.

20 Director First National Bank, Wrightstown, N. J.

Director People's National Bank, Pemberton, N. J.

WILLIAM H. BOWKER, Medford, N. J.

Real Estate and Insurance

THOMAS J. EARLY, Pemberton, N. J.

President People's National Bank, Pemberton, N.J.

B. NEY RIDGWAY, Pemberton, N. J.

Merchant

30

*ASSOCIATED  
MORTGAGE COMPANY  
OF NEW JERSEY*

Executive Offices

MECHANICS NATIONAL BANK BUILDING  
BURLINGTON, N. J.

## Schedule C

STATEMENT  
 ASSOCIATED MORTGAGE  
 COMPANY  
 of New Jersey  
 Feb. 1, 1930

## Resources

Cash .....	\$ 5,336.62	10
Accounts Receivable .....	4,692.50	
Bonds and Mortgages .....	63,452.90	
Capital Stock Subscribed .....	35,085.00	
Office Furn. and Equipment .....	477.00	
	<hr/>	
	\$109,044.02	

## Liabilities

Bills Payable .....	\$ 22,000.00	
Capital Stock full paid, Preferred .....	48,200.00	
Received on Deferred Payments .....	14,606.13	20
Surplus .....	24,237.89	
	<hr/>	
	\$109,044.02	

William E. Taylor,  
 Treasurer.

## Auditors:

Wm. C. Jones,  
 Glenn Lindabury,  
 W. Emory Cheesman.

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

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PHILIP L. COFFIN, Jr., being duly sworn according to law, upon his oath deposes and says:

1. I am a Special Assistant Attorney General of the State of New Jersey, associated with the Division  
10 of Securities of the Department of the Attorney General, and authorized to act for the Attorney General, and in his name to represent him in carrying into effect the provisions of Chapter 79 of the Laws of 1927, approved March 19th, 1927, the amendments thereof and supplements thereto.

2. In pursuance of the authority contained in said statute, as amended and supplemented, I have investigated the practices of ASSOCIATED MORTGAGE  
20 COMPANY OF NEW JERSEY, a corporation of the State of New Jersey, in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution by it within and from this state of the capital stock and other securities of Associated Mortgage Company of New Jersey aforesaid. Pursuant to said authority, on May 1st, 1930, I examined Joseph R. Cheesman, President of the corporation, Marquis T. Perkins, fiscal agent for the corporation, and Her-  
30 bert S. Killie, solicitor of the corporation, personally, under oath. Pursuant to said authority, on July 23rd, 1930, I continued my examination and examined the aforementioned Joseph R. Cheesman and Marquis T. Perkins personally, under oath, and by their deposition and the papers and documents filed in connection with said examination, substantially the following facts were related:

3. The defendant, Associated Mortgage Company of New Jersey, was incorporated on December 2nd, 1927, with an authorized capitalization of 10,000 shares of 7% cumulative preferred stock with a par value of \$100.00 per share and 20,000 shares of no par value common stock. The holders of preferred stock are not entitled to any voice or vote in the management or affairs of the corporation and the voting power is confined exclusively to holders of the common stock. Both classes of stock may be issued at any time and for any consideration that the Board of Directors may determine and the vote or assent of the stockholders is not necessary for such issuance. The incorporators of the enterprise were Clinton D. Evans, Howard L. Hildebrand and T. Philips Brown. These individuals, however, were merely "dummy incorporators" and did not own any substantial interest in the corporation at any time. Shortly after the organization of the company, the real organizers and promoters of the enterprise assumed their official positions. They were: Joseph R. Cheesman, President; Glenn A. Lindabury, Vice-President; William E. Taylor, Secretary and Treasurer. In addition to these names aforementioned, E. R. Dickson and Harry L. Perrine were active in the promotion and organization of the corporation.

4. At the time of the organization of the corporation, Messrs. Perrine and Dickson appeared at the first meeting of the Board of Directors and stated that they were entitled to a large number of shares of common stock for work, labor and services in the organization of the corporation. The officers of the corporation, acting under orders from the Board of Directors, thereafter issued 3,000 shares of the corporation's no par value voting stock to Perrine and Dickson as payment in full for organization expens-

es. The Board of Directors neglected, however, to establish the actual money value of the services which Perrine and Dickson had performed and nothing appears on any of the corporation's records to indicate the actual capital stock indebtedness so assumed by the issuance of the aforesaid 3,000 shares of common stock. Several weeks later, a special meeting of the Board of Directors of the corporation was held, at which time Mr. Perrine stated that

10 he was attempting to procure capital with which to operate the business. Mr. Perrine offered to sell the securities of the corporation and with that end in view procure members of an advisory board consisting of men of wide acquaintanceship and esteem, so that he might thereby, by virtue of the corporation's association with such a group of well known and highly regarded individuals, be able to more readily dispose of the corporation's securities. Mr. Perrine, in consideration of such offer, was issued 6,000

20 shares of common stock to be used in the procurement of members of the aforesaid advisory board. The Board of Directors neglected, at this meeting, as well as at the previous meeting, to establish the value of the 6,000 shares of common stock so issued, and there is no method by which the capital stock indebtedness of the corporation on these 9,000 shares of common stock can be determined. In answering to the following specific questions which I put to Joseph R. Cheesman at the various examinations that

30 were conducted by me, he testified as follows:

Q. At the time of the organization, was 9,000 shares of stock issued to Perrine and Dickson?

A. 3,000 at one time and 6,000 at another.

Q. What did they pay for that stock?

A. Well, the first three thousand, I do not suppose they paid anything. That was for services rendered.

Q. What did they pay for the 6,000 shares?

A. That was supposed to be in services.

Q. Was it ever revealed to purchasers of stock that 9,000 shares had been issued for services rendered?

A. They knew that some stock had been issued.

Q. What did Perrine and Dickson do with their stock?

A. Well, they disposed of some of it gathering Advisory Board members and selling some stock and using it as expenses. 10

Q. Did the company ever receive any benefit from the sale of that privately owned stock?

A. I would not say so, in money.

Q. At what prices did Perrine and Dickson sell that privately owned stock?

A. Well, from \$5.00 to about \$15.00. I think \$15.00 was the highest.

5. Shortly following the organization and incorporation of the defendant, Associated Mortgage Company of New Jersey, a contract was entered into between the defendant corporation and Marquis T. Perkins, wherein Perkins was to act as the fiscal agent of the corporation in the sale of its securities. Under the terms of this contract, Perkins was to receive a commission of 25% on all stock subscriptions. 20

6. On divers occasions subsequent to the organization and incorporation of the defendant corporation, it caused to be printed, issued and circulated within and from this State to divers persons, the particular names of whom are unknown to this complainant, and also to the public at large, a certain circular, a true copy of which is attached hereto and made a part hereof and designated as "Schedule A". Said circular stated: 30

“There is a strong Financial Institution managed by a group of prominent New Jersey Men—”

The statement continues:

“You are cordially extended an invitation to become associated with the following gentlemen in furthering the program of this institution.”

10

There was thereafter listed a group of prominent individuals, together with their connections with various financial institutions and banking houses. This statement was prepared in such a way as to make it appear that the men whose names appeared therein were active in the management of the corporation, either as directors or officers. Notwithstanding such natural implication, it is a fact that a great number of the names that were listed in the circular had no  
20 interest whatsoever in the corporation, except from the point of view of a stockholder. A great number of these men had not assumed any duties of a managerial or administrative nature. It is furthermore the fact that several of the men whose names were listed were the recipients of various quantities of common stock of the corporation which had been originally issued to Perrine and Dickson, without the receipt of any valuable monetary consideration by the corporation therefor. It is furthermore the fact  
30 that considerable quantities of common stock had been issued to several of the individuals whose names had been listed in the circular above referred to, so that these individuals' names might be used to further the sale of stock. In answer to the following specific questions, Joseph R. Cheesman testified before me at the various hearings conducted pursuant to the New Jersey Securities Act, as follows:

Q. Who made up this circular A-1? (Referring to the circular attached hereto and made a part hereof and designated as "Schedule A").

A. Mr. Perkins made it up and we printed it.

Q. Has the Board of Directors passed upon it?

A. Yes.

Q. Are the men whose names appear in the circular A-1 outside of the directors, the only stockholders?

A. No, we have about 230 or 240 stockholders. 10

Q. What was the purpose of putting some of the stockholders' names on this circular and not the others'?

A. Each one of those that is printed is connected with a bank.

Q. So you thought that would look better?

A. Yes.

Q. Did it ever occur to you that naming these men as being connected with banks would lead the public to believe that they were connected with the Asso-20  
ciated Mortgage Company of New Jersey in some more prominent way than as stockholders?

A. We had their consent.

Q. The public would believe that they were connected either as officers or directors, would they not?

A. We have their consent.

Q. I am not referring to their view point, but to the viewpoint of the people who read this circular. Did it ever occur to you that there would arise in the minds of people reading this circular, reading this 30  
list of names of men who were associated with the company, that they would believe that they were connected with the company as directors, at least?

A. That is possible.

Q. What control would they have over the company? Or what would be the importance of their connection as stockholders?

A. I suppose the salesmen would probably work around in that town. I suppose that if they could go into a town and say that yes Mr. So-and-so was a stockholder that it would make it easier for the salesmen.

7. The circular mentioned in paragraph 7 hereof, printed, issued and distributed by the defendant in the manner and for the purposes described in said  
10 paragraph, characterized the defendant, Associated Mortgage Company of New Jersey, in the following manner:

“There is a strong financial Institution—which has been functioning for some time, and has proven to be one of the safest and most profitable enterprises in the State of New Jersey.

20

---

This institution is State wide in its aspect, operations will cover the whole State of New Jersey.”

These sentences were meant to convey to persons who read the same that the defendant was then and there a well established institution, with a business sufficiently large to be state-wide in its scope and extending over the entire State of New Jersey. Said  
30 statement was deceptive, false and fraudulent because the defendant did not then and there have sufficient business on hand to be state-wide in its scope. It did not have funds in sufficient quantity to justify the statement “Strong Financial Institution,” but on the contrary was, in fact, insolvent from the date of its organization and incorporation and has been up until the present time. It is a fact, moreover, that the

corporation since its organization has engaged in only a limited number of mortgage transactions, wherein it has loaned money at excessively high rates to a few individuals in Burlington County. Aside from twenty-two mortgage loans which it has made, the corporation has confined its activities to the sale of its stock.

8. The circular mentioned in paragraph 7 hereof, printed, issued and distributed by the defendant<sup>10</sup> in the manner and for the purposes described in said paragraph, states on its last page:

“Dividends being paid quarterly.”

such statement was used to provoke the interest in the purchase of stock of the defendant corporation by the public. Its chief purpose was to induce sales. The circular above referred to concealed and suppressed the fact, however, that dividends had been<sup>20</sup> paid out of capital and not out of earnings or surplus of the corporation. Complainant charges the fact to be that the corporation has never earned sufficient money to pay a dividend, but has at all times paid such dividends out of the capital of the corporation, which acts were and have been contrary to the statutes made and provided relative to the payment of dividends. The best evidence of the financial condition of the company is the balance sheets of the corporation as of June 24th, 1930, prepared by the<sup>30</sup> agents of the corporation and submitted to the Attorney General upon his demand. These balance sheets are attached hereto and designated “Schedule D” and the analysis of the deficits contained therein attached hereto and designated “Schedule C” are made a part of this affidavit.

9. On divers occasions since the organization of the defendant corporation, it has caused to be printed, issued and circulated, within and from this State to divers persons, the particular names of whom are unknown to this complainant, and also to the public at large, a certain circular, a true copy of which is attached hereto and made a part hereof and designated "Schedule B". Said circular offered for sale and advertised the capital stock of the defendant, Associated Mortgage Company of New Jersey, in units  
10 of one share of preferred stock and two shares of common stock, at \$150.00 per unit. That circular contained under the heading "Directors and Advisory Board" the names of eighteen different prominent men, with their vocation and title specifically set forth. The connotation to be placed upon the use of that list of names could only be that the men listed thereunder were active in the direction and management of the defendant corporation. Such, however,  
20 was not nor has not at any time been the case. Several individuals had been listed in said circular who have had no interest nor voice in the management or direction of the corporation; they being, in fact, stockholders and nothing more. The use of such names was a deliberate attempt on the part of the defendant corporation to exploit the reputation and prestige their names would spell out, so as to induce the purchase of stock on the part of the gullible public whose reliance upon the reputation and association  
30 of prominent men in such an enterprise was well known to the defendant corporation.

10. At all times during the negotiation and sale of the corporation's capital stock, defendant concealed and suppressed the fact that 9,000 shares of an authorized capitalization of 20,000 shares had been issued to various individuals without receipt of

any valuable monetary consideration by the corporation. Such suppression and concealment was fraudulent.

11. The defendant, in its negotiation and sale of the capital stock of the defendant corporation, concealed and suppressed the fact that the actual book value of the common stock which it was selling at prices up to \$25.00 a share was less than nothing. Such suppression and concealment was fraudulent. 10

12. The defendant, in its negotiation and sale of the capital stock of Associated Mortgage Company of New Jersey concealed and suppressed the fact that \$37.50 of every unit so sold at \$150.00 per unit was being used to defray the selling expenses of that security offering. Such concealment and suppression was contrary to the provisions of the New Jersey Securities Act.

20

13. Complainant further charges the fact to be that notwithstanding that under the terms of the contract between defendant corporation and M. T. Perkins, he was to receive a commission of 25% on all securities sold under his jurisdiction, the amount of money disbursed for selling and organization expenses has exceeded 46%. Up and until April 30th, 1930, \$111,110.00 worth of stock of the corporation had been sold. The cost of organizing the business and of selling the stock totaled, as of that date, 30 \$51,882.28. Complainant charges that defendant corporation, Associated Mortgage Company of New Jersey, suppressed and concealed the fact that this considerable sum of money had been disbursed by the organization for the establishment of defendant's business. The New Jersey Securities Act specifically defines the procurement of any commissions so large

as to be considered excessive and unconscionable as a fraud.

14. One of the recipients of the "watered" stock that had been issued as is described in paragraph 4 hereof was Joseph R. Cheesman, President of the corporation. Cheesman received several thousand shares of common stock in consideration of his work, labor and services performed in the organization of  
10 the corporation. No cash consideration was paid for this stock. Notwithstanding the fact that Cheesman was an officer and director of the corporation, and required to comport himself with the highest degree of care in all negotiations with the corporation, and to completely divorce himself from any actions wherein there might be a private, personal profit to himself, he offered and sold to the corporation 745 shares of this common stock at \$5.00 per share. The corporation purchased this stock out of capital, its  
20 earnings being insufficient to pay therefor. The total amount of money received by Cheesman from this improper sale was \$3,725.00. Defendant in its promotion, negotiation, and sale of the capital stock of the Associated Mortgage Company of New Jersey concealed and suppressed the fact that the corporation had purchased its own stock out of capital from one of its officers. It also concealed and suppressed the fact that Cheesman had sold this stock to his corporation at a profit of \$3,725.00 to himself and a loss  
30 of a like amount to the corporation. It furthermore suppressed and concealed the fact that Cheesman, who was disenfranchised and disqualified from taking any action on such a matter at a board meeting, had formally voted at the meeting at which the transaction had been approved by the Board of Directors that such offer of sale from himself to the corporation be accepted. Such suppression and concealment

was fraudulent. In answer to the following specific questions, Joseph R. Cheesman testified as follows:

Q. Has the company bought any of its own stock?

A. Yes. My own.

Q. Your own? You mean stock that was issued to you and by you in turn sold back to the company?

A. Yes.

Q. How many shares did you sell them?

A. 745 shares. I got \$5.00 a share for it.

10

Q. What did you pay for it?

A. That was in the transaction that I had.

Q. Had it been received by you for services rendered?

A. Yes.

15. Defendant corporation, in its negotiation, promotion and sale of the capital stock of Associated Mortgage Company of New Jersey, has steadfastly and consistently represented that the corporation 20 had paid dividends and on the basis of such history of dividend payments, has solicited and induced the purchase of additional stock from the public. Defendant corporation has suppressed and concealed, however, that such dividends have been paid out of capital and not out of earnings and or surplus, as is required by the statutes of New Jersey. Defendant corporation by its statement of dividend payments represented to the public that the corporation was solvent and earning substantial sums of money on 30 its investments so as to enable it to meet its dividend requirement. Such statements and implications were without any basis in fact and were, in fact, fraudulent, deceptive and misleading. The net profits that had been earned by the corporation from the inception of its business, December 15th, 1927, up to and including June 24th, 1930, were \$1,758.14.

Dividends totalling \$3,401.02 have been paid during this period. Such dividends have not been paid out of earnings and net profit did not amount to that sum. It is furthermore the fact that there has been a depreciation of assets since the organization of the corporation of \$51,882.28 and that of the total capital stock investment of \$111,110.00 the corporation's net worth has depreciated to \$57,660.81. No provision was made at the time of the payments of the dividends to amortize any portion of this depreciation. 10 The solicitation and inducement of the purchase of the capital stock of the corporation on the basis of its history of dividend payments was intended to mislead the purchasers of stock into the belief that the corporation was enjoying substantial success when such was not the case.

16. Defendant in its negotiation and sale of the capital stock of Associated Mortgage Company of New Jersey has at all times suppressed and concealed the fact from the purchasers of stock that the corporation was insolvent. Complainant charges the fact to be that since the organization of the corporation it has not earned sufficient money to enable it to meet the cost of selling its securities, organization expenses and its operating overhead. Complainant charges that on June 24th, 1930, the corporation had a deficit of \$43,429.67. The suppression and concealment of this impairment of the assets of the corporation was a certain and definite infringement of the New Jersey Securities Act. Such concealment was necessary so as to enable the corporation to dispose of its securities. 20 30

17. During the negotiation, promotion and sale of the capital stock of the defendant, Associated Mortgage Company of New Jersey, caused to be printed,

issued and circulated within and from this State to divers persons, the particular names of whom are unknown to this complainant, and also to the public at large, a certain financial statement, a true copy of which is attached hereto and made a part hereof, and designated as "Schedule C." Said financial statement reveals a surplus of \$24,237.89. Said statement, however, fails to list as a liability the obligation of the corporation on its common stock issued and outstanding. That statement does not reveal truly and accurately the financial condition of the corporation. Its use was intended to induce further sale of the capital stock of defendant corporation. Such use, knowing that the statement did not correctly depict the true condition of affairs of the corporation, was a well-considered, and deliberate fraud upon all the purchasers of stock who relied upon the figures contained therein. 10

18. The statement above referred to lists at the bottom, as auditors, William C. Jones, Glenn Lindabury and W. Emory Cheesman. To the casual reader it would appear as though three disinterested individuals had examined the books of the defendant corporation and had prepared the statement to which they were then and there certifying. Such was not the true condition of affairs, however, inasmuch as the three men, whose names appeared as auditors, were all directors of the corporation. None of the men were qualified in any manner to determine the true financial condition of the corporation. None of them were auditors, nor, in fact, engaged in any business of a statistical nature or auditing nature that qualified them to certify to the verity of the financial statement. The purpose in listing the names of the men was to influence the purchasers of stock into the belief that the financial statement which disclosed 30

an apparent healthy condition and a surplus of \$24,237.89, had been carefully prepared by experts who were willing to personally guarantee the accuracy of the figures contained therein.

19. The chief function of the corporation, according to the Certificate of Incorporation, is to engage in mortgage financing. Its usual practice has been to lend money up to and including \$10,000 on 50% of the appraised value of improved property, charging an interest rate of 6% with a bonus of 5%. Although the contract between M. T. Perkins and the corporation specified that a 25% commission was to be paid on all stock sold, he has been active in the flotation of mortgage transactions, and has received large and excessive commissions for the placing of such loans. Complainant charges the fact to be that Perkins, on behalf of the corporation, has purchased \$14,730.60 worth of mortgages on improved property in Burlington County and paid therefor by various quantities of the capital stock of the defendant corporation. Perkins received, as commissions on these transactions, \$3,682.65. The income of the corporation from such transactions will be insufficient to take care of the cost of acquisition in less than three years' time and consequently the amount of stock so issued and delivered will not be productive of results to the treasury of the corporation for a considerable period of time yet to come. Defendant has suppressed and concealed the fact that Perkins has been engaged in the purchase of mortgages, has paid therefor in stock upon which he has received an excessive commission, and that the corporation has thus jeopardized its future success by paying a fee of 25% on these mortgage loans which cannot show a return in excess of 11% per annum.

20. Although the chief business of the corporation has been to lend money on first mortgages, it has invested considerable sums of its money in the securities of other corporations. Complainant charges that the corporation purchased 67 shares of stock of the Burlington Real Estate Company at \$100.00 per share. Such purchase was irregular in that the Burlington Real Estate Company is dominated by Joseph R. Cheesman, its president, who is also the president of the defendant corporation. It is furthermore true 10 that the treasurer of the defendant corporation, one Taylor, is also the treasurer of Burlington Real Estate Company. The purchase of the capital stock of the Burlington Real Estate Company by Associated Mortgage Company of New Jersey was handled by Joseph R. Cheesman in dereliction of his duty as an officer and director of defendant corporation. The Burlington Real Estate Company is engaged in the same type of business as defendant corporation. There was no reason whatsoever for the investment 20 of any money of defendant corporation in the capital stock of a competing enterprise unless it was to provide the competing corporation with funds with which to combat defendant corporation. In answer to the following specific questions, Joseph R. Cheesman testified before me as follows:

Q. What is your connection with the Burlington Real Estate Company?

A. The Burlington Real Estate Company? I am 30 the president.

Q. What is Mr. Turner's connection with the Burlington Real Estate Company?

A. Treasurer.

Q. How many shares of the stock of the Burlington Real Estate Company does the Associated Mortgage Company own?

A. I think \$6,700 worth.

Q. Who bought that stock for the Associated Mortgage Company?

A. The Executive Board of the Associated Mortgage Company.

Q. Who are the members of the Executive Board of the Associated Mortgage Company?

A. Taylor, myself, Jones and Glenn Lindabury. (Taylor is treasurer of Burlington Real Estate Com-  
10 pany and Cheesman President of that corporation and Jones and Lindabury both appear as auditors on its financial statement. All four men are, at the same time, directors of defendant corporation).

Q. Did you vote at that meeting where it was voted to buy this stock?

A. I don't recall. I suppose I did.

Q. Did Mr. Taylor vote at that meeting?

A. I suppose so.

20 21. Complainant further charges that considerable amounts of money have been invested in the securities of corporations which will not result in sufficient returns to enable the corporation to pay its dividend at the rate of 7% per annum. It is also a fact that M. T. Perkins, who is acting as the fiscal agent of the corporation in the sale of its securities, is in an embarrassed financial condition, and as a result thereof has been forced to borrow money from the corporation, so that there is now owing by Per-  
30 kins to the corporation on account of such loans and advances so made, a sum in excess of \$6,800.00. Such money so disbursed to Perkins is non-productive and the corporation cannot and does not receive any income therefrom so as to enable it to meet its dividend requirements. One instance in particular is eloquent proof of the type of investment transactions engaged in by the corporation which have pre-

vented the payment of dividends out of earnings. Harry I. Perrine, who was a dominating figure in the enterprise and a director purchased 95 shares of capital stock of the Wrightstown National Bank for \$9,500.00. This stock was held for a considerable time and then sold back to the bank for \$8,550.00 at a loss of \$950.00. At the same time, a commission of \$2,500.00 was paid by defendant to Perrine and an associate of his named Oliver, with the result that the company lost \$3,450.00 on this transaction. De-<sup>10</sup> defendant corporation suppressed and concealed the fact that considerable sums of money of the corporation had been invested in this manner, and that the corporation was the owner of shares of stock in various corporations, which could not and would not show a sufficient return to enable it to pay its 7% dividend requirements. The fact that officers and directors of the corporation received commissions from defendant on the purchase and sale of securities of other corporations as in the case of the <sup>20</sup> purchase of the Wrightstown Bank stock was suppressed and concealed from the purchasers of stock. Such suppression and concealment was fraudulent.

PHILIP L. COFFIN, Jr.

Sworn and subscribed to  
before me this 31st day of  
July, 1930.

30

J. Branton Wallace,  
Notary Public of New Jersey.  
My Commission expires May 5, 1932.

Mr. Lenard Norman

There is a Strong Financial Institution managed by a group of prominent New Jersey men, which has been functioning for some time, and has proven to  
10 be one of the safest and most profitable enterprises in the State of New Jersey.

You are cordially extended an invitation to become associated with the following gentlemen in furthering the program of this institution.

This institution is State wide in its aspect, operations will cover the whole State of New Jersey. It will render a distinct service to all communities in New Jersey, and for this reason is favorably regarded by all.

20 Information showing how you may become acquainted with the purpose of this corporation and take advantage of the valuable rights now being offered will be furnished, if you will mail the enclosed card, using the envelope supplied herewith.

Yours very truly,

THE COMMITTEE.

Schedule A

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Page 2

Schedule A.

GRANDIN V. JOHNSON

Vice-President First National Bank, Sea Bright

THOMAS J. EARLY

President Peoples National Bank, Pemberton

MORRIS E. LAMB

President First National Bank, New Egypt

JOHN C. HURFF

10

President First National Bank, Marlton

DAVID S. H. CROSHAW

Director First National Bank, New Egypt

DR. H. E. LONGSDORF

Director Union National Bank, Mount Holly

Page 3

Schedule A

HARRY HAWKINS, Jr.

20

Director Union National Bank, Mount Holly

W. G. DAVIS

Director First National Bank, Wrightstown

WILLIAM C. JONES

President Burlington City Chamber of Commerce

Director Associated Mortgage Co. of New Jersey

J. H. ATKINSON

Director Peoples National Bank, Pemberton

JOHN R. WILKINSON

Director First National Bank, Vincentown

30

JOSEPH R. CHEESMAN

Vice-President First National Bank, Wrightstown

President Associated Mortgage Co. of New Jersey

Page 4

Dividends being paid quarterly.

## Schedule B

TENTATIVE BALANCE SHEET  
ASSOCIATED MORTGAGE COMPANY OF NEW JERSEY,  
BURLINGTON, N. J.

June 24, 1930

Adjusted to give effect to provisions of the unsigned Minutes of the Board of Directors dated December 19, 1927 and January 28, 1928, together with affidavits of the Directors attending said meetings, as follows: (a) Giving a stated value of \$1.00 per share on 4623 shares of No Par Common Stock issued to the Organizers, Messrs. Perrine, Dickson, Oliver and Cheesman for services rendered; (b) Charging to Organization Expense value of said 4623 shares at \$1.00 per share, or \$4,623.00; (c) Eliminating from funds of Company the sum of \$21,013.56 said to represent proceeds from sale of 1,229 shares (part of 4,623 shares referred to above) of Common Stock sold from stock originally issued to and owned personally by Messrs. Perrine and Dickson; (d) Writing off Commissions and Organization Expense amounting to \$41,786.79 on 1,484 shares of Common Stock issued and 514 shares of Common Stock subscribed.

