

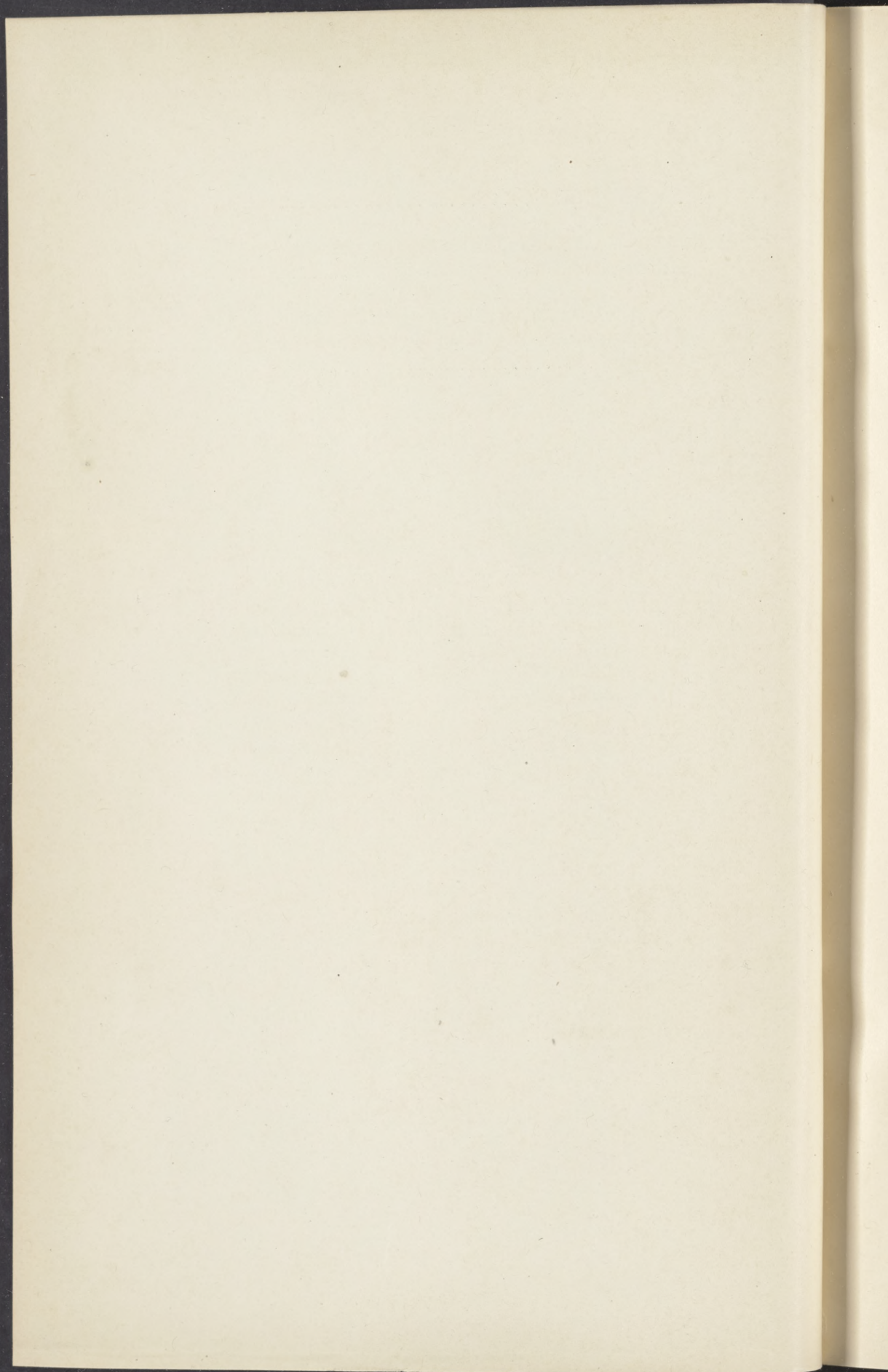
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BILL OF COMPLAINT.

(Filed Jan. 3, 1927.)

IN CHANCERY OF NEW JERSEY.

*To the Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey:*

Complainant, Eva B. Calverley, of Elkins Park, 10
in the Township of Cheltenham, Montgomery
County, State of Pennsylvania, respectfully shows
that:

1. By deed dated October 16, 1922, and recorded
at Mays Landing, New Jersey, in the office of the
county clerk in and for the County of Atlantic, in
said State, in Book 692 of Deeds, on page 410, Rena
Loveland Wheeler granted and conveyed unto com- 20
plainant a building lot situate in the City of Vent-
nor, in the County of Atlantic aforesaid, together
with the improvements thereon, consisting princi-
pally of a three-story frame dwelling-house and two-
car garage. Said building lot is more particularly
bounded and described as follows:

BEGINNING at a point in the Northeasterly line
of Richards Avenue, distant one hundred feet South-
wardly from the intersection of the Northeasterly
line of Richards Avenue with the Southeasterly line 30
of Atlantic Avenue, and in the dividing line be-
tween Lots Two and Three in Block 72B, on Plan
of the Ventnor Beach Front Improvement Com-
pany, and extending thence (1) Southeastwardly,
along the Northeasterly line of Richards Avenue
fifty feet in front or width; thence (2) Northeast-
wardly, between the parallel lines of that width and

parallel with Atlantic Avenue, sixty-two and five-tenths feet in length or depth: Being Lot 3 in Block 72B on Plan aforesaid.

2. On October 23, 1922, complainant borrowed the sum of \$10,000 from the Ventnor Building and Loan Association, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and executed and delivered her bond
10 to said association, dated October 23, 1922, and conditioned for the payment of said sum of \$10,000 at the time and in the manner therein stipulated. To secure payment of said bond and interest thereon complainant mortgaged the lands and premises hereinbefore described in favor of the said Ventnor Building and Loan Association, by indenture of mortgage dated October 23, 1922, and recorded at Mays Landing aforesaid in the office of the county clerk in Book 245 of Mortgages, on page 67.

20

3. As collateral security for the payment of said loan of \$10,000, complainant also subscribed for and assigned to said Ventnor Building and Loan Association fifty shares of its stock, and paid all dues and charges thereon and in connection therewith and all interest becoming due upon said bond and mortgage from and beginning with the month of July, 1922, to and including the month of November, 1925.

30 4. Sometime in the month of April, or thereabout, 1924, complainant paid the lump sum of \$1800 to said Ventnor Building and Loan Association in connection with her said stock and loan.

5. On March 24, 1924, complainant borrowed the sum of \$2500 from Eva J. Armstrong and executed

and delivered to her complainant's bond dated March 24, 1924, and conditioned for the payment of said sum of \$2500, with interest at the rate of six per cent per annum, at the expiration of five years after date. To secure payment of said bond and interest complainant placed a second mortgage upon the said lands and premises hereinbefore described, which mortgage bears even date with said bond and is of record at Mays Landing aforesaid in the office of the said county clerk in Book 295 on page 184. 10

6. On January 26, 1926, Eva J. Armstrong obtained a judgment in the New Jersey Supreme Court against complainant for the sum of \$6,167.08 and \$41.33 taxed costs. Under said judgment a writ of execution was duly issued out of the Supreme Court directed to the sheriff of the said County of Atlantic and tested January 27, 1926, by virtue of which the said sheriff levied upon the land and premises of complainant, hereinbefore described, and sold the same at public sale on March 31, 1926, to Sherman H. Bloch and Julia F. Bloch and thereafter conveyed the said land and premises to the said purchasers by deed dated April 8, 1926, and recorded in the clerk's office at Mays Landing in Book 817 of Deeds, on page 311. Said property was sold by the sheriff subject to said first mortgage in the amount of \$10,000 and subject to said second mortgage in the amount of \$2500. 20 30

7. The said Eva J. Armstrong assigned complainant's said bond and second mortgage by instrument of assignment dated April 7, 1926, to Benjamin B. Bloch, said assignment being recorded at Mays Landing in the office of the county clerk aforesaid

in Book 81 of Assignments of Mortgages, on page 63.

8. The said Sherman H. Bloch and Julia F. Bloch, his wife, placed another mortgage upon said property in favor of the said Benjamin B. Bloch, for \$9,000, dated May 20, 1926, and recorded at Mays Landing aforesaid in the office of the said county clerk in Book 397 of Mortgages, on page 473. Said mortgage is subsequent and subject in lien and operation to said first mortgage in the amount of \$10,000 and to said second mortgage in the amount of \$2500, and to complainant's rights as herein set forth.

9. At the time the said Eva J. Armstrong obtained said judgment in the New Jersey Supreme Court against complainant, and at the time of the sheriff's sale upon execution under said judgment, and at all times since, complainant's said stock in said Ventnor Building and Loan Association was and is of substantial value, but complainant is not informed as to the exact value thereof, but believes that the same was, at the time of said sheriff's sale, and now is, worth between two and three thousand dollars, exclusive of said lump-sum payment of \$1800 made by complainant as aforesaid.

10. After said sheriff's sale of complainant's said land and premises, the said Ventnor Building and Loan Association, so complainant is informed and believes, entered into some arrangement or agreement with the said Sherman H. Bloch and Julia F. Bloch, the purchasers of said property at said sale, under which arrangement or agreement the said Sherman H. Bloch and wife made and continue to make the stipulated monthly payments to the said

building and loan association upon complainant's said stock, on the assumption that the said Sherman H. Bloch and wife have an interest or estate therein and also in and to the said lump-sum payment of \$1800 made by complainant to said building and loan association as aforesaid. Complainant denies that the said Sherman H. Bloch and Julia F. Bloch or either of them have or has any right, title, interest or estate of any kind whatsoever, at law or in equity, in and to complainant's said shares of stock in said Ventnor Building and Loan Association, or the proceeds thereof, or in and to the said lump-sum payment of \$1800 made by complainant as aforesaid. 10

11. In consequence of the foregoing facts complainant is advised and believes and so charges: that complainant is entitled to have the land and premises hereinbefore described serve as the primary security, first, for the payment, with all accrued interest thereon, to the said Ventnor Building and Loan Association, of the full amount of \$10,000 secured by its said mortgage, and, second as the sole security for payment in full of such amount, with all accrued interest thereon, as may be secured by said subsequent mortgages of \$2500 and \$9,000 respectively; that complainant is entitled to have the said land and premises applied, under the direction of this Court, to the payment and discharge of the said mortgages in the manner aforesaid; that upon receipt by said Ventnor Building and Loan Association of the sum of \$10,000, with accrued interest thereon, out of the said land and premises, complainant is entitled to receive from said building and loan association the value of her said shares of stock therein, together with the said lump-sum payment of \$1800; that the said Sherman H. Bloch, 20 30

Julia F. Bloch and Benjamin B. Bloch have no right, title, interest or estate of any kind whatsoever, at law or in equity, in and to or with respect to complainant's said shares of stock in said building and loan association and in and to or with respect to said lump-sum payment of \$1800; and that complainant is entitled to an accounting by said Ventnor Building and Loan Association and the said Sherman H. Bloch and Julia F. Bloch with respect to
10 and for the value of complainant's said shares in said building and loan association and said lump-sum payment of \$1800.

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

1. That Ventnor Building and Loan Association, Sherman H. Bloch, Julia F. Bloch and Benjamin
20 B. Bloch, who are the defendants to this suit, may answer this bill of complaint, without oath, and each statement therein made.

2. That pursuant to an Act of the Legislature of the State of New Jersey entitled "An Act concerning declaratory judgments and decrees," approved March 11, 1924, and in the exercise of the jurisdiction thereby conferred, this Court may declare
30 and decree the rights of the complainant as hereinbefore enumerated and such other rights as the complaint has or may have in and to and with respect to the said lands and premises and the said shares of building and loan association stock and said lump-sum payment of \$1800, in consequence of the facts, transactions and instruments hereinbefore set forth and referred to.

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

WALTER CARSON,
*Solicitor and Counsel of
Complainant.*

10

ANSWER OF DEFENDANTS, SHERMAN H.
BLOCH AND JULIA F. BLOCH.

(Filed Feb. 1, 1927.)

IN CHANCERY OF NEW JERSEY.

Between
EVA B. CALVERLY,
Complainant,
and
VENTNOR BUILDING AND
LOAN ASSOCIATION, *et*
als.,
Defendants. } On Bill, &c.
Answer of Defen-
dants, Sherman H.
Bloch and Julia F.
Bloch.

20

30

The answer of Sherman H. Bloch and Julia F. Bloch, defendants in the above cause.

These defendants, Sherman H. Bloch and Julia F. Bloch, answering the bill of complaint, say that:

1. They admit paragraph 1.

2. They admit paragraph 2, but allege that Benjamin F. Calverly joined in the execution of the said bond and mortgage.

3. They admit paragraph 3.

4. They have no knowledge or information sufficient to form a belief as to the statements in paragraph 4.

5. They admit paragraph 5.

6. They admit paragraph 6, except that said property was sold by the sheriff subject to said first mortgage in the amount of \$10,000 and subject to a second mortgage in the sum of \$2500, and say that said property was sold by the sheriff subject to the balance of the principal due to the Ventnor Building and Loan Association on a first mortgage in the principal sum of \$10,000 together with interest and fines that had accrued thereon, and subject to a second mortgage held by Eva J. Armstrong in the principal sum of \$2500 and interest due thereon.