		Assets	
	CASH		
	On Deposit .....	\$10,156.84	
	On Hand for Deposit ...	2,000.00	
20	On Deposit for Collection	162.50	
		\$	12,319.34
	SUBSCRIPTIONS TO CAPITAL STOCK .....		19,054.72
	INVESTMENTS		
	Real Estate Mortgages . \$55,330.60		
	Accrued Interest .....	932.24	\$56,262.84
	Bonds .....	21,220.00	
	Stocks .....	13,262.30	
	Real Estate—Beach Haven Lot .....	70.32	90,815.46
	NOTES RECEIVABLE		
	H. I. Perrine .....	\$37.50	
30	W. E. Oliver .....	37.50	75.00
	ACCOUNTS RECEIVABLE		
	M. T. Perkins .....	\$6,892.50	
	J. R. Cheesman .....	2,980.00	9,872.50
	PERMANENT		
	Real Estate — Office Building—Cost .....	\$14,102.51	
	Furniture and Fixtures .	866.80	14,969.31
		\$	147,106.33

<b>Liabilities</b>		
<b>NOTES PAYABLE</b>		
Bank—Secured .....		\$30,000.00
<b>ACCRUED ACCOUNTS</b>		
Professional Services—		
Estimated .....	\$600.00	
Interest .....	425.00	
Commissions .....	248.00	1,273.00
<hr/>		
<b>MORTGAGE PAYABLE</b>		
First Mortgage on Real Estate (Office Building) .....		10,000.00
<b>DEFERRED INCOME</b>		
Interest Paid in Advance		600.00
<b>CAPITAL STOCK</b>		
7% Cumulative Preferred—		
790 Shares Issued ...	\$79,000.00	
177 Shares Subscribed	17,700.00	\$96,700.00
<hr/>		
Common—No Par Value—		
1229 Shares @ \$1.00 per Share	\$1,229.00	
3394 Shares @ \$1.00 per Share	3,394.00	
1484 Shares @ Paid-in Value	36,300.00	\$40,923.00
<hr/>		
514 Shares Subscribed	11,040.00	51,963.00
<hr/>		
Deficit .....	43,429.67	105,233.33
<hr/>		
		<u>\$147,106.33</u>

## Schedule C

ANALYSIS OF DEFICIT		
ASSOCIATED MORTGAGE COMPANY OF NEW JERSEY, BURLINGTON, N. J.		
June 24, 1930		
<b>ADDITIONS</b>		
Dividends Paid .....	\$3,401.02	
Organization Expense ..	4,623.00	
Commissions .....	37,163.79	\$45,187.81
<hr/>		
<b>DEDUCTION</b>		
Net Profit for the period from December 19, 1927, to June 24, 1930		1,758.14
<hr/>		
		\$43,429.67

## Schedule D

ASSOCIATED  
MORTGAGE COMPANY  
OF NEW JERSEY

10 (Incorporated Under the Laws of the State of  
New Jersey)

Capitalization  
ONE MILLION DOLLARS

10,000 Shares 7% Cumulative Preferred Stock,  
Par Value \$100 Each

20 20,000 Shares Common Stock, No Par Value  
AMC

## ADVANCE OFFERING PRICE

Unit Price: { 1 Share Preferred Stock } \$150.00  
                  { 2 Shares Common Stock }

(All Subscriptions Received Subject to Allotment)

SECURITY BEHIND EACH MORTGAGE

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1. Every loan granted by our Company is secured by a first mortgage on property worth nearly 10  
twice as much as the amount of the loan.

2. Property appraisals are made by men whose experience in valuing real estate justifies their opinion.

3. All mortgages deposited as security for our bonds must be issued only against occupied dwellings.

4. All properties against which loans are made  
are adequately insured. 20

5. Titles are examined by recognized authorities.

6. The character and financial responsibility of the owner must be beyond reproach.

7. The Company exercises careful supervision as regards the payment of all taxes and insurance 30  
premiums and takes care of the collection of interest and principal when due.

8. The Company's field of operations is confined to the State of New Jersey, which state is recognized by mortgage authorities as one of the safest and most profitable in which to operate.

9. The wide diversification of mortgages throughout the State of New Jersey offers a strong factor of safety.

10. The type of security in which the Company deals has been approved as a legal investment for Savings Banks and Trust Funds.

11. The Company's capital is liquid at all times and is not tied up in factories, equipment and burdensome inventories.

12. The Company renders a service which is certain to be beneficial to the communities in which it operates.

13. The management of the Company is in the hands of men who are thoroughly experienced in the mortgage business.

14. Securities of the modern mortgage company, such as the Associated Mortgage Company of New Jersey, offer a splendid type of investment, combining unusual profit probabilities with a satisfactory degree of safety.

Page 3

Schedule D

30

DIRECTORS AND ADVISORY BOARD

JOSEPH R. CHEESMAN, President  
President Burlington Realty & Finance Corp.  
President Enterprise Publishing Co.  
Director Independent Bonding & Casualty Ins. Co.,  
Newark, N. J.

H. I. PERRINE, Vice-President

H. I. Perrine & Co., Investments, Burlington, N. J.  
Formerly with National City Company, New York  
City

Formerly with West & Co., Philadelphia, Pa.

WILLIAM C. JONES, Burlington, N. J.

Director Burlington Realty & Finance Corp.  
Coal Merchant

WILLIAM E. TAYLOR, Treasurer

Treasurer Joshua Taylor & Co., Burlington, N. J. 10  
Treasurer Burlington Realty & Finance Corp.

WARREN R. RAHN, Burlington, N. J.

HARRY J. ZIEGLER, Riverside, N. J.

Real Estate and Insurance

CHRISTIAN DICK, SR., Riverside, N. J.

Retired

CHAS. B. DURBOROW, Edgewater Park, N. J.

President Chas. B. Durborow & Co., Real Estate.

Director Coast National Bank, Seaside Heights, N.J.

Director Indemnity Exchange of America, 1001 20  
Chestnut St., Philadelphia, Pa.

MORRIS E. LAMB, New Egypt, N. J.

President First National Bank, New Egypt

DAVID S. H. CROSHAW, New Egypt, N. J.

Director First National Bank, New Egypt

DR. H. E. LONGSDORF, Mount Holly, N. J.

Vice-President Mount Holly Mortgage & Finance  
Co.

President Northampton Textile Co., Mount Holly

Director Union National Bank and Trust Co., 30  
Mount Holly

## Schedule D

HERBERT S. KILLIE, Mount Holly, N. J.

Attorney

Solicitor Northampton Textile Co., Mount Holly

Secretary-Treasurer Mount Holly Chamber of  
Commerce

HARRY HAWKINS, JR., Mount Holly, N. J.

10 Insurance

President Mount Holly Mortgage & Finance Co.,

Director People's Building & Loan Association

Director Union National Bank and Trust Co.,  
Mount Holly

JOHN R. WILKINSON, Vincentown, N. J.

Director First National Bank, Vincentown

Treasurer Vincentown & Tabernacle Telephone  
Co.

J. H. ATKINSON, Wrightstown, N. J.

20 Director First National Bank, Wrightstown, N. J.

Director People's National Bank, Pemberton, N. J.

WILLIAM H. BOWKER, Medford, N. J.

Real Estate and Insurance

THOMAS J. EARLY, Pemberton, N. J.

President People's National Bank, Pemberton, N.J.

B. NEY RIDGWAY, Pemberton, N. J.

Merchant

30

*ASSOCIATED  
MORTGAGE COMPANY  
OF NEW JERSEY*

Executive Offices

MECHANICS NATIONAL BANK BUILDING

BURLINGTON, N. J.

## Schedule E

STATEMENT  
ASSOCIATED MORTGAGE  
COMPANY  
of New Jersey  
Feb. 1, 1930

## Resources

Cash .....	\$ 5,336.62	10
Accounts Receivable .....	4,692.50	
Bonds and Mortgages .....	63,452.90	
Capital Stock Subscribed .....	35,085.00	
Office Furn. and Equipment .....	477.00	
	<hr/>	
	\$109,044.02	

## Liabilities

Bills Payable .....	\$ 22,000.00	
Capital Stock full paid, Preferred .....	48,200.00	20
Received on Deferred Payments .....	14,606.13	
Surplus .....	24,237.89	
	<hr/>	
	\$109,044.02	

William E. Taylor,  
Treasurer.

## Auditors:

Wm. C. Jones,  
Glenn Lindabury,  
W. Emory Cheesman.

## IN CHANCERY OF NEW JERSEY

Between WILLIAM A. STEVENS, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY,  Complainant, and 10 ASSOCIATED MORTGAGE COMPANY OF NEW JERSEY,  Defendant.	}	On Bill, &c. ANSWER.
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The answer of the defendant, Associated Mortgage Company of New Jersey, a corporation of the State of New Jersey, having its principal office in the City of Burlington, State of New Jersey:

1. As to paragraph 1 of said bill defendant has no  
20 knowledge or information thereof sufficient to form a belief.
  
2. Paragraph 2 of said bill is admitted.
  
3. Defendant admits that it was incorporated as set forth in paragraph 3 of said bill, and that the incorporators were Clinton D. Evans, Howard L. Hilderbrand and T. Philips Brown, as set forth in said paragraph, but denies that these individuals were  
30 merely "dummy incorporators" and did not own any substantial interest in the corporation, as in said paragraph 3 is set forth. Defendant admits that after the organization the said Clinton D. Evans, Howard L. Hilderbrand and T. Philips Brown sold their stock in said corporation and resigned as officers and directors, and that Joseph R. Cheesman, Glenn A. Lindabury and William E. Taylor were elected

president, vice president and treasurer, respectively, as in said paragraph alleged, but denies that E. R. Dickson and Harry I. Perrine, were active in the promotion and organization of the corporation, as in said paragraph 3 is alleged.

4. Defendant admits that at or shortly after its organization, Messrs. Harry I. Perrine and E. R. Dickson entered into an agreement with defendant to sell the stock of the defendant and agreed to do certain 10 advertising and solicitation in an effort to sell said stock, and as compensation to the said Perrine and Dickson the corporation agreed to issue to them 3,000 shares of the common stock of the corporation at an established actual money value of \$1.00 per share, said Board of Directors being of opinion that the services which Messrs. Perrine and Dickson agreed to furnish, and to reimburse them for actual money previously paid by them for organization ex- 20 penses, was a fair compensation; and that later, Mr. Perrine having represented to the Board that sale of the stock could be better accomplished and the business of the company advantageously promoted by procuring as stockholders men residing in different communities, well and favorably known therein, it was agreed by said Board of Directors that 6,000 additional shares of the common stock were authorized to be issued and made available by the said Perrine and Dickson to be distributed by them upon such terms as they deemed advisable, with the 30 approval of the Board of Directors, as a means of securing the co-operation of advisory board members and directors who should constitute committees acting in advisory capacity with the Board of Directors of the corporation to enable the company the better to secure business and more effectually and advantageously carry on the same. The business of the

company being that of loaning money on first mortgages on real estate, it was considered that it would be for the advantage of the corporation to have men acquainted with real estate values in different communities, who would be interested in the corporation and could advise them as to the values of the real estate offered as security. The valuation of said 6,000 shares so made available was fixed at \$1.00 per share. The defendant denies the matters set forth in  
10 paragraph 4 save as herein admitted.

5. Defendant admits that since its organization it has sold its stock to various persons, but denies that it has ever used or employed, or contemplated using or employing any deception, misrepresentation, concealment, suppression, fraud, false pretense, false promise or fictitious or pretended purchase and sale in violation of any of the provisions of any law of the State of New Jersey.

20 6. Paragraph 6 is admitted.

7. Defendant admits that it caused to be printed, issued and circulated a circular as set forth in paragraph 7 of said bill, a copy of which is annexed thereto and marked "Schedule A", but denies that said statement was prepared in such a way as to make it appear that any men whose names appeared therein were connected with the company in any capacity  
30 other than as stockholders, and said men whose names appeared upon said circular were, as a matter of fact, stockholders of the corporation and were bona fide holders of stock therein.

8. Defendant admits the issuance of the circular as stated in paragraph 8 of said bill, but denies all the other matters and things therein set forth.

9. Defendant admits that in said circular it was stated "dividends being paid quarterly," but denies the other matters set forth in said paragraph.

10. Defendant admits the printing, issuance and circulation of the circular designated as "Schedule B" in complainant's bill, but denies that there was any attempt by means of said circular, or any statements therein made, to deceive or defraud any one, and all of the matters in said paragraph 10 are denied. 10

11. Paragraph 11 of said bill is denied.

12. Paragraph 12 of complainant's bill is denied.

13. Paragraph 13 of complainant's bill is denied.

14. Paragraph 14 of complainant's bill is denied.

15. Paragraph 15 of complainant's bill is denied. 20

16. Defendant admits the payment by it of dividends upon its stock, but denies that the same were paid out of capital and avers that all dividends were paid out of earnings. The other statements contained in said paragraph 16 are denied.

17. Paragraph 17 is denied. 30

18. Defendant admits the issuance and circulation of financial statement, a true copy of which is attached to complainant's bill and designated as "Schedule C," but defendant denies that said statement was untrue or incorrect. All the other matters contained in paragraph 18 of said bill are denied.

19. Defendant admits that the names of William C. Jones, Glenn Lindabury and W. Emory Cheesman were signed to said statement as auditors, but all the other matters contained in said paragraph 19 are denied.

20. Defendant admits that it is engaged and has been engaged in loaning money on real estate mortgages; that it has paid M. T. Perkins 25% commission on all stocks sold. It has no knowledge or information sufficient to form a belief as to whether he has been active in the flotation of mortgage transactions or has received large and excessive commissions in connection therewith. Defendant denies that it has paid the said Perkins any commissions on stock sold by him in excess of the 25%, or that it has received from the sale of its said stock anything other than money or good and satisfactory securities. The other matters contained in said paragraph 20 are denied.

21. Defendant admits the purchase of 67 shares of stock of the Burlington Real Estate Company at \$100.00 per share, as set forth in paragraph 21, but denies that there was anything fraudulent in said purchase and avers that the stock so purchased was worth and is worth the amount so paid for it by defendant. The other matters as set forth in said paragraph 21 are denied.

22. Paragraph 22 of said bill is denied.

23. Defendant denies that it has engaged in, is engaging in, or is about to engage in the use and employment of deception, misrepresentation, concealment, suppression, fraud, false pretenses or false promises in connection with the sale, offer for sale,

promotion, negotiation, advertisement or distribution within and from this State of its capital stock and other securities, or that it has engaged in, is engaging in, or is about to engage in the use and employment of fraud in any way as alleged in paragraph 23 of complainant's bill. Defendant has no knowledge as to what appears to complainant, but denies that complainant is justified in making the allegations contained in paragraph 23 of his bill and denies the same. 10

Defendant denies that complainant is entitled to the relief prayed for by his said bill and prays that it may be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. KILLIE,  
Solicitor for Defendant.

GEO. M. HILLMAN, 20  
Of Counsel with Defendant.

## IN CHANCERY OF NEW JERSEY.

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Between  
 WILLIAM A. STEVENS, ATTORNEY  
 GENERAL, Complainant,  
 and  
 ASSOCIATED MORTGAGE COMPANY  
 10 OF NEW JERSEY, Defendant. }  
 On Bill, &c.  
 ANSWERING  
 AFFIDAVITS.

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

Joseph R. Cheesman, of full age, being duly sworn according to law, on his oath says:

20

I reside in the City and County of Burlington, State of New Jersey, and have resided there all of my life or for 62 years. I am president of the Burlington Enterprise Company, of Burlington, and I am also president of the Associated Mortgage Company of New Jersey, the defendant in this cause, which said defendant is a corporation under the laws of the State of New Jersey, having been incorporated in December, 1927. I have been director and president  
 30 of the company since January, 1928, and during all that time have been active in the management of said corporation and am familiar with its business and affairs. Said company was incorporated for the purpose of loaning money on mortgages and making investments. The officers of the company, in addition to myself, are Glenn A. Lindabury, vice-president, and William E. Taylor, secretary and

treasurer. The directors of the company, in addition to myself, and Messrs. Taylor and Lindabury, both of whom reside in the city of Burlington, Mr. Taylor being engaged in the insurance business and Mr. Lindabury being a manufacturer, are William C. Jones, of Burlington, a coal dealer and president of the Chamber of Commerce of the City of Burlington; Dr. Harold Longsdorf, a physician, of Mount Holly, New Jersey; C. B. Durborow, of Edgewater Park, a broker engaged in business in Philadelphia; 10 Morris E. Lamb, of New Egypt, New Jersey, president of the First National Bank of New Egypt; David Croshaw, of Wrightstown, New Jersey, a farmer; and Mr. D. C. Mershon, a farmer, of Cranbury, New Jersey. All of the directors are stockholders in the company. I have had knowledge of sales of stock in our company made by our agents and representatives. I have seen the literature and advertisements circulated in connection with the company, and for the purpose of securing subscriptions to the stock of 20 the same. In none of this literature or advertisement was there any false or misleading statements concerning the condition of the company. No statement or representation was ever made by any agent or solicitor of the company, to the best of my knowledge, which was false or misleading, and the agents and solicitors employed by our company were instructed to make no false or misleading statements concerning the company or its business. The said Associated Mortgage Company of New Jersey is not 30 insolvent and never has been insolvent. The stock of the company consists of 10,000 shares of 7% cumulative preferred stock having a par value of \$100.00 per share, and 20,000 shares of the common stock having no par value.

On the 18th day of July, 1930, a statement of the assets and liabilities of Associated Mortgage Com-

pany of New Jersey was made, which statement I know to be true. By this statement the assets of the company amounted to \$153,995.36 and the liabilities to \$146,323.00, leaving a surplus of \$7,672.36. There was issued on this day 790 shares of the preferred stock which had been fully paid for; 196 shares had been subscribed for but only partially paid for; 6,852 shares of the common stock had been issued and paid for; 533 shares of the common stock had been

10 subscribed for but not paid for. The assets consisted of cash on deposit in Mechanics' National Bank of Burlington and Burlington City Loan & Trust Company, \$15,270.23; unpaid subscriptions to the capital stock, preferred and common, \$17,801.87; mortgages on real estate \$59,330.60. All of these mortgages are first liens upon real estate in New Jersey and the mortgaged premises in every case are, in my opinion, ample security. There is accrued interest on these mortgages amounting to \$932.24.

20 We had bonds which we carried at \$21,220.00. These consisted of 19 \$1000. bonds of Ortlely Beach, bearing interest at 6%; two \$1000. bonds of Electric Public Utility Company 5% bonds; and two \$1000. bonds of Tri-Utilities Corporation, 5%. Before purchasing these bonds we investigated the same and I believe that the same are good, sound investments. The aforesaid statement showed that we owned stock which we carried at \$12,262.30. This was made up of 100 shares of the stock of the Seaboard Util-

30 ities Company which we carried at \$12,000.; 96 shares of stock Burlington Realty & Finance Corporation at \$9,600.; 10 shares Peoples Light & Power Company, \$486.25; 10 shares Tri-Utilities Corporation, \$486.75; 50 shares American States Public Service at \$1,400. We carried these stocks in our statement at \$12,262.30. We also included in the statement a lot at Beach Haven, New Jersey, at \$70.32. We

took this lot in settlement of an account and believe that the same is worth more than \$70.32. We also listed as assets accounts receivable from H. I. Perrine and W. E. Oliver \$37.50 each; from Ortley Beach Company \$162.50; M. T. Perkins \$6,892.50; Joseph R. Cheesman \$3,725.00. All of these accounts receivable are in my opinion collectible and worth face value. There is also an item of \$207.34 for interest on a mortgage past due. Office building, with furniture and fixtures, \$15,045.46. This is our office building, it was the building, in Burlington, New Jersey, formerly occupied as a banking house by Mechanics' National Bank of Burlington and was sold by that institution because it had erected and moved to a new bank building. This building is well located, in excellent repair, and well adapted for use in our business. Before purchasing it we had it appraised by Elwood H. Russell, a well known real estate agent of Burlington, and Hugh B. Miller, of Edgewater Park, contractor and builder. Mr. Miller appraised the building at \$40,000. and Mr. Russell appraised at \$35,000. This made our assets total \$153,995.36.

As liabilities we had notes in Mechanics' National Bank of Burlington for money which we had borrowed to reinvest amounting to \$30,000. The accrued interest on this indebtedness amounted to \$90.00. We owed commissions in the amount of \$248.00. There was a mortgage on our office building amounting to \$10,000.; 790 shares of preferred stock issued, \$79,000.; 196 shares of preferred stock subscribed for, \$19,600.; common stock issued, 6,852 shares at \$1.00 per share, \$6,852; common stock subscribed, but not paid for, 533 shares at \$1.00 per share, \$533. This made a total of liabilities of \$146,323, and left a surplus of \$7,672.36.

The condition of the company has not materially changed since this statement as of July 18th, 1930.

Shortly after I was elected president, the question of securing subscriptions to the stock of the company was considered. I found that prior to my election the company had made an arrangement or agreement with E. R. Dickson and H. I. Perrine whereby these gentlemen were to undertake the sale of the company's stock. They were to provide their  
10 own clerical force, additional solicitors, to furnish literature and advertisements, and to pay all of the expenses incidental to such sales and were also to bear the costs and expense of the incorporation of our company. In consideration of this the company had issued to them 3,000 shares of the common stock, no par value, and had fixed the value of said stock at \$1.00 per share, we being of opinion that \$3,000. was a fair compensation for what Messrs. Perrine and Dickson were to do and had done at a fair value for  
20 the common stock. Subsequently, Messrs. Perrine and Dickson stated to the directors of our company that they believed they could sell more stock and could increase and benefit the business of the company if they could secure as stockholders who would be active and as additional directors men of well known standing residing in surrounding towns; that to induce the co-operation of such men who would give to the officers and directors of the corporation valuable information concerning real es-  
30 tate valuations which would assist us in making safe mortgage loans; that shares of the common stock should be given to such persons upon their rendering such services to the company. Accordingly the directors of our corporation authorized the issuance of 6,000 shares of the common stock and placed this at the disposal of Messrs. Dickson and Perrine for use as aforesaid, and the price of said stock was fixed

at \$1.00 per share. A part of this stock was issued for this purpose. We did, in this way, secure a number of prominent men, many of them connected with banks and other financial institutions, who gave us information and assisted us in the extension of our business and to whom we referred in our advertisements, with their permission. Among these gentlemen were Grandin D. Johnson, vice president First National Bank of Sea Bright; Thomas J. Early, President Peoples National Bank of Pemberton; 10 John C. Hurff, president First National Bank of Marlton; Harry Hawkins, Jr., a director of Union National Bank at Mount Holly; W. G. Davis, director of First National Bank of Wrightstown; J. H. Atkinson, director Peoples National Bank of Pemberton; John R. Wilkinson, director First National Bank of Vincentown. There was no deception or misrepresentation whatever practised by our company or in its behalf by the use of these names.

A part of the common stock which was made avail- 20  
able for issuance to persons with the idea of interest-  
ing them in the corporation was issued to me. A  
gentleman who was interested in the company, to  
wit, Horace Roberts, of Moorestown, New Jersey, offered to purchase 745 shares of this stock from me for \$6.25 a share. I felt, under the circumstances, that the company should have this profit. I told the directors of the transaction and sold them my 745 shares at \$5.00 a share, with the idea that it was to be resold to Mr. Roberts. For some reason the trans- 30  
action was never consummated with him; he did not take the stock, and so I have agreed to refund this \$3,725.00 to the company and it is that item which is listed as accounts receivable in the statement of the condition of the company as of July 18, 1930.

The Burlington Realty & Finance Corporation is a corporation engaged in business in the City of Burlington. Our directors were of opinion that it would perhaps be advisable for us to secure this company and consolidate it with ours. With this end in view we purchased 96 shares of the capital stock of said company, which we still own. We have not secured control of the company and it has not been consolidated with our company. This stock is worth, in my  
10 opinion, all that was paid for it. Burlington Realty & Finance Corporation is a going concern, it has paid dividends regularly, and we regard this stock as a good investment.

During the World War, while the United States Cantonment was located at Camp Dix, near Wrightstown, a bank known as First National Bank of Wrightstown was established at that place. After the removal of the troops from the cantonment, the business of the bank decreased very much and we  
20 understood that the bank would probably go into liquidation. We learned that a considerable quantity of the stock of the bank was for sale. We thought that by purchasing this stock, giving in some cases our stock in exchange for the same, we could secure the assets of the bank and also interest prominent people in the vicinity of the bank in our company. The company acquired 75 shares of the stock of this bank on the basis of \$100. per share, in nearly every case giving our stock in exchange for same.  
30 Only \$1000. in cash was paid. We held this stock for a while but found or concluded that our original plan of having the bank liquidated was not practical and we sold all of the stock of this bank to the First International Surety Company of New York City, receiving cash on the transaction; we sustained a loss of \$750. This was a total loss and the only

loss which we sustained in connection with this bank stock transaction.

Our company has paid its dividends on the preferred stock at the rate of 7% per annum regularly, quarterly. The last payment was made May 1st, 1930, and the institution of these proceedings prevented the payment of these dividends on August 1st. We also paid a dividend during the past year on the common stock at the rate of 25c per share.

Certain affidavits were prepared in connection <sup>10</sup> with the affairs of Associated Mortgage Company of New Jersey and presented to the Attorney General of New Jersey. A copy of these affidavits is annexed hereto.

JOSEPH R. CHEESMAN.

Sworn and subscribed before  
me this 9th day of August,  
1930.

Mary E. Allen,  
Notary Public of N. J.

20

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

William E. Taylor, being duly sworn according to law, on his oath deposes and says:

I reside in the City of Burlington, in said County and State.

10 I am secretary and treasurer of Associated Mortgage Company of New Jersey, a corporation of New Jersey doing business at Burlington aforesaid. Joseph R. Cheesman is the president of said corporation. I have read over the affidavit which he has made in this matter and so far as the same relates to the acts of the corporation and the transactions of said corporation with Mr. Cheesman, the same is true.

20 I have made up a balance sheet, showing the assets and liabilities of the said Associated Mortgage Company of New Jersey, as of July 18, 1930, a copy of which is hereto annexed. Said balance sheet and statement is correct and shows the true condition of the company on the date of July 18, 1930, and the condition of said company has not materially changed since that date. There are 790 shares of the preferred stock issued and paid for; 196 shares of the preferred stock subscribed for but not fully paid for; 6852 shares of the common stock have been issued and paid for; 533 shares have been issued but not fully paid for. This is all of the stock, common  
30 and preferred, which has been issued and is outstanding or which has been partially paid for. The value of the common stock issued has been fixed by the Board of Directors of the company at the sum of \$1.00 per share.

William R. Kennedy was the first secretary of the corporation. He removed and took with him certain books and papers of the company, including the

original minute book, but we have memoranda made by others of what took place and from these have made up the minutes as shown by the affidavit which I previously made and which was presented to the Attorney General, as stated by Mr. Cheesman, my affidavit being supported by the affidavits of Messrs. Perrine, Dickson and Cheesman, also filed with the Attorney General. The business of the Associated Mortgage Company of New Jersey has shown a steady and healthy increase, ever since 1928, when Mr. Cheesman assumed the active management of the company as president. The assets of the company are invested in real estate mortgages which are first liens on property worth considerably more than the amount of the mortgage; on good bonds and stocks and the other items as shown in the statement; with regard to the item among the assets in said statement of accounts receivable, M. T. Perkins \$6,892.50, this was money advanced to him by our company, authorized by the Board of Directors, to cover the expense of establishing offices and agencies, employing clerks, agents and solicitors, printing circulars and other advertising matter, and selling the stock of our company. This money was to be returned by Mr. Perkins out of commissions coming due to him from our company on the sales of stock. The contract with him provided for the payment of 25%. The company has never paid, either to Mr. Perkins or to any one else, any commission in excess of 25% for selling stock. We find that in the business of the company we can satisfactorily and profitably invest our money and that more business could be done and larger income obtained without increasing materially the operating expenses if we had the additional money, which can be obtained only by securing stockholders, and it is for this reason that

the company has been active in selling and endeavoring to sell its stock.

The profits of the company are increased by the fact that we can turn our money several times in the course of a year. We have been able, believe that we will be able to borrow money and loan the same at a higher rate of interest than we are obliged to pay for the same. None of the dividends which our company has paid have been paid out of capital nor  
10 otherwise than out of the earnings of the corporation.

I have seen the literature and advertisements used by the agents and solicitors who were engaged in selling stock for our company and there were no false or misleading statements contained therein, nor was there any attempt in such advertisements and circulars to mislead any one as to the business of our company or its condition, and I know that the  
20 agents and solicitors were instructed by the officers of our corporation to make no misrepresentations nor fraudulent suppression of facts in the sale of such stock.

WM. E. TAYLOR.

Sworn and subscribed before  
me this 9th day of August,  
1930.

Mary E. Allen,  
Notary Public of N. J.

BALANCE SHEET

July 18, 1930

ASSETS

Cash on Deposit .....		\$15,270.23	
Subscriptions to Capital stock .....		17,801.87	
Investments:			
Real Estate Mortgages .....	\$59,330.60		
Accrued Interest .....	932.24		
Bonds .....	21,220.00		
Stock .....	12,262.30		
Beach Haven Lot .....	70.32	94,815.46	
Accounts Receivable:			
H. I. Perrine .....	37.50		10
W. E. Oliver .....	37.50		
Ortley Beach Company Company ...	162.50		
M. T. Perkins .....	6,892.50		
Joseph R. Cheesman .....	3,725.00		
Past due mortgage interest items ...	207.34	11,062.34	
Permanent Investments:			
Office Building at cost .....	14,102.51		
Office Furniture & Fixtures .....	942.95	15,045.46	
		<u>\$153,995.36</u>	

LIABILITIES

Bank Notes payable .....		\$30,000.00	
Accounts payable:			
Bank Interest accrued to date ....	90.00		20
Commissions .....	248.00	338.00	
Mortgages Payable (office bldg.) .....		10,000.00	
Capital Stock:			
Preferred stock—issued—790 shares	79,000.00		
Preferred stock — subscribed — 196 shares .....	19,600.00		
Common stock — issued — 6852 shares .....	6,852.00		
Common stock — subscribed — 533 shares .....	533.00	105,985.00	
Surplus .....		<u>7,672.36</u>	
		<u>\$153,995.36</u>	

The above statement is a true transcript from the books of the Company as of July 18, 1930. 30

Treasurer.

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

M. T. PERKINS, of full age, being duly sworn according to law, on his oath deposes and says:

10 I am stock sales manager of Associated Mortgage Company of New Jersey, a corporation of the State of New Jersey, with principal place of business in the City and County of Burlington, and I have full knowledge of the matters and things herein alleged and deposed.

20 I have occupied such position as stock sales manager for said corporation since the latter part of December, 1928, at which time I entered into contract with the company and since which time I have continued operating under said contract as sole stock sales manager for Associated Mortgage Company. Such written contract as herein referred to is a part of the records of the Associated Mortgage Company and may be produced when and where required.

30 In connection with my sales of the preferred and common stock of Associated Mortgage Company of New Jersey I have sold the only two classes of stock of said corporation in units of one share of preferred and two shares of common no par value stock. For each unit the company has received \$112.50, clear of deductions. In consideration of the terms of the contract above referred to and of commissions received by me, I have continuously maintained the expenses of the corporate office, including all necessary stenographers and clerks, telephone (part), lights, office rental and expenses of like nature, all of said expenses having been paid by me from out of my commissions received or otherwise allotted to me under the terms of the contract.

At the time I came under contract to Associated Mortgage Company of New Jersey, in December, 1928, there was but little of the stock in the hands of the public, but since that time the sales have steadily increased until interfered with by the proceedings in this matter, which have, of course, prevented further solicitation or sale of stock or the securing of subscriptions therefor. I have especially noticed a great increase in the demand for the stock of the Associated Mortgage Company since the acquisition of 10 the company office building on West Broad Street, in Burlington.

As a result of the steadily increasing sales of stock and the consequent investments by the company of the proceeds thereof in first real estate mortgages on improved lands in Burlington County, the profits of the company have been continuously improving and the company has during the past 12 or 15 months shown constantly increasing profits from its business. In a business such as that conducted by Asso- 20 ciated Mortgage Company, investment money is of primary importance to the success of the corporation, as it is in nature a banking business, requiring a considerable amount of ready cash funds which can be invested and reinvested by turning its capital several times during the course of a year, thereby adding to its net profits in the same manner in which money is earned by banking institutions. To accomplish this purpose it is necessary that the company should have available a minimum of \$250,000. to 30 \$300,000, preferably all raised by stock sales, but alternately could be raised by bond issue against the securities now in hand to make up the difference between the amount of capital now subscribed and a reasonable amount of funds for turn-over investments.

I have always been particularly careful that no statement was ever made, either by myself or by salesmen under my jurisdiction or control, which might in any wise mislead the public or induce any person or persons to purchase stock of the company except with such person's full knowledge and consent. In other words, all questions which may be asked by any proposed subscriber or solicited person must be answered completely and accurately.

- 10 No facts have or may be concealed by myself or any agent in my employ, and my instructions to my salesmen also are that they are to advance information, when by such salesmen known to be true, to the inquiring public when solicited, in order that such solicited person or persons may be fully apprised of the actual condition of the corporation. To the best of my knowledge and belief these instructions have always been carried out faithfully, and there is no stockholder of the Associated Mortgage
- 20 Company at the present time who has been induced in any manner to part with any valuable consideration in exchange for stock of the said company through any concealment, fraud, misrepresentation or untruthful inducement.

I have examined the books and papers of the corporation, so far as they pertain to my contract, in order that I may be as completely as possible versed in the financial condition of said Associated Mortgage Company. I have been and now am of the

30 opinion that Associated Mortgage Company, by reason of my examination of the books of said company, is in liquid condition and shows by its statements assets greatly in excess of its liabilities. I am not a bookkeeper, but I have reason to believe that statements heretofore made by the directors of the corporation were not only made in good faith but

also upon merit, as evidenced by the books of the company.

In my opinion the best interests of the stockholders require that the business of the company be contained as at present and that the sale of the preferred and common no par value stock of the corporation be continued, as with an insufficient floating fund for investment and turn-over the revenue of the company would be insufficient to maintain its annual expenses, aside from the fact that any publicity or notoriety given to the company, whether justified or unjustified, will result in the immediate public condemnation of the stock of the company as a safe security, resulting in the immediate cessation of purchase of the company's stock.

M. T. PERKINS.

Sworn and subscribed before  
me this 9th day of August,  
1930.

Mary E. Allen,  
Notary Public of N. J.

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

J. C. REARICK, of full age, being duly sworn according to law, on his oath deposes and says:

I am a salesman employed by M. T. Perkins to sell preferred and no par common stock of Associated Mortgage Company of New Jersey and have been so  
 10 employed for eighteen months last past. During said time directions issued by M. T. Perkins to all salesmen selling stock of said Associated Mortgage Company, and especially instructions given to me, were that there were to be absolutely no misrepresentations given to any person or persons to obtain a sale of any of the stock of the said corporation, nor were there to be any concealments of material facts concerning the company, its operation, officers, financial condition or otherwise; that we were directed to  
 20 inquire concerning any material facts in connection with the company which might be of interest to any proposed stockholders, and that we were to furnish such proposed stockholders or subscribers with the truth, the whole truth and nothing but the truth in obtaining subscriptions to stock. This has been in every instance faithfully carried out by me in every sale of stock of the Associated Mortgage Company during my connection with said company.

30

J. C. REARICK,

Sworn and subscribed before  
 me this 9th day of August,  
 A. D. 1930.

Mary E. Allen,  
 Notary Public of N. J.

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

I. J. KEUPER, of full age, being duly sworn according to law, on his oath deposes and says:

I am a salesman employed by M. T. Perkins to sell preferred and no par common stock of Associated Mortgage Company of New Jersey and have been so employed for seven months last past. During said 10  
time directions issued by M. T. Perkins to all salesmen selling stock of said Associated Mortgage Company, and especially instructions given to me, were that there were to be absolutely no misrepresentations given to any person or persons to obtain a sale of any of the stock of the said corporation, nor were there to be any concealments of material facts concerning the company, its operation, officers, financial condition or otherwise; that we were directed to inquire concerning any material facts in connec- 20  
tion with the company which might be of interest to any proposed stockholders, and that we were to furnish such proposed stockholders or subscribers with the truth, the whole truth and nothing but the truth in obtaining subscriptions to stock. This has been in every instance faithfully carried out by me in every sale of stock of the Associated Mortgage Company during my connection with said company.

I. J. KEUPER. 30

Sworn and subscribed before  
me this 9th day of August,  
A. D. 1930.

Mary E. Allen,  
Notary Public of N. J.

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

HERBERT S. KILLIE, of full age, being duly sworn according to law, on his oath deposes and says:

As solicitor for the defendant in the within and above entitled cause, and during a conference between certain officers of the defendant corporation and Philip L. Coffin, Jr., Special Assistant Attorney General of the State of New Jersey, in the Department of Securities, held at 1060 Broad Street, Newark, New Jersey, at 11 A. M., on Monday, July 21st, 1930, deponent personally handed to the aforesaid Philip L. Coffin, Jr., signed copies of affidavits of Harry I. Perrine, dated July 18, 1930; Joseph R. Cheesman, dated July 18, 1930; E. R. Dickson, dated July 18, 1930; and William E. Taylor, dated July 18, 1930, to which affidavits were attached copies of the records of the following meetings of defendant corporation: Meeting of the organizers dated December 19, 1927; meeting of the directors dated December 19, 1927; special meeting of the board of directors dated December 23, 1927; special meeting of the board of directors dated January 28, 1928; special meeting of the board of directors dated February 25, 1928; regular meeting of the board of directors dated December 11, 1928.

The original signed affidavits, together with copies of said minutes, are attached to these affidavits and made a part hereof.

HERBERT S. KILLIE.

Sworn and subscribed before me this 11th day of August, 1930.

Mary E. Allen,  
 Notary Public of N. J.

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

HENRY I. PERRINE, of full age, being duly sworn according to law, on his oath deposes and says:

I was present at the Director's meeting of the Associated Mortgage Company of New Jersey held at the Company's then principal office at 527 Cooper Street, Camden, New Jersey, at 2.30 P. M., on the nineteenth day of December, 1927. At said meeting I was nominated and elected as temporary chairman of the meeting and Mr. William Kennedy was nominated and elected temporary Secretary and not temporary chairman as contained in the transcript of the records of said meeting attached hereto and made a part hereof and which is otherwise correct. The word "chairman" being apparently a typographical error in transcribing of the record, whereas Mr. Kennedy was Secretary. In all other respects the transcript of said meeting as attached hereto and made a part hereof is correct.

At said meeting it was truly reported to the board that the firm of H. I. Perrine and E. R. Dickson, trading as Perrine and Dickson, of which I was the senior partner, had paid practically all the organization expenses of the corporation and had done considerable work in behalf of the organization of the corporation and by reason thereof the company having no cash at the time it was duly resolved upon unanimous vote of all of the Directors present that three thousand shares of the corporation no par value common stock based on the valuation of one (1) dollar per share be issued to Messrs. Perrine and Dickson in payment of the money advanced for organization expenses and expenses incident thereto and for their services rendered in behalf of the cor-

poration was the express intention and purpose and the act of the Board of Directors then assembled as outlined in the resolution which was presented and carried unanimously that said three thousand shares of no par value common stock of the said Associated Mortgage Company would be issued and transferred by the corporation to Perrine and Dickson, upon the express valuation of \$1.00 per share and no more.

I next attended a special meeting of the Board of  
10 Directors of the Associated Mortgage Company held at office of Burlington Enterprise, Enterprise Building, Burlington, New Jersey, at two P. M., on the twenty-eighth day of January, 1928; at said meeting beside myself, there were present Messrs. E. R. Dickson, William Kennedy and Joseph R. Cheesman. At a previous meeting of the said Board held on December 23, 1927, I had been elected first a Director and then President and Treasurer of the corporation. I therefore occupied the Chair.

20 At said meeting in view of the fact that the Corporation had no cash to expend for organization expenses and in view of the fact that Mr. Dickson and I expended considerable time, energy and money in rounding out the organization of the company in addition to services compensated by the directors at their meeting of December 19, 1927, and in further compliance with the plan which was suggested by me for the establishment of local advisory boards and local directors in communities over a reason-  
30 ably diversified area and who would not only be interested thereby in the welfare of the corporation, but would also be able to act more intelligently for the interests of the corporation in the transaction of its business in the sections where such advisory board members and directors resided, a plan was laid by me before the meeting for the establishment of such interested executive board and members of the

board of directors by the issuance of stock which I would be privileged, either myself or through the firm of Perrine and Dickson to distribute at a lower price per share, then such stock would ordinarily be sold to other proposed stockholders. The understanding had at said meeting was that a valuation of one dollar per share would be placed upon an amount of six thousand shares of such no par common stock of Associated Mortgage Company and that said six thousand shares would be placed at the disposal of Perrine and Dickson, who were acting as stock salesmen or fiscal agents for the company in that behalf and that they in turn would be privileged to dispose such shares to prominent citizens in various communities, remitting to the Associated Mortgage Company \$1.00 for each share so issued and they to retain any sum obtained for such stock over and above the sum of one dollar to reimburse them for their services and expenses in that connection. The proceeds of the sale of any stock issued in accordance with said plan over and above the sum of \$1.00 never was a part of the corporate funds, never was accountable to the said corporation and should in no wise be entered upon any of the records or transcripts of the corporation. The matter was thoroughly understood by the directors present and resolution which was submitted and adopted by the Directors present clearly included such outline of capital set up so far as the 6000 shares voted at this meeting were concerned. The minutes in this particular as attached hereto and made a part hereof are true and correct except that they are not sufficiently complete to outline the full intention and purpose of the directors then assembled.

I also attended meetings of the board held in Burlington on February 25, 1928, at 2.30 P. M., at which meeting Messrs. Cheesman, Perrine, Dickson and Kennedy were present and the transcript of said minutes of such meeting, attached hereto and made a part hereof is true and correct.

10 I also attended a meeting of the Board held in the Mechanics' National Bank Building at Burlington, under date of December 11, 1928, at which meeting there were present, Messrs. Cheesman, Jones, Taylor, Oliver and myself and the transcript of the proceedings of the Board of Directors at said meeting as attached hereto and made a part hereof is correct.

20 Following the meeting of February 25, 1928, Mr. William E. Kennedy, who had been acting as Secretary of Associated Mortgage Company of New Jersey claimed that Mr. Dickson or others in connection with the Company, had promised him a definite salary for his services as Secretary and that in view of the fact that he had received no salary up to that time, he did not propose to continue with the Company longer unless such amount was paid. As the Company was only being organized and had made no real progress up to that time the company was not in a position to either confirm any promise which any director had made to Mr. Kennedy, nor was it financially able to pay the salary which Mr. Kennedy demanded. Accordingly Mr. Kennedy resigned as Secretary of the corporation and at about that  
30 time also resigned as Secretary of the Chamber of Commerce of Camden, New Jersey, and left these parts for some point in the Western part of the United States taking with him the original minute book of the corporation as transcribed by him. Sincere efforts have been made to my knowledge since that time, to locate Mr. Kennedy and only as recently as during the past week preceding the date of this

deposition I have personally made renewed inquiries through the Burlington Chamber of Commerce and through the Camden Chamber of Commerce, in an effort to locate Mr. Kennedy, in the hope that such original record of the minutes might be secured, but I am wholly unable to locate him for such purpose.

However, the transcripts of the records of the meetings of the incorporators, stockholders and directors of the Associated Mortgage Company of New Jersey as now contained within the minute book of the corporation are in all manner substantially correct, except as to possibly certain details of transactions. It is impossible naturally for me to state that these details were contained in the original minutes, presumption being that they were not transcribed in detail by Mr. Kennedy. But at any rate I am able to positively state that the records of the proceedings as transcribed in those minutes, a copy of which is attached, to this deposition, as to the meetings attended by me during the period of the lost records, are in all manner substantially correct.

I would further state that in accordance with the agreed price of the shares of the no par value common stock of the corporation transferred to me or to Perrine and Dickson or to Perrine, Dickson and Cheesman, such shares were paid for at \$1.00 per share to the company and there is nothing due thereon from me at the present time except possibly a small adjudgment including one item of \$37.50 the details of which I have not been able to definitely check up, but which probably is due from me to the Corporation, upon a note in evidence, in addition correct records of the books of the corporation will show that acting upon the further continued valuation of the common stock of said corporation for the sum of \$1.00, I made reports to the corporation of the sale of a unit of stock consisting of 1 share preferred

and 2 shares of common for which I remitted the sum of \$102.00 to the corporation.

Whenever I personally sold any stock to any person in connection with this company, I invariably told the subscriber details concerning commissions and organization expenses which were to be deducted from the amount received through the sale of the common stock. There were no misrepresentations, nor fraud, nor any information withheld from  
10 any proposed stockholders or subscriber relative to the transaction as proposed and as herein outlined.

From the time of my first connection with the Company, up until approximately the middle of December 1928, I bore practically all the expenses of the Associated Mortgage Company, paying stenographers in the office, office rent, telephone bills, light bills and all other expenses of like nature to which the Company was subjected as this was according to  
20 my contract in regard to the purchase of the shares to which I have above referred.

HARRY I. PERRINE.

Sworn and subscribed before  
me this 18th day of July, 1930.

Mary E. Allen,  
Notary Public of N. J.

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

JOSEPH R. CHEESMAN, of full age, being duly sworn according to law, on his oath deposes and says:

I was elected to the board of directors of the Associated Mortgage Company of New Jersey at a special meeting of the board of directors held on December 23, 1927, and was advised thereof by the then secretary, William Kennedy. 10

The first meeting of the corporation which I attended was held at office of Burlington Enterprise, Enterprise Building, Burlington, New Jersey, on January 28, 1928, at 2 P. M. Besides myself there were present Messrs. Perrine, Dickson and Kennedy. At that meeting the plan of Perrine & Dickson was stated by Mr. Perrine in regard to obtaining members of advisory board and local directors in the various portions of the communities in the State of New Jersey where such local members could render valuable service to the corporation both in the sale of the stock and in the transaction of the corporate business. In view of the fact that the corporation had no cash, but that this plan was agreed upon as to the advantage of the corporation, the corporation by resolution duly presented and unanimously carried, voted 6000 shares of the no par value common stock of the corporation be assigned or transferred to Messrs. Perrine & Dickson and to be used by them 20 in distribution of such shares of stock to further the interests of the corporation. I distinctly remember that the resolution presented at that time embodied the fact that such shares were to be transferred upon an agreed valuation of \$1.00 per share, and that any amounts or sums received by Perrine & Dickson, or the other persons interested in this distribution 30

plan, over and above the \$1.00 per share were to be retained by the agents so serving the corporation as expenses and for services rendered.

Whenever stock was to be transferred on the books of the company, Mr. Perrine and Mr. Dickson, or whoever was requesting the transfer, would report the transaction to me and at that time a certificate which had previously been issued for organization expenses or purposes, would be turned in to the company and new certificate or certificates would be issued to the parties entitled to receive the same. In other words, issues of stock to individuals, either under the organization payment plan or under the executive board and local director plan, were issued from the books of the corporation and the number of shares so issued were charged against the shares previously issued to Mr. Perrine or to Mr. Dickson or to myself for such purpose. This was necessary in order to keep the certificates properly entered and distributed to the parties entitled to receive them. No new certificates were issued for any of these purposes other than deductible from the amounts of shares of stock so authorized for such purpose at the stated value of \$1.00 per share.

Later on, namely, about December, 1928, when Mr. Perrine withdrew as sales agent or sales manager of the Associated Mortgage Company and was replaced by Mr. M. T. Perkins, certain accounts or records which had been kept by Mr. Perrine, some of which had been in my possession previously and some of which had been wholly in Mr. Perrine's possession, were delivered to Mr. William E. Taylor, who was then acting as secretary and treasurer of the Associated Mortgage Company. Through a mistake as to the records delivered to him, Mr. Taylor erroneously entered upon the books of the Company the private transactions of Mr. Perrine, or in other

words what Mr. Perrine had sold the stock for as his personal stock, instead of having entered the number of shares issued at the valuation of \$1.00 per share, which was all that the company was entitled to. This matter was previously discussed by me with Mr. Taylor and with others of the officers and directors of Associated Mortgage Company, but it was stated that in view of the fact that we all understood the transaction it could do no harm being upon the books of the company, and that it did not mean anything so far as any of the stockholders were concerned and did not affect in any way the assets or liabilities of the company as such records were not intended to be a corporate record. It was for this reason that they were merely left upon the records of the company and no attempt was ever made to eliminate them because of the fact that they were thoroughly understood and were explained to the board of directors or to any stockholders who might have made inquiry concerning them. 10 20

The company's books have frequently been audited by the board of directors or a committee of such board, and the company has been found to be in satisfactory financial condition, having earned profits in a very reasonable amount during the past eighteen months and is in a position to proceed rapidly in its growth and development and earnings for its stockholders.

JOSEPH R. CHEESMAN.

30

Sworn and subscribed before  
me this 18th day of July, 1930.

Wm. K. Taylor,  
Notary Public of N. J.

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

E. R. DICKSON, of full age, being duly sworn according to law, on his oath deposes and says:

10       I personally attended a special meeting of the board of directors of Associated Mortgage Company of New Jersey held at its then corporate office, Enterprise Bldg., Burlington, New Jersey, on the 28th day of January, 1928, at two o'clock, P. M., at which time there were also present Messrs. Perrine, Kennedy and Cheesman (being a quorum of directors).

20       The transcript of the records of the proceedings of said meeting, attached hereto and made a part hereof, is a true and correct transcript as to the transactions of said directors, except that they do not amply set forth the actual resolution which was adopted by the directors at said meeting, assigning  
30       to Perrine and Cheesman the 6000 shares of the no par value common stock of the said corporation. The purposes as outlined in such transcript of the meeting records are substantially correct, but such 6000 shares were to be transferred to Perrine and Cheesman for such purposes for the stated value of \$1.00 per share. This was definitely discussed and mentioned in the resolution which was unanimously adopted. Any amount which was received over and above the sum of \$1.00 per share was in no wise to  
30       be considered as part of corporate funds, nor was any such amount over and above the sum of \$1.00 per share in any manner to be entered upon the corporate books or accounted for by the corporation, either as a charge or otherwise. All stock sold either under the organization expense distribution of stock or under the executive board or directors' distribution of stock was sold only upon full information to

the subscriber or proposed stockholder as to the selling expenses, organization expenses, maintenance, etc., costs of which were deductible from the amount received through the sale of the common stock. No information was withheld from any proposed stockholder or subscriber relative to such deductions and there was no fraud or misrepresentation whatsoever in connection with any sale or distribution of the stock of said corporation by me or by any one else to my knowledge or information. 10

I also attended a special meeting of the board of directors of Associated Mortgage Company held at Burlington, New Jersey, on February 25th, 1928, at 2.30 P. M., at which there were present in addition to myself, Messrs. Cheesman, Perrine and Kennedy. The record of the transcript of such meeting attached hereto and made a part hereof is a true and correct transcript thereof.

Shortly following this meeting Mr. William E. Kennedy, who had been acting secretary of the Associat- 20  
ed Mortgage Company of New Jersey claimed that he had been promised a salary of \$300. per month to act as secretary of the corporation, but that he had received no money and saw no prospects of getting any, and therefore refused to continue further to act as secretary. It was financially impossible for the corporation at that time in its incorporation processes to pay Mr. Kennedy any salary, not to speak of the exorbitant salary which Mr. Kennedy demanded, and as result thereof Mr. Kennedy relin- 30  
quished his job without any formalities, at the same time, or thereabout, resigning his position as secretary of the Camden City Chamber of Commerce, and left for the far West, at the time I did know of the city to which Mr. Kennedy went.

When he left he also took with him the original minute book of the Associated Mortgage Company,

but in view of the fact that there had been but few meetings, either of the organizers or of the directors up to that time, namely five, including the organization meeting and also including the meeting of February 25, 1928, the minutes as now contained in the minute book of the corporation were at that time written up from original notes of the organizers and from memory of the directors and constitute the records of the corporation. Mr. Kennedy having left  
10 for parts unknown, we were unable to secure his signature to the copies of the minutes and were also unable to secure from Mr. Kennedy the original minutes records.

Repeated efforts have been made since that time to locate Mr. Kennedy or to otherwise secure control of the original records of the corporation, all of which has been without avail because of the fact that there is no one known to this deponent who is able to locate the address of William E. Kennedy. I  
20 have no hesitancy, however, in stating in this deposition that the records as now had of the minutes and as contained in the corporate minute book are substantially correct, except that some possible details have been omitted.