Defendants further say that prior to the said sale by the sheriff of the lands and premises described in the complaint, they were informed by the secretary of the Ventnor Building and Loan Association, who was also present at the time of the sale, that the principal sum of the mortgage held by said building and loan association and referred to in paragraph 2 of the bill of complaint, had been reduced to the principal sum of \$8200.00 by the payment by complainant of a lump-sum of \$1800.00, thus withdrawing nine shares of the fifty shares of stock assigned by the complainant to the said building and loan associa-

tion as collateral security with the mortgage hereinbefore referred to, and that the said principal sum of \$8200 was further reduced by monthly payments so that the balance at the time of the sale due to the building and loan association was \$6,595.86, and that upon the payment of said sum together with dues, fines and premiums in arrears to said building and loan association, said association would satisfy and cancel said mortgage. 10

7. They admit paragraph 7.

8. They deny paragraph 8 except they admit that these defendants placed another mortgage upon said property in favor of the said Benjamin B. Bloch for \$9,000, dated May 20, 1926, and recorded at Mays Landing in the office of the county clerk in Book 397 of Mortgages, page 473. 20

9. They deny paragraph 9.

10. They deny paragraph 10, except that they had paid the Ventnor Building and Loan Association the amount of principal, interest, premiums and fines due at the time of the sheriff's sale, and have since said time paid the principal, interest and premiums due each month thereafter, which sums have been applied by the said building and loan association on the forty-one shares of building and loan stock which the said building and loan association held as collateral security with the first mortgage on the lands and premises described in the bill of complaint. 30

11. They deny paragraph 11, and say that the complainant has no right in and to the shares of

stock mentioned and is not entitled to any relief by this Court either to see to the application of the lands and premises to the discharge of the encumbrance thereon, or any accounting by the said building and loan association or these defendants in respect to the shares of stock mentioned or the lump-sum payment.

10 12. Defendants purchased the lands and premises mentioned in the bill of complaint at a sheriff's sale wherein all the right, title and interest in and to the said lands and premises of the complainant were sold by the sheriff of Atlantic County, and that these defendants were the highest bidders at said sale, and were bona fide purchasers of said lands and premises for the personal use of the said defendants as a dwelling, and that the said defendants were not interested in the proceeding under which
20 said sale was held.

13. That the said defendants, before purchasing said lands and premises, made inquiry of the secretary of the Ventnor Building and Loan Association, which association held a first mortgage on said lands and premises as hereinbefore mentioned, and were informed by the said secretary that the amount of the principal sum still due and owing to the association on the said mortgage was the sum of
30 \$6,595.86, and that upon the payment to the association of said amount together with the principal, interest, premiums and fines in arrears, that said association would satisfy said mortgage.

14. Relying on said information as to the amount due on said first mortgage, these defendants did

bid at said sale the sum of \$9,000, and have paid to the sheriff the said sum, and have received the sheriff's deed for said lands and premises upon the payment to said sheriff of said sum of \$9,000.

15. Immediately following said sale and prior to the delivery of the deed by the sheriff of Atlantic County to these defendants, defendants informed the complainant that they did not recognize any right that said complainant alleged she had in the shares of stock then assigned to the building and loan association as collateral security for the first mortgage on the lands and premises described in the bill of complaint, and defendants deny that the said complainant had any right, title or interest in the said shares. 10

16. That, notwithstanding said notice, said complainant failed to ask the relief of this Court or to restrain the sheriff of Atlantic County from delivering to the defendants their deed for said lands and premises described in the bill of complaint, and failed to make any objection to said sale until the date of the filing of the bill of complaint in this cause. 20

17. That since the date of said sale, these defendants have expended large sums of money in making alterations and repairs to the said premises, and have taken personal possession thereof, and the position of these defendants has been changed due to the laches of the complainant to promptly ask the relief of this Court. 30

18. On the 3rd day of May, 1926, the sheriff paid to the complainant the sum of \$2,614.10, being the

12 *Answer of Defendants, Sherman H.
Bloch and Julia F. Bloch*

surplus moneys realized in said sale, which sum was accepted by the complainant without protest, and with full knowledge that the defendants denied that the complainant had any right or interest in said shares of stock by reason of the payment by the said complainant of the monthly payments made by her or of the lump-sum paid by the complainant as alleged in said complaint, and said acceptance by 10 the complainant of said surplus money was a ratification of the said sale by the sheriff and a waiver of any rights to set said sale aside, and the said complainant cannot at this time ask the relief of this Court.

CASSMAN & GOTTLIEB,
*Solicitors of Defendants,
Sherman H. Bloch and
Julia F. Bloch.*

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ANSWER OF VENTNOR BUILDING AND LOAN ASSOCIATION, DEFENDANT.

(Filed Jan. 28, 1927.)

IN CHANCERY OF NEW JERSEY.

10

Between
EVA B. CALVERLY,
 Complainant,
and
VENTNOR BUILDING AND
LOAN ASSOCIATION, *et*
als.,
 Defendants.

On Bill, &c.
Answer of Ventnor
Building and Loan
Association, Defen-
dant.

20

The answer of the Ventnor Building and Loan Association, one of the defendants in above cause.

This defendant, Ventnor Building and Loan Association, answering the bill of complaint, says that:

(1) Admits paragraph (1) of bill of complaint.

(2) Admits paragraph (2) of bill of complaint, but alleges that Benjamin F. Calverly joined in the execution of said bond and mortgage.

(3) Admits paragraph (3) of bill of complaint.

(4) As to paragraph (4) of said bill of complaint,

30

14 *Answer of Ventnor Building and Loan
Association, Defendant*

this defendant alleges that on March 24, 1924, there was paid to it by or for said complainant the sum of \$1700.00 and on March 31, 1924, there was paid to it by or for said complainant the additional sum of \$100.00 making a total of \$1800.00 thus withdrawing 9 shares of the 50 shares of the stock of this answering defendant in the 39th series and assigned to this defendant by said complainant as alleged in the bill of complaint, thus reducing said mortgage of \$10,000.00 to \$8200.00 and on March 31, 1924, there was paid by this defendant to said complainant the sum of \$189.00 being the dues on said shares of stock so withdrawn together with profits of \$319, so that after March 31, 1924, said mortgage was reduced to \$8200.00 and thereafter dues, interest, premiums and fines were only paid on 41 shares of the stock of this defendant then remaining in force instead of on 50 shares as theretofore.

20

(5) This defendant has no knowledge as to paragraph (5) of the bill of complaint.

(6) This defendant has no knowledge as to paragraph (6) of the bill of complaint.

(7) This defendant has no knowledge as to paragraph (7) of the bill of complaint.

30 (8) This defendant has no knowledge as to paragraph (8) of the bill of complaint.

(9) As to paragraphs (9) and (1) of the bill of complaint this defendant says that the 50 shares of its stock reduced to 41 shares on March 31, 1924, are held by this defendant by assignment from the

said complainant as collateral security for the payment of the balance due on the loan made by this defendant to complainant for interest, dues, premiums, fines or other indebtedness that might arise by virtue thereof according to the terms and conditions of the bond and mortgage given by the said complainant and her husband as set out in the bill of complaint and alleges that this defendant is entitled to hold said shares of stock now held by it until said bond and mortgage amounting to \$8200.00 are paid in full and this answering defendant is entitled at maturity of said 39th series of its shares to apply the value thereof to the cancellation of said mortgage. 10

(10) As to paragraph (10) this answering defendant denies any arrangement or agreement with Sherman H. Bloch and Julia F. Bloch on any assumption whatever but admits that since January 20 of 1926, the dues, interest and premiums have been received and applied on the said 41 shares of its stock assigned to it as aforesaid and this defendant alleges that any proceedings which have been had do not in any wise affect the rights of this defendant in said 41 shares of its stock assigned to it as aforesaid.

(11) This defendant denies paragraph (11) of the bill of complaint and expressly alleges and says it 30 is only interested in the payment to it of the amount due on its bond and mortgage and until paid in full it is entitled to retain as collateral security said 41 shares of its stock assigned to it as aforesaid and has nothing to account for. This defendant further says that the said sum of \$1800.00 paid for or on

This defendant, Benjamin B. Bloch, answering the bill of complaint, says that:

1. He admits paragraph 1.
2. He admits paragraph 2.
3. He admits paragraph 3.
4. He has no knowledge or information sufficient
to form a belief as to the statements in paragraph 4. 10
5. He admits paragraph 5.
6. He has no knowledge or information sufficient
to form a belief as to the statements in paragraph 6.
7. He admits paragraph 7.
8. He denies paragraph 8, except he admits that
the defendants, Sherman H. Bloch and Julia F.
Bloch placed another mortgage upon said property
in favor of this defendant for \$9,000, dated May 20,
1926, and recorded at Mays Landing in the office of
the county clerk in Book 397 of Mortgages, on page
473. 20
9. He denies paragraph 9.
10. He has no knowledge or information sufficient
to form a belief as to the statements in paragraph
10. 30
11. He denies paragraph 11.
12. Defendant further says that at the time the

said Eva J. Armstrong assigned the mortgage in the sum of \$2500 as referred to in paragraph 7 of the bill of complaint, this defendant paid to the said Eva J. Armstrong the sum of \$2500 and interest at the rate of 6% per annum from March 4, 1924, at the time of which payment the complainant and her husband, Benjamin F. Calverley, signed a declaration of no set-off that they had no charge, claim, demand, plea or set-off upon, for or against the same in any manner whatsoever; that at the time of said assignment of the said mortgage to this defendant, this defendant had made inquiry as to the amount still due to the Ventnor Building and Loan Association on the mortgage held by said association, which was a first mortgage and lien upon the lands and premises described in the bill of complaint, and the only lien prior to the lien of the said mortgage in the sum of \$2500, and was informed by said building and loan association that the payment at that time of the sum of \$6,595.86 would satisfy said mortgage.

13. As against this defendant, the said complainant has no interest in the shares of stock assigned by said complainant to the building and loan association as collateral security for the payment of said building and loan mortgage; that as between the complainant and this defendant, this defendant has a prior equity to have the building and loan association apply said shares of stock to the payment of said mortgage before recourse is had to the land.

14. That at the time of the assignment of said shares and the execution of the bond and mortgage described in the bill of complaint, said complainant

had agreed with the said building and loan association that when the amount paid on the principal of said shares would equal the principal sum of the mortgage held by said building and loan association, then the said building and loan association would cancel the remaining shares of stock held by said association and the mortgage for which the shares had been assigned as collateral security and said mortgage would no longer be an encumbrance upon the lands and premises. 10

CASSMAN & GOTTLIEB,
Solicitors of Defendant,
Benjamin B. Bloch.

REPLICATION.

(Filed Feb. 16, 1927.)

IN CHANCERY OF NEW JERSEY. 20

Between
EVA B. CALVERLY,
Complainant,
and
VENTNOR BUILDING AND
LOAN ASSOCIATION, et
als.,
Defendants.

On Bill, &c.
Replication.

30

The complainant joins issue on the answers of the defendants, Ventnor Building and Loan Association, Benjamin B. Bloch, and Sherman H. Bloch and Julia F. Bloch.

WALTER CARSON,
Solicitor of Complainant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10	Between EVA B. CALVERLY, <i>Complainant,</i> and VENTNOR BUILDING AND LEAN ASSOCIATION, <i>et</i> <i>als.,</i> <i>Defendants.</i>	} } } } }	On Bill, &c. Final Hearing.
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Atlantic City, N. J., December 7, 1927.

TESTIMONY.

Before HON. R. H. INGERSOLL, Vice-Chancellor.

30 APPEARANCES:

WALTER CARSON, Esq., for complainant.
 MESSRS. BOLTE & TRIPICIAN, ESQS., JOHN B. SLACK,
 Esq., and CASSMAN & GOTTLIEB, ESQS., for de-
 fendants.

The Court: Gentlemen, in the case of Calverley against the Ventnor Building and Loan, I have notified all counsel that I am a director in the Ventnor Building and Loan Association and I am informed that each counsel has waived any question as to my having any interest in the matter and that it is not a matter in which the Ventnor Building and Loan is of itself especially interested and that each counsel has requested that I proceed with the hearing. 10
I would like to hear from each counsel so that the record will be complete on that.

Mr. Tripician: Please the Court, so far as the Ventnor Building and Loan is concerned, the only interest we have is to have a declaratory judgment here setting out our position. Our position, you might say, is in the form of an interpleader. We have no interest other than to have the Court tell us what to do with the matter in hand. 20

The Court: Then there is no real interest, monetary interest?

Mr. Tripician: None whatsoever so far as the Ventnor Building and Loan Association is concerned.

The Court: Mr. Gottlieb, what have you to say? 30

Mr. Gottlieb: Your Honor, I think the statement by the Court is correct, no sum has been paid by the Ventnor Building and Loan; they have in no way changed their position finally on the interest on the shares. This matter is only between the complainant and various defendants and that all the build-

ing and loan could do was to bring out the facts which we could have subpoenaed and brought out in this case between us.

The Court: Mr. Carson?

Mr. Carson: Why, it is entirely agreeable to me that your Honor should hear this case.

10 The Court: You agree that it is in the nature of an interpleader insofar as the effect is concerned?

Mr. Carson: I think that is the way to state it.

The Court: The question is to whom the Ventnor Building and Loan shall make certain payments; is that the situation?

20 Mr. Carson: I think this far it is correct that the Ventnor Building and Loan Association is not in a position in which any of its rights are contested.

The Court: Under those circumstances, then, gentlemen, so long as it has been referred—I think it was referred during my illness and designation was made during my absence—I will hear the matter. You may proceed.

30 Mr. Carson: I might say at the outset, if your Honor please, that Mrs. Calverley, the complainant in this suit, is an elderly lady and she is unable to be present this morning on account of her health. I didn't know whether she would be here or not. I have a certificate this morning from her physician

who says that in his opinion it would not be advisable for her to come down here today. She lives in Philadelphia. I do not believe that there are any matters on which her testimony is necessary. If it should be necessary, I would ask the privilege of having her deposition taken subsequently.

Mr. Gottlieb: Now, your Honor, there are matters which I suppose she has, but I think they can be admitted as a fact. In the first place that she received a check from the sheriff's office for the surplus moneys? 10

Mr. Carson: Possibly when these matters arise in the trial of the case we can take each one up and probably reach an agreement.

The Court: Yes, I think that can be done, probably.

20

Mr. Carson then opened for the complainant.

Mr. Tripician opened for the defendants.

Mr. Carson: Please the Court, I have requested the Supreme Court Clerk to have the file here and his deputy is here.

The Court: What do the files show?

30

Mr. Carson: The file shows a writ of execution dated January 27, 1926 directed to the sheriff of Atlantic County to raise a sum of \$6167.08 debt, \$41.33 costs, total \$6208.41, issued in the case of Eva J. Armstrong v. Eva B. Calverley. To this writ is attached levies made by the sheriff of Atlantic

County and a statement of the sheriff setting forth the receipts and disbursements under the levy, each levy containing an inventory, and there is endorsed on the back of the levy the sheriff's statement that he has executed the writ and the manner of its execution. I will offer that.

(File admitted in evidence as Exhibit C1, but not marked.)

10

(I offer copy of rule for judgment dated January 26, 1926 authorizing judgment to be entered in favor of Eva J. Armstrong against Eva B. Calverley for the sum of \$6167.08 besides costs to be taxed.

(Admitted and marked Exhibit C2.)

20

HOWARD R. CLOUD, sworn.

Direct examination.

By Mr. Carson:

Q. You were sheriff of Atlantic County in 1926?

A. I was up until the ninth of November of that year, I think that is the date.

30 Q. Do you recall receiving a writ of execution in the case of Eva J. Armstrong against Eva B. Calverley out of the Supreme Court?

A. I do.

Q. I show you Exhibit 1 on behalf of the complainant, and ask you if that is the writ which you received?

A. That is the writ.

Q. Attached to the writ are what purport to be schedules of two levies.

A. Schedules of levy of the personal property of the defendant and of the real estate.

Q. I ask you to refer to schedule on your levy of personal property and state whether you levied on any stock of the defendant, Eva B. Calverley or any claim of Eva B. Calverley in or against the Ventnor Building and Loan Association?

A. I did not.

10

Q. Did you levy on the premises on Richards Avenue as described in this bill of complaint?

A. Levied on tract or parcel of land in Ventnor City, beginning at a point in the northeasterly line of Richards Avenue hundred feet south of the intersection of northeasterly line of Richards and southeasterly line of Atlantic Avenue, yes.

Q. Were sales of the respective assets levied on made, Sheriff?

A. They were.

20

Q. Do you recall the date when they were made?

A. I can refer to my record and show what date the sales were made, that is the conditions of the sale which were signed at the time of the sale. The personal property was sold first on the thirty-first day of March, 1926, in the morning.

Q. Do you have written conditions of sale covering the sale of that property?

A. I have.

Q. Do you have them here?

30

A. Yes, sir.

(Conditions of sale produced.)

By Mr. Gottlieb:

Q. Mr. Cloud, who gave you the conditions of the sale?

A. Who gave them to me?

Q. Yes.

A. They were made up in the office.

Q. On the printed conditions or the written?

A. The statement you refer to?

Q. Yes.

A. Well, is there a statement on there? Let me see. I can't tell without I see it, Mr. Gottlieb. I don't know as any statement made as to the personal property.

Mr. Gottlieb: We have no objection to the personal property.

(Conditions of sale of personal property offered, received in evidence and marked Exhibit C3.)

By Mr. Carson:

20 Q. You said that you made sale of the real estate also on the levy which you had made?

A. Yes.

Q. Were there written conditions of sale in connection with the sale of real estate?

A. There were, yes, sir.

Q. You have them with you?

A. I have.

Q. Will you read the conditions of sale written in penmanship at the end of the printed form?

30

Mr. Gottlieb: I object, your Honor.

The Court: What is the objection?

Mr. Gottlieb: I think I have a right to first examine him who authorized him, as far as the complainant is concerned, to make those conditions.

The Court: I will admit it in evidence and permit you to cross-examine later. It is admissible in evidence.

(Conditions of sale admitted and marked Exhibit C4.)

Q. Do you recall the highest bid you got for this property, this real estate?

A. I can if I refer to it. I don't undertake to remember these things; I make a record of them and that is final. \$9000 was the highest bid for that property. 10

Q. Who made that bid?

A. That was bid by Sherman H. Block, I think, through Mr. Gottlieb, his attorney. I am not quite sure of that. Mr. Gottlieb was there, but Mr. Block, it was bid in Mr. Block's name.

Q. Who signed that paper?

A. Sherman H. Block. 20

Q. In your presence?

A. Yes, sir.

Mr. Carson: I call the attention of the Court to a portion of this exhibit as I proceed. This exhibit consists of five printed conditions of sale, with the following written by the sheriff, as follows: "Sold subject to municipal assessments and taxes, whatever they may be, taxes 1925, \$374.13, paving assessment bill, \$35 unpaid, also first mortgage Ventnor B. & L. \$10,000, second held by plaintiff \$2500, with approximately two years interest due." 30

Q. Did I ask you whether that was written on there before it was signed?

A. You did not.

Q. Will you state whether that was written there before it was signed by Mr. Block?

A. It was written in this manner. I conducted that as I conduct all sales. The sale was announced. The advertisement was read. The conditions of sale were read and I inquired of the attorney, Mr. Reeves, if he had any statement to make and Mr. Reeves then made the statement which you have just read, which was on this blank before the sale
10 was cried even, then the bid was made and the conditions of sale as to the purchase signed by Mr. Block.

Q. You say a statement was made by Mr. Reeves? He was the attorney of the plaintiff?

A. He was.

Q. Do you recall the statement that he made?

A. It is a matter of record. You just read it. That is what I said, the record you just read. I will read it again if you want me to.

20 Q. You needn't read it again, what I want to bring out is what you have written down is the statement that he made?

A. Absolutely.

Q. Did he make that statement before you received any bids or after?

A. Before any bids were received.

Q. Before you began the sale?

A. No.

Q. What had you done up to that time?

30 A. I had announced the sale, read the copy of the advertisement and read the conditions of sale and then Mr. Reeves made the statement, which I copied as he made it, on the blank, on the forms.

Q. And before any bids were received?

A. Before bids were asked for, that statement was on the conditions of sale.

Mr. Carson: I requested counsel to produce the sheriff's deed. Were you able to find that?

Mr. Gottlieb: Yes.

(Deed produced.)

Q. I show you what purports to be a deed from Howard R. Cloud, Sheriff of Atlantic County, to Sherman H. Block and Julia F. Block, dated April 10 eighth, 1926.

A. That is the deed that I executed.

Q. Is that the deed that you delivered in consummation of this sale?

A. Yes, sir.

Q. When did you deliver that deed?

A. It was delivered to the title company, one of the title companies—let's see which one it was—deed was delivered on April ninth, 1926, to the South Jersey Title Company. 20

Q. What led up to your handing the deed to the South Jersey Title Company?

A. How is that?

Q. What led up to your handing it to the South Jersey Title Company? At whose request did you do that?

A. I don't recall.

Q. Would your correspondence show that?

A. I don't know. Don't seem to. Might have been by the title company or by Mr. Reeves. 30

Mr. Carson: Counsel admits the deed was delivered by the sheriff to the Title Company at his request, counsel for defendant, Sherman Block.

(Deed offered, received in evidence and marked Exhibit C5.)

Q. You testified, Sheriff, that an announcement was made by counsel for the plaintiff at the sale, which you wrote there. Did you announce the same conditions or not?

A. I don't presume that I did. I don't recall that. I seldom do when counsel speaks in an intelligible manner and the public I think haven't heard, but in this case —

10 Q. Were there any public statements made by anyone except counsel for the plaintiff?

A. No other statement made except those written on the conditions of sale which were made by Mr. Reeves.

Q. Do you recall when you received the money in connection with the delivery of your deed?

A. I don't recall the exact date, no. My books in the office would show that, but I haven't the information, the exact time when that was received. It was between the ninth and sixteenth of April,
20 1926 for the reason that a check for \$6289.12, the proceeds of the sale, was sent to Mr. Reeves the attorney for the plaintiff on April sixteenth, 1926.

Q. What is the date of that please, that check?

A. April 16, 1926, just one week after the deed was delivered to the title company.

The Court: Deed was recorded on April thirteenth, so the title company probably had the money at that time.

30

Q. Could you refer to your records later and let us know the date when you received the money, Sheriff?

A. Yes.

The Court: Does it make any material difference, must have been between the ninth and sixteenth?

A. There is the time, within a week.

Mr. Carson: It is an element of importance, if the Court please, that this deed is recorded on April thirteenth. If counsel would stipulate that the money was paid prior to that date it would be satisfactory to me.

The Court: It wouldn't be delivered to the sheriff probably, the sheriff, in the course of business, trusts the title company to record the deed immediately upon their receiving the money and then they pay it to the sheriff, so that there may be a difference of a day or two there. 10

Cross-examination.

By Mr. Gottlieb:

Q. Have you a record of how you disposed of money derived from the sale? 20

A. I have.

Q. How much did you pay to the complainant, Eva B. Calverley?

A. \$2614.10.

Q. Have you got the check representing that amount with you?

A. I have.

Q. That has been paid by your office?

A. It has. 30

Q. Is that the endorsement on there, Eva B. Calverley?

A. That is her name. I don't know whether she endorsed it or not. I don't know her signature.

(Check marked D1 for identification.)

Q. Did you send it to Mrs. Calverley, directly to her?

A. I did not. I sent it to Mr. Reeves upon receipt from him of an order of the Court to pay the surplus to Mrs. Calverley.

Q. But the check was made payable to her personally?

A. It was and I have her receipt signed in the same manner from her as having received the
10 money.

(Receipt marked D2 for identification.)

The Court: Have you the order to pay Mrs. Calverley the surplus money?

A. I have.

20 (Order produced.)

Mr. Carson: We don't contest the surplus money was paid and received by Mrs. Calverley if it will save any time.

(Order marked D3 for identification.)

Q. How were the moneys received by virtue of this sale distributed?

30 A. They were distributed in the following manner: you referred just now, of course, to the receipt. We will have to deduct the \$199 received from the personal property if you want these figures because it is on the execution which shows the whole transaction.

Q. How much was the personal property sold for?

A. \$199.

Q. If you haven't the figures right down it is unnecessary to wait.

A. I can now give the figures. The real estate was sold for \$9,000, of which the sheriff retained \$295.78 as fees, which also included the fees on the sale of the personal property in that matter. I think the whole thing, would have to make two statements on that. Get those exact figures if it is necessary.

Q. That is not necessary. The amount of money due to the complainant was \$2614.10?

10

A. Yes.

EDMUND H. REEVES, SWORN.

Direct examination.

By Mr. Carson:

20

Q. You are a counsellor at law of the State of New Jersey, Mr. Reeves?

A. I am.

Q. You were in 1926?

A. I was.

Q. Attorney of record of Eva J. Armstrong in the matter of an action in the New Jersey Supreme Court against Eva Calverley?

A. I was.

Q. Are you familiar with the writ of execution in that case and what was done under it?

A. Yes.

Q. Do you recall the sale of the personal property and of the real estate under the writ of execution which you obtained?

A. I do.

Q. Were you personally present?

A. I was.

Q. Referring to the sale of the real estate, did you, prior to the bidding at the sheriff's sale, make an announcement?

A. I did.

Q. Publicly or privately?

A. Well, I made a public announcement and I made a private announcement.

10 Q. Will you state what the public announcement was that you made?

A. When the sheriff asked me if I had any statement to make I said, "This sale is subject to a building and loan mortgage held by the Ventnor Building and Loan Association in the amount of ten thousand dollars; also subject to a second mortgage held by the plaintiff in the amount of \$2500 on which interest has not been paid since the date of that mortgage amounting to approximately three hundred dollars; also subject to taxes for 1925, which amount I do not know, but I am advised by the tax collector is so much," and I stated that amount, "and also subject to any other municipal assessments."

20 Q. You said that you made a private announcement; what do you mean by that?

A. Well, before the sale, just a few minutes before the sale, Mr. Gottlieb —

Q. You mean before the sale was called?

30 A. Yes. Before any sales were called in the sale room, Mr. Gottlieb approached me and asked me what charges were against this property. I asked him if he was interested in buying the property and he said that he represented a man who might be interested and I then said, "The sale will be subject to a ten thousand dollar mortgage held by the Ventnor Building and Loan Association, a twenty-

five hundred dollar mortgage held by the plaintiff, with interest on that mortgage for approximately two years, and also subject to municipal liens or assessments." Mr. Gottlieb said to me, "That is not correct about the ten thousand dollar mortgage. There is not that amount due the building and loan association." I said, "That makes no difference. We are not selling the stock of the defendant. We have no levy on that. We have no interest in it and we are selling subject to the full amount of the mortgage of ten thousand dollars and I shall so make the announcement." Mr. Gottlieb said nothing further and that was the end of that conversation. 10

Q. You refer to Mr. Gottlieb, you mean counsel present today?

A. I do.

Q. Did you know who he was counsel for at that time?

A. The purchaser at that sale.

20

Cross-examination.

By Mr. Gottlieb:

Q. Mr. Reeves, are you certain that you said that statement to me prior to the sale?

A. I am.

Q. Isn't it a fact I spoke to you after the sale?

A. You spoke to me after the sale and prior to the sale. 30

Q. What did I say to you after the sale?

A. We were going down in the elevator after the sale and you had your client who had just purchased the property with you, and we all got in the same elevator, you, your client, my client, her husband

and myself; and my client or Mr. Armstrong, the husband of my client, the plaintiff, asked you if you would be willing to buy the personal property and you said, "no." He said, "Well, you have got a cheap property today," and I think he addressed that remark to your client and I again said, "Well, the sale was subject to the full amount of the mortgage."