E. R. DICKSON.

Sworn to and subscribed before  
me this 18th day of July, 1930.

30

Herbert S. Killie,  
Attorney at Law of N. J.

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

WILLIAM E. TAYLOR, of full age, being duly sworn according to law, on his oath deposes and says:

I was present at a regular meeting of the Board of Directors of the Associated Mortgage Company held in Mechanics' National Bank Building, Burlington, New Jersey, on December 11, 1928. The transcript of the record of the proceedings of the Board of Directors for that meeting remain in the minute book unsigned, but having been there I am in a position to state that the transcript is a correct record of the proceedings of the Board of Directors at said meeting. 10

I am the person who as secretary and treasurer of Associated Mortgage Company received from Mr. Cheesman and Mr. Perrine, Mr. Perrine's personal record of sales of his personal stock. This was in the form of a memoranda when received by me, and as I did not know just what the purport of this memoranda was and did not at that time understand that it was merely Mr. Perrine's personal check of his personal transactions, and believing that it was my duty to do so I entered these memoranda in the books of the Associated Mortgage Company. Later and within the past few months, this matter was called to my attention following an audit of the accounts of the company by its directors and was then shown to me that I had committed an error in entering these items upon the corporation's books, and that any amount of money which Mr. Perrine or other persons who had received stock on the \$1.00 a share basis had no place on the corporation's books excepting the regular transaction or charge of \$1.00 30

for each share so issued for organization or distribution purposes. However, having made these entries upon the books, I was at a loss to know how to make the proper correction to eliminate the items and, therefore, the matter being understood by all the other directors, I left these items upon the books but did not take them into consideration, except in the true intent of the same, when the corporation's statements were made up.

10

WM. E. TAYLOR.

Sworn and subscribed before  
me this 18th day of July, 1930.

A. M. Stackhouse,  
Master in Chancery of New Jersey.

ORGANIZATION MEETING OF THE  
ASSOCIATED MORTGAGE COMPANY  
OF NEW JERSEY

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MINUTES of the meeting of the organizers of the Associated Mortgage Company of New Jersey held at the principal office of the said corporation on December 19, 1927, at 527<sup>10</sup> Cooper Street, city of Camden, state of New Jersey, at 2 o'clock in the afternoon.

The meeting was called to order by Evans. There were present the following: T. Phillips Brown, Clinton I. Evans and Howard Hilderbrandt, being all of the organizers of the corporation.

On motion duly made and seconded and carried, Mr. Evans was duly nominated and elected secretary of the meeting.

The secretary (acting) then read to the incorporators the certified copy of the articles of incorporation and announced that nominations were open for the offices of directors.

The following names were placed in nomination, duly seconded and unanimously elected as directors of the corporation:

I. Phillips Brown, Howard L. Hilderbrandt, Clinton I. Evans and William Kennedy.

The secretary read a waiver of notice of the meeting, subscribed to by all of the organizers of the meeting, presented a copy of a set of by-laws, and after adopting them as read.

There being no further business before the meeting it was adjourned.

(Signed) WILLIAM KENNEDY,  
Secretary.

FIRST MEETING OF THE BOARD OF DIRECTORS  
OF THE  
ASSOCIATED MORTGAGE COMPANY OF  
NEW JERSEY

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10 The directors of the Associated Mortgage Company of New Jersey, meeting for the first time, at the principal office of said corporation in the State of New Jersey, No. 527 Cooper Street, Camden, State of New Jersey, on the 19th day of December, 1927, at 2.30 o'clock in the afternoon.

The meeting was called to order by Mr. Brown.

There were present the following: T. Phillips Brown, Clinton I. Evans, William Kennedy and Howard L. Hilderbrandt, being all of the newly elected directors of the corporation.

20 On motion duly made, seconded and carried Mr. Perrine was nominated and elected temporary chairman of the meeting and Mr. Kennedy was nominated and elected temporary secretary.

The secretary presented and read to the meeting the minutes of the first meeting of the incorporators and stockholders held on the 19th day of December, 1927, at 2 o'clock in the afternoon at 527 Cooper Street, Camden, New Jersey.

30 Upon motion duly made, seconded and carried, the same were in all respects ratified, approved and confirmed.

The secretary then read to the meeting, the by-laws adopted at the said meeting of stockholders. Upon motion duly made, seconded and carried the same were in all respects ratified, approved and confirmed as and for the by-laws of the Corporation.

The meeting then proceeded to the election of officers, and the following persons' names were nominated and unanimously elected to fill the offices set opposite to their names for the ensuing year and until their successors shall be elected and shall qualify:

President, T. Phillips Brown.

Vice-President, Clinton I. Evans.

Treasurer, H. I. Perrine.

Secretary, William Kennedy.

The secretary also read a communication from E. R. Dickson, offering to market the preferred stock of the corporation and a proposed contract containing and setting forth the condition under which the said Dickson would undertake the sale of the stock, was read. After consultation, the board acting unanimously, agreed that the proposed contract was fair and would be beneficial to the corporation and voted that Messrs. Brown and Kennedy, President and Secretary, respectively should negotiate with said Dickson and execute the proposed contract. 10

Mr. Brown presented the bills of the corporation and stated that Messrs. Dickson and H. I. Perrine had worked indefatigably to get the corporation organized, had traveled extensively in the State looking toward the organizing profitable connection for the future activities of the corporation as well as persuading several prominent men financially, to join the company and that all of the original expenses of the company had borne by the said Dickson and Perrine. 20

The board after due deliberation and decision that the services that had been performed by Messrs. Perrine and Dickson were valuable aside from the actual money that had been spent by them, ordered the officers to issue to said Perrine and Dickson three thousand (3,000) shares of the corporation's no par value Common Stock as payment in full for the mon- 30

ey they had advanced to pay the expenses of organization and travel and for their time and efforts in the corporation's behalf.

There being no further business before the Board adjournment was taken.

(Signed) WILLIAM KENNEDY,  
Secretary.

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MEETING OF THE BOARD OF DIRECTORS  
OF THE  
ASSOCIATED MORTGAGE COMPANY  
OF NEW JERSEY

A special meeting of the Board of Directors of the Associated Mortgage Company of New Jersey was held in the offices of the Company at 527 Cooper Street, Camden, N. J., at 2 o'clock P. M., December 23, 1927.

The secretary was Mr. Kennedy and Mr. Brown occupied the chair. There were also present the other directors, Messrs. Hildebrand and Evans.

Mr. Brown offered his resignation as president, stating that he believed he could best serve the corporation in the capacity of solicitor. The board accepted his resignation after thanking him for his services, which he gave without remuneration. The secretary announced that Mr. H. I. Perrine had purchased the stock of Mr. Evans and was therefore qualified to serve as a Director. The board then unanimously elected Mr. Perrine as a Director and then President and Treasurer of the corporation. The name of E. R. Dickson also was proposed to be elected a member of the Board and when Mr. Evans resigned as vice-president, and a member of the

board, Mr. Dickson was elected to take his place. Mr. Hildebrand also offered his resignation which was accepted and Mr. Horace Roberts was elected to the Board of Directors together with Mr. Joseph R. Cheesman.

The Secretary announced that the proposed contract with E. I. Dickson for the sale of the company's stock, had been executed as per the order of the board at the previous meeting and a copy of the contract was ordered read upon the minutes. 10

The meeting thereupon adjourned.

(Signed) WILLIAM KENNEDY,  
Secretary.

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SPECIAL MEETING OF THE  
BOARD OF DIRECTORS  
OF THE  
ASSOCIATED MORTGAGE COMPANY 20  
OF NEW JERSEY

A special meeting of the Board of Directors of the Associated Mortgage Company of New Jersey was held at the offices of the corporation, 527 Cooper Street, Camden, New Jersey, on the 28th day of January, 1928, at 2 o'clock P. M.

There were present Messrs. Perrine, Dickson, Brown, Kennedy and Cheesman. Mr. Perrine occupied the chair and Mr. Kenedy acted as secretary of the meeting. 30

The secretary read the minutes of the previous meeting and they were ordered adopted and approved.

Mr. Brown addressed the meeting and announced that press of business made it imperative that he

resign as Director of the corporation, and the board voted that his resignation be accepted after voting him a vote of thanks for his services to the corporation.

Mr. Perrine announced that he and Mr. Dickson in seeking a permanent President for the Corporation had prevailed upon Mr. Cheesman to accept the office, if he were elected. The resignation of Mr. Perrine was offered to the Board and it was accepted, and Mr. Cheesman's name was proposed and seconded and the Directors voted that he be made President and Messrs. Perrine and Dickson were ordered to escort him to the chair.

Mr. Perrine notified the Board that Mr. Horace Roberts desired to resign as a board member because of an extended trip to Africa and it was voted that Mr. Roberts' place on the board be declared vacant.

Mr. Cheesman from the chair announced that it was his understanding that if he was elected president and assumed the responsibilities of the office, the corporation would transfer its activities to Burlington and he offered the company space in the Enterprise building at no cost to the company until suitable office space could be acquired.

It was moved by Mr. Perrine and seconded by Mr. Kennedy that the transfer be made and the proper officers of the corporation were ordered to effect such transfer by notifying the Secretary of State's office at Trenton. Through the regular legal form following the adoption of the resolution, Mr. Kennedy was named as the agent in charge and upon whom process might be served.

Mr. Dickson addressed the meeting stating that something should be done to facilitate the handling of the funds of the corporation pending the opening of a bank account and Mr. Cheesman was named Trustee for all funds due and paid to him by the fis-

cal agent until the sum amounted to one large enough to warrant the opening of a bank account.

Mr. Perrine then outlined to the Board an ambitious plan for obtaining support in communities wherein the corporation planned to loan funds and otherwise operate when the capital stock was sold and declared that he would obtain members of the advisory board to strengthen the company's position in such territories. Mr. Perrine agreed to serve the corporation in that capacity and to travel and advertise the corporation and obtain such members to advisory board, provided a block of common stock were voted to him to defray the cost of such operation. Mr. Dickson advocated Mr. Perrine's plan strongly, stating that in his opinion as fiscal agent, it would aid him in disposing of the corporation's preferred stock in those communities and elsewhere if the company had several members acting in an advisory capacity. Mr. Cheesman addressed the board and stated that in his opinion, he could do likewise in other communities where he had influence and that he believed it was a good plan. On motion of Mr. Dickson, seconded by Mr. Kennedy, the board voted to set aside 6000 shares of stock to be used by Mr. Perrine and Mr. Cheesman in this work and the proceeds to be used by them to defray the expense incident thereto. Mr. Perrine stated that due to the wide territory to be covered, that he thought it advisable to spread the stock as widely as possible and the board agreed to set up an advisory board from such men selected and sold by Mr. Perrine and Mr. Cheesman, who enjoyed high reputations in their respective communities.

On motion duly made and seconded the Board voted to have the Mechanics' National Bank of Burlington act as depository of the Company's funds at the expiration of Mr. Cheesman's Trusteeship.

There being no further business before the meeting, the meeting adjourned.

WILLIAM E. KENNEDY,  
Secretary.

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SPECIAL MEETING OF THE  
BOARD OF DIRECTORS  
OF THE  
ASSOCIATED MORTGAGE COMPANY  
OF NEW JERSEY

A special meeting of the board of directors of the Associated Mortgage Company of New Jersey was held at the Company's office in Burlington, on February 25, 1928, at 2.30 o'clock P. M. There were present Messrs. Cheesman, Perrine, Dickson and  
20 Kennedy, constituting the entire elected board. Mr. Cheesman occupied the chair and Mr. Kennedy acted as secretary of the meeting.

Mr. Kennedy read the minutes of the previous meeting and they were unanimously approved and adopted.

Mr. Dickson announced that he had negotiated with the attorneys in Camden, Brown & Evans, who obtained the Company's charter, and that the change of registered address for the company had been ef-  
30 fected and that the certificate of incorporation had been so amended.

Mr. Perrine announced that as long as he was to spend a great deal of time organizing the advisory board that his duties as treasurer might interfere with it as the fiscal agent sold the preferred stock and that he would like to resign. He offered his resignation as treasurer and it was accepted. Mr. Wil-

liam E. Taylor, of Burlington, was proposed, seconded and elected to fill the vacancy after he was elected to the board by unanimous vote.

Mr. Dickson thereupon addressed the meeting declaring that as long as he had a contract for the sale of the company's preferred stock and in order to prevent criticism for his acting as fiscal agent and a director at one and the same time he would offer his resignation to the board. The resignation was accepted.

Mr. Dickson declared that due to the company having no bank account at present and that some subscribers to the company's stock already had made payment to the company in the company's name, the regular procedure under his agreement of turning over to the company the net amount due on stock sales could not be rigidly adhered to in these particulars, but rare cases. Mr. Dickson asked that the board pass a resolution authorizing Mr. Cheesman to make payment to the fiscal agent on all money orders, drafts, checks, etc., made payable to the company in amounts over and above the net amount on each sale due to the company. On motion duly made and seconded the motion was carried and Mr. Cheesman was ordered to make such payments to the fiscal agents out of the company funds as were due the fiscal agent and to account to the company only for the net amount due the company the same as if the checks, drafts and money orders, etc., had been made payable to the fiscal agent and he had turned over to the company the net amount due it on such sales.

There being no further business, the meeting adjourned.

WILLIAM E. KENNEDY.

December 11, 1928.

The regular meeting of the Board of Directors of the Associated Mortgage Company was held at the office of the Company, in the Mechanics' National Bank Building, on the above date.

President Joseph R. Cheesman, presiding.

The following members were present: Joseph R. Cheesman, H. I. Perrine, W. C. Jones, W. E. Taylor,  
10 W. E. Oliver, W. E. Cheesman.

At this time Mr. W. E. Oliver was duly elected a director of the company to fill a vacancy on the board.

A contract was presented by the president and read by the secretary covering an agreement between Mr. Perkins, of Newark, and this company to act as selling agent of stock. After carefully digesting contents of same in a general discussion by the members it was suggested that the contract be changed to include that the executive office of the company shall  
20 remain at Burlington and the headquarters office at Newark. It was thereupon moved by Mr. Jones that the proper officers of the Company be duly instructed to sign the contract.

It was moved that the contract be spread on the minutes (attached hereto).

There being no further business the meeting adjourned.

Secretary.

IN CHANCERY OF NEW JERSEY

Between

WILLIAM A. STEVENS, ATTORNEY  
GENERAL OF THE STATE OF NEW  
JERSEY,

Complainant,

and

ASSOCIATED MORTGAGE COMPANY  
OF NEW JERSEY,

Defendant.

ON BILL, etc.  
FINAL DECREE. 10

This matter being opened to the Court by PHILIP L. COFFIN, Jr., Special Assistant Attorney General of New Jersey, Solicitor of complainant, and the Court having read and considered the Bill of Complaint filed in this cause and the affidavits thereunto annexed, and it appearing that by an Order made in this cause on the 31st day of July, 1930, the defendant, Associated Mortgage Company of New Jersey, was ordered to show cause on the 12th day of August, 1930, why the relief prayed for in said Bill of Complaint should not be granted; that true copies of said Order to Show Cause were served upon the defendant as therein directed; and the Court having heard the argument of counsel and it appearing that the complainant is entitled to the relief prayed for in his said bill of complaint: 20

30

It is on this 12th day of August, 1930, ORDERED, ADJUDGED and DECREED that:

1. The defendant, Associated Mortgage Company of New Jersey, has been and is hereby adjudged to be guilty of having violated an Act of the Legisla-

ture of the State of New Jersey entitled "New Jersey Securities Act," approved March 19th, 1927, as amended and supplemented in that it has used and employed concealment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within and from this State of its securities as defined by the said New Jersey Securities Act.

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2. Said defendant, Associated Mortgage Company of New Jersey, its attorneys, agents, officers, directors and servants, as the case may be, as well as all other persons acting in aid or assistance of it, directly or indirectly, be and they are hereby jointly and severally, permanently enjoined and restrained from the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and or distribution within or from this State of any securities whatsoever, the word "securities" being  
20 used in the sense and as defined by the New Jersey Securities Act and particularly the securities and capital stock of the defendant, Associated Mortgage Company of New Jersey, a New Jersey corporation, until this Court shall otherwise order.

3. Said defendant, Associated Mortgage Company, of New Jersey, a New Jersey corporation, its attorneys, agents, officers, directors and servants be  
30 and is hereby enjoined and restrained from exercising any of the privileges or franchises of defendant corporation, Associated Mortgage Company of New Jersey, a New Jersey corporation, within or from this State and from collecting or receiving any debts or paying out, selling, assigning or transferring any of the estate, monies, funds, lands, tenements or effects of said defendant corporation in this

State, except to the receiver hereinafter appointed by this Court, until the Court shall otherwise order.

4. That Ernest Watts, of Burlington, New Jersey, be and he hereby is appointed receiver of defendant, Associated Mortgage Company of New Jersey, a New Jersey corporation, with all the powers conferred upon him as such receiver by said New Jersey Securities Act as amended and supplemented; and he is hereby ORDERED to furnish a bond in the sum of \$100,000. for the faithful performance of his trust, in accordance with the usual practice of this Court, which bond is to be approved by Charles A. Rigg, Esq., one of the Special Masters of this Court; 10

5. That the defendant, Associated Mortgage Company of New Jersey, a New Jersey Corporation, its officers, directors, attorneys, agents and servants do forthwith turn over and deliver unto the receiver herein appointed, all of the real and personal property of every nature and description within this State derived by it by means of practices within or from this State declared to be illegal and prohibited by said New Jersey Securities Act; also all property with which such property has been mingled, if such property cannot be identified in kind because of such co-mingling; and the receiver hereinbefore named shall sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of this Court for the actual benefit of all who establish an interest therein, as provided for by the New Jersey Securities Act as amended and supplemented. 20 30

6. Any bank or other depository or stake holder, who may have in its possession any property belonging to the defendant, Associated Mortgage Company

of New Jersey, a New Jersey corporation, shall forthwith turn over and deliver the same unto said receiver.

7. Copies of this Decree, which may be certified as true copies by Solicitor of Complainant, be served on the defendant, Associated Mortgage Company of New Jersey, a New Jersey corporation, by leaving the same with an officer thereof, or by leaving the same at the office of its registered agent with the person in charge thereof, either within or without this State.

E. R. WALKER, C.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM A. STEVENS, ATTORNEY  
GENERAL OF THE STATE OF NEW  
JERSEY,

Complainant,

and

ASSOCIATED MORTGAGE COMPANY  
OF NEW JERSEY,

Defendant.

ON BILL, &c.  
NOTICE OF  
APPEAL.

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The defendant Associated Mortgage Company of New Jersey hereby appeals from the final decree made in the above entitled cause on August 12, 1930, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes, said decree having been made by Hon. E. R. Walker, Chancellor of the State of New Jersey. 20  
Dated September 20, 1930.

HERBERT S. KILLIE,  
Solicitor of Defendant Associated  
Mortgage Company of New Jersey.

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

G. M. HILLMAN,  
Of Counsel with Defendant Asso- 30  
ciated Mortgage Company of New  
Jersey.

Service of the within Notice of Appeal is hereby acknowledged this 29th day of September, A. D. 1930.

PHILIP L. COFFIN, Jr.  
Solicitor of Complainant.



used and employed concealment, suppression and fraud in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and distribution within and from this State of its securities as defined by the said the New Jersey Securities Act.

2. That the said defendant, its attorney, agents, officers, directors and servants, be enjoined and restrained from the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement and or distribution within or from this State of any securities whatsoever, and particularly the securities and capital stock of the defendant, Associated Mortgage Company of New Jersey, a New Jersey Corporation, until said Court should otherwise order. 10

3. That said defendant, a New Jersey corporation, its attorneys, agents, officers, directors and servants be enjoined and restrained from exercising any of the privileges and franchises of defendant corporation, Associated Mortgage Company of New Jersey, a New Jersey corporation, within or from this State and from collecting or receiving any debts or paying out, selling, assigning or transferring any of the estate, monies, funds, lands, tenements or effects of the said defendant corporation in this State, except to the receiver appointed by said Court of Chancery, until said Court should otherwise order. 20 30

4. That Ernest Watts, of Burlington, New Jersey, be appointed receiver of defendant, Associated Mortgage Company of New Jersey, a New Jersey corporation, with all the powers conferred upon him as such receiver by said New Jersey Securities Act as amended and supplemented.

5. That the defendant, Associated Mortgage Company of New Jersey, a New Jersey corporation, its officers, directors, attorneys, agents and servants forthwith turn over and deliver unto the said receiver, all of the real and personal property of every nature and description within this State derived by it by means of practices within or from this State declared to be illegal and prohibited by said New Jersey Securities Act; also all property with which  
10 such property has been mingled, if such property cannot be identified in kind because of such comingling; and that the said receiver thereinbefore named should sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of said Court for the actual benefit of all who establish an interest therein as provided for by the New Jersey Securities Act as amended and supplemented.

20 6. Any bank or other depository or stake holder, who may have in its possession any property belonging to the defendant, Associated Mortgage Company of New Jersey, a New Jersey corporation, shall forthwith turn over and deliver the same to said receiver.

And petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that,

30 1. The said decree was made upon the return of a rule to show cause, theretofore made by said Chancellor, and without any subpoena having been issued against or served upon defendant and without any hearing. No witnesses were produced or examined and the only evidence before the Chancellor in support of complainant's allegations was an *ex parte* affidavit of the solicitor of the complainant.

2. The said Chancellor had no power or jurisdiction to make said decree as aforesaid.

3. There was no evidence produced before the Chancellor to substantiate or prove the allegations in the bill of the complainant nor to justify the making of the decree appealed from as aforesaid.

4. The said decree adjudged the defendant to be guilty of having violated the New Jersey Securities Act, but no evidence was presented to said Court of Chancery to support, substantiate or prove that fact nor to justify such adjudication and decree. <sup>10</sup>

5. Said defendant was not guilty of violating the New Jersey Securities Act, and the evidence before the Chancellor showed that fact.

6. The decree of the Chancellor was based upon the assumption that the defendant was insolvent and had violated the New Jersey Securities Act aforesaid. There was no evidence presented to the Chancellor from which the Chancellor could find as a matter of fact that said defendant was insolvent or had, as a matter of fact, violated the New Jersey Securities Act. <sup>20</sup>

7. The only evidence presented to the Chancellor was the affidavit of Philip L. Coffin, Jr., Special Assistant Attorney General of New Jersey, who swore to no facts, but only to his opinion based upon certain matters, as to the truth of which matter no evidence was presented to the Court, and which were denied by affidavits presented by defendant. <sup>30</sup>

8. The allegations of complainant's bill were contradicted by the affidavits of various witnesses, hav-

ing knowledge of the facts to which they swore, which affidavits were presented to the Chancellor at the hearing on the rule to show cause aforesaid, and which were not contradicted.

9. The findings of the Chancellor upon which said decree was based, were contrary to the evidence produced before the Chancellor.

10 10. The decree of the Chancellor aforesaid was contrary to the provisions of the New Jersey Securities Act and to the laws of the State of New Jersey.

11. The decree of the Chancellor aforesaid was based on allegations contained in complainant's bill (verified in part only by the affidavit of complainant's solicitor, who had no personal knowledge of the matters to which he swore, and not otherwise verified, substantiated or proved) that the defend-  
20 ant was insolvent, by reason of a certain liability of defendant alleged by said bill to exist, showing a deficit of the sum of FORTY-THREE THOUSAND, FOUR HUNDRED AND TWENTY-NINE DOLLARS AND SIXTY-SEVEN CENTS (\$43,429.67), said liability being made up by charging the common stock issued and outstanding at an erroneous and fictitious value. Said common stock was of no par value and was issued at the established price of One Dollar per share. The amount of the liability on account of  
30 such common stock as charged by complainant was made up by charging said common stock at a value in excess of One Dollar per share. This because of the allegations that some of said common stock had been sold by individual stockholders, (not by defendant corporation) at a sum in excess of One Dollar per share. By reason of such erroneous charge,

complainant alleged that the defendant corporation had a deficit of FORTY-THREE THOUSAND FOUR HUNDRED AND TWENTY-NINE DOLLARS AND SIXTY-SEVEN CENTS (\$43,429.67). Included in such deficit is the sum of FOUR THOUSAND, SIX HUNDRED AND TWENTY-THREE DOLLARS (\$4,623.) classified as organization expenses and the sum of THIRTY-SEVEN THOUSAND, ONE HUNDRED AND SIXTY-THREE DOLLARS AND SEVENTY-NINE CENTS (\$37,163.79) as commissions 10 paid to agents for the sale of stock of defendant corporation. The item of FOUR THOUSAND, SIX HUNDRED TWENTY-THREE DOLLARS (\$4,623.) as organization expenses is entirely fictitious. The items of commissions are also fictitious. The item of commissions paid for the sale of its stock by defendant is erroneous and arrived at by the complainant by deducting the value of common stock issued at One Dollar per share from a fictitious amount determined by complainant by multiplying the number of 20 shares by an arbitrary and fictitious value per share, not established by defendant; and also by charging as a liability the alleged difference between the amount at which certain of its sales agents sold its stock, and the amount at which the same had been issued by defendant corporation to such agents. Neither of these items are properly chargeable as liabilities. The allegations of the bill of concealment, suppression and fraud, as well as insolvency of defendant, and upon which allegation the decree 30 of the Chancellor was based, were founded upon and rested altogether on complainant's allegations of insolvency made up erroneously as aforesaid, and not verified nor proved, while said allegations were expressly denied and contradicted by the affidavits presented on the part of the defendant.

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

HERBERT S. KILLIE,  
Solicitor of Appellant.

G. M. HILLMAN,  
Of Counsel with Appellant.

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We hereby acknowledge service of the within and above petition of appeal this 29th day of September, 1930.

PHILIP L. COFFIN, Jr.,  
Solicitor of Respondent.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

Between

WILLIAM A. STEVENS,  
Attorney General,  
Complainant-Appellee,

and

ASSOCIATED MORTGAGE COMPANY  
OF NEW JERSEY,  
Defendant-Appellant.

ON BILL, &c.

Brief of 10  
Appellant.