10 Q. Mr. Reeves, you recall that before leaving the Freeholders room, where the sale took place, I came up to you and spoke to you about the sale and at that time you said to me, "What are you going to do about the shares of the building and loan?"

A. That only —

Q. You can say yes or no, did we have that conversation?

A. We did not.

Q. You say we never talked together in the court room following the sale?

20 A. Not to my recollection.

Q. Well, are you certain about that as you are about the conversation?

A. I am certain about it. I remember only two conversations, one with you before the sale and one going down the elevator.

By the Court:

30 Q. Whom did you represent in obtaining the order to pay surplus money?

A. Mrs. Calverley came to me through her son-in-law, stating that the sheriff had not paid her the surplus money and asked me what I would do, and I said I would suggest that Mrs. Calverley file a petition with the Supreme Court, and she did file a petition, which I forwarded to Justice Campbell, with

a letter, in which I said that she was representing herself pro se, but I knew of no reason why she should not receive her money and that I represented the plaintiff and I would consent that she should have her money, whereby Justice Campbell made the order.

Q. Do you know who prepared that petition?

A. I think I did.

Q. I show you a paper which is marked "petition of defendant for payment of surplus money," and ask you if that is the petition to which you refer and if that is — 10

A. It is.

Q. —prepared by you?

A. It was.

By Mr. Gottlieb:

Q. When you made the announcement at the sale you represented Armstrong? 20

A. That is correct.

Q. The daughter of the present complainant?

A. I represented the plaintiff, Eva J. Armstrong.

Q. You didn't represent the complainant in this case at the time of the sale?

A. I did not.

Q. And did she authorize you to make a statement for her?

A. She did not.

Q. Did you make inquiry of the building and loan association as to the true nature of the mortgage? 30

A. I asked Mr. Armstrong to find out what encumbrances there were and he reported to me the amount to which that mortgage had been reduced.

Q. He did?

A. He did.

Q. What was your object in making the announcement that it was sold subject to a first building and loan mortgage of ten thousand dollars?

A. I didn't want to guarantee to sell something that we couldn't deliver. I represented the plaintiff in that case and I was interested in seeing that we stated encumbrances in full for the protection of the plaintiff in delivering the title under that sale. We had no levy on the stock and I felt that any question between Eva B. Calverley and the building and loan association and any purchaser was a matter in which I wasn't concerned or my client, and that we were concerned in making a statement so that everybody might have notice of the encumbrances under any interpretation in the full amount.

Q. Your announcement was purely the encumbrances of record?

A. That is correct.

20 By the Court:

Q. Although you had been advised that the building and loan association mortgage had been reduced in principal you refrained from making such an announcement?

A. I did.

Q. That is all.

30 Mr. Carson: I will offer in evidence petition that your Honor has called attention to, inasmuch as it has been brought into the case.

(Admitted as Exhibit C6, from the original files, and not marked.)

Mr. Carson: The only remaining subject of testi-

mony for the complainant are the matters of record in the books of the building and loan association. The answer filed by Mr. Slack as counsel practically sets forth the facts and it is quite possible that a statement could be made by Mr. Tripician which would put upon the record the essential facts regarding that and thereby considerable time might be saved.

Mr. Gottlieb: I prefer that the books of the association be placed in evidence. 10

The Court: You are entitled to it.

PERCY HOWARD, SWORN.

Direct examination.

20

By Mr. Carson:

Q. Mr. Howard, you are secretary of the Ventnor Building and Loan Association?

A. Yes.

Q. You have been for how long?

A. Possibly twelve or fourteen years.

Q. You have the roll book of the association here?

A. Yes.

Q. Will you kindly refer to the account of Eva B. Calverley? 30

A. As of what date?

Q. As of the opening of that account.

Mr. Tripician: I might say for the record, I don't think that is the opening, condition shows prior to

any payments at all; that book begins 1924 whereas the mortgage is dated 1922.

A. Yes, that is right.

The Court: Then you haven't the book for that?

A. Not the commencing of the mortgage, no; it is in the office.

10 Q. Could you answer the question if you saw Mrs. Calverley's pass book?

A. Yes.

(Pass book produced.)

Q. Is that Mrs. Calverley's pass book?

A. Yes.

(Pass book offered, received in evidence and
20 marked Exhibit C 7.)

Q. When was the account of Mrs. Calverley opened?

A. October of 1922.

Q. And she paid dues back to what time?

A. To July of 1922.

Q. From that time—what was the amount of dues paid per month at that time?

A. The dues were fifty dollars a month.

30 Q. And the interest?

A. Fifty dollars, installment ten dollars premium.

Q. Premium ten dollars?

A. Yes.

Q. Now, will you turn to the next page, please, the monthly dues at fifty dollars per month continued to what time?

A. Including March of 1924.

Q. And then the monthly dues appear to have been what?

A. The dues were forty-one dollars, the interest was forty-one dollars, and premium \$8.20.

Q. Until what date do you find entries of dues at \$41 per month?

A. The last entry in this pass book is January 8, 1926, but the book isn't written up to date.

10

The Court: I think we better take your roll books and answer that question and not have any confusion.

Q. I mean payments by Mrs. Calverley; can you answer that question from this book?

A. I can answer it from the roll book; the last payment made by Mrs. Calverley was February of 1926.

Q. Then payments were made by Mrs. Calverley 20 that are not in the book?

A. Yes.

Q. How do you account for that?

A. That book wasn't sent to our office for credit.

Q. Mrs. Calverley would be entitled to have them, under your rules, put in that book?

A. They are supposed to present their pass book when they make a payment, which she did not do.

Q. Then when the pass book is later presented they are entered? 30

A. Written up, yes.

Q. Will you state what transaction took place resulting in the reduction of the monthly dues from fifty dollars to forty-one dollars?

A. On March 24, 1926, we received a payment of \$1700 on account of principal of the mortgage.

Mr. Slack: Got the date right, is that right, 1926?

Mr. Tripician: 1924.

A. 1924, pardon me. Then on March thirty-first of 1924 we also received a hundred dollars on account of principal of the mortgage.

10 Q. Can you tell, Mr. Howard, the total amount paid by Mrs. Calverley to the association for dues?

A. I have that figure. When she paid that \$1800 she withdrew nine free shares of stock; we gave her our check for the amount of dues paid plus the withdrawal profit, and her dues paid on the remaining forty-one shares was \$1722.

Q. \$1722?

A. \$1722. That was paid as against the \$8200, after reduction of the \$1800 on account of principal.

20 Q. That is the total amount paid as dues by Mrs. Calverley at all times?

A. On that \$8200, I explained, but she withdrew nine free shares.

Q. Do you have the book of minutes of meeting of the stockholders and directors of your association?

A. Yes.

Q. Do you find any entries in the book of minutes relating to Mrs. Calverley's account?

30 A. Under date of October eleventh, 1922, we granted her a mortgage loan of ten thousand dollars.

Q. May I see the entry before you turn. Would you kindly just state that, just read that little motion?

A. "Moved, seconded and carried that the application of Eva Bernstein Calverley for mortgage loan of ten thousand dollars be granted. Unanimous."

Q. What is the date of that?

A. In minutes of October eleventh, 1922.

Q. What is the next entry, if any, in the book of minutes?

A. Under date of April ninth, 1924, my action was ratified by the board of directors, in paying withdrawal to Eva Bernstein Calverley of \$192.19, that representing the withdrawal value of the nine shares plus the profit allowed.

Q. Was that the total payment that she got? 10

A. Yes.

Q. Did you say what the \$3.19 was?

A. That was the profit on the withdrawal of the nine shares.

Q. And that is in the \$192?

A. Yes, that is in the total.

Q. Will you read that motion, please?

A. That reference to withdrawal is part of a motion of withdrawals granted per month. Do you want the whole motion read or just the part? 20

The Court: You can give the substance of the motion and omit the other names.

Q. Under date of April ninth, 1924, "Moved, seconded and carried that the secretary's action in paying the following withdrawals be ratified: Eva B. Calverley, \$192.19."

Q. You find any other motions of the directors or stockholders or do you know of any other motions of the directors or stockholders in connection with Mrs. Calverley's account? 30

A. I did not.

Q. Mrs. Calverley's pass book which you have identified and which is in evidence contains what purports to be a printed copy of the constitution and

by-laws of the association. Have there been any amendments or supplements to the constitution and by-laws since this book was issued?

A. I think there have, yes.

Q. Can you tell us what they are?

A. We authorized full paid stock; we changed the meeting night of the board. I think that is the only thing was done.

10 Q. Nothing in any way relating to a transaction or series of transactions such as your account shows in the matter of Mrs. Calverley's loan and stock?

A. No.

Q. Is this a copy of the constitution and by-laws in Mrs. Calverley's pass book except the changes that you have just mentioned?

A. Yes.

Q. Do you have the bond and mortgage executed by Mrs. Calverley and the stock assignment with you?

20 A. I think counsel has it.

(Produced.)

Mr. Carson: Bond and mortgage dated October 23, 1922, signed by Eva Bernstein Calverley and Benjamin F. Calverley, husband, both bond and mortgage signed that way, transfer of stock signed by Eva Bernstein Calverley dated October 23, 1922

30

Q. Is Eva B. Calverley the same person as Eva Bernstein Calverley, so far as your records go?

A. Yes.

Mr. Carson: Also offer certificate number 39031 for fifty shares of the thirty-ninth series of Ventnor

Building and Loan Association issued in the name of Eva Bernstein Calverley, dated October 16, 1922.

(Papers admitted and marked Exhibits C8, 9, 10 and 11.)

Q. Do your books show any entries with reference to payment of dues after the sheriff's sale of this property?

A. Yes.

10

Q. What does it show, please, and will you turn to it?

A. I made a notation in April of 1926 that a sum of money that I received was paid by S. H. Block, that included the arrearages in the account of Calverley; just made a notation in red ink.

Mr. Slack: If your Honor please, I think that is an old form of mortgage and I doubt very much whether we have any more. I don't see why your Honor shouldn't keep that original mortgage. It has been recorded. I think it contains a complete copy of the bond in the mortgage, as I recall. 20

The Court: I will examine it and see. I will take care of it then.

Cross-examination.

By Mr. Gottlieb:

30

Q. Mr. Howard, when were the first payments made by Mr. Block under the Building Association mortgage?

A. \$371.10 during April of 1926.

Q. How much has he paid per month since then?

A. \$90.20.

Q. What is that payment upon?

A. First payment?

Q. What was that payment on?

A. On account of his mortgage.

Q. What did the mortgage show at the time he made that payment as the principal amount of the mortgage?

10 The Court: Now, do you mean that question?

Q. What did your records show was the principal amount of the mortgage at the time he made his first payment?

A. The principal debt ten thousand dollars, the principal of the mortgage was eighty-two hundred and arrearages against that.

Q. Was the eighty-two hundred dollars marked on your book at that time?

20 A. Yes.

Q. How is it now carried?

A. Still carried \$8200.

Q. You have a check book here showing a check to Eva Bernstein Calverley of \$192.19.

(Check offered, received in evidence and marked Exhibit D3.)

30 Q. Does that represent the payment made to her on the withdrawal of the nine shares?

A. Yes, that is right.

By Mr. Carson:

Q. Mr. Howard, you said that Mr. Block, according to your record, paid how much that first time?

A. \$371.10.

Q. How much of that is dues?

A. \$164 dues.

Q. That is all.

By the Court:

Q. Mr. Howard, at the time of the reduction from fifty shares to forty-one shares was there any change made in the certificate of the shares? 10

A. There was no change made in the certificate.

COMPLAINANT RESTS.

Mr. Gottlieb: Your Honor, as to the defendant, Benjamin Block, the building and loan association—I represent Benjamin Block and at this time the complainant has not carried out their case 20 as against them.

The Court: In a motion of this nature you must determine whether you close your case or not, so far as they are concerned.

Mr. Gottlieb: I close my case as to Benjamin Block.

The Court: All right; as to Benjamin Block the 30 case is closed. I will hear your motion.

Mr. Gottlieb: Your Honor, there is nothing in the case that shows that, so far as Benjamin Block is concerned, he can be bound. He took an assignment of the mortgage and he took a declaration of no offset —

Mr. Carson: No proof of those facts.

Mr. Gottlieb: That is set out in the answer and not denied. I have no copy of replication denying that. I have no copy of it if that is on record.

The Court: Complainant joins issue.

Mr. Gottlieb: Then I can't close my case. My
10 information was there was no joinder on my answer.
I have no notice such was filed.

The Court: No need you should have.

Mr. Gottlieb: I won't do that.

Mr. Carson: It was our intention to send copies
as we did the bill.

20 The Court: I notice the clerk in Chancery has
made no notation of notice in any particulars.

Mr. Gottlieb: There is no notice to us a replica-
tion had been filed by the complainant.

The Court: There is no provision in the law
there should be.

30 Mr. Gottlieb: Usually they do.

The Court: You can't rely on that.

Mr. Gottlieb: Then I withdraw that.

The Court: I think, under the circumstances, I
will permit you to do so.

BENJAMIN B. BLOCK, SWORN.

Mr. Gottlieb: I offer in evidence mortgage of Eva B. Calverley and Benjamin F. Calverley to Eva J. Armstrong, bond accompanying the same, assignment of mortgage to Benjamin B. Block —

Mr. Carson: Pardon me just there. I have no objection to his offering the assignment if it is conceded that it was executed on the day it was acknowledged, otherwise I would want it to be proved by the attesting witness. I don't want to hold up Mr. Gottlieb; if he will concede that point, I will make no objection to its admission. 10

Mr. Gottlieb: Yes. I also offer —

Mr. Carson: The same would apply to the declaration of no offset, executed the date acknowledged, my recollection sixteenth of April, 1926. 20

(Papers admitted in evidence as follows: Bond, D4, mortgage D5, assignment D6, declaration D7.)