This is an appeal from a decree of the Chancellor in the above cause, dated August 12, 1930, (S. of C. page 107) which was made upon the return of a rule to show cause granted by the Chancellor on July 31, 1930, (S. of C. page 1). This decree adjudged the defendant to be guilty of violation of an Act of the Legislature of the State of New Jersey entitled "New Jersey Securities Act," approved March 19, 1927, as amended and supplemented, appointed a receiver for the defendant corporation, and enjoined it from exercising any of its corporate powers or privileges. The grounds of appeal are set forth on pages 114 to 118 of the state of the case; numbers 1, 2 and 3 relate to the fact that the decree, final in its nature, was improperly made on the return of the rule to show cause. The defendant filed his bill (S. of C. page 5) in which he charged that the officers of the defendant corporation had violated the provisions of the New Jersey Securities Act, and been guilty of false and fraudulent representations and concealment in the matter of the sale of its stock, and that the corporation was insolvent. The bill prayed that the

defendant corporation be enjoined from issuing or selling its stock and that a receiver be appointed, and an order made directing defendant to show cause before the Court, on a date to be fixed, why its officers should not be restrained as aforesaid *pending the final hearing of the cause*, and that subpoena be issued for the defendant to answer (S. of C. page 21). Annexed to this bill was the affidavit of Philip L. Coffin, Jr., the solicitor of the complainant, which

10 set forth various conclusions, at which he said he had arrived, but practically no pertinent facts, nor did he set forth any facts within his own knowledge which would justify the conclusions at which he stated he had arrived. In fact, many of the averments in this affidavit are prefaced with the statement that "complainant further charges" which were, of course, without probative force. Upon the filing of this bill and affidavit, the rule to show cause was made. On the return of the same, the defendant

20 appeared and presented a number of affidavits denying all the allegations of violation of law or insolvency. (S. of C. pages 64 to 106). These affidavits were made by eight different people, all of whom swore to matters within their own knowledge. The complainant offered nothing further save his bill and the aforementioned affidavit of his solicitor. The allegations of complainant's bill were not verified. No attempt at verification was made as to many of them.

30

The Chancellor then proceeded to make, not a temporary restraining order pending final hearing, as prayed by complainant's bill, but a final decree stating that "this matter being opened to the Court by Philip L. Coffin, Jr., Solicitor of Complainant, and the Court having read and considered the bill of complaint filed in this cause, and the affidavit there-

unto annexed," making no mention of the appearance of the defendant or of the affidavits presented by it, or the presence of its solicitor, then the decree as above mentioned.

It is respectfully submitted that the learned Chancellor erred in making a final decree under these circumstances. The order to show cause made by him on the 31st of July, required the defendant to show cause on August 12, 1930, why an order should not be made restraining and enjoining, *pending the final*<sup>10</sup> *disposition of this cause, etc.*

This was of its nature an important matter. It involved the property rights of the stockholders of a New Jersey corporation having assets to the amount of over \$150,000. The interests of the stockholders were jeopardized, and the control of their property was taken out of their hands. All this upon the unsupported affidavit of the solicitor of the complainant, as to his fanciful and distorted views and conclusions, most of them based upon an assumed state of facts, shown by the overwhelming weight of affidavits on the part of the defendant to be non-existent. Certainly this was a case which should have been decided only after a full hearing and the examination of witnesses before the Court. Where there is an order to show cause there need be no subpoena to bring defendant into court, but he need not file his answer until required to do so by subpoena. (Dean vs. Bonnell—4th N. J. L. J. 348—Dodd, V. C.)<sup>30</sup>

Where the equities of a sworn bill for injunction are fully controverted by the answering affidavits, a preliminary injunction is properly denied, or, if granted ex parte, is properly vacated. (Metropolitan Lumber Co. vs. Fordham National Bank, N. J. A. R. Volume 7, No. 10, p. 441.)

In both the answer of the defendant (S. of C. pp. 58 to 63) as well as in the annexed affidavit (S. of C. pp. 64 to 96) every allegation on the part of the complainant has been answered and controverted, leaving the issue or issues in the same position as were such issues in the case of Metropolitan Lumber Company vs. Fordham Nat. Bank, above cited.

10 The defendant-appellant, Associated Mortgage Company of New Jersey, was incorporated under the laws of the State of New Jersey on December 2nd, 1927, with an authorized capitalization of 10,000 shares of 7% cumulative preferred stock with a par value of \$100 per share, and 20,000 shares of no par value common stock. The purposes for which the corporation was formed were, among other things, the loan of money at legal rate of interest upon bond secured by first real estate mortgage, as also the purchase of existing executed bonds and first mortgages  
20 on real estate.

The charter granted to this company gave it the right to transact business within the State of New Jersey, or, in fact, in other States upon proper application and license for such purpose. No second real estate mortgages and no chattel mortgages were ever dealt in or intended so to be.

30 Upon the formation of this corporation it differed from no other corporation in that until its certificates of stock were sold it had no cash wherewith to transact any business or to incur any liabilities, and therefore at the beginning it became necessary for the corporation to issue some of its no par value common stock in payment for the expenses of incorporation, organization and the initial sales of its two classes of stock, to wit, the preferred and the no par common.

While the book of minutes recording the proceedings of the stockholders, as well as the elected directors of the corporation, was not in evidence before the Court below because such minute book was at the time of the preliminary hearing in the hands of and in the custody of the Attorney General's Office of the State of New Jersey, and because of the fact that there was no final hearing granted by the Court below whereby the officers of the State could be subpoenaed to bring such book of records before the Court, and while it is admitted that the first few minutes of the proceedings of the corporation pertaining to its stockholders' meetings and its directors' meetings do not appear to be the original minutes of the proceedings of such corporation, yet by the defendant's answering affidavits (affidavit of Joseph R. Cheesman, S. of C. p. 68 l. 3—p. 69, l. 19; William E. Taylor, S. of C. p. 72 l. 35—p. 73 l. 8; Henry I. Perrine, S. of C. p. 83, l. 1—p. 88 l. 20; Joseph R. Cheesman, S. of C. p. 89, l. 7—p. 91, l. 20; E. R. Dickson, S. of C. p. 92, l. 7—p. 94, l. 24; William E. Taylor, S. of C. p. 95, l. 8-17; minutes, S. of C. pp. 97-106) it was shown that the transaction transferred certain certificates of shares of the no par common stock of Associated Mortgage Company of New Jersey for the valuation of \$1.00 per share as fixed by the Board of Directors under the power granted to them under Section 152 of the General Corporation Act of the State of New Jersey (Revision 1896) and that the services rendered and to be rendered by the transferees of such stock were given a fixed valuation in the minds of the directors as a fair, reasonable and valid consideration for such transfer of said certificates of no par common stock. It is contended, therefore, on the part of the defendant-appellant that a confirmation of the transactions of the stockholders and direc-

tors and a confirmation of what actually transpired at such meetings is properly accounted for by the affidavits of the officers and directors who were present at such meetings, although the actual minutes themselves were stolen, mislaid or destroyed through the dereliction or wilful act of a former officer of the company, and that irrespective of the absence of the actual records showing what actually took place at that time, the affidavits of the  
10 then directors and officers of the corporation must stand as conclusive as to the then acts of the corporation. If such is the case, then as above referred to Section 152 of the General Corporation Act of the State of New Jersey would unquestionably give to this corporation the right to transfer a reasonable and proper amount of its no par value common stock in exchange for services then and to be rendered, as well as for indebtedness then and to be created. Elevator Supplies Co. vs. Wylde, 106  
20 N. J. E. 163.

Upon this reasoning, substantiated as said, the 3,000 shares transferred to Messrs. Dickson and Perrine for services rendered and to be rendered, as well as for expenditures theretofore made and thereafter to be made, were wholly in accord with the laws of the State of New Jersey and no fraud could be imputed to the defendant corporation by reason of such transfer.

30 The General Corporation Act of the State of New Jersey, Sections 121 and 152, further gives to the directors of a corporation the full power and authority to determine not only the value of its no par common stock to be issued, but also the full power and authority to determine the value of the services rendered or to be rendered in addition to the expenditures made or to be made.

There is no allegation on the part of the complainant, and there is no evidence before this Court which in any manner imputes fraud upon the then officers and directors of the corporation in the transfer of this stock, and nowhere is it alleged that there was any fraud either in the valuation placed by the directors upon the no par common stock of the corporation nor an over-valuation for the services and advancements of cash for which such stock was transferred.

10

On the other hand, the allegation of the complainant is grossly unfair to the defendant corporation in that the complainant alleges that the money received by Messrs. Perrine and Dickson for the sale of their privately owned no par common stock of the corporation, transferred to them as aforesaid for valid consideration of services and money, should be charged against the corporation as a stock liability. In other words, the complainant alleges that after this stock had unquestionably been sold by the corporation to Messrs. Perrine and Dickson, and Perrine and Dickson had sold some of their own stock to individuals within the State of New Jersey, that the money received for the Perrine and Dickson stock constituted the true value of such stock and that such amount should be set up on the corporation's books as a stock liability against such 3,000 shares of no par common stock so issued as aforesaid to Messrs. Perrine and Dickson.

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Had the Court below afforded the defendant an opportunity on a final hearing to have shown the true state of facts as they existed, it could have been readily shown by testimony and evidence on the part of the defendant that the directors had in due and legal form fixed a valuation of \$1.00 per share on the no

par common stock of the corporation, and that if any stock liability was to be charged therefor, such charge should not exceed \$1.00 per share. The law as we interpret it has permitted the issuance by corporations of no par common stock at a fixed valuation as determined by resolution of the Board of Directors, and that any amount over and above such fixed valuation when received by the corporation for a sale of its no par common stock may be credited  
10 to the corporation as capital surplus, and that such capital surplus when set up upon the books of the corporation may be drawn upon or used for any legitimate purpose for which the corporation is organized other than the payment of dividends, and in some instances may even be used for that purpose.

Further confusion might have been prevented if the defendant had been afforded an opportunity on  
20 final hearing whereby the defendant might have disclosed to the Court, among other pertinent facts, the fact that of the 9000 shares, to wit 3000 shares to Perrine and Dickson and 6000 shares allotted for Advisory Board sales, a very comparatively few of these authorized no par common stock shares were ever in fact issued to anyone. In other words, of the 3000 shares originally intended to be conveyed to Perrine and Dickson for services rendered and moneys expended a very small number of such shares  
30 were actually issued to either Mr. Perrine or Mr. Dickson due to the fact that the services contemplated to be rendered in the future by them were not rendered and they were replaced as sales agents by another sales agent selected by the directors; and also that of the 6000 shares allotted for sale to Advisory Board members an insignificant amount of such shares were ever sold or issued, and that as of

July 18, 1930, to wit, more than two years and a half after the incorporation of the company, and after intensive stock sale drives had been inaugurated, there were altogether but 6852 shares of the common stock issued together with 533 shares of such no par common stock subscribed, all of which was accounted to the stockholders in the statement to the company bearing date July 18, 1930, and as set out in the answering affidavits of this defendant (S. of C. p. 75, 1. 24-27), in which statement the no par common stock is shown as carried upon the books of the corporation for the amount designated by the directors, to wit, \$1.00 per share, with surplus, if any, received in excess of such amount carried as a capital surplus. 10

It is the contention of the defendant-appellant that the improper set-up of the statement of the Associated Mortgage Company on which the complainant relies is the basis of all the allegations in the bill of complaint and that if the financial set-up of the corporation's financial status as prepared by the company's officers, and as directed that the same should be set up from the facts and figures furnished by the company's officers, if correct from a standpoint of law would eliminate any question of fraud or misrepresentation imputed to the company. 20

The query addressed to the Court on this point by the mortgage company is, what is the value of no par common stock of a corporation, and what, if any, liability should be set up by the corporation for the outstanding no par common stock? 30

Thompson on Corporations, 3rd Edition, Volume V, section 3417 on page 248—"It is very generally regarded, among officers and stockholders of corporation, and it is stated by some Courts and law

writers, that the capital stock is a liability of the corporation. Indeed, in the original edition of this work it is stated that 'The shares of such stock represent a liability of the corporation to the shareholders.' And in the financial statements of corporations generally the capital stock is set down as a liability. This is not only erroneous, but it is unfair to the corporation's credit, and misleading to its creditors. By liability is meant the state of being  
10 bound, or pledged in law or justice to do, pay, or make good something; it means a legal responsibility. It would not only be anomalous but phenomenal to see a stockholder attempting to recover the amount of his shares from the corporation; no such right exists because there is no corresponding liability. The shareholder has no right or claim whatever to the capital stock as such. Each shareholder contributes his proportion of the capital stock as a common fund, as a working capital and the  
20 basis of credit, on the faith that the enterprise will bring to him a good per cent. on his investment. This capital focused in a corporation is a substitute for the personal liability which subsists in private partnerships; and when debts are incurred an implied agreement arises with the creditors that this capital shall be either devoted to the corporate enterprise or applied on their demands."

Upton vs. Tribilcock, 91 U. S. 45, 23 L. ed. 203.

30 See also Sanger vs. Upton, 91 U. S. 56.

Webster vs. Upton, 91 U. S. 65.

In Bent vs. Hart, 10 Mo. App. 143 (affirmed 73 Mo. 641); Barrie vs. United Rys. Co. 138 Mo. App. 557, the Court said, "Regarded in this character, as first subject to the claims of creditors the shareholder owns not a dollar of it (proceeds of stock). He owns

no stock. What he owns is simply a right or share in the proceeds of the profits of the stock, proportioned to the amount of his contribution, together with an ultimate right to receive back his contribution, or so much as may remain thereof, upon the dissolution or closing up of the corporation."

In line with this explanation there can be no question raised but that in case of the preferred stock of this mortgage company the stockholders, either present or prospective, had a right to rely upon the fact that each dollar of the preferred stock was not only paid in to the corporation but that each dollar thereof was represented by assets of the corporation; or, in other words, that for each share of the preferred stock of this corporation \$100.00, or the par value thereof, was represented by the assets of the corporation, and this is the case here. There is no allegation anywhere in the case before the Court that any of the proceeds of the sale of the preferred stock had been spent or utilized. In fact, such allegation could not be made, or, if made, could not be substantiated, and no attempt at such substantiation was made, as the investments of the corporation represent more than dollar for dollar value of the preferred stock of the corporation issued and outstanding. Such preferred stock was represented in investments in first real estate mortgages and in marketable securities purchased by the corporation.

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In the case of the common stock to which the above query is alone directed, it is the contention of the defendant-appellant that no par common stock has no value at any time until the assets of the corporation show a surplus over and above the liability for the outstanding preferred stock, and that at such time each share of the no par common stock has a

value equal only to the proportionate value of each outstanding share divided into the total of the surplus, as above stated. We further submit to the Court that under the General Corporation Act of the State of New Jersey, the directors and the directors only had a right to place a nominal value upon each share of the no par common stock, and this they did by placing a value of \$1.00 per share. Holders of the no par common stock could not be misled by the issuance of such stock because no money value was  
10 either printed upon the face of such certificates or in any manner represented to stockholders or to the public in general. The stockholders and the public by law were presumed to know that such common stock was intrinsically worth only such surplus of the corporation.

We further allege that as a question of law the amount such no par common stock might bring in a  
20 sale upon the open market, whether a share of such no par common stock be sold for \$1.00 per share or for \$25.00 per share, was not chargeable as a stock liability to the corporation, but that the proper procedure for the officers and directors of the corporation in selling a unit, to wit, one share of the 7% cumulative preferred stock for \$100.00 per share with two shares of the no par common stock at \$25.00 per share, that the company in receiving the total thereof, to wit, \$150.00, were only duty bound to set  
30 up a stock liability upon the corporation's books of \$102.00, being \$100.00 for the one share of the preferred stock and \$1.00 each for the shares of the common stock, and that from the overplus resulting from such sale, to wit, \$48.00, the company legitimately could pay a reasonable and fair commission to the stock salesman of \$37.50 and legitimately transfer to capital surplus the remaining \$10.50,

which it had a perfect right to use for any legitimate purpose excepting possibly the payment of dividends. The corporation, however, does not admit that such capital surplus may not also be used for the payment of dividends if properly voted for such purpose, but alleges that that would be the only exception to the reasonable and proper use of the moneys so received, and that such corporation was only thereby chargeable strictly for the \$102.00 as stated.

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If this principle of law as alleged by this corporation is incorrect, then it would be humanly impossible for any corporation, within the State of New Jersey or elsewhere, to ever commence business through the flotation of stock. Every corporation would be otherwise required to in some way or other amass its paid in capital without the payment of any commissions or other expenses in the sale of its stock, and such stock having been sold without any expense, the proceeds of such sale could then not be used for any purpose even in the organization expenses but could be used only for purposes for which an actual asset of a tangible nature could be accounted to overcome the stock liability. Every corporation in its initial formation is obliged to make expenditures and create liabilities for which no asset can properly be set up, not alone in the expenses of the sale of its securities but in the nature of temporary rents, advertising, Secretary of State fees and the like. And the defendant-appellant alleges that it was for the purpose of paying these necessary and reasonable expenses of the corporation, as well as other proper expenses which every corporation is likely to face during the period when it is becoming established in business, that no par common stock was created in order that such stock

might be sold for a fair and reasonable amount and that such money therefrom derived might be used for corporate expenses without impairing the actual cash capital of the corporation as represented by its stated par value securities, either stocks or bonds. It is our contention that such no par common stock has in fact always been so treated since the allowance and recognition of no par common stock.

- 10 This is, in fact, what was done in the case before the Court and nothing else. In the beginning, as stated in this argument, a limited number of shares of such stock, with a determined value thereon, was transferred to the stock salesman in consideration of expenses and services rendered and to be rendered and on which a determined value had been placed by the Board of Directors. All of the stock used for this purpose was set up upon the books of the corporation for \$1.00 per share. Later when the additional 6000 shares of such stock were authorized to be issued for Executive Board purposes, such stock was set up upon the books of the corporation as a liability of \$1.00 per share. All moneys over and above the \$1.00 per share were either set up upon the books of the corporation as a capital surplus or otherwise were expended for legitimate, proper and reasonable services rendered.

30 The Supreme Court of Alabama has been called upon to construe the non par stock statute of that State in the light of a constitutional provision that: "No corporation shall issue stocks or bonds except for money, labor done, or property actually received; and all fictitious increase of stock or indebtedness shall be void." The Court held that the constitution was not infringed. There was nothing in the law under review to show that the proposed stock

would not be issued for money, labor done, or property actually received. The Court observed that the purpose of the constitution "was to protect the public as well as the stockholders against worthless stock, and marketing of fictitious stock based on nothing valuable as a consideration for its issue. The issue of common or preferred stock without nominal or par value does not hold out to, or mislead, the public that money, labor, or property was not received by the corporation for the issue of its stock. It is merely a certificate to the holder of his interest in the corporate property, indicated by the number of shares\*\*\*. The par value indicated on the face of a share of stock does not express the aliquot part of the corporation's property or the right to share in the proceeds of the corporation (before or on its dissolution) by the stockholder in any due distribution thereof, than would be expressed on the face of 'non par' corporate stock merely indicating the number of shares, and in which is not stated its par value. The stock is merely muniment or title, not purporting to indicate the amount of capital invested or its value, and only indicating the 'number of divisional interests' in the corporation evidenced thereby. Otherwise stated, the indication in the certificate of corporate stock of its par value has the effect only of declaring the actual money, labor, or property that has come into the corporation from its original subscribers, and in lieu thereof the owner's claim on, or interest in, the properties of the corporation, and that its original face value was the amount indicated. It is of common knowledge that economic and physical conditions are causes of fluctuations of the actual and market values of properties generally, and that corporate stocks are subject to such changes. Hence the par value indicated in the certificate of stock has not always represented its actual or

book value. This fact, in a large measure, accounted for the substitution of 'non par stock'—stock without any nominal or par value—for or in lieu of stock expressing a par value, and this change has tended to relieve the confusion or deception, the necessity for an embarrassment of explanation of discrepancy between the book or market value and the face value of corporate stocks."

Randle vs. Winona Coal Co., 206 Ala. 254, 89 So. 10 790, 19 A. L. R. 118.

Also Commonwealth vs. Wayne Sewage Co., 287 Pa. 42, 134 Atl. 390.

Thompson on Corporations, section 3632, page 459, provision is made in the laws for placing valuation on the shares for purposes of sale. The provision of the New York law is: "Subject to laws creating and defining duties of the Public Service Commission and the Transit Commission, such corporation may  
20 issue and may sell its authorized shares without nominal or par value from time to time, for such consideration as may be prescribed in the certificate of incorporation or for such consideration as shall be the fair market value of such shares, and, in the absence of fraud in the transaction, the judgement of the Board of Directors as to such value shall be conclusive, or in the absence of fraud in the transaction for such consideration as, from time to time, may be fixed by the Board of Directors pursuant to  
30 authority conferred in such certificate of incorporation; or for such consideration as shall be consented to or approved by the stockholders of a majority of shares then outstanding at any meeting called in the manner prescribed by the by-laws, provided the call for such meeting shall contain notice of such purpose."

N. Y. L. 1921, chapter 694, section 1.

Under the Illinois law the value may be fixed, either in the articles of incorporation or from time to time by the Board of Directors, and the statement of non par issues may be in number of shares and not in money, in the event that the money value, at the time of the issuance of the certificate, has not been determined.

Roberts, etc., Co. vs. Emmerson, 313 Ill. 137, 144 N. E. 818.

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The allegation is several times referred to by the complainant that the defendant-appellant not only had no right to enter into a contract with M. T. Perkins for the sale of its units of stock; but that an agreed commission of 25% of the amount received for stock sold by him as such stock salesman was an exorbitant and unreasonable and unjustified commission to be paid therefor. This allegation is unsupported except as an opinion on the part of the complainant, and the defendant while setting up the reasonableness of such commission and the validity of the same was estopped from making its due proofs in regard thereto by the entry of the final decree of the Court of Chancery without a final hearing, at which time proper witnesses and evidence in such behalf might have been produced. 20

Even assuming that there may be some merit in the complainant's allegations, unsupported as they are, that the corporation was obliged to set up as a stock liability any amount of money paid by any stockholder for such stock, there is no proof before this Court, and there was no such proof before the Court below, as to how many shares of the no par common stock were sold for a consideration exceeding \$1.00, or what was, in fact, received for any 30

of the shares of stock so sold. The complainant merely charges the corporation with a sum gross which Messrs. Perrine and Dickson received for the shares of stock which had been sold to them at \$1.00 a share by the corporation and concerning which the corporation had no further interest or accounting, and in addition thereto the complainant has charged this defendant with a liability of commissions paid to Perkins out of the proceeds of the sale  
10 of the no par common stock, all of which is obviously unfair to the corporation and which the corporation alleges is not in accord with the law controlling such corporate existence.

The corporation alleges here, as it alleged in its argument in the Court below, that the financial statement of the corporation upon which the complainant has laid so much stress before the Court (S of C. pp. 50-51), while prepared by expert ac-  
20 countants engaged by the corporation, yet was set up, in the form in which the same appears under the express directions of Philip L. Coffin, Jr., then Special Assistant Attorney General, and against the opinions of the expert accountants, who emphatically stated in Mr. Coffin's presence and in the presence of officers of this corporation that such a statement was not an accurate and true statement of the financial standing of this corporation. This fact is here reiterated in justice to the corporation, which  
30 was in the absence of the final hearing barred from producing evidence to such effect after the complainant had in its argument before the Court below laid such great stress upon this statement and erroneously stated to the Court that such statement was prepared by the defendant's own accountants.

Enlargement of the foregoing argument pertaining to the alleged erroneous financial set-up of the company on the part of the complainant is emphasized for the reason that, as before stated, practically every allegation in the complainant's bill is based upon such financial set-up. If our argument, therefore, is correct, that these items or erroneous charges and expenses should not be charged as a liability against the company, then practically all of the other allegations contained in the bill of complaint would fall of their own weight, as will be shown as the argument proceeds. Furthermore, the complaint shows and it is admitted by the complainant that this condition of the financial set-up took place very largely during the first few months of the corporate existence, except as pertains to the 25% commission paid to Perkins, the sales agent. The company was undoubtedly making money during the period of approximately 18 months previous to the application for the appointment of a receiver, and this fact is borne out by the very statement relied upon by the complainant and prepared under the complainant's direction (S. of C. p. 51, ll. 36-39), in which not the gross profits but the net profits of the corporation from December 19, 1927, to June 24, 1930, are stated as \$1,758.14. The corporation further alleges, as is conclusively shown by the minutes of the Board of Directors, that the errors of the incorporators were rapidly being corrected by the Board of Directors, and that irrespective of errors in judgment or otherwise mistakes which had previously been made, such errors or mistakes were being overcome and outlived. Further evidence of this argument will be presented immediately.

It is deemed proper to respectfully state that while his Honor the Chancellor in his opinion or reasons

herein (107 N. J. E. 297; Weekly Law Review Vol. VIII, No. 51, page 297, at page 298) states that, "The day after the hearing, and the day after the making of the final decree herein, the defendant filed an answer," and with all due respect to his Honor the Chancellor, the answer and the answering affidavits of the defendant were personally handed to his Honor, and copies thereof delivered to the solicitor of the complainant, in the Chancery Court Room  
10 upon the call and prior to the hearing of the arguments upon the rule to show cause on the 12th day of August, 1930; and while it is not the purpose of this argument to in any wise controvert such statement on the part of his Honor the Chancellor, we most respectfully submit at this time that it might be possible that the Sergeant-at-Arms attendant in the court room at the time did not file the answer and the answering affidavits with the clerk of the court until the following day, or otherwise too late  
20 upon August 12, 1930, for them to be entered upon the dockets of the court on the day of the hearing. At any rate the docket of the court (80-316) discloses that both the answer and the answering affidavits were marked filed upon the docket as of August 13, 1930, which would indicate that there was no dereliction upon the part of the defendant's solicitors is promptly submitting to the Court both the answer and the answering affidavits.

30 In the second ground of appeal herein filed (S. of Co. p. 115, 1. 1, No. 2), the jurisdiction of the Court of Chancery to make a final decree, as was done, is challenged for the reason, among other reasons, that this Appellate Court has endeavored by reason of the Metropolitan Lumber Company case, above recited, to throw around every defendant a proper safeguard against any injustice which might otherwise be cre-

ated through injunctions and or receiverships ordered except upon a thorough investigation of the facts alleged. And it is further alleged, and most respectfully so, that an ex parte affidavit does not and cannot produce before a Court the evidence or the facts, especially when the same are controverted, in such form or manner as to fully advise any Court of the truth alleged in such ex parte affidavits, but can at the best only raise a presumption based upon the affidavits of parties usually interested in the outcome, and that accordingly at the best the jurisdiction of the Court below extended only to the granting of a preliminary injunction, which, by the force thereof, would fully protect the interests sought to be protected until some short day when the Court might fully investigate the allegations upon final hearing and make or refuse a final decree thereupon. 10

It is further contended in behalf of the defendant-appellant herein that both from a standpoint of the facts involved as well as the "Securities Act", that the jurisdiction of the Court cannot extend in this case beyond the point of restraining further sale of the securities of the corporation. Neither stockholders nor creditors being interested as parties complainant, the "Securities Act" does not contemplate a receiver limiting or prohibiting the conduct of the corporation's business. 20

As to the third ground of appeal (S. of C. p. 115, 1. 4, No. 3) the same argument applies, with the additional argument that as is usual upon the hearing of the argument upon ex parte matters the Court merely listens to the argument of the solicitors, without reading the affidavits presented and without the production of any evidence, and we submit with due respect that any Court may be improperly ad- 30

vised by such solicitor through an incorrect statement made by the solicitor. It is our belief that in the hearing of the arguments below the Court was unduly influenced by the statements on the part of the solicitor for the complainant that the financial statement of the defendant corporation (S. of C. pp. 50-51) ) was the defendant corporation's own statement, whereas the facts of the case as may be shown upon opportunity afforded to the defendant that such  
10 statement was made up by the expert accountants engaged by the defendant corporation but on the advice and under the direction of the solicitor for the complainant, who, in his office and in the presence of the officers of the defendant corporation and the expert accountants, directed such accountants that the statement must be made up only in the form used by the complainant, and which the defendant alleged at the time and still insists is an incomplete and incorrect statement of the finances as of June  
20 24, 1930, of the defendant corporation.

Attention of the Court is at this time directed to the fact that Schedules B and C (S. of C. pp. 50-51) are unsigned by the expert accountants, further confirming the statement hereinbefore made, and provable, that such statement was made up under the direction of and in the form prescribed by the Special Assistant Attorney General, and that such statement  
30 was not signed by the expert accountants by reason of the fact that they disagreed with the correctness thereof.

Reverting, therefore, to the opinion of the learned Chancellor, 107 Eq. 297-309, VIII Weekly Law Review No. 51, pp. 297-309, which said opinion or reasons were filed by his Honor the Chancellor on or about the 5th day of December, 1930, and by rea-

son thereof printed as a part of this argument and brief, it is deemed advisable to reconsider certain of the findings therein referred to not heretofore touched upon.

The defendant alleges that such jurisdiction granted to the Court is prejudicial to the defendants in depriving them not so much of a right of trial by jury, which is not herein insisted upon but merely suggested, as that it prevented the defendants from 10 submitting actual facts in the form of competent evidence and conclusive facts from the statement of witnesses sworn in the presence of the Court, not only in confirmation of the affidavits submitted as answering affidavits on the part of the defendants, but also by the introduction of testimony which otherwise was not and could not have been presented before the Court upon the preliminary hearing. The defendants contend in the first place that the New Jersey Securities Act, P. L. 1927, Chap. 79, page 138, 20 is either unconstitutional in awarding to the Court jurisdiction and authority to proceed in a "summary way to hear affidavits, proofs and allegations which may be offered on behalf of the parties", or that the intention and meaning of the Legislature in so phrasing an intended jurisdiction and authority to be given to a Court to hear the matter in a "summary way" was that the Court itself, free of any jury, would have original jurisdiction to hear the affidavits, proofs and allegations, etc., and that the mere fact that the 30 phraseology contains the words "proofs" and "allegations", in addition to the word "affidavits", enlarges the intention of the Legislature that proofs were to be submitted in such a case similar to proofs in any other case, whereby a defendant might be entitled to all reasonable doubts and full opportunity to support and sustain its case as well as the prin-

principle of law and equity that every defendant shall be given a reasonable opportunity and that the burden of proof is at all times upon the plaintiff or complaining party.

22 C. J. page 69, EVIDENCE, Section 14B, et seq. in re McCraven (Ch.) 99 A. 619.

10 The other grounds of appeal relate to the propriety of the decree irrespective of the circumstances under which it was made.

The main allegations of complainant's bill are based almost entirely upon the assertion, frequently repeated but never proved, that the defendant corporation was insolvent. It was not pretended that there was insolvency in the sense that the corporation had not sufficient assets with which to pay all of its debts.

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According to its verified statement of July 18, 1930, (S. of C. page 75) affidavit of Joseph R. Cheesman (S. of C. pages 65 and 66) affidavit of William E. Taylor (S. of C. page 72) the debts of the corporation consisted of notes held by

Mechanics' National Bank of Burlington (representing money borrowed to reinvest) .....	\$30,000.00
30 Mortgage on office building in Burlington .....	10,000.00
Accrued interest on indebtedness .....	90.00
Unpaid commissions .....	248.00
	<hr/>
Making a total of .....	\$40,338.00

To pay this, the company had on deposit in

Mechanics' National Bank of Burlington and Burlington City Loan and Trust Company, cash to the amount of .....	\$15,270.23
Mortgages on real estate (first liens) .....	59,330.60
Bonds of other corporations .....	21,220.00
Stock of other corporations .....	12,262.30
Real Estate (office building in Burling- ton) .....	14,102.51
Office furniture and fixtures .....	942.95
Accounts receivable .....	10,855.00
Accrued interest on mortgages .....	1,139.58
Other real estate .....	70.32
<hr/>	
Making a total of .....	\$135,193.49

Deducting from this amount the above indebtedness of \$40,338.00, leaves a surplus of \$94,865.49.

The bonds owned by the company consisted of nineteen bonds for \$1,000.00 each of Ortley Beach; 2 bonds, \$1,000.00 each, of Electric Public Utilities Company; 2 bonds, \$1,000.00 each of Tri-Utilities Corporation.

The stock in other corporations consisted of 100 shares of Seaboard Utilities Company, \$2,000.00; 96 shares of Burlington Realty and Finance Corporation, \$9,600.00; 10 shares of People's Light and Power Company, \$486.75; 10 shares of Tri-Utilities Corporation, \$486.75, and 50 shares of American States Public Service, \$1,400.00.

The real estate of the company consisted of its office buildings in the City of Burlington, which was the banking house formerly occupied by Mechan-

ics' National Bank, and sold by the institution because it had erected and moved to a new bank building. The property had been appraised by two real estate experts, affidavit of Joseph R. Cheesman, (S. of C. page 66 & 67), at between \$35,000.00 and \$40,000.00. No allegation was made in the bill of complaint, nor the affidavit annexed thereto, that the assets of the defendant corporation were at all questionable. A corporation which has assets in  
10 excess of liabilities to the amount of nearly \$95,000.00 can not be said to be insolvent.

The charge of insolvency by complainant was based apparently upon the theory that the capital stock of the defendant corporation issued and outstanding exceeded the amount of its surplus over and above its debts. The corporation had issued and outstanding, on July 18, 1930, 790 shares of preferred stock of the par value of \$100.00 amounting  
20 to \$79,000.00; 196 shares of the preferred stock subscribed at \$100.00, \$19,600.00; 6,852 shares of the common stock issued at \$1.00 per share, \$6,852.00; 533 shares of the common stock subscribed at \$1.00 per share, \$533.00, making a total of \$105,985.00, less unpaid subscriptions of \$17,801.87, or a total stock liability of \$88,183.13, which, deducted from the \$94,865.49, of net assets, leaves a surplus of \$6,682.36.

30 In the above listed assets, there is not included the value of the business of the corporation as a going concern, the organization expenses, etc. Complainant makes a showing of insolvency by arbitrarily charging as a liability 6,621 shares of common stock at \$51,953.00, or \$7.84 per share instead of \$1.00 per share (S. of C. p. 51) which was the value fixed by the directors upon the shares of common stock issued.

(Affidavit William E. Taylor, S. of C. p. 72). The fixing of this value by complainant is entirely arbitrary. The only apparent explanation or justification for it is the idea somewhere obtained by him that certain shares of the common stock were sold by someone, not by the company, for more than \$1.00 per share. If the owner of such stock was able to sell it for more than \$1.00 per share or for more than it was worth, the defendant was not responsible.

It nowhere appears in complainant's affidavit that defendant ever sold its common stock for more than \$1.00 per share. Any corporation may by the method adopted by complainant be shown to be insolvent, if a sufficiently high price be placed upon its shares. The stock of some of our largest and strongest banks and trust companies, as well as other wealthy corporations, sell for more than the book value of the same. Complainant does not appear to be altogether clear as regards the common stock of de-  
fendant. 10 20

In the eleventh paragraph of his bill he alleges that defendant had issued 9,000 shares of its common stock without the receipt of any valuation monetary consideration by the corporation.

In Schedule B attached to his bill, (S. of C. page 51) he states the total number of shares of common stock issued to be 6,621. The real number issued and outstanding was 6,852, with 533 shares subscribed but not fully paid for and not issued. (Affidavit of William E. Taylor, S. of C. page 72). 30

The allegations of insolvency are not sustained. A determination that the defendant corporation was insolvent could only be reached by utterly ignoring

and disregarding the affidavits of the officers, employees, of the company, (the only ones who had accurate knowledge of the subject) and by accepting as proved facts all the suspicions of the attorney of the complainant.

Since practically the whole charge of fraudulent practice on the part of defendant is based on the charge that the company was insolvent, when that  
10 allegation falls the whole charge must likewise fail. The complainant's bill contained other allegations from which it was sought to draw the conclusion that the management and operation of defendant, had been fraudulent. With the allegations of insolvency swept aside, such charges, have little, if any, bearing on the matter.

It is true, as charged by complainant, that 3,000 shares of the common stock were issued to Messrs. Perrine and Dickson, in consideration of the agree-  
20 ment on the part of these gentlemen to render services in selling the stock of the corporation, and to reimburse them for money previously paid by them for organization expenses, &c., and the value of said stock being fixed by the directors in accordance with the power given by the certificate of incorporation at \$1.00 per share, and the directors being of the opinion that this was fair compensation to Messrs. Perrine and Dickson, they having provided, at their own expense, clerical assistance, advertising matter,  
30 &c. (Affidavit of Joseph R. Cheesman, S. of C., page 68).

It is not alleged in the bill that such amount was excessive.

The business of defendant was that of loaning money to carry on its business. It was necessary

that it have money. It did not receive money on deposit, hence, it must depend upon the sale of its stock for the same. To successfully conduct its business it must be in position to obtain accurate knowledge of the value of the properties upon which it was asked to take mortgages. It was desirable to extend its operation through various sections of the state, to secure stockholders and to loan money there. As a means of successfully accomplishing this, it was determined to endeavor to secure as stockholders men of prominence and financial experience, acquainted with real estate values in different communities. To accomplish this, it was determined to offer the common stock to such men in hope that they, becoming stockholders, would be interested in the business of the company, of assistance in obtaining other stockholders, and available for reliable information concerning real estate valuation and the making of mortgage loans in their respective communities.

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Therefore, the issuance of 6,000 shares of common stock was authorized at the value of \$1.00 per share, but the stock was not issued to Mr. Perkins. The shares were available for distribution by him with the approval of the directors for the purpose aforesaid, and never have all been issued. (Affidavit Joseph R. Cheesman, S. of C. pp. 68-69). It is not charged that this was fraudulent, and it could not be so charged truthfully. It is true that an agreement was made with Mr. Perkins, whereby he was to sell the stock of the company and receive as compensation a commission of 25% on the stock sold by him. He was to pay out of the commission so received the expenses of maintaining the corporation office, including stenographers, clerks, telephone rent, lights, etc. It is not alleged that such commission was excessive.

30

Complainant criticizes certain of the advertising matter circulated by defendant and complains that the following language was used therein: "There is a strong financial institution managed by a group of prominent New Jersey men. You are cordially extended an invitation to become associated with the following gentlemen in furthering the program of the institution." Following this is a list of prominent individuals together with their connection with various financial institutions and banking houses. There was nothing fraudulent or deceptive in this. The men so listed were connected with various banks, and were stockholders and some of them directors of the defendant corporation.

The largest and strongest financial institutions publish the names of their directors, as showing the character of the men by whom their affairs are managed. Had the defendant corporation alleged that certain men were connected with it, when as a matter of fact they were not, it would have been fraudulent, but wherein lies the fraud for a corporation to publish the names of its directors and of its stockholders? Is it a crime or misdemeanor to use as an inducement to one to take stock in a corporation the fact that other men of financial ability and unquestioned judgment, have favorably regarded the stock?

Complainant says that the circular or statement was prepared in such a way as to make it appear that the men whose names appeared thereon were active in the management of the corporation, either as directors or officers. Not so! The language employed and which is complained of, is "You are cordially extended an invitation to become associated with the following gentlemen, etc." If complainant's construction be placed upon these words,

the circular was an invitation to every person who received one to become a director or officer of the corporation. This was obviously not the case.

It is not intimated that the circular was calculated to induce the belief on the part of any person receiving one that if he subscribed for stock in the corporation he would thereby become an officer or director of the same. There was nothing misleading. The recipient of one of these circulars was asked to become a stockholder of the company, to become associated with the other stockholders (it is the ordinary language of a certificate of incorporation), some of whom were named. If he was asked to become associated with them and given to understand that he could do so by purchasing stock, he would know they were stockholders, not necessarily directors.

The circulars of the corporation are further criticized because they say, "There is a strong financial institution which has been functioning for some time, and has proven to be one of the safest and most profitable enterprises in the State of New Jersey. This institution is state-wide in its aspects. Operations will cover the whole State of New Jersey." There is not one false or misleading statement. Defendant was a financial institution. It was strong. It had more than enough assets to cover its liabilities. It had been functioning for some time and had proved to be a safe and profitable enterprise. The corporation was state-wide in its aspect and its operations were intended to cover the whole state. This is absolutely true.

A corporation, honestly designed with the purpose of extending its business throughout different parts of the State, can not be accused of fraud for so asserting. If the corporation had stated, in its circular, that it was actually engaged in business which extended throughout the entire State, this would have been a mis-statement, but the circular does not so state. It says, that "The institution was state-wide in its aspect." It was, by its certificate of incorporation, given power to operate throughout the State, and the officers say that it was their intention so to do. If the rule, applied in this case, be applied in all cases, every corporation is subject to the same criticism because it would be impossible for any corporation to announce the intended scope of its business and activity.

The circular set forth the honest intention of the company to be state-wide in its operations, but did not state that it had already become so. If it had, it would perhaps not have been necessary for it to solicit stock subscriptions. If the contention of the complainant be adopted, no company seeking to secure stock subscriptions can state its intended business. The statement in the circular, "dividends being paid quarterly," was true. That dividends were being paid quarterly is not denied, and such is a positive fact. It is alleged that the purpose of this statement was to create an interest in the stock and promote the sale thereof. This is admitted by defendant, and it is submitted that there was nothing wrong in advertising the fact that dividends were being paid, if such was the fact.

Complainant states that the commission paid Mr. Perkins was excessive, that up to April 30, 1930, stock in the defendant corporation to the amount of

\$111,110.00 had been sold (as a matter of fact, up to July 18, 1930, only \$105,985.00 had been sold) and that the cost of organizing the business, selling the stock totaled \$51,882.28. If this were true the net assets of the corporation would only be the difference between \$111,110.00 and \$51,882.28, or \$59,227.72. Whereas the net assets, including unpaid subscriptions on stock of \$17,801.87 amounted to \$112,667.36. Attack is made on Joseph R. Cheesman for his action in selling his stock to the defendant. The <sup>10</sup> transaction is fully explained in his affidavit. (S. of C. page 60). He received an offer from one Horace Roberts of \$6.25 per share for 745 shares. Mr. Cheesman informed the directors of this and sold the company these shares of stock at \$5.00 per share, with the idea that it should be sold to Mr. Roberts at a profit to the company of \$1.25 per share. The transaction was never carried out. Mr. Roberts did not take the stock. Mr. Cheesman took it back and owes the company for the same. His indebtedness <sup>20</sup> of \$3,725.00 (745 shares of stock at \$5.00 per share) is an asset of the company, shown upon its statement, and is perfectly good.

It was not necessary to revise all the literature of the company to insert therein a statement of the fact that Mr. Roberts had intended to purchase the stock but had changed his mind. The company lost nothing.

Again the complainant renews the assertion that <sup>30</sup> the corporation's net worth had depreciated to \$57,640.81. As shown heretofore, this is a mistake. The net worth was \$94,865.49. It was not misleading for the corporation not to publish that the net assets of the company were only \$57,640.81. It would have been false and misleading to tell them that they were only \$57,640.81.

Criticism is further made of the fact that a statement of the corporation, under date of February 1, 1930, was issued (S. of C. page 57) and is followed under the title, Auditors, by the names of William C. Jones, Glenn Lindabury, and W. Emory Cheesman, and complainant charges that these gentlemen were not auditors. This rests entirely upon the affidavit of Mr. Coffin. It is not apparent why this is any evidence of misdoing on the part of the  
10 corporation. These gentlemen were auditors. They were appointed to examine the books of accounts of the corporation. The published statement of every National Bank and Trust Company contains, at the end, the signatures of three of its directors. In most cases, these are not certified public accountants nor professional auditors. Nevertheless, it has never been regarded as fraudulent on the part of the Bank or Trust Company. There is no suggestion that these auditors were not honest.

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The learned Chancellor, in his opinion, says that in his judgment the company was insolvent on February 1, 1930. As stated before, there is no basis for this statement and such conclusion could only be reached by declaring the assets of the corporation to be of no value.

Criticism is made of the statement in the literature of the corporation that the capitalization of the same  
30 is therein stated to be \$1,000,000.00. The charter of the corporation or certificate of incorporation, provides for 10,000 shares of stock of the par value of \$100.00 each. 10,000 times \$100.00 is \$1,000,000.00.

The learned Chancellor criticizes the affidavits produced on the part of the defendant as being general and rejects everything in them which contra-

dicts the affidavit of Mr. Coffin, which is admittedly hearsay, notwithstanding the fact that the Chancellor, himself, says "I do not say that the men who composed the officers and directors of this company were not perfectly honest men, and men of standing in their community," and then in spite of this assertion, he brushes aside, as of no value, the solemn oaths of these men.

The learned Chancellor criticizes the affidavit of 10 Mr. Perkins wherein he says that to accomplish the purpose of this company it is necessary to have available \$250,000.00 to \$300,000.00; then he states that the company never had anything like either of these amounts. It is difficult to understand the pertinency of this criticism. If it be conceded that the company should have available \$250,000.00 to \$300,000.00 the company may endeavor to secure that amount, but because it has not yet succeeded in doing so, it is not to be branded as fraudulent or prevented from do- 20 ing business.

Of course, it stated this was merely a matter of opinion on the part of Mr. Perkins and has no particular relevancy in the case.

The Chancellor says that this is evidence of the fact that Mr. Perkins places a real value on the stock of the company, but that he says it is practically worthless. When a company shows, by a 30 statement, that its assets are sufficient to pay all of its indebtedness and leave an amount in excess of the par value of all of its stock issued and outstanding, it is difficult to understand how the conclusion can be reached that the stock is worthless.

The learned Chancellor says in his opinion, that on April 30, 1930, one hundred and eleven thousand one hundred and ten dollars worth of the stock of the Corporation had been sold, while fifty-one thousand eight hundred and eighty-two dollars and twenty-eight cents was the cost of organizing and distributing that stock, which showed that the net worth of the corporation's property had depreciated to fifty-nine thousand two hundred and twenty-seven  
10 dollars and seventy-two cents. This is taken from the affidavit of Mr. Coffin. (S. of C. page 39).

Mr. Coffin in his affidavit does not state this to be a fact. He says that complainant charges this to be a fact. The assertion is palpably incorrect, because it appears conclusively from the statements of the corporation that it had assets over and above all of its indebtedness to an amount far in excess of  
20 fifty-nine thousand two hundred and twenty-seven dollars and seventy-two cents (\$59,227.72).

The opinion further says that the company's deficit in June, 1930, was forty-three thousand four hundred and twenty-nine dollars and sixty-seven cents. (\$43,429.67). This statement finds its only support in the affidavit of Mr. Coffin, who again in this says that complainant charges, etc. This conclusion is arrived at by charging as a liability an arbitrary value of the common stock. If the complainant chooses  
30 to arbitrarily value the common stock at five hundred dollars a share, the deficit would, of course, be that much more. Any corporation may be shown to have a deficit, if a sufficiently high value be arbitrarily placed upon its stock.

The learned Chancellor criticizes the action of the corporation in purchasing the stock of the Burling-

ton Real Estate Company. It is not contended that the corporation had not the right under its Charter to purchase this stock, neither is it contended it was an unwise move on the part of the corporation to make such purchase, nor is it shown that any loss was sustained by the defendant corporation, nor is it likely to sustain it by reason of this transaction. The opinion states that Mr. Perkins had purchased for the defendant fourteen thousand, seven hundred and thirty dollars and sixty cents worth of mortgages, and had received from the corporation a commission therefor. Perkins was to receive a commission for the sale of the stock in the corporation. It made no material difference whether the corporation received in exchange for its stock so issued, cash or mortgages. If it had received cash, it would have invested the same in mortgages, and if a person bought ten thousand dollars worth of stock and instead of paying ten thousand dollars in cash assigned to the corporation mortgages for this amount held by him which were well secured and otherwise acceptable, what material difference did it make? The commission paid Perkins was not for the mortgages acquired by him, but for the stock sold by him.

It is true that M. T. Perkins is indebted to the corporation in the sum of SIX THOUSAND EIGHT HUNDRED DOLLARS.

The learned Chancellor comments upon the fact that Mr. Perkins did not deny this in his affidavit. There were no occasions for him to deny it. He could not have done so. He does owe the Company the money. In the balance sheet of the company, (S. of C. page 75) the indebtedness is listed as an asset. It is not charged that this will be a loss, or that it is a loss. As to the actions of the defendant

corporation in the purchase of the stock of the Wrightstown National Bank, this transaction is fully explained in the affidavit of Mr. Cheesman. (S of C. page 70). The corporation believed that it was advisable from a business standpoint to acquire the assets of this bank. It did. Subsequently the corporation sold this stock, not back to the Wrightstown Bank, (it did not purchase it from the bank, it purchased it from various stockholders of the bank),  
10 but sold it to another institution, and there was a loss of seven hundred and fifty dollars (\$750.00). Perrine and Oliver were not paid any commission on the sale or purchase of this stock. They were paid commissions on the sale of the stock of the Associated Mortgage Company. The stock of the Associated Mortgage Company was in most cases given in exchange for the stock of the Wrightstown National Bank. By means of the transaction, the Associated  
20 Mortgage Company secured the co-operation and assistance of men connected with the bank and acquired business in the vicinity thereof.

Because a corporation suffers a loss on a legitimate business transaction does not brand the corporation as fraudulent.

The bill of complaint has been discussed because the opinion of the Chancellor has followed in order the various allegations in the bill and the affidavit  
30 of complainant's solicitor.

The defendant corporation is criticized and adjudged guilty of a violation of the law and its stockholders are punished by being deprived of their property and investment; this though there was no complaint on the part of any stockholder. The company was criticized for purchasing bonds and the

shares of stock of other corporations, because it is said that its principal business was the loaning of money on mortgage.

It had the right, under its certificate of incorporation, and under the law of the State of New Jersey, to purchase and acquire such stock and bonds, and to hold them. A manufacturing corporation, primarily engaged in the manufacture of clothing, would certainly not be guilty of an offense if it also manufactured neckties, unless there was something in its certificate of incorporation or the law of the State which expressly prevented it from so doing. 10

The fact that the corporation, in its literature and advertisements, stated it was state-wide in its aspect, did not render it guilty of fraud because it had not yet extended its activities beyond the confines of Burlington County; as a matter of fact, it has made loans in other Counties. A corporation formed to manufacture various articles would not be guilty of fraud because, pending the securing of sufficient capital and facilities, it engaged only in one line of manufacture. No corporation could ever start in business if it would be held guilty of fraudulent practice because it stated its honest objects and intentions, before they had been fully completed. 20

There is no confirmation of the allegations of the bill of complaint except by the hearsay affidavit of Philip L. Coffin, Jr., The equity maxim, "To doubt is to deny," has not been applied so far as this defendant is concerned. The rule of evidence that the defendant is to be given the benefit of the doubt and that the burden of proof rests upon the plaintiff or complaining party has not been followed. The principle of law as enunciated in *Metropolitan Lumber Co. vs. Fordham National Bank, et als*, N. J. A. R. 30

VII No. 10, 421, whereby the Court of Chancery has held, as before stated, that "where the equities of a sworn bill for injunction are fully controverted by the answering affidavits, a preliminary injunction is properly denied, or if granted ex parte is properly vacated," has not been followed. The Court below has erred in its refusal to grant to this defendant a final hearing with its attendant production of witnesses and evidence. And we further allege that  
 10 the grounds of appeal of this defendant-appellant (S. of C. pp. 112-118) are fully sustained, including the corporation's allegations of law pertaining to the fictitious creation of a stock liability involving no par value common stock.

Dvorin vs. Greenberg, 106 N. J. E. 495.

Elevator Supplies Co. vs. Wylde, 106 N. J. E. 163.

Citizens Coach Co. vs. Camden Horse R. R. Co., 29 N. J. E. 299 (at page 303).

20 Ellerman vs. Chicago Junction Rys. Co., 49, N. J. E. 217.

Edison vs. Edison United Phon. Co., 52 N. J. E. 620, 627.

Elkins vs. Camden & Atl. R. Co., 36 N. J. E. 241.

Sewell vs. E. Cape May Beach Co., 50 N. J. E. 517.

Park vs. Grant Loco. Works, 40 N. J. E. 114.

U. S. Steel Corp. vs. Hodge, 64 N. J. E. 807-817.

U. S. Ind. Alcohol Co. vs. Distilling Co., 87 N. J. E. 177.

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The decree appealed from should be reversed.

Respectfully submitted,

George M. Hillman,  
 Of Counsel with Defendant-Appellant.

Herbert S. Killie,  
 Solicitor for Defendant-Appellant.

## New Jersey Court of Errors and Appeals

*Between*

WILLIAM A. STEVENS, Attorney  
General of the State  
of New Jersey,

*Complainant,*

*and*

ASSOCIATED MORTGAGE COM-  
PANY OF NEW JERSEY, a cor-  
poration of the State of  
New Jersey,

*Defendant.*

*On Bill, &c.*

*On Appeal  
from the  
Court of  
Chancery.*

### BRIEF OF RESPONDENT.

#### The Facts.

Associated Mortgage Company of New Jersey, a New Jersey corporation, having its principal office in Burlington, New Jersey, was incorporated on December 2nd, 1927, with an authorized capitalization of 10,000 shares of 7% cumulative preferred stock with a par value of \$100.00 and 20,000 shares of no par value common stock. It is alleged, and there is no denial of this fact, that up until April 30th, 1930, \$111,110.00 worth of stock of the corporation had been sold to the public. Since that time and up until the institution of these proceedings, an additional \$30,000.00 worth of stock, more or less, has also been sold to the public.