(Also offer the mortgage of Sherman H. Block and Julia F. Block to Benjamin B. Block with the bond accompanying the mortgage.)

(Mortgage and bond admitted and marked Exhibits D8 and 9.) 30

Direct examination.

By Mr. Gottlieb:

Q. Mr. Block, are you the defendant in this action?

A. Supposed to be.

Q. Are you the holder of two mortgages on 105 South Richards Avenue?

A. Yes, sir.

Q. What two mortgages do you hold on that property?

A. One \$2500 that was assigned to me by Mrs. Armstrong and one that I took from my son and daughter-in-law after they had purchased the property.

10

Q. How much was that?

A. \$9,000.

Q. Now, at the time you took the assignment of that mortgage what inquiry did you make in regard to the mortgage encumbrances on the property?

Mr. Carson: I object to that unless the inquiry was made of the owner of the property.

20

The Court: That is the question that is now propounded to ascertain that fact. I will permit the question.

(Question repeated.)

A. I was told that it was —

The Court: That is not the question. What inquiry, of whom did you make inquiry?

30

A. I inquired from Mr. Gottlieb and my son what the first mortgage was.

Q. What did they tell you concerning the same?

A. Told me there was six thousand —

Mr. Carson: I object to that.

The Court: How can that be admissible? How can it be admissible what his counsel states to him?

Q. Did you know there was a building and loan mortgage on there?

A. Yes.

Q. Did you know how much the building and loan mortgage was?

A. Not exactly; I only know the amount that was due on it.

10

Q. Did you know that amount?

A. Yes.

Q. What amount was it?

Mr. Carson: If your Honor please, the mortgage speaks for itself.

The Court: Sustain the objection. Not necessarily so. He certainly should under the circumstances show his knowledge.

20

Q. At the time you took the assignment of the \$2500 mortgage, did you get any other declaration from the owners of the property?

A. No, sir.

Q. Did you get a declaration of no offset as against that mortgage?

Mr. Carson: That is in evidence, declaration.

The Court: Question was did he get any other declaration. I assume any other than this declaration of no set-off.

30

(Question withdrawn.)

(No cross-examination.)

SHERMAN H. BLOCK, SWORN.

Direct examination.

By Mr. Gottlieb:

Q. Are you the defendant in this case?

10 A. Yes.

Q. Did you purchase property 105 South Richards Avenue?

A. I did.

Q. When did you first hear that that property was for sale?

A. Oh, I heard it for quite some time before the sale.

Q. Did you make any inquiry regarding the encumbrances on the property prior to the day of
20 the sale?

A. Yes, I did.

Q. Now, what inquiry did you make?

A. I made inquiry of the building association.

Mr. Carson: I object to that.

The Court: I will permit that statement.

Mr. Carson: May I be heard on that before your
30 Honor rules?

The Court: What, that he can't say he had the information from a building and loan association? That is all the question is now. He doesn't say what he has been informed. I will hear you if that question comes.

Mr. Carson: The greater includes the less.

The Court: Not necessarily. It is admissible that he made inquiry from the building and loan association.

Mr. Carson: Would your Honor hear us on that?

The Court: Yes.

Mr. Carson: Our objection is this, the building association had no authority which would be binding upon Mrs. Calverley.

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The Court: Mr. Carson, what has that to do with the present question at all? He is not endeavoring at this time to tell what was told him by the building association. You are anticipating other questions. I don't care to take the time unless the questions are asked, entirely an academic proposition.

20

Mr. Carson: I will wait until the next question is asked.

Q. To what officer of the building and loan association did you make inquiry?

A. Mr. Howard, the secretary.

Q. Did he tell you—what did you ask him?

A. I asked him just how the mortgage was on 105 South Richards and he said that ———

30

Mr. Carson: I object to that. If your Honor please, conversation between Mr. Block and Mr. Howard can have no binding effect and no material place in this case as against Mrs. Calverley the owner of the property. That is the first ground of

objection. A conversation with a third party not in the presence of Mrs. Calverley in which she does not participate in any way, directly or indirectly. Secondly, Mr. Block has signed the conditions of sale with the sheriff which expressly set forth the condition of the mortgages upon the property. This constitutes a written contract between Mr. Block and the sheriff covering the sale of this property and any testimony that would vary from that in any
10 way would be inadmissible as changing the terms of his contract on the basis of which he has received a deed for the property.

The Court: The first objection is, of course, good, that your client can't be bound by information given in her absence to this party.

Mr. Gottlieb: Your Honor, I am not endeavoring to bind Calverley.
20

The Court: Who are you endeavoring to bind?

Mr. Gottlieb: I am endeavoring to show that this man, when he went to the sale, made an investigation concerning the sale and that he bid in accordance with the information he received.

The Court: Then you are not attempting to bind Mrs. Calverley by it?
30

Mr. Gottlieb: I am not saying that she authorized Howard to do so, but that the building and loan association statement gave him that information.

Mr. Carson: Unless it would bind Mrs. Calverley, it would bind only the building and loan asso-

ciation. In his opening I understand he doesn't contest the building and loan association and the only object would be to bind Mrs. Calverley.

The Court: You put a witness on the stand who says he makes a statement to the sheriff which he had been informed was false before he made it, that he made it for the purpose of being on the safe side, that he said there was due on a mortgage ten thousand dollars when he had been informed by the mortgagee that it was less than that, and that he says he made that statement to the sheriff knowing it was not in accordance with the information that had been given, and that he made it for the purpose of being on the safe side, of making the largest possible amount. Under those circumstances I will permit this defendant to show, only for that purpose, what his information, from the same source which the attorney had received it, showed the facts to be.

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20

Mr. Carson: I didn't argue that. You gave me an opportunity to be heard but I didn't argue that because that wasn't raised. May I be heard on that question?

The Court: Yes, you may be heard on that.

Mr. Carson: I fear your Honor has drawn an erroneous inference from the testimony of Mr. Reeves.

The Court: I haven't drawn any inference from the testimony of Mr. Reeves. I simply recited his testimony, perhaps not in the words he gave it, but the absolute fact. He said he had been informed

30

by the building association that the mortgage had been reduced to \$8200, that there had been payments made on it and that certain values were fixed. He says that he didn't make that announcement because he wanted to be on the safe side, so far as his client was concerned, and that, as the face of the mortgage was ten thousand dollars he so announced.

10 Mr. Carson: I think that correctly states his position and with reference to the propriety of that

The Court: We are not questioning that.

20 Mr. Carson: As to the legal significance of it with reference to Mr. Gottlieb's case, the sheriff was in command of that sale, property could be sold only on such terms as he should announce and declare. Whether he made a statement that an examination
30 before a Court would show might be erroneous or not, he had the right to make that statement; it was his duty to make that statement. Mr. Reeves was in the position of being confronted with the question now to be decided by this Court after hearing testimony and argument. And Mr. Block again, he knew that dues had been paid, interest had been paid and a lump-sum payment had been made at one time; what was the effect of all this at a sheriff's sale? In order that no bidder, in order that this man might not be misled, he stated the maximum amount that the face would be, not for the benefit of any other person, but for the benefit of the purchaser. How can they suffer any loss if they know the worst, the maximum amount of these mortgages; and he did know that, Mr. Reeves stated it to him before the sale, he stated it publicly and

the sheriff announced it. If Mr. Reeves had made any other announcement he would have jeopardized that sale and he might have caused the whole thing to be invalidated.

The Court: You are now coming in and endeavoring to show that the facts, if stated, and which it is now being endeavored to show this witness knew, that a ten thousand dollar mortgage had been upon the property—you are now endeavoring to show that this man, although he knew at the time that that wasn't the true amount, endeavoring to make this man responsible for some part of that amount which he perhaps—now endeavoring to show, at least, knew was not due. That is the effect of it, isn't it, that this man must pay some money? 10

Mr. Carson: Yes, the effect is, as we now view it, Mr. Block bid subject to a ten thousand dollar mortgage. If he had in his mind certain matters which he had gained by investigation he thought later would be profitable to him, which other persons attending that sale did not have, it would be inequitable, I believe it will be found, under the cases, for him to be permitted to get out from under any penny of that ten thousand dollar mortgage. 20

The Court: Then you claim that this man is compelled to pay back the eighteen hundred dollars that this woman has paid on account of the principal? 30

Mr. Carson: Our contention will be as to the eighteen hundred dollars, this mortgage in equity stands reinstated as to that, and as to the dues which Mrs. Calverley paid she will ultimately be subrogated to the rights of the association.

The Court: I am not asking about the dues at the present time. I am asking now if you were claiming that the \$1800 which this woman paid that this man is bound to pay?

Mr. Carson: I do not say he is bound personally to pay. I don't mean that; but I mean, so far as Mrs. Calverley is concerned, a ten thousand dollar mortgage will ultimately, when the association is
10 protected, enure to Mrs. Calverley's benefit in equity until she gets her eighteen hundred dollars and the amount of the dues that she paid in accumulation of the stock which will ultimately go to pay the loan.

The Court: Then your claim is that because counsel at the sale made a statement, which he knew was not the claim of the mortgagee, that this man is bound, that that rises higher than the fact that she had paid on account of the mortgage before that
20 time?

Mr. Carson: If your Honor please, I think the cases will show that it is possible to validate a void mortgage if you do so when the sale takes place, a mortgage can be validated for the full amount, after it has been reduced and after the purchaser has notice that he is bidding subject to it. We emphasize this fact, that these conditions of sale are publicly announced, Mrs. Calverley's property has
30 been sold on the basis of these conditions of sale, not upon certain latent facts which this gentleman obtained by reason of some investigation of his own. He comes into the sheriff's sale as a stranger, he hears the terms of sale. He can bid or not bid just as he sees fit. Then if he has some secret knowledge about that sale, such as value of the property

or some other matters, he has his reasons for bidding, but exactly in point, contrary to the formal announcement of the sheriff's sale, which in this case the sheriff added his own.

The Court: Then your contention is that if Mr. Reeves had announced that there was a mortgage of 20 thousand dollars on this property he would be bound to pay twenty thousand dollars to her?

10

Mr. Carson: He wouldn't be bound personally to pay.

The Court: The property would?

Mr. Carson: That sale would go forward subject those terms. That is the extreme case that your Honor makes.

The Court: Not at all, no more extreme than the 20 present case.

Mr. Carson: Of course, the property with a mortgage of twenty thousand dollars, this particular property, would have had no appeal to the public at all, but so far as the principal is concerned I would say that when the sheriff sells a property he can set his terms of sale, when a receiver sells a property—your Honor is familiar with the case, I think I name it right, Camden Safe Deposit and Trust 30 Company against somebody—there was a receiver's sale, and the receiver sold subject to the Camden Safe's mortgage and a purchaser bought it. Later he wished to contest that mortgage and, of course, they said, "You are estopped from doing that. You bid at the sale." There is a very interesting case

by Vice-Chancellor Griffin that comes very close in principle to this case in 93 Equity 73. There was a chattel mortgage, not recorded and to all intents and purposes not valid as to other creditors of the company. The property was sold on a judgment similar to this and the sheriff announced at the sale he was selling subject to that mortgage and the purchaser bought it and later, when the chattel mortgage was foreclosed, he set up a defense against it.

10 The Vice-Chancellor held that he couldn't be heard to do that. He was absolutely bound by the contract that he made at the sale, couldn't be heard on that subject.

The Court: There was a valid chattel mortgage not enforceable because of provisions of the statute; it wasn't enforceable as against other creditors but it was an enforceable chattel mortgage, wasn't it; that is my recollection of it?

20

Mr. Carson: It was enforceable against him on the opinion of the Court on the ground that he had bought subject to it.

The Court: Surely.

Mr. Carson: The doctrine of estoppel was introduced to prevent him from counter-claiming against that mortgage. The theory of that equity, as I understand it—I don't pretend to be universally informed on the subject, but as I understand the equity that underlies this doctrine is this: Mrs. Calverley has given her bond; she is personally liable for that debt to the association. Whenever the property is sold, if the purchaser knows and is bound by, I contend he is bound by a term that that

30

mortgage is ten thousand dollars. She is exonerated from ten thousand dollars until after the property is applied, therefore —

The Court: The difficulty is there is no responsibility on her above eighty-two hundred.

Mr. Carson: I am only calling the Court's attention now to the principle that underlies this doctrine as illustrated in the Chancery cases, etc. 10

The Court: It is not necessary to determine the entire matter upon the ruling on this. I will permit the question and then either strike it or let it remain later.

(Question repeated.)

A. Mr. Howard told me that there had been a payment of \$1700 and a payment of one hundred dollars, reducing the mortgage to eighty-two hundred and there had also been subsequent payments made which reduced the mortgage to \$6595 and some odd cents, I believe, with a statement of the fines and assessments that were due and dues. 20

Q. Did you bid on the property having in mind the amount due on the first mortgage given to you by Mr. Howard?

Mr. Carson: I will object to that. 30

The Court: I will permit it under the same condition.

A. I did.

Q. When did you first hear that the complainant,

Calverley, held any interest in the shares of stock which were assigned to the building and loan as collateral security with their mortgage?

A. Why through —

Mr. Carson: I object to that.

The Court: You may take your general objection to all of this.

10

A. It was a day or two after the sale.

Q. From her personally or from some one else?

A. I think it was from her daughter.

Q. Well, did you ever at any time talk to her about it?

A. Yes, I talked to her about it, I believe she was along, the daughter and son-in-law.

20 Q. Did you have any knowledge, prior to the sale, that there was any claim made by the complainant as to the shares of stock?