Shortly following the organization of the corporation, 9,000 shares of no par value common stock were issued to the promoters and organizers for promotional work. No valuable con-

sideration was received for this stock by the corporation. Contract was entered into between the corporation and Marquis T. Perkins, whereby he was to sell the stock of the corporation and to receive a commission of 25% of the subscription price. The actual cost of organizing and distributing this stock on April 30th, 1930, was, on a basis of \$111,110.00 worth sold, 46% of that amount, or \$51,882.28, with the result that the net worth of the corporation had depreciated to \$57,640.81.

The sale of this stock was promoted and negotiated through the medium of various advertising circulars. One of these circulars described the corporation as:

“A strong Financial Institution—which has been functioning for some time, and has proven to be one of the safest and most profitable enterprises in the State of New Jersey.

“This institution is State wide in its aspect, operations will cover the whole State of New Jersey.”

The corporation, at the time of the issuance of this circular, had not been functioning for any considerable period of time and had never proven itself to be safe nor profitable. It was not, in any sense of the phrase, State wide in its aspect, its activities having been confined to the sale of securities and the lending of money on mortgages in twenty-two transactions in the County of Burlington. Furthermore, it had no financial strength nor stability.

This particular circular listed, under the heading “Directors and Advisory Board” the names of eighteen different prominent men, with their avocations and titles specifically set forth. A great number of these men were merely stock-

holders of the corporation and had no interest nor voice in its management or direction. They were, in fact, the recipients of the promotional stock above referred to, for which they had not paid any consideration and their only value to the corporation was to render more easy and expeditious the sale of its stock through the use of their names in this manner.

The president of the corporation, Joseph R. Cheesman, upon whose reputation and standing in the community the sale of stock was exploited, received, in consideration of the assumption of his official duties as president, several thousand shares of common stock of the corporation. He paid nothing for it. He later sold 745 shares of this common stock to the corporation at \$5.00 per share. The corporation purchased this stock out of capital, it having insufficient earnings to pay for it out of surplus. Cheesman thus obtained \$3,725.00 in cash for which he had paid nothing.

Associated Mortgage Company of New Jersey, in its promotion and negotiation of the sale of its stock, and more particularly in the circulars above referred to, stressed the fact that dividends had been consistently paid by the corporation. The obvious deduction to be drawn from such statement was that the corporation was earning sufficient money to pay dividends. The fact was, however, that the total earnings of the corporation from the inception of its business, December 15, 1927, up to and including June 24th, 1930, was \$1,758.14. Dividends totaling \$3,401.02 had been paid during this period. The corporation had not, in fact, up until that time, earned sufficient money to enable it to meet the cost of selling its securities, organization

expenses and its operating overhead; its deficit on that date being \$43,429.67.

Defendant, in its promotion and negotiation of the sale of its stock, prepared and published a financial statement dated February 1st, 1930, which revealed a surplus of \$24,237.89. That statement was false and fraudulent. It did not include all of the liabilities of the corporation.

This financial statement listed at its bottom, under the title "Auditors," William C. Jones, Glenn Lindabury and W. Emory Cheesman. These men ~~was~~<sup>were</sup> not auditors in any sense of the word but were, in fact, officers and directors of the corporation. None of them was qualified in any manner to determine the true financial condition of the corporation. The impression that was created upon the minds of the readers of the statement that they were three disinterested individuals who had examined the books of the defendant corporation and had prepared the statement to which they were then and there certifying was inaccurate and misleading.

Although the business of the corporation was to lend money on first mortgages, it spent considerable sums in the purchase of securities of other corporations to the damage and impairment of the financial condition of defendant. The corporation, through its officers, purchased a \$9,500.00 block of stock of a local bank and paid a commission of \$2,500.00 to the promoters and officers of defendant corporation therefor. Another outstanding purchase was that of stock of the Burlington Real Estate Company, a direct competitor of the defendant. Burlington Real Estate Company was dominated and controlled by the officers and directors of defendant corporation. Its president was Cheesman, who was

the president of defendant corporation. The money spent in the purchase of this stock adversely affected the working capital of defendant and furnished its competitor with additional funds with which to combat and compete against defendant.

Defendant corporation advanced considerable sums of money to its fiscal agent, Marquis T. Perkins, in addition to commissions owing and payable to him on account of the sale of securities. This money is non-productive and is uncollectable from Perkins, who is admittedly insolvent. Nevertheless, it has been listed at all times as an asset of the corporation.

All of these facts and conditions of affairs were suppressed, concealed and misrepresented in connection with the promotion, advertisement, offer for sale, sale and negotiation of the corporation's securities.

#### **Nature of Proceedings.**

Complainant filed a bill against the defendant under the provisions of the New Jersey Securities Act, Chapter 79 of the Laws of 1927, the amendments thereof and supplements thereto, in the manner provided by Section 6 of the said Act. On the basis of the verified bill so filed, Vice-Chancellor Bigelow made an order on the 31st day of July, 1930, directing the defendant to show cause before the Court of Chancery on the 12th day of August, 1930, why the relief prayed for by the complainant should not be granted. The defendant was served as provided for in said order and the matter was subsequently argued before Chancellor Walker on the 12th day of August, 1930, after which a decree

was entered enjoining the defendant from any further sale of securities within or from New Jersey, and appointing a receiver under a \$100,000.00 bond.

The bill filed on behalf of the Attorney General of the State of New Jersey is supported and verified by the affidavit of the Special Assistant Attorney General who investigated the situation. The only pleadings filed by the defendant were affidavits of the promoters, officers and directors of the defendant corporation, who had previously sworn to certain testimony during the Attorney General's investigation, excerpts from whose testimony were set out in verification of facts alleged in the bill of complaint.

#### Questions Involved.

Nowhere in the appellants' brief is there any statement as to what specific points they are trying to raise or what propositions either of law or fact they intend to establish, and practically no authorities from this or any other jurisdiction are cited. In answering their contentions and attempting to present the respondent's side of the case in a logical manner, we have divided our argument into a discussion of the following questions:

I. Did the appellant violate the provisions of the New Jersey Securities Act in offering its securities for sale under the circumstances related in the bill of complaint, particularly when it was insolvent and paying dividends in spite of this condition?

II. Were the pleadings with their supporting affidavits and the facts thereby established sufficient warrant to the Court of Chancery in issuing its decree?

III. Is the New Jersey Securities Act constitutional and was this suit properly before the Court of Chancery?

## ARGUMENT.

### POINT I.

In offering its securities for sale under the circumstances related in the bill of complaint, particularly when it was insolvent and paying dividends in spite of this condition, the appellant violated the provisions of the New Jersey Securities Act.

Appellant argues its dissatisfaction at certain allegations contained in the Bill of Complaint that the liability of the corporation on account of its no par value stock was considerably in excess of that which had been carried in its financial statements. It cites Section 121 of the General Corporation Act, which reads, in part, as follows:

“Every such corporation may issue and may sell its authorized shares without nominal or par value, from time to time, for such consideration \* \* \* as may be fixed by the board of directors.”

Respondent acknowledges, of course, that this was the law until 1930 when that particular section of the Corporation Act was amended, P. L. 1930, Chapter 120, p. 377 in the following manner:

“The Board of Directors shall have the power, within thirty days after the issuance of any shares without nominal or par value, to determine what part of the consideration for such shares shall be capital and what part, if any, of such consideration, shall be surplus.”

Under this amendment, a Board of Directors has greater leeway than under the previous

statute, for it may defer the allocation of the issuance price of such no par stock to capital and surplus for thirty days' time, or until it has determined what amount, if any, is net to the treasury of the corporation after organization expenses, selling expenses, counsel fees and the other various phenomena that affect a new-born corporation have been charged off. Previous to the 1930 amendment, it was necessary for the Board of Directors of a corporation to determine at the same time as it authorized the issuance of no par stock at a certain price what proportion, if any, would be credited to surplus.

Appellant claims that the Board of Directors of the corporation authorized the issuance of 9,000 shares of stock to Messrs. Dickson, Perrine and Cheesman for services rendered and formally resolved that such services were worth \$9,000.00 and that therefore the capital liability of the corporation on account of such issuance was \$9,000.00 or \$1.00 per share. The appellant asserts that this action was expressly taken at various meetings of the Board of Directors, which had been duly called for that purpose. Unfortunately such was not the case.

Appellant further states that the first minutes of the Board of Directors had been "stolen, mislaid or destroyed" and that therefore the affidavits of the directors who were present at those meetings should stand as conclusive as to the acts of the Board. The affidavits, which had been executed by the individuals whose conduct was then under criticism, were given deliberate consideration by the Chancellor, who stated: "These gentlemen who testified for the defendants o'er-leap themselves and protest too much."

The affidavit of Mr. Joseph R. Cheesman, president and director of the corporation alleges (Page 68, State of Case) "The company had issued to them 3,000 shares of the common stock, no par value, and had fixed the value of said stock at \$1.00 per share." Again Mr. Cheesman testified (Page 68, State of the Case); "Accordingly, the directors of our corporation authorized the issuance of 6,000 shares of the common stock and placed this at the disposal of Messrs. Dickson and Perrine for use as aforesaid, and the price of said stock was fixed at \$1.00 per share." Mr. Cheesman is in error inasmuch as the minutes of the Board meeting held on January 28, 1928 (State of the Case, page 103) recite that Mr. Dickson moved the Board to issue 6,000 shares of stock to Messrs. Perrine and Cheesman, not to Messrs. Perrine and Dickson.

William E. Taylor, secretary and treasurer of the corporation, stated in his affidavit (Page 72, State of the Case) "The value of the common stock issued has been fixed by the Board of Directors of the company at the sum of \$1.00 per share." Mr. Perrine, in his affidavit (State of the Case, page 84) stated: "The express intention and purpose and the act of the Board of Directors then assembled as outlined in the resolution which was presented and carried unanimously that said 3,000 shares of no par value common stock of the said Associated Mortgage Company would be issued and transferred by the corporation to Perrine and Dickson, upon the express valuation of \$1.00 per share and no more."

Herbert S. Killie, solicitor of appellant, certified in his affidavit that he had handed to the

Special Assistant Attorney General in charge of the investigation the only minutes of the Board of Directors dealing with the issuance of this quantity of stock. The minutes of these meetings, which appellant has made a part of the record (State of the Case, pages 97-106) reveal the following: The first meeting of the Board of Directors was held on December 19, 1927, at which time the Board (Page 99, State of the Case) "ordered the officers to issue to said Perrine and Dickson 3,000 shares of the corporation's no par value common stock as payment in full for the money they had advanced." No other resolution dealing with the issuance of stock was passed at that meeting. At a special meeting of the Board held on January 28th, 1928, it was voted (State of the Case, page 103) "to set aside 6,000 shares of stock to be used by Mr. Perrine and Mr. Cheesman in this work and the proceeds to be used by them to defray the expense incident thereto." No resolution which concerned the liability of the corporation on account of its outstanding stock was then enacted, nor has any such resolution ever been voted. Appellant has not seen fit to include in the record the minutes of all of the meetings of the Board held during this period. The minutes most interesting are those of a meeting held on March 5, 1928, at which were present Messrs. Cheesman, Taylor and Perrine, constituting the entire membership of the Board. The minutes of that meeting, over the signature of Mr. Perrine, secretary, read in part as follows: "The acting secretary then read the records of the corporation to date as obtained from the attorney (above recited verbatim) and upon motion duly made, seconded and carried, the records were adopted as the records of the corpora-

tion." At all times since March 5, 1928, the corporation and its Board of Directors have been satisfied with the minute books and records of the corporation, or at least they have failed to take cognizance of the fact that the minutes as then prepared did not cover what they now profess to have been their express intention. On the contrary, they ratified the early actions of the Board at the Board meeting on March 5th, 1928. It is difficult to understand why the wording of the minutes as it now reads was not unsatisfactory to the Board if such minutes were of different substance and effect than those which have been "stolen, mislaid or destroyed." The facts speak for themselves. So, at least, the Chancery Court held. The above recitation of facts is merely for the purpose of emphasizing the consistent *mala fide* attitude of these officers and directors.

Respondent does not aver that the issuance of the "watered" stock was *per se* fraudulent. The general public was entitled to know, however, that stock which was offered to them at \$25.00 per share had previously been sold to the promoters and organizers at \$1.00 per share, although, in fact, no valuable monetary consideration of any sort whatsoever was received therefor by the corporation. It is doubtful that the public would have purchased the same class of stock at twenty-five times as much if it has been informed of this fact.

Appellant does not allege that the resolution that was passed at the meeting, the minutes of which have been "stolen, mislaid or destroyed" recited that the capital liability of the corporation on all no par value common stock presently or in the future to be sold, would be \$1.00 per

share. Apparently, the resolutions concerned only the 9,000 shares then in question. As a matter of fact, the Board of Directors on divers subsequent occasions, authorized the sale and issuance of no par value common stock at variant rates. Such resolutions, however, did not stipulate what percentage or proportion of the issuance price should be credited to capital and surplus. In the absence of such a clause, the capital liability on account of the issuance of such no par value stock, at different times and for different amounts, was the sales price received by the corporation. Surely the Board of Directors did not contemplate nor intend to confine and bind the corporation to a fixed definite policy on all future occasions, at the time it "paid off" Perrine and Dickson for their alleged services.

If appellant's contention is sound and accurate, it becomes pertinent to inquire why the corporation did not set up in its books of account, as assets, the net cash received on account of such sales and an item of organization expense consisting of 25% commission of the sales price and, as liabilities, the sum of \$100.00 for each share of preferred stock so sold and \$1.00 for each share of common stock so sold, as capital, and a sum amounting to the difference between the sales price of the units of stock, less the amount charged to capital, as surplus, and thereafter balance the item of 25% selling commission against the amount of surplus, eliminating one and decreasing the other. Such practice was never followed. Mr. Perrine reveals the actual conduct of the corporation in his affidavit (State of the Case, page 85) "They (Perrine and Dickson) would be privileged to dispose

of such shares to prominent citizens in various communities, remitting to the Associated Mortgage Company \$1.00 for each share so issued and they to retain any sum obtained for such stock over and above the sum of \$1.00 to reimburse them for their services and expenses in that connection. The proceeds of the sale of any stock issued in accordance with said plan over and above the sum of \$1.00 never was a part of the corporate funds, never was accountable to the said corporation and should in no wise be entered upon any of the records or transcripts of the corporation." If appellant actually intended that all common stock presently to be issued should be charged against capital at the rate of \$1.00 per share, and the balance over and above that sum donated to the fiscal agent of the corporation, it would seem as though the corporation was indebted to Mr. Perkins, fiscal agent, on account of certain sums which he has since turned over to the corporation as receipts from the sale of common stock, over and above \$1.00 per share. Instead, he is in debt to appellant. Certainly, if the resolution controlled the actions of the Board *in futuro* in certain respects, it controlled them in all.

Appellant alleges that complainant-respondent laid particular stress in his Bill of Complaint upon a financial statement (State of Case, pages 50-51) which had been prepared by expert accountants engaged by the corporation. Such is not the case. The statement referred to is no more illuminating than the other statements attached to the Bill of Complaint. Furthermore, it is not the fact that the Special Assistant Attorney General, who conducted the investigation, had persuaded and insisted that the expert accountants who prepared it set up the liability

of the corporation on account of its issued and outstanding capital stock in the manner as carried in that statement.

It is of particular interest, in view of appellant's remarks concerning the missing minutes of the early meetings of the Board, that the statement of the accountant, above referred to, was "adjusted to give effect to provisions of the *unsigned* minutes of the Board of Directors dated December 19th, 1927 and January 28th, 1928." Apparently, little if any interest was attached to the corporation's liability on account of its issuance of capital stock; little enough interest, at any rate, to properly sign the minutes dealing with the issuance of its stock. The attitude of the officers and directors of the corporation is also evidenced by the following excerpts from the sworn testimony of Joseph R. Cheesman, president, given at a hearing conducted under authority of the New Jersey Securities Act by the Special Assistant Attorney General in charge of this particular matter:

"Q Is the surplus which you carry on this statement (referring to statement S. C. p. 57) of \$24,000 rightly, a paid-in surplus?"

A I cannot answer that question. I am not familiar with the books. This is Mr. Taylor's bookkeeping."

and still later—

"Q Does the corporation set up the value of the common stock which you sell at \$25.00 per share?"

A How do you mean?"

Q I mean did it set up the value on that minute book?"

A You mean the book value?"

Q I mean, do the minute books recite that the \$12.50 over and above your selling

expenses shall be paid in to surplus or into capital stock indebtedness?

A I don't know what the minute books say."

and again:

"Q The common stock is being sold at \$25.00 per share?

A Yes.

Q Is it fully paid up?

A Yes, but we do not sell shares of common separate from the units.

Q Is the corporation applying any of that sum to its surplus, or is that a part of the capital?

A I suppose that that would be surplus."

It seems somewhat peculiar that the corporation and its officers did not know up until the institution of these proceedings exactly what the liability of the corporation was on account of the common stock that had been issued nor to have any substantial interest in such a question. Such information would seem to be of vital importance to any corporation who was soliciting the public to invest its money on which it promised to pay handsome returns. How else could its Board of Directors determine when its assets exceeded its liabilities so as to be in funds with which to pay dividends? It is indisputable that dividends cannot be paid out of capital or anything other than surplus. Surplus can be determined in only one way, that is by subtracting all of the liabilities *in toto* from all of the assets *in toto*, not by subtracting a part from the whole or the whole from a part or any other way.

If, for the purposes of this argument, defendant's contention is accepted as sound, it must necessarily be concluded that the corporation has not received any paid-in surplus on account of the issuance of its no par value common stock.

No surplus out of which to declare and pay dividends could have been created except from earnings. The Bill of Complaint alleges and there has never been a denial of this, that the net profits earned by the corporation from the inception of its business, December 15, 1927, up to and including June 24, 1930, was \$1,758.14. Regardless of the fact that the total investment in the securities of the corporation up until June 24, 1930, had been \$111,110.00, of which only \$57,640.81 was then in the treasury of the corporation, appellant asserts that the corporation was economically sound and entirely solvent, and thus able to pay dividends out of surplus. It does not explain, however, why dividends totaling \$3,401.02 were paid during the aforementioned period, although earnings had not amounted to more than \$1,758.14. It is very plainly the respondent's duty to object to and contest the promotion, negotiation and sale of securities on the strength of the dividend record of a corporation when such dividends have, in fact, been improperly declared and paid.

It is respondent's contention that the assets of the corporation have never equalled its liabilities. The language of the General Corporation Act very plainly requires that liabilities, including the liability of a corporation on account of its outstanding capital stock, shall be less than and not exceeding the assets of a corporation before any dividends are paid. Appellant has never prepared a financial statement, except that prepared by its agent at the suggestion of the Attorney General, in which it acknowledged its liability on account of common stock issued and outstanding. The minutes of its Board of Directors and the testimony of its officers and directors before the Attorney General plainly

reveal that it felt no responsibility on account of outstanding common stock. Perhaps it thought its outstanding common stock was an asset and not a liability. Unless it was an asset the corporation's liabilities have always exceeded its assets.

### POINT II.

The pleadings, with their supporting affidavits and the facts established thereby, were sufficient to warrant the Court of Chancery in making the decree.

Appellant does not deny that the inaccurate financial statement attached to the Bill of Complaint as of February 1, 1930 (S. of C., page 57) wherein three directors of the corporation, as auditors, certified to the accuracy of the statement and wherein the corporation listed a surplus of \$24,237.89, was used in connection with the promotion, negotiation and sale of the securities of appellant corporation. Appellant does not explain why it failed to reveal the liability of the corporation on account of its issued and outstanding no par value common stock, nor that any such shares were then actually issued and outstanding.

Appellant argues on page 31 of its brief that it was not false or misleading for it to describe itself as "a Strong Financial Institution \* \* \* Functioning for some time \* \* \* Proven to be one of the Safest and Most Profitable Enterprises in the State of New Jersey, State Wide in its Aspect." The financial condition of the corporation as revealed by the accountants, retained by the corporation (S. of C., pages 50-51) is the best proof of its "strength." Its safety and profit-making possibilities were and are entirely

fictional in view of its deficit of \$105,233.33 (page 51, S. of C.). On page 25 of appellant's brief it is asserted that the corporation has a surplus of \$94,865.49. Of course, appellant fails to take into account the \$148,000.00 worth of stock that has been purchased by the public.

Appellant defends the use of a number of names of prominent men, with their banking connections, for the purpose of inducing the purchase of securities of the company, and contends that there was nothing wrong in inviting the public "to become associated with the following gentlemen," when such gentlemen were merely stockholders who had loaned their names for the purpose of selling the stock. Appellant failed to reveal, however, the nature of the association between the incoming stockholders and the men whose names it points to with pride.

Appellant admits that Mr. Joseph R. Cheesman, president of the corporation, sold 745 shares of his stock, for which he had paid nothing, back to the corporation at \$5.00 per share. It does not deny that such purchase was made out of capital and not out of earnings or surplus of the corporation. It does not deny that Mr. Cheesman received \$3,725.00 in cash from the corporation on account of such sale. It merely defends the transaction by stating that Mr. Cheesman admits his wrong, has taken the stock back and now owes the company for it. It does not explain why the corporation bought this stock from Mr. Cheesman when there were sufficient shares still unissued which might just as well have been sold.

The answering affidavits and the brief of appellant fail to deny that the officers and directors of the corporation have received commis-

sions on account of certain purchases and sales of various securities. They circumvent the question by stating Perrine and Oliver, directors, were not paid commissions on the sale or purchase of stock of other corporations but were paid commissions on the sale of the stock of the Associated Mortgage Company. What difference? How many times were they "paid off"? Does the secret profit rule apply to only such a limited field?

Appellant promoted, negotiated and sold 6,621 shares of common stock at variant prices, sometimes as high as \$25.00 per share. The actual value, commonly called "book value," of these shares was only nominal, at best. The corporation was, in fact, laboring under a deficit. Notwithstanding this fact, the common stock was sold by the corporation without any revelation by appellant of its true value and the public purchased, trusting and believing that the shares were worth more than the paper on which they were written. Appellant acknowledges (page 27 of its brief):

"Any corporation may \* \* \* be shown to be insolvent if a sufficiently high price is placed upon its shares."

What other price can be placed upon the shares of appellant except the price recited in its minutes, that which was required by statute or the price which it procured through sales?

It was the hope of the promoters and organizers of the enterprise that they would be able to procure large sums of money from the public through the sale of preferred stock, and then by the practicable employment of that money, make valuable the shares of common stock, the major proportion of which had been issued to themselves without the payment of any valuable con-

sideration. The public, in fact, was induced to buy because of the promised appreciation of the value of the common shares. Appellant concealed and suppressed, however, that a substantial number of common shares had been issued to the promoters and organizers without the receipt of any valuable consideration. It further suppressed and concealed the fact that the organizers and promoters of the corporation would receive the largest profit and return as soon as the gamble and speculation of the public's money had turned out profitably for the corporation.

There is no denial of the charges made in the Bill of Complaint, which were proven before the Chancery Court, that \$37.50 of the purchase price of \$150.00 of a unit of the corporation's securities was paid to the fiscal agent of the corporation, nor is there a denial of the fact that this was suppressed and concealed from the purchasers of securities. Appellant also avoids discussion of the suppression and concealment from the purchasers of securities that 46% of the money paid into the corporation by the purchasers of securities was used up in organization expenses, stock-selling commissions and in other unproductive ways.

The learned Chancellor, in commenting upon the conduct of the affairs of the corporation by its officers and directors, specifically discussed the sale of \$14,730.60 worth of mortgages for that amount of stock, and the payment of commissions of \$3,682.65 on account therefor. He aptly stated "the amount of stock so issued and delivered will not be productive of results to the company for a considerable period." The public was not informed of this method of doing business.

Appellant's brief does not meet any of the issues of fraud insofar as the administration of the affairs of the corporation is concerned. It does not allude, in any manner, to the purchase by appellant of 67 shares of stock of a corporation of which its president was the president, and which was engaged in the identically same business. The Chancellor described that transaction as "a dereliction of the duties of those officers which was due the defendant, to say nothing of the other party to which it was entirely favorable." All questions of fact were resolved against appellant in the Chancery Court.

It is submitted by appellant that the promoters and organizers of Associated Mortgage Company are men of standing and prestige in their community and that therefore they could not nor would not be guilty of any course of conduct that was unethical, corrupt or dishonest. This is their only defense. It is unfortunate that the facts are so glaring.

### POINT III.

**The New Jersey Securities Act is constitutional and this suit was properly before the Court of Chancery.**

The constitutionality of the New Jersey Securities Act was not questioned before the trial court nor was it made a ground for appeal in the petition of appeal. In spite of this the appellant attempts to raise the question on page 23 of its brief. Laws designed to curb the activities of fraudulent stock salesmen fall into two general classes, namely, LICENSING OR REGISTRATION acts and FRAUD OR INJUNCTIVE acts. Some states have adopted one type and

some the other. New Jersey's law, like that of New York, is in the latter class. Because of the fact that New York's statute has been in force longer than New Jersey's there are more decisions relating to it and the attitude of the courts of that state is clearly expressed in the case of *Dunham v. Ottinger, Attorney General*, 154 N. E. 298, wherein Chief Justice Hiscock said:

“But our Legislature chose not to follow this course of licensing. In our opinion it went a shorter and perhaps a safer distance than the Legislatures of some other States by simply requiring the Attorney-General to be on the lookout for fraudulent practices and when he saw what seemed to him to be the appearance of such practices, whether existent or threatened, to investigate and if investigation confirmed appearances to take steps to halt the evil. Certainly no fundamental rights were impaired by an investigation and examination authorized in this course of supervision milder than is prevalent elsewhere within the principles of the authorities which have been cited. If our Legislature might have required licenses issued only upon full disclosure of details and revocable upon disclosure of prohibited acts disclosed by searching supervision, it must have the power to go only part of this way and authorize its Attorney-General to appeal to the courts to enjoin unlawful practices disclosed by an examination of those who either are or threatened to become the fraudulent actors. It seems quite impossible to hold that it might require a full disclosure of facts as a condition to a license, and may not authorize examination and investigation to determine whether a person is engaged in practices forbidden by the statute to the end that the courts may stop him in his prohibited course before he has victimized the public.”