A. No.

Q. Was your conversation with Mrs. Calverley prior to the delivery or subsequent to the delivery of the sheriff's deed?

A. Prior to the delivery.

Q. What did you tell her in regards to the recognition of her interest in these shares that she claimed?

30 Mr. Carson: My objection applies to all of this?

The Court: Certainly.

A. I spoke to her and told her that I didn't think that I was liable for the eighteen hundred dollars that had been paid off or the dues that had been

paid in and that I had bought it subject to the balance due on the first mortgage.

Q. Have you expended any moneys on the premises after you received the sheriff's deed?

A. I did.

Q. Have you got a statement there of the amount of the checks on those expenses?

A. Yes, sir.

Mr. Carson: This is a slightly different situation. I will object to any testimony on this subject, what he has spent on this house is hardly a material matter in this case. 10

The Court: I will simply permit him to give an approximate amount to show that it is or is not a real amount and not go into figures or anything of that sort at all. I will permit that.

Q. How much did you expend on the premises? 20

A. I spent \$4950 on the premises.

Cross-examination.

By Mr. Carson:

Q. You were present personally at the sheriff's sale?

A. I was.

Q. You heard the announcement made by Mr. Reeves? 30

A. I did.

Q. Did you make any public statement at that sale to the sheriff or anybody else?

A. I did.

Q. What did you say?

A. I spoke to Mr. Reeves and Mrs. Armstrong before the sale and after the sale.

Q. I say at the time of the sale did you tell the sheriff anything?

A. During the sale?

Q. Yes.

A. No.

Q. You said you had a conversation with Mrs. Calverley, when was that?

10 A. I believe it was either the next day or two days after the sale.

Q. Where did it take place?

A. Why, we met her on Atlantic Avenue and then we went to Mr. Gottlieb's office in this same building.

Q. Was Mrs. Calverley represented by counsel at that time?

A. She was not.

20 Q. You took her to Mr. Gottlieb's office, didn't you?

A. With her daughter and son-in-law.

Q. There you offered to pay her three hundred dollars for the money that she paid into the association?

Mr. Gottlieb: Your Honor, I object to that.

Mr. Carson: I think that is proper cross-examination.

30

The Court: What objection?

Mr. Gottlieb: This man can pay her ten thousand dollars in a voluntary settlement, if he is talking settlement, we have a right to do that.

The Court: Of course, an unaccepted offer of

compromise is not admissible but if this is for the purpose of showing mental condition at that time, an admission of an amount due, I will permit it. You may answer.

(Question withdrawn.)

Q. Did you make an offer to pay Mrs. Calverley a sum of money?

10

A. We spoke about settlement.

Q. Did you make an offer to Mrs. Calverley to pay a sum of money?

A. We spoke about an amount, yes, but there was no special amount offered.

Q. You telephoned to Mrs. Calverley and asked her to come down and see you about selling her stock, didn't you?

A. No, I didn't.

Q. Didn't you telephone to Mrs. Calverley?

20

A. Not about the stock, no.

Q. Didn't you telephone to Mrs. Calverley to come and have a talk with you?

A. I don't recall.

Q. Where did you meet Mrs. Calverley that day?

A. I met her on Atlantic and New York Avenue.

Q. Just by accident?

A. We had had some conversation about it previous, but I don't know whether it was the daughter or Mrs. Calverley.

30

Q. And Mrs. Calverley refused to make a settlement, didn't she?

A. I believe she did.

Q. On the ground you didn't offer enough?

A. I don't know.

By Mr. Gottlieb:

Q. Do you recall the purpose of the meeting with the mother and daughter and son-in-law that day?

A. Yes, I do.

Q. What was the —

A. That had reference to, we explained about that we had bought it subject to the balance due on the first mortgage of the building association and that
10 we didn't, we weren't liable for any more money, but if she wanted, it was her privilege to have the sale cancelled if she wanted to.

Q. You told her that?

A. Yes.

Q. What was the purpose of the Armstrongs being there and why did you bring them to my office?

A. Well, I believe they came down with the mother on account of she was old and couldn't get around so well, and they brought her down and
20 came over to the office with her for what purpose I don't know only that one purpose.

Q. Have you had any communication with the Armstrongs regarding the second mortgage?

A. Yes, I have.

Q. Did they make any demands upon you in regard to that mortgage?

A. On the purchase of the mortgage.

Q. Was that matter also discussed in my office?

A. It was.

30

By Mr. Carson:

Q. Who were present at this conversation in Mr. Gottlieb's office?

A. Myself and Mr. Gottlieb, Mrs. Calverley, and Mr. and Mrs. Armstrong.

By Mr. Tripician:

Q. Mr. Block, when did you have your conversation with Mr. Howard?

A. With Mr. Howard? Oh, I think it must have been three or four days before the sale.

Q. And he stated to you that \$1700 and \$100 had been paid off on the mortgage?

A. He stated to me that there had been \$1800 paid off on the mortgage. 10

Q. On direct examination you stated that he also said there was subsequent payments made reducing the mortgage?

A. Yes.

Q. What payments, if any?

A. Payments of dues amounting to \$90.20 a month.

Q. Did he tell you that the mortgage was being reduced \$90.20 a month?

A. He didn't tell me that it had been reduced \$90.20 a month but he told me it had been reduced by payments to \$6595 and some odd cents. 20

Q. He told you that the face of this mortgage or principal had been reduced to \$6500 odd dollars?

A. \$6595.

Q. That is the principal?

A. Not the principal, but that the mortgage had been reduced to \$8200 and had been payments made on it which had brought it down to \$6595 but the mortgage had not been reduced. 30

Q. As a matter of fact, didn't he tell you that the principal was \$8200?

A. Yes, \$8200, yes.

Q. And that the stock was worth sufficient money which would make the \$6500 odd dollars necessary to secure cancellation of that mortgage?

A. Yes, he did.

By Mr. Carson:

Q. When you specified the expenditures upon the property a moment ago you included your taxes and carrying charges?

A. No. If I see the statement I can tell. The expenses only include the amount of money that was spent on it to put the house in first class condition.

10 Q. Doesn't refer to taxes either?

A. Taxes have been deducted, taxes and the amount of money have been deducted, you see it was thirteen and there these two items have been deducted, the interest \$881.75.

Q. But you have the bills will show?

A. Yes. (Producing bills.)

Q. Are all these bills in the list you have there?

A. No, there are some there, furniture that I didn't add on to that slip, there may be a few mixed
20 in there.

Q. Maple bed, dresser, is that in?

A. No, that is not included in there, no. I can pick them out for you.

Q. I will pick them out. You have got a bill for decorating here.

A. Yes, that is painting.

Q. Includes painting your furniture, doesn't it?

A. I don't know; maybe one item on there.

Q. Does the bill show what it was for?

30 A. Yes.

Q. Says painting furniture \$225, carpenter work on furniture \$45, painting maid's furniture \$30, taking down aerial?

A. No, it is not included. I took the amounts from the checks.

Mr. Gottlieb: Are draperies in there?

A. No, draperies are not included.

Q. You have taken all money you paid the South Jersey Title and Finance Company \$8175?

A. And the taxes.

Q. Doesn't this charge for decorating include the draperies?

A. No, doesn't. Two separate firms.

Q. The electrical bill includes lanterns you notice?

A. Includes lanterns, yes.

Q. Mirror and table?

10

A. It isn't included. Three firms did the electrical work.

Q. It is in the adding machine tape here.

A. It may be.

Mr. Gottlieb: The only purpose of showing repairs was to show repairs had been made.

Mr. Carson: Not try to locate the amount but nothing like the amount specified. We concede he has spent some money on the property, but nothing like the amount he specified. 20

By Mr. Gottlieb:

Q. Mr. Block, did you separate, before you made up that statement, the amounts on actual repairs, charges to the house from the things like furniture or repairs to furniture?

A. I separated as many as I possibly could. There may be a few items like table or lamp or something like that, but outside of that it wouldn't amount to fifty dollars. 30

Mr. Carson: I have already called attention to more than that.

A. I also spent other money that I didn't include in there.

By Mr. Tripician:

Q. Mr. Block, do you have any stock of this Ventnor Building and Loan Association?

A. I have no stock.

Q. Do you have a book?

10 A. No book.

Q. Did you demand either?

A. No, I didn't.

Q. Didn't you demand a book be given to you by the Ventnor Building and Loan Association?

A. After I purchased it I asked for a book.

Q. And it was refused?

A. I don't recall.

Q. You didn't get a book?

A. No, I didn't get anything.

20 Q. Do you recall a statement being made to you that you would secure the same only upon assignment of the stock?

A. I don't recall.

PERCY E. HOWARD, recalled.

30 Direct examination.

By Mr. Gottlieb:

Q. Mr. Howard, did you receive a letter from Charles M. Armstrong regarding the Calverley mortgage? I show you that letter signed by Arm-

strong, and ask you whether you received that letter?

A. Yes.

(Letter offered in evidence.)

Mr. Carson: I object to that, Mr. Armstrong, anything he may have said or done is not material.

The Court: Not unless connected up with Mrs. Calverley. 10

Mr. Gottlieb: It is connected. You recall Mr. Reeves for the complainant testified that he delegated Armstrong to make the inquiry of the building and loan with regard to the amount due on the building and loan mortgage.

The Court: How can that bind Mrs. Calverley?

20

Mr. Gottlieb: Only so much as the announcement itself didn't mean anything there, that is what we are trying to show, your Honor, so far as the announcement is concerned, was no condition of the sale.

The Court: I will permit to on the same condition as I permitted the others.

(Letter admitted and marked Exhibit D7.)

30

Q. Did you reply to him?

A. I assume I did if the letter needed an answer. I don't recall the letter. I didn't read it over.

Q. Is that a copy of the answer?

A. That is a copy of the letter written to Arm-

strong replying to his of the date it was because it is dated March 18, 1926.

(Letter offered, received in evidence and marked Exhibit D8.)

By Mr. Carson:

Q. Application was made to you to issue a book
10 to Mr. Block, was there not, after the sheriff's sale?

A. I think was a request made, yes, I don't know who by, whether Mr. Block or Mr. Gottlieb.

Q. You declined to issue it, did you not, until an assignment was obtained?

A. Yes.

Q. And none has been issued to Mr. Block?

A. Not to my knowledge.

Q. The book that was issued to Mrs. Calverley was never called in by the association?

20 A. We requested that she forward the book to us to have it written up at our annual audit, but she didn't comply with our request.

Q. Was a stock certificate at any time issued to Mr. Block in this matter?

A. No.

Q. So that the only stock certificate in existence is the one already in evidence in favor of Mrs. Calverley?

A. Yes.

30

By Mr. Tripician:

Q. Mr. Howard, did you ever inform Mr. Block that the principal on the mortgage was less than \$8200?

A. My answer won't be a direct answer to you,

but around the time of the sheriff's sale I had numerous people come in and ask me the amount due the association. I told them the principal was \$8200. Then I showed them where they had a credit by dues and by a withdrawal value profit; in other words, showed them the amount due to satisfy the Ventnor Building and Loan Association, as far as their mortgage went.

Q. And you didn't tell him the principal of the mortgage itself had been reduced so that there was only sixty-five hundred odd dollars due? 10

A. I told him the principal was \$8200 and credit by dues paid and profit allowed on withdrawal, yes, always stated that way, the principal sum and then call attention to the credit.

By Mr. Gottlieb:

Q. You also stated, Mr. Howard, that the amount necessary to satisfy the mortgage — 20

A. Possibly I did, as I mention there, giving credit upon dues paid and the profit allowed on the withdrawal in satisfaction of the mortgage.

By Mr. Carson:

Q. When you gave that information to Mr. Block, did you give it to Mr. Block or Mr. Gottlieb?

A. I don't know who I gave it to; I gave it to several people. 30

Q. You gave it to him and stated that result was reached by applying the stock to the mortgage?

A. I have a printed statement I probably gave to some of the boys, as I say, sheriff's sale, they want to know the amount due to satisfy the association's mortgage and I gave them that amount.

Q. You made it only with a possible application of that stock to the mortgage?

A. Yes.

Q. Your statement says that.

A. Yes, shows a statement referring to this case.

Q. And that practice is where the stock is prior to the mortgage to take an assignment of stock?

A. Yes.

Q. For that reason you haven't transferred this
10 stock to Mr. Block?

A. We needed Mrs. Calverley's assignment.

Q. I say because you haven't had Mrs. Calverley's assignment?

A. Yes.

By the Court:

Q. You have a conditional assignment, have you not, Mr. Howard, of Mrs. Calverley's to the com-
20 pany?

A. Your Honor, we have a form of assignment, yes. We had the certificate, too.

Mr. Carson: That was made at the time of the mortgage?

A. Yes.

MRS. EVA ARMSTRONG, SWORN.

Direct examination.

By Mr. Carson:

Q. Did you receive a telephone call after the sheriff's sale from Mr. Block? 10

A. I did.

Q. What did he say?

A. He asked me if I could bring my mother, Mrs. Calverley, down to Atlantic City, and he appointed a date, and asked me to bring her to the drug store, Freeman's Drug Store, where Mr. Block is, and we did so.

Q. What did you do there? Did Mrs. Calverley do there? 20

Mr. Gottlieb: I suppose I may be anticipating a series of questions, but I want to make my objection at this time to this line of testimony. I can't see how any conference—I suppose that is what it is about—in regard to a settlement of an alleged claim of a disputed claim can in any way bind us in this matter. We have a perfect right—wasn't accepted—and we have a perfect right to make any offer we care to make or refuse to make any offer. 30

The Court: I will permit it upon the same condition that I did before.

Mr. Carson: Only introducing testimony in reference to a conference that he has produced testimony in direct regarding.

The Court: Didn't you produce it on cross-examination?

Mr. Carson: That is correct, then he followed with their rebuttal.

The Court: Naturally compelled to and it was admitted.

10 Mr. Carson: I think a part of that was on direct examination as to whether he had seen Mrs. Calverley.

The Court: I have permitted the question.

Q. You said you came to the drug store?

20 A. On that occasion that he telephoned we went to Freeman's Drug Store and there we met Mr. Block thinking he had something to tell us. Instead of that he said to come over to Mr. Gottlieb's office, and Mr. Armstrong, my husband, and Mrs. Calverley, my mother and myself and Mr. Block went over to Mr. Gottlieb's office.

Q. What did Mr. Gottlieb say, if anything?

A. Well, I couldn't repeat just what one person said, but the discussion was about the stock.

Q. What did Mrs. Calverley say?

A. Mrs. Calverley positively wouldn't accept anything. She said that she wanted that money she had put in the building and loan.

30 Q. Did you hear anybody say that the sale could be set aside if this settlement wasn't made?

A. No, I don't recall ever hearing anything like that.

Cross-examination.

By Mr. Gottlieb:

Q. Whatever sum Mrs. Calverley asked, Mr. Block refused to pay her?

A. Pardon me?

(Question repeated.)

A. When was that? I don't just understand that. Mrs. Calverley never asked Mr. Block anything that I understand. The sheriff's sale was the only place where I know any money passed or any talk of money. I don't understand that.

10

Q. Didn't you testify that you were in my office and Mr. Block made an offer of so much?

A. Oh, the stock you mean?

Q. Yes.

A. Yes. Mrs. Calverley refused anything of the kind at that time, she said that she wanted the money that she had put in the building and loan on the principal of stock.

20

Q. And at that time did Mr. Block refuse to pay her any money?

Mr. Carson: I object to that.

The Court: Sustain the objection.

TESTIMONY CLOSED.

30

INGERSOLL, V. C.:

Gentlemen, doesn't this devolve itself into two questions, the first of which can be divided into two parts: First, can an announcement made by the sheriff, by direction of the attorney of the plaintiff, manifestly false upon its face, bind the purchaser who signs that condition of sale? It is admitted in this entire case, on the first sub-division of that question, that \$1800 had been paid on account of the principal and that there was only due on the mortgage as principal the sum of \$8200. That fact was known by counsel or attorney who gives the information to the sheriff and is known also by the purchaser. It must have been known by the owner of the land who—it is not testified whether she was present or not at the sale. Now, is the purchaser bound by that condition of sale in so far as the \$1800 payment on account of the principal is concerned?

Secondly, is he bound on that condition of sale for the amount of money which this woman has paid into the building association regardless of any other question except the question of the condition of sale and the fact that the money is paid? These two sub-divisions make the first question to be determined.

If he is not bound by that, there is the subsequent question. If he is bound by that condition, it seems unnecessary to determine the remaining question, which is: Is the holder of building association stock, which has been assigned as collateral for a loan of money advanced by the building association to the owner of the stock, and who also, as a condition of that loan on the stock gives a bond and mortgage as additional collateral for the same loan, and who,

thereafter by her own act, or by the act of the law, becomes divested of the title to the land, is or is not the original owner of the stock, who has assigned it as collateral, entitled to a credit to her personally for the amount of payments made on account of the principal of the mortgage or is that a payment on account of the principal of the mortgage for which the purchaser is entitled to a credit? In other words, does the purchaser, either at private or public sale of a property subject to a building and loan association buy that property subject to the then amount due the building association, after crediting all payments or is that sale made subject to the principal of the mortgage all payments thereon reverting to the holder of the land? 10

Now, are they not the two legal propositions, one, as I say sub-divided?

Because of the peculiar condition of this case the Court is bound to consider whether or not this announcement by the sheriff, by reason of the information given to him by the counsel, whether or not there has been collusion between the plaintiff and the defendant, and whether if that announcement was made, whether or not Mrs. Calverley can take advantage of that statement under the circumstances? The fact that her daughter was the plaintiff—and it is quite manifest that it was a friendly suit because they were together afterwards, apparently family relations, were not disturbed at all—together with the fact that the same attorney represented Mrs. Calverley in at least the preparation of the petition for surplus money to the extent, at least, that it was sent by him to the Justice of the Supreme Court with a statement that it was filed *pro se*, of course, and that on the file there is no statement of attorney *pro se*, or anywhere else, and 20 30

it is in the same form that all other papers apparently were in the same case.

Mr. Carson: I think, if your Honor please, at the end of the paper signed by Mrs. Calverley as attorney *pro se*.

The Court: Yes, it is so marked, petitioner attorney *pro se*, but the papers were prepared and
 10) mailed by the same attorney of the daughter. I simply call attention to that fact because that may enter into the matter.

PART OF EXHIBIT C1.

(Filed Jan. 25, 1926.)

20

NEW JERSEY SUPREME COURT

Eva J. Armstrong,	}	Action at Law Complaint
Plaintiff,		
vs.		
Eva B. Calverley,	}	
Defendant.		

30

The plaintiff, residing in the City and County of Philadelphia and State of Pennsylvania, says:

1. She sues for the amount of a judgment recovered by her against the defendant Eva B. Calverley,

in the Court of Common Pleas No. 3 for the County of Philadelphia, State of Pennsylvania, being a court of record and of general jurisdiction on December 15, 1925 for \$6,118.32, a copy of the exemplification of the record thereof and proceedings thereunder are hereto annexed and made a part hereof. Said defendant, at the time of entering said judgment, was subject to the jurisdiction of the said court.

2. The amount of said judgment has not been paid and the full amount is still due and owing by the said defendant to the said plaintiff, and said judgment is a valid and final adjudication remaining at this time in full force and effect not being in any way reversed, paid, satisfied, annulled or otherwise vacated and is capable of being enforced in the State of Pennsylvania by a final process. 10

Plaintiff demands as damages the sum of \$10,000.00. 20

Edmund H. Reeves
Attorney for plaintiff.

of \$9199.00 in cash. The Sheriff's fees on execution amounted to \$295.78 leaving a balance in his hands of \$8903.22, the amount due the plaintiff being \$6289.12, left a surplus belonging to the petitioner in the amount of \$2614.10.

4—There are no other judgment creditors with liens against the petitioner or against the property which was sold; and the petitioner knows of no one who has any interest whatever in the said surplus 10 money except herself.

The petitioner respectfully asks for a rule from this honorable court directing the Sheriff of Atlantic County or the Clerk of this court or which ever officer of this court may have custody of said surplus money to pay the same to the petitioner.

Eva B. Calverly

Petitioner

Attorney pro se

20

STATE OF PENNSYLVANIA }
 COUNTY OF PHILADELPHIA } ss.

Eva B. Calverly, of full age, being duly sworn according to law on her oath says: that she is the petitioner in the foregoing petition named; that she has read the same and that the facts stated therein are true.

Eva B. Calverly

30

Sworn to and subscribed before
 me, this 22nd day of April

A. D. 1926.

Ernest M. Jackson

A Foreign Commissioner of Deeds
 for New Jersey in Pennsylvania.

(Seal)

PART OF EXHIBIT C1.

(Filed April 29, 1926.)

NEW JERSEY SUPREME COURT

10

Eva J. Armstrong,	}	Action at Law
Plaintiff,		
vs.		
Eva B. Calverley,	}	Rule Directing Pay- ment of Surplus Money
Defendant.		

20 Upon reading the petition filed in the above entitled cause by Eva B. Calverley, defendant, attorney pro se, and it appearing from said petition and affidavit that the Sheriff of Atlantic County or the Clerk of this court has in custody the sum of \$2614.10 surplus money arising from the sale of certain real and personal property of the petitioner, as defendant, under execution in the above cause; and it further appearing that no judgment creditors or other persons have any lien or interest in said money and that the said defendant, Eva B. Calverley, is

30 entitled to be paid said surplus money: It is hereby ordered that the Sheriff of Atlantic County or the Clerk or any other officer of this court who may have custody of the surplus money arising from the sale under execution of the property of the defendant, Eva B. Calverley, in the above entitled matter be and he is hereby directed to pay the surplus

money in his hands after paying the plaintiff the amount due and after paying the Sheriff's execution fees, said surplus money to be paid to Eva B. Calverley, defendant.

Luther A. Campbell
Justice.

Let the above rule be entered.

I consent to the making of the above Rule.

Edmund H. Reeves
Attorney for Plaintiff. 10

EXHIBIT C4.

CONDITIONS OF SALE.

- 1.—The property will be sold to the highest bidder.
- 2.—*10** per cent of the purchase money shall be paid when the property offered is struck off, in default whereof it may be put up again and sold immediately. 20
- 3.—The balance of the purchase money shall be paid on the *14* day of *Apr* 1926, at 2 o'clock in the afternoon, at the Sheriff's office at Mays Landing, New Jersey.
- 4.—The deed will be delivered at the above time upon compliance by the purchaser with these conditions. 30
- 5.—The purchaser will be held bound by the purchase whether he intends to receive the deed and

*The parts of the Conditions of Sale that were written on the printed form are here set in Italics.

comply with the conditions of sale or not. If he does not so comply with them, the property may be again advertised and sold, or the purchaser may be liable for his bid, at the option of the Sheriff. In case of re-sale at a less price than the former bid, with interest and expenses, the former purchaser will be held liable for the deficiency; to meet which the money paid by him shall be retained and applied by the Sheriff.

- 10 *Sold subject to Municipal assts & taxes whatever they may be, taxes 1925 \$374.13 paving asst bill 35.00 unpaid also 1st mtg sub Ventnor B&L 10000 2nd mtg held by pltf 2500 with approx 2 years int. due.*

I have bid off the property described above for the sum of *Nine Thousand Dollars*, and agree to comply with the above conditions of sale. Dated this *31* day of *March* 1926.

20

(Signed) *Sherman H. Bloch* or assign Purchaser.
1516 Atlantic Ave. Residence.

30

EXHIBIT C7.

Date	Install- ments	Interest and Fines	Credits	Secy's Attestation	
Jan.					
Feb.					
Mar.					10
April					
May					
June					
1922					
July	50.				
Aug.	50.				
Sept.	50.				
Oct.	50.	60.	260.		
Nov.	50.	60.	110.	1/30/22 L P. E. Howard	20
Dec.	50.	60.	110.	12/22/22 L P. E. Howard	
1923					
Jan.	50.	60.	110.	1/12/23 P. E. Howard	
Feb.	50.	60.	110.	2/14/23 L P. E. Howard	
Mar.	50.	60.	110.	3/16/23 L P. E. Howard	30
April	50.	60.	110.	4/18/23 L P. E. Howard	
May	50.	60.	110.	5/14/23 L P. E. Howard	
				6/22/23 L	

	June	50.	60.	110.	P. E. Howard 7/24/23 L
	July	50.	60.	110.	P. E. Howard 8/30/23 L
	Aug.	50.	60.	110.	P. E. Howard 9/27/23 L
	Sept.	50.	60.	110.	P. E. Howard 10/22/23 L
	Oct.	50.	60.	110.	P. E. Howard 11/28/23 L
10	Nov.	50.	60.	110.	P. E. Howard 12/29/23 L
	Dec.	50.	60.	110.	P. E. Howard
<hr/>					
	1924				
	—				1/29/24 L
	Jan.	50.	60.	110.	P. E. Howard 2/27/24 L
	Feb.	50.	60.	110.	P. E. Howard 3/27/24 L
20	Mar.	50.	60.	110.	P. E. Howard 4/21/24
	April	41.	49.20	90.20	P. E. Howard 5/22/24
	May	41.	49.20	90.20	P. E. Howard 7/1/24
	June	41.	53.30	90.20	P. E. Howard 7/28/24 L
	July	41.	49.20	94.30	P. E. Howard 8/27/24 L
30	Aug.	41.	49.20	90.20	P. E. Howard 9/29/24
	Sept.	41.	49.20	90.20	P. E. Howard 10/27/24 L
	Oct.	41.	49.20	90.20	P. E. Howard 11/28/ 24

Nov.	41.	49.20	90.20	P. E. Howard 2/16/25	
Dec.	41.	53.30	94.30	P. E. Howard	
<hr/>					
1925					
<hr/>					
Jan.	41.	53.30	94.30	2/27/ W L P. E. Howard	
Feb.	41.	53.30	94.30	3/17/ W L P. E. Howard	
Mar.	41.	49.20	90.20	3/31/ W L P. E. Howard	10
April	41.	49.20	90.20	4/30/ W L P. E. Howard	
May	41.	49.20	90.20	5/29/25 P. E. Howard	
June	41.	49.20	90.20	6/29/ W L P. E. Howard	
July	41.	49.20	90.20	7/27/ W L P. E. Howard	
Aug.	41	49.20	90.20	8/29/ W L P. E. Howard	20
Sept.	41.	49.20	90.20	9/28/ W L P. E. Howard	
Oct.	41.	49.20	90.20	10/29/ W L P. E. Howard	
Nov.	41.	53.30	94.30	1/8/26 P. E. Howard	
Dec.					

EXHIBIT C7 (Continued).

CONSTITUTION

ARTICLE 1.

10 Sec. 1. This corporation shall be known by the name, style and title of "Ventnor Building and Loan Association," and is located in Atlantic City, Atlantic County, New Jersey.

 Its object is to accumulate a fund from the monthly contributions of its members, fines, premiums on loans, interest on its investment to aid its members in acquiring real estate, making improvements thereon and removing encumbrances therefrom, or for use in investment in any lawful business as they may deem advantageous, and for the
20 further object of accumulating a fund to be repaid to its members (subject to the right of earlier redemption) who do not obtain advances for purposes above mentioned, when the funds of the association shall amount to two hundred dollars per share.

ARTICLE II.

MEMBERSHIP AND VOTING.

30

 Sec. 1. Any person above the age of twenty-one years may become a member by being a shareholder or the parents or guardians of their minor children or wards, all of whom shall be entitled to vote as prescribed by the State Law, either in person or by proxy.