In the foregoing case the constitutionality of the New York statute was upheld by a unanimous opinion of the Court of Appeals of the State of New York and the decision was taken to the United States Supreme Court by writ of error. This writ of error was dismissed in a *per curiam* decision rendered January 16, 1928. The memorandum thereof will be found in 72 U. S. Sup. Ct. (Lawyer's Edition) at p. 237. The United States Supreme Court has also held that the statutes of other states designed to suppress fraudulent practices in connection with the vending of corporate securities were a proper exercise of the police power:

*Hall v. Geiger-Jones Co.*, (Ohio) 242 U. S. 539.

*Caldwell v. Sioux Falls Stock Yards Co.*, (South Dakota) 242 U. S. 559.

*Merrick v. Halsey & Co.*, (Michigan) 242 U. S. 568.

Cases involving the New Jersey Securities Act have been before the Court of Errors and Appeals of New Jersey on two occasions and in the first one the points were not the same as in the matter *sub judice* but the decision of the Chancery Court was affirmed without comment on the opinion of Vice-Chancellor Backes. See *Edward L. Katzenbach, Attorney General v. Tomadelli Electronic Products Corporation and Juan Tomadelli*, 102 N. J. Equity 186, 144 Atl. 920; 7 A. R. 371. The other case, *William A. Stevens, Attorney General v. Washington Loan Company, et als.*, was argued at the last term of this Court and from many points of view it was similar to the case now under consideration.

The following quotation from the opinion of Justice Ernest I. Edgecomb, of the Appellate Division of the Supreme Court, in *Attorney*

*General v. F. H. Smith Company*, decided July 1, 1930, is a most valuable illustration of the attitude of the New York Courts in interpreting their statute:

“The statute is remedial in its nature, and was passed to protect the inexperienced, confiding and credulous investor, and save him from his own foolish cupidity. It should, therefore, be liberally and sympathetically construed in order that its beneficent purpose may, so far as possible, be attained.

“This statute was before the Court of Appeals in *People v. Federated Radio Corporation*, 244 N. Y. 33, and it was there held that it should be given such a broad construction as would put an end to all visionary and fantastic schemes of promoters in the sale and disposition of securities, whereby the public would be fraudulently exploited, so far as that might be done. The words ‘fraud’ and ‘fraudulent practice’ were construed to include all acts which tended to deceive or mislead the purchasing public, even if such acts were done without any actual design to perpetrate fraud or injury upon others. It was said that fraud, as used in the statute, included ‘all deceitful practices contrary to the plain rules of common honesty.’

“This record presents a picture, as I view it, of an attempt on the part of these promoters to float a project, which undoubtedly they hoped and probably believed would eventually be successful, by putting over on the public a bond issue large enough to pay for the entire property, and without putting any of their own money in the enterprise. Under such circumstances, they have quite naturally put their best foot forward. But in so doing, they have inflated and exaggerated the value of the security out of all proportion, in the hope that the unsuspecting and long suffering public will be induced to buy the bonds, and put up the requisite money. If the fondest dreams of the promoters are realized, then the interest will be

met, and the bonds eventually taken care of; if their hopes do not materialize, the loss will fall not upon them, but on the bondholders. This was one of the situations which the legislature had in mind when it passed the Martin Act, and one which it was sought to make impossible." 243 N. Y. Supp. 446.

We appreciate the fact that the New Jersey Courts are not bound by decisions from other States, but in the absence of cases in our own jurisdiction, the reasoning followed by them in passing on similar statutes is worthy of consideration.

The situation *sub judice* has many elements similar to that in *William A. Stevens, Attorney General v. Adelpia Finance Service, Inc., et als.*, 107 N. J. Equity 222.

The proceedings instituted under the New Jersey Securities Act are very similar to those against corporations filed under authority of Compiled Statutes, page 1640, paragraph 65, which provides that the Court of Chancery may proceed in a summary way to hear affidavits, proofs and allegations, and if, thereafter, it appears to the Court that the corporation has become insolvent it may issue an injunction and, under other sections of the statutes, may appoint a receiver.

*Pearce v. Old Dominion Smelting Company*, 67 N. J. Eq. 399, has long since established the propriety of proceedings such as those in the instant case. In that case, Vice-Chancellor Stevenson said, at page 410, "on the return day of the order to show cause the statute prescribes a 'summary hearing' of the 'affidavits, proofs and allegations which may be offered on behalf of the parties.' Under our modern practice in the Vice-Chancellors' courts, this *summary* hearing

often is and always will be, where justice so requires, a complete trial of the issues presented by the pleadings. The defendant corporation may present an answer or only affidavits, and may, without answer or affidavits, contest the charges contained in the complainant's petition or bill. \* \* \* After the *summary* final hearing no process of subpoena is issued or ought to be issued. The entire function of process has been performed by service of the statutory notice under the direction of the Court. No other subsequent final hearing can be had."

Chancellor Walker discussed this phase of the matter very thoroughly, citing *in re. Martin*, 86 N. J. Eq. 265.

The New Jersey Securities Act was drafted in strict conformity to the provisions of the Corporation Act insofar as they govern the application for writs of injunction and the appointment of receivers. It contemplates both expressly and impliedly a *summary* hearing and trial of the issues. Section 6 of the Act provides as follows:

"He (the Attorney General) may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the Court of Chancery for a writ of injunction, or the appointment of a receiver, or both, and the Court being satisfied by affidavit or otherwise of the sufficiency of said application and the truth of the allegations contained in the petition or bill, and upon such notice as the Court may by order direct, may proceed in a *summary* way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that any such person, partnership, corporation, company or association has engaged in, or is engaging in, or is about

to engage in any practice declared to be illegal and prohibited by this act, the Court may issue an injunction.”

Appellant has gone far afield to obtain supporting citations for its argument. No cases of this jurisdiction having any bearing or effect upon the Securities Act have been cited. Appellant has, on the contrary, made reference to certain text books dealing with matters of corporate management and has alluded to certain cases in Pennsylvania, Alabama and Illinois to establish the propriety and condone the offenses that took place in this State. The law, as stated by those cases in those different jurisdictions is not applicable to the instant matter nor is it the law of this State. Your respondent respectfully submits that the judicial pronouncements of the following cases clearly enunciates the rule of law in the State of New Jersey and should be followed. *William A. Stevens, Attorney General v. Adelpia Finance Service, Inc., et als.*, 107 N. J. Equity, 222. *William A. Stevens, Attorney General v. Washington Loan Company, et als.*, 107 N. J. Equity 94.

### CONCLUSION.

The judgment appealed from should be sustained.

Respectfully submitted,

W. A. STEVENS,  
Attorney General of New Jersey.

RICHARD C. PLUMER,  
Assistant Attorney General.

PHILIP L. COFFIN, JR.,  
Special Assistant Attorney  
General.



IN CHANCERY OF NEW JERSEY.

Between

WILLIAM A. STEVENS,  
Attorney General,  
Complainant,

and

ASSOCIATED MORTGAGE COMPANY  
OF NEW JERSEY,  
Defendant.

80-316.

On Bill, &c.

OPINION.

DEC 5 - 1930 10

1. Process is the means of compelling a defendant to appear in court; and it need not necessarily be a subpoena or other writ; it may be an order or notice; as every state has the power to prescribe a reasonable notice in order to subject a defendant to the jurisdiction of its courts.

2. A hearing under the New Jersey Securities act 20 (Blue Sky law), *Chapter 79, P. L. 1927, p. 138*, is summary, and the court proceeds to hear the affidavits, proofs and allegations offered on behalf of the parties; and if it shall appear to the court that the act in question has been violated, it may issue an injunction and appoint a receiver.

3. This summary hearing is a complete trial of the issues presented by the pleadings; the defendant corporation may present an answer or only 30 affidavits, and may, without answer or affidavits, contest the charges contained in the complainant's bill; after summary final hearing no process of subpoena is issued, as the entire function of process has been performed by service of the order to show cause or other notice under the direction of the court; no subsequent final hearing can be had.

4. Facts examined, and held to show a violation by defendant of the New Jersey Securities act; and that therefore the complainant is entitled to an injunction and the appointment of a receiver, in accordance with the statute and the prayer of the bill.

5. *Stevens v. Adelpia Finance Service*, 107 N. J. Eq. (8 Adv. R.), 222, followed.

10 On final hearing on bill, affidavits and exhibits, and answering affidavits.

For complainant, *Mr. William A. Stevens, Attorney General; Mr. Richard C. Plumer, Assistant Attorney General, and Mr. Philip L. Coffin, Jr., Special Assistant Attorney General.*

For defendant, *Mr. Herbert S. Killie and Mr. George M. Hillman.*

20

WALKER, Chancellor.

The complainant filed a bill against the defendant under the provisions of the New Jersey Securities act, *Chap. 79, P. L. 1927, p. 138*, and the acts amendatory thereof and supplemental thereto, which bill is verified by the affidavit of the Special Assistant Attorney General, who investigated the situation; and to whose affidavit is annexed several exhibits.

30

The defendant filed no pleading herein up to the return day of the order to show cause, but went to hearing on the bill and affidavit and exhibits annexed to the affidavits of certain of the promoters, officers and employes of the defendant. The day after the hearing, and the day after the making of

the final decree herein, the defendant filed an answer. Upon the hearing reliance was only had upon the bill, affidavit and exhibits, and the affidavits put in by the defendant. The case was fully argued by both sides upon the theory that it was on final hearing and submitted to the court for decision. All the questions were fully argued by counsel on both sides; and immediately upon its conclusion the court decided the case, and shortly thereafter signed the final decree. While no objection was made to the summary hearing, the defendant in its petition of appeal now says that the hearing was preliminary and it is entitled to another. Not so. 10

The proceedings under the New Jersey Securities act are akin in a great measure to those against insolvent corporations under *Comp. Stat. p. 1640, §65*, which provides among other things that the court may proceed in a summary way to hear the affidavits, proofs and allegations offered on behalf of the parties, and if it shall appear to the court that the corporation has become insolvent, it may issue an injunction; and by §66, may appoint a receiver. 20

In *Pierce v. Old Dominion, &c. Smelting Co.*, 67 N. J. Eq. 399, Vice Chancellor Stevenson said at p. 410: "On the return day of the order to show cause the statute prescribes a 'summary hearing' of the 'affidavits, proofs and allegations which may be offered on behalf of the parties.' Under our modern practice in the vice chancellors' courts this summary hearing often is, and always will be, where justice so requires, a complete trial of the issues presented by the pleadings. The defendant corporation may present an answer or only affidavits, and may, without answer or affidavits, contest the charges contained in the complainant's petition or bill. \* \* \* After the 30

summary final hearing no process of subpoena is issued, or ought to be issued. The entire function of process has been performed by service of the statutory notice under direction of the court. \* \* \*  
No other subsequent final hearing can be had.”

Process is the means of compelling a defendant to appear in court; and it need not necessarily be a subpoena or other writ, it may be an order or notice.  
10 Every state has the power to prescribe a reasonable notice which shall be given in order to subject a defendant to the jurisdiction of its courts. *In re Martin*, 86 N. J. Eq. 265, 273.

The New Jersey Securities act in every section indicates that the suit is one of summary jurisdiction; if anything were wanting to show that the court has summary jurisdiction in these matters as in §65 of the corporations act, it is furnished by the amendatory act of 1930, P. L. p. 254, approved four months  
20 before this bill was filed, which amends §6 of the original act by providing among other things “that the court may proceed in a *summary way* to hear affidavits, proofs and allegations which may be offered on behalf of the parties,” &c., having already provided in the original act for the issuance of injunction and appointment of a receiver.

The defendant company was incorporated on December 2, 1927, with an authorized capitalization of  
30 10,000 shares of 7% cumulative preferred stock of \$100.00 per share, and 20,000 shares of no par value common stock. Following the organization of the corporation 9,000 shares of no par value common stock was issued to the promoters and organizers for promotion work, but no estimate was made of the value of their services, so it cannot be told what valuation the corporation held or considered this

stock to have had. Contract was entered into between the corporation and Marquis T. Perkins, whereby he was to sell the stock of the corporation and receive a commission of 25% of the subscription price. On April 30, 1930, \$111,110.00 worth of stock of the corporation had been sold, while \$51,882.28 was the cost of organizing and distributing that stock, which showed that the net worth of the corporation's property had depreciated to \$59,227.72.

10

Joseph R. Cheesman, the president of the corporation, received several thousand shares of the common no par stock of the corporation, for which he paid nothing, and later sold 745 shares of that stock to the corporation itself at \$5.00 per share, which the corporation purchased out of capital, having insufficient earnings to pay for it out of surplus; and Cheesman obtained \$3,725.00 in cash for stock for which he had paid nothing except, perhaps some work in organization, &c., which was never valued.<sup>20</sup> He says in his affidavit that he intends to pay back the \$3,725.00 and the company lists it as an asset.

The defendant company said in its circulars that dividends had consistently been paid by the corporation; while, in fact, the total earnings of the corporation from its organization, December 1927, up to and including, June 1930, were \$1,728.00, while dividends totalling \$3,401.02 had been paid. It is apparent that the corporation had not earned sufficient money to<sup>30</sup> enable it to pay such dividends out of the earnings and also the cost of sale of its securities, organization expenses and operating overhead, and its deficit on that date was \$43,429.67.

Although the business of the corporation was to loan money on first mortgages, it spent considerable

sums in the purchase of securities of other corporations, to the damage and impairment of its financial condition. One purchase was that of stock of the Burlington Real Estate Company, a competitor of the defendant, which was headed by the officers and directors of the defendant corporation. Its president was Cheesman, who was the president of the defendant.

10 At the time of the organization of the corporation, two men, Messrs. Perrine and Dickson, appeared before the directors and stated they were entitled to a large number of shares of common stock for work, labor and services in organization of the company. The officers of the corporation, acting under orders from the board of directors, thereafter, issued 3,000 shares of the corporation's no par common stock to Perrine and Dickson, as payment for organization expenses, neglecting, however, to establish the actual money value of the services they had  
20 performed. Later, at a special meeting of the directors, Perrine stated that he was attempting to procure capital with which to operate the company's business, and urged that members of an advisory board be procured, consisting of men of wide acquaintanceship and esteem, so that he might thereby be able to more readily dispose of the corporation's securities. There was issued to him 6,000 shares of common no par stock, to be used in the procurement  
30 of members of the advisory board, the board of directors, however, not establishing the value of his work or the stock so issued for it.

Cheesman, the president, being examined by the Special Assistant Attorney General, testified as follows:

“Q. At the time of the organization, was 9,000 shares of stock issued to Perrine and Dickson?

A. 3,000 at one time and 6,000 at another.

Q. What did they pay for that stock?

A. Well, the first three thousand, I do not suppose they paid anything. That was for services rendered.

Q. What did they pay for the 6,000 shares?

A. That was supposed to be in services.

Q. Was it ever revealed to purchasers of stock that 9,000 shares had been issued for services rendered? 10

A. They knew that some stock had been issued.

Q. What did Perrine and Dickson do with their stock?

A. Well, they disposed of some of it gathering Advisory Board Members and selling some stock and using it as expenses.

Q. Did the company ever receive any benefit from the sale of that privately owned stock? 20

A. I would not say so, in money.

Q. At what price did Perrine and Dickson sell that privately owned stock?

A. Well, from \$5.00 to about \$15.00. I think \$15.00 was the highest.”

The defendant company advertised and offered for sale its capital stock in units of one share of preferred and two shares of common no par stock at \$150.00 per unit, and at the time of the negotiations and sale of the company's capital stock it concealed and suppressed the fact that 9,000 shares of the authorized capitalization of 20,000 shares of no par common stock had been issued without receipt of any valuable monetary consideration by the corporation; at least, it made no estimate of the value of services for which it had been issued, while the 30

actual value of this common stock which it was selling, had practically no value; and in the sale of the grouped stock just mentioned at \$150.00 per unit, the company suppressed and concealed the fact that \$37.50 of every unit so sold was being used to defray the selling expenses of that security. While under the terms of the contract between defendant and Perkins he was to receive 25% commission on all securities sold by him, the amount of money disbursed for selling and organization expenses has exceeded  
10 46%.

The agent Perkins had purchased for the defendant \$14,730.60 worth of mortgages on improved property in Burlington county, and paid therefor by various quantities of the common stock of the defendant corporation. Perkins received as commissions on these transactions, \$3,682.65; it thus appearing that the income of the corporation from that transaction will be insufficient to take care of all the cost  
20 of acquisition for nearly three years' time, and the amount of stock so issued and delivered will not be productive of results to the company for a considerable period.

The defendant purchased 67 shares of the stock of the Burlington Real Estate Company at \$100.00 per share, which was irregular; Cheesman, as already said, was president of both corporations, and Taylor  
30 also was treasurer of both concerns. This purchase was in dereliction of the duty of those officers, which was due the defendant,—to say nothing of the other party, to which it was entirely favorable.

It is shown that Perkins, who is acting as agent of the company in the sale of securities, is in an embarrassed financial condition and has borrowed

money from it and now owes it on account of loans and advances, a sum in excess of \$6,800.00. This he does not deny, although he makes an affidavit in the case.

Another instance of investment by the defendant corporation is this: Perrine, before mentioned, purchased for defendant 95 shares of the capital stock of the Wrightstown National Bank for \$9,500.00. This stock was held for a considerable time and then sold 10 back to the bank for \$8,550.00, making a loss of \$950.00. At the same time a commission of \$2,500.00 was paid by defendant to Perrine and an associate named Oliver, with the result that the company lost \$3,450.00 on this transaction.

The company in the sale of stock issued certain circulars, one of them described the corporation as: "A strong financial institution, which has been functioning for some time and has proven to be one of the 20 safest and most profitable enterprises in the State of New Jersey." "This institution is state-wide in its aspect. Operations will cover the whole State of New Jersey."

At the time of the issuance of this circular, the company had not been functioning for any considerable period of time and had never proven itself to be safe and profitable. It appears to have been insolvent at the time. It was not in any sense of the 30 phrase state-wide, its activities having been confined to the sale of securities and the loaning of money on mortgages in 22 transactions in the county of Burlington.

In the circular listed under the heading, "Directors and Advisory Board," the names of 18 different

prominent men, with their vocations and titles, are specifically set forth. A great number of these men were merely stockholders and had no interest or voice in its management or direction. Their only value and interest to the corporation was to render more easy and expedient the sale of its stock.

Defendant in the sale of its stock stressed the fact that dividends had been consistently paid by the corporation; when, in fact, the corporation up to that time had not earned sufficient to enable it to meet the cost of selling its securities, organization expenses and its operating overhead.

The defendant prepared and published a financial statement, dated February 1, 1930, which revealed a surplus of \$24,237.89. That statement did not include all the liabilities of the corporation; and listed at its bottom under the title, "Auditors," William C. Jones, Glenn Lindabury, and W. Emery Cheesman. These men were not auditors but were officers and directors of the corporation. None of them seem to have been qualified to determine the true financial condition of the corporation. The undoubted impression created in the minds of the readers of the statement was that three disinterested individuals had examined the books of the defendant corporation and had prepared that statement, to which they were then and there certifying that it was correct; when, in fact, it was untrue.

In the statement put out by the company on February 1, 1930, resources and liabilities are listed. It will be observed that in this statement no mention is made of the liability for the value of the common stock. The alleged surplus of \$24,237.89, I cannot find to exist, except in this bookkeeping scheme.

The company, in my judgment, was insolvent at the time and could not have met its obligations.

The statement of February 1, 1930, showed "Surplus," \$24,237.89, while that of July 18, 1930, showed a surplus of \$7,672.36. Of course the surplus might have sunk legitimately to that amount subsequent to the statement of February 1, 1930; but the figures are significant. Another thing: The circular (Schedule B, p. 1) says: "Capitalization, ONE MILLION 10 DOLLARS." This is significant, also. They never had a million dollars or could ever hope to have a million dollars, by the sale of stock, and that is the only way they could get it. It was, of course, intended to deceive the public. While the defendant company was incorporated with an authorized capitalization of 10,000 shares of 7% cumulative preferred stock of the par value of \$100.00, and 20,000 shares of no par value common stock; and no money, it nevertheless in an annual report filed in 20 the office of the secretary of state, April 29, 1930, says that the authorized capital stock is \$1,000,000.00, without the charter having been amended; and this latter provision is therefore illegal.

The affidavits of Joseph R. Cheesman, William E. Taylor, M. T. Perkins, J. G. Rearick, I. J. Keuper, Harry I. Perrine and E. R. Dickson, are quite general where they touch salient facts, and are quite unsatisfactory. Mr. Killie, the solicitor, makes a 30 purely formal affidavit about handing copies of affidavits to the Assistant Attorney General.

For instance, Mr. Cheesman says that in none of the literature or advertisements circulated for the purpose of securing subscriptions to the stock of the company, were there any false or misleading state-

ments concerning the condition of the company; that no statement or representation was ever made by an agent or solicitor of the company, to the best of his knowledge, which was false or misleading, and that the agents and solicitors employed by the company were instructed to make no false or misleading statements concerning the company or its business; that the defendant company is not, and never has been, insolvent. He says, though he did not inform the Attorney General, that the no par  
10 common stock was valued at \$1.00 per share, that of that stock there were issued 6,852 shares at \$1.00 each, making \$6,852.00, and subscribed, but not paid for, 533, at \$1.00 each, \$533.00; that a part of the common stock available for issuance to persons with an idea of interesting them in the corporation, was issued to him, he was to sell the stock, but failing to do so, he says he agreed to refund the \$3,725.00 to the company, and that that item is list-  
20 ed in Accounts Receivable in the statement of July 18, 1930. As to the stock of the Wrightstown National Bank, they thought that by purchasing it they could secure the assets of the bank and also interest prominent people in the company; that the company acquired 75 shares of the stock of that bank at \$100.00 per share "in nearly every case giving our (their) stock in exchange for same, only \$1,000.00 in cash being paid;" after holding the stock for a while they found, or concluded, that the  
30 original plan of having the bank liquidate was not practical, and they sold all of the stock of the bank to the First International Surety Company of New York, and lost \$750.00 in all. It will be observed that the only difference between the Attorney General's affidavit and the defendant company's is the amount of loss on this stock, which the former asserted was \$950.00, which the defendant stated that it was

\$750.00, making a difference of \$200.00; but notwithstanding that, a substantial loss on the resale alone, nothing being said as to the commission of \$2,500.00 paid for the acquisition of the shares.

William E. Taylor, secretary and treasurer of defendant company, swears that he has read over the affidavit which Mr. Cheesman, the president, had made, and that so far as the same relates to the acts of the corporation and the transactions of said corporation, the same is true. Of course no man can swear that the contents of another affidavit is true. This statement falls of its own weight, and should never have been made. He also states that the value of the common stock has been fixed by the directors at \$1.00 per share; that William R. Kennedy, the first secretary of the corporation (not being paid for his services) removed and took with him certain books and papers of the company, and that they have not been able to locate him. He says that the contract with Perkins was for commissions of 25%, and that the company has never paid either to him or anyone else in commissions, in excess of that amount for selling the stock; that he has seen literature and advertisements used by the agents and solicitors engaged in selling stock of the company, and that there were no false or misleading statements contained therein, nor any attempt in such advertisements and circulars to mislead anyone as to the business of the corporation and its condition, and that the agents and solicitors were instructed by the officers of the corporation to make no misrepresentations or fraudulent suppression of facts in the sale of stock.

Perkins says in his affidavit that to accomplish the purpose of the company it is necessary that it

should have available a minimum of \$250,000.00 to \$300,000.00, preferably all raised by stock sales, or alternatively could be raised by bond issue against the securities now in hand, and to make up the difference between the amount of capital now subscribed and the reasonable amount of funds for turn-over investments.

The company has never had anything like either  
10 of those sums, and if that be necessary for it to successfully accomplish its purpose, it, of course, was not successfully accomplishing it at the time of the final decree in this case, an injunction awarded, and the appointing of a receiver. Perkins makes denial of ever making false statements himself, or by salesmen under his control. He says he is of opinion that the defendant company is in liquid condition and shows by its statement assets greatly in excess of its liabilities. *This shows, if it shows*  
20 *anything, that he places a real value upon the stock of the concern, which, in my judgment, is practically worthless.*

J. C. Rearick, a salesman employed by Perkins, says that instructions were given him that there were to be no misrepresentations made to any person or persons to obtain any sale of stock, nor was there to be any concealment of material facts concerning the company, its operation, officers, financial  
30 condition or otherwise, and that we (salesmen) were to furnish proposed stockholders or subscribers with "the truth, the whole truth and nothing but the truth, in obtaining subscribers to stock;" that that had been in every instance carried out by him in every sale of stock for the company.

These gentlemen who testify for the defendant o'er-leap themselves and protest too much.

I. J. Keuper, a salesman employed by Perkins, makes a like affidavit.

Harry I. Perrine, who acted as a temporary officer at the organization of the company, was afterwards connected with it, together with Dickson, under the name of Perrine & Dickson, says that the 10 proceeds of sale of any stock issued in accordance with the plan of the company from and above the value of \$1.00 never was a part of the corporate funds, never was accountable to the corporation and should in nowise be entered upon the record of the transcripts of the defendant (and evidently never was accounted for to the company), and that the matter was thoroughly understood by the directors, and the resolution which was submitted to and adopted by them clearly included such outline of 20 capital set-up, so far as the 6,000 shares voted at the meeting were concerned.

It is a well known principle of law that the actions and utterances of men are presumed to have their intended effect, no matter what they say was the intention. Now, there is no denial of the issuance of these circulars, in fact it is admitted; and that they were intended to deceive the public, at least the gullible part of it, is perfectly apparent. A small cor- 30 poration, organized in a small place, without capital, save as it sold its stock, is advertised to be: "A strong financial institution, which has been functioning for some time and has proven to be one of the safest and most profitable enterprises in the State of New Jersey." "This institution is state-wide in its aspect." "Operations will cover the whole State of

New Jersey." Nothing of which was true. The literature was clearly intended to lull the purchasing public into a sense of security in buying the stock of this concern.

I do not say that the men who composed the officers and the directorate of this company were not personally honest men and men of standing in their community; but I do say that they were chasing a  
10 will-o'-the-wisp in this instance, endeavoring to work an age-old scheme of transmuting base metal into gold, of conceiving that something could be made out of nothing, in which effort they were unsuccessful, and such of the public as have invested in their securities, to use a modern phrase, have been left holding the bag.

The transactions carried on by this concern come within many of the prohibitions denounced in the  
20 Blue Sky law, the intention of the Legislature being to protect those from investing in a scheme who otherwise would have no protection.

The recent case of *Stevens v. Adelpia Finance Service*, 107 N. J. Eq. (8 Adv. R.) 222, is so like the present case in all its salient features that it is submitted that it governs the case at bar, and shows the wisdom of the adjudication contained in the final  
30 decree, in the issuance of an injunction and the appointment of a receiver under the statute in this case.

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