HOW AND WHEN PAYMENTS ARE MADE.

Sec. 2. Each shareholder shall for every share held pay one dollar as the first payment and thereafter pay for each share held the sum of one dollar per month, any time within the month, to the Secretary or any other person authorized by the Board of Directors to receive the same, until the net value of the stock in that series shall be sufficient to divide to each share the sum of two hundred dollars, unless sooner ordered paid by the directors as herein provided. 10

STOCK TAKEN AFTER FIRST MONTH.

Sec. 3. Any person joining the Association after the commencement thereof must pay the full value of a share at the time of taking same.

Sec. 4. Any member neglecting to pay his dues for six months, forfeits his stock and may be considered as having withdrawn, and any such member shall be entitled to receive from the association the withdrawal value of his shares, after first deducting all fines and forfeitures that may be charged against him with his proportion of any losses that may have occurred. 20

DEATH OF A MEMBER.

Sec. 5. Upon the death of any member, his personal representatives may continue in his place, or if such member has not taken a loan, may transfer his shares, or may, after one month's notice, receive from the Association the withdrawal value of each share, first deducting all fines and forfeitures that may be charged against him and his proportion of 30

any losses that may have occurred, but no stock on which a loan has been made shall be withdrawn until such loan is fully paid.

Sec. 6. No non-borrower to take, in any one series, more than twenty-five shares, except by vote of directors.

10 Sec. 7. When the shares of stock upon which mortgages or other loans have been granted shall have reached the matured value of two hundred dollars each, this amount shall be credited to the borrower and the loan or loans shall be fully paid and satisfied, if all dues, interest, fines and other indebtedness have been paid in full.

MATURED STOCK.

20 Sec. 8. When the value of any series of shares shall be two hundred dollars a share, the stockholders holding free shares shall receive a full value of their shares.

ARTICLE III.

WHENEVER THERE IS A SURPLUS IN THE TREASURY.

30 Sec. 1. The shares of non-borrowing members of the association may be retired and paid off at their actual value at such time and under such conditions as the Board of Directors may prescribe, beginning with the oldest series.

WITHDRAWALS.

Sec. 2. Any stockholder may withdraw from the Association by giving written notice at any stated

meeting, and at the next stated meeting, unless otherwise sooner ordered by Board of Directors, such member will be entitled to receive the amount of contributions actually paid, less all fines standing against same, and also a proportion of losses, if any, incurred by the Association at the following scale: 25 per cent. of the profits after the first year and thereafter increasing five per cent. each year, but at no time shall more than one-half of the funds in the treasury of the Association be applied to the payments of withdrawals without the consent of the Board of Directors, and the connection of such member with the Association shall cease. No shares shall be withdrawn until such loan is fully paid. 10

NEW SERIES OF STOCK.

Sec. 3. A new series of stock shall be issued at any time if so ordered by the Directors, the number of shares to be determined by the Directors. 20

ARTICLE IV.

THE BUSINESS—HOW CONDUCTED.

Sec. 1. The business of the Association shall be conducted by not more than eighteen directors, who with three auditors shall be elected at the annual meeting of the stockholders on the second Wednesday in February of the first year in the following manner: Six directors shall be elected to hold office for three years, and six directors shall be elected to hold office for two years, and six directors shall be elected to hold office for one year, and then at each annual meeting directors shall be elected to 30

take the place of those whose term ends; the three auditors are to hold office for a term of one year.

HOW BOARD SHALL BE ORGANIZED.

10 Sec. 2. The Board of Directors shall, at their annual meeting on the second Wednesday in February of each year, either immediately after the adjournment of the stockholders' meeting, or as soon thereafter as they may determine, elect from their own members, a President and Vice-President and elect also either of, or outside of their members, as they, the Directors may determine, a Treasurer, Secretary, Counsel, and such other assistants as the Directors may deem necessary.

TERM OF OFFICERS.

20

Sec. 3. The officers so chosen and elected shall hold office for the term of one year from the date of their election and until their successors are elected.

VACANCIES—HOW FILLED.

30 Sec. 4. Vacancies from any cause occurring during the year, may be filled by the Directors at any monthly or special meeting. Officers selected to fill such vacancies shall hold office for the unexpired term of their predecessors.

ARTICLE V.

THE BOARD OF DIRECTORS—PURPOSE AND
TIME OF MEETING.

Sec. 1. The Board of Directors shall meet regularly on the second Wednesday of each month, at the office of the Association, unless otherwise 10
ordered by the Directors, for the purpose of loaning the funds or making other investments and to attend to all other business which concerns the Association. The time of meeting shall be fixed by the Board. The President shall preside; in his absence the Vice-President shall preside, and in his absence the Directors can elect a President pro tem. Seven shall constitute a quorum. The office will be open at the regular monthly meetings to receive dues, etc., at eight o'clock P. M. 20

DIRECTORS TO PURCHASE PROPERTY.

Sec. 2. It shall be the duty of the Board of Directors to purchase at foreclosure any property mortgaged to the Association, if such action shall be considered by the said Board for the benefit of the Association.

REMOVAL OF OFFICERS.

30

Sec. 3. Any officer may be removed for any cause by a two-thirds vote of all the Directors.

POWER TO BORROW MONEY.

Sec. 4. The Board of Directors shall have the

power to borrow money on the note of the Association, signed by the President and Treasurer, and attested by the Secretary, providing such loan shall be in accordance with the State Laws.

SPECIAL MEETINGS.

10 Sec. 5. Special meetings of the Directors may be called by the President or any two Directors, at any time, by giving one day's previous written notice mailed to each Director.

20 Sec. 6. Special meetings of the Stockholders may be called at any time by the President or any two Directors, or by the Secretary at the written request of ten per cent. of the stockholders, but at least five days' notice of such meeting shall be given to each stockholder, except a meeting for amending the Constitution, which shall require at least ten days' prior notice as hereafter stated, and the object of such meeting shall be inserted in the notice; the notice to each stockholder shall be either a written notice through the mail addressed to each stockholder or may be by publishing in a newspaper published within the County of Atlantic at least five days before the meeting.

30 Sec. 7. The annual meeting of the Stockholders shall be held on the second Wednesday night of February at eight o'clock. Notice of this meeting shall be given by the Secretary at least ten days before the date of such meeting, and which notice shall be given by sending the same through the mail, addressed to each stockholder, or by inserting the said notice in a newspaper published in the County of Atlantic at least ten days before the meeting.

WHEN STOCKHOLDERS CAN EXAMINE BOOKS, ETC.

Sec. 8. The books and papers of the Association shall be open to inspection by the Stockholders at the annual, special or monthly meetings.

ARTICLE VI.

10

DUTIES OF OFFICERS—PRESIDENT.

The President shall preside at all meetings of the Directors, preserve order, sign all orders drawn on the Treasurer, when ordered by the Board of Directors, and perform all other duties usually appertaining to the office of President, or any other duties imposed upon him by order of the Board of Directors. He shall be ex-officio a member of all committees.

20

ARTICLE VII.

VICE-PRESIDENT.

It shall be the duty of the Vice-President, in the absence of the President, to preside at all meetings of the Board and in his absence discharge all duties appertaining to the office of President.

30

ARTICLE VIII.

TREASURER.

Sec. 1. He shall be the custodian of all funds belonging to the Association and shall deposit them,

or cause them to be deposited to the account of the Association, in the bank or trust company designated by the Directors; pay all orders drawn upon the Treasurer when ordered by the Board.

Sec. 2. He shall be the custodian of all securities belonging to the Association, excepting such as are given by him, which shall be held by the Secretary.

10 Sec. 3. For his honesty in the performance of his duties, and for the faithful delivery of all books, papers and money in his hands to his successor in office, he shall give bonds in such sum and with such security as the Directors shall prescribe, said bond to be renewed annually. He shall receive such compensation as the Board of Directors shall vote.

ARTICLE IX.

SECRETARY.

20

It shall be the duty of the Secretary to receive all moneys paid into or received by the Association and pay over the same to the Treasurer or into the bank or trust company designated by the Directors to the credit of the Association.

It shall be his duty to keep accurate minutes of the proceedings of the Association and the Board of Directors and to record the same in books kept for that purpose.

30 He shall keep accurate accounts with all stockholders and attest all orders drawn on the Treasurer for the payment of money.

He shall give notice of the annual or special meetings of the Stockholders and also of the special meetings of Directors, as set out in sections 5, 6 and 7 of Article V, of this constitution. He shall

give bonds with such security and for such sum as the Board of Directors may direct for his honesty in the performance of his duties, and for the faithful delivery of all books, papers and money in his hands to his successor in office, said bond to be renewed annually. He shall receive such salary as the Board of Directors may vote. He shall see that all taxes are paid on properties on which the Association holds mortgages, and if not paid, notify 10 the Directors and the person or persons owing the mortgages. He shall make the annual and State report. At the close of his term of office, he shall deliver all books, papers and other property belonging to the Association to his successor in office.

He shall see that all insurance policies are kept renewed and notify the Directors at each monthly meeting of the person or persons whose policies have or are about to expire and notify the insured of any policies not renewed. 20

ARTICLE X.

In the event of the absence or disability from any cause of the Secretary or Treasurer, the Board of Directors shall have power to appoint an Assistant Secretary or Assistant Treasurer to hold office during the absence or disability of the Secretary or Treasurer and whose duties shall be the same as the Secretary or Treasurer. 30

ARTICLE XI.

DUTIES OF AUDITORS.

The auditors shall make a thorough audit and inspection of the books, papers, securities, accounts

on bond and mortgage and shall fail to pay the interest, premiums or fines for sixty days after the same become due, then the principal sum of such mortgage shall, at the option of the Directors, become due and payable at once.

FINES AND PENALTIES AFTER THREE MONTHS.

10

Sec. 4. If the dues, interest, premiums or fines should be suffered to remain unpaid for three months, a fine of two per cent. per month may be charged on the account in arrears.

Sec. 5. All members not paying the dues for the month within the month shall be charged a fine of ten cents per share per month.

ARTICLE XIII.

20

HOW TO APPLY FOR A LOAN.

Any person wishing a loan shall make application to the Secretary or some other officer of the association. He shall fill out, or cause to be filled out, a blank application, giving a description of the property with the amount of the loan desired. If the loan be approved by the Committee and passed by the Directors, it shall be allowed.

30

ARTICLE XIV.

Sec. 1. Every member twenty-one years of age or over shall, for each share held in his own right, be entitled to a loan of two hundred dollars, and whenever a loan is offered, and there is more than

one applicant, it shall be disposed of by the Board to the person first applying for same, provided his loan is granted.

10 Sec. 2. Whenever a member shall become entitled to a loan as set out in Section 1, he shall pay a premium of ten cents for each hundred dollars or fraction thereof, per month, and secure the payment to the satisfaction of the Board of Directors by mortgage upon sufficient real estate or pledge; and in case there are buildings on said real estate, the same shall be first insured and kept insured as long as the Directors shall require and the policies assigned to the association, and shall also assign to the association, for every loan of two hundred dollars, at least one share of stock of this association.

ARTICLE XV.

20 Sec. 1. Stockholders, whose dues and fines are paid up, shall be entitled to borrow from the association, not exceeding ninety per cent. of the withdrawal value of his shares, by giving the association a bond or note and by transferring a sufficient number of shares as collateral security to cover the gross amount of his loan, the borrower paying interest and premium, said premium to be ten cents a month on each hundred dollars or part thereof and the rate of interest to be one-half of one per cent.
30 per month.

Sec. 2. Should any borrowing stockholder, as above set out allow the interest, premium and dues, or any of them, to remain unpaid for the space of six months, then his shares so transferred may be declared forfeited to the association.

ARTICLE XVI.

Sec. 1. Members taking loans shall pay the interest and the dues, at any time within the month, together with the monthly premium.

WHEN A LOAN OR A PART CAN BE PAID.

10

Sec. 2. A borrower may repay his loan or any part of it at any time and the stock of the association will be taken for the payment of loans at its withdrawal value.

Sec. 3. Members taking loans who do not pay interest, premium and dues within the month for the month shall be charged a fine of ten cents per share per month.

ARTICLE XVII.

20

The Board of Directors shall have the power to insure all buildings or property upon which loans have been made and also to renew the same or secure other insurance if the mortgagors refuse or neglect to renew the same and to collect the amount paid therefor in the same manner as fines, installments and interest are collected.

ARTICLE XVIII.

30

LOANS ON REAL ESTATE.

No loan shall be made on real estate except it be a first lien and shall not exceed 80 per cent. of the cash value thereof, except where the association

holds a mortgage on real estate, which is a first lien, then it may increase its loan and secure the same by a second or subsequent mortgage; provided the total indebtedness to the association, less the amount of dues paid on the shares pledged for such loan, shall not exceed eighty per centum of the cash value of the real estate loaned on, and all the mortgages held by said association shall be prior to any
10 other encumbrances on said real estate.

ARTICLE XIX.

Every stockholder having a loan shall be held as contracting to pay all taxes that may be assessed at any time upon the property and pay all insurance; he shall also pay the counsel of the association for drawing all necessary papers and making all necessary searches as the said counsel shall deem necessary.
20

ARTICLE XX.

The Board of Directors shall have the power to make such By-Laws and Regulations as they may deem necessary not inconsistent with the Constitution or State Laws.

ARTICLE XXI.

30 This Constitution may be amended, supplemented, altered or repealed by a two-thirds vote of the stockholders present at the annual or any special meeting, provided ten days' previous written notice shall have been given to each stockholder, which notice shall be given by sending same through the mail

addressed to each stockholder or by publishing in a newspaper published in the County of Atlantic.

Wherever the masculine gender is used in this Constitution, it shall be deemed to apply to all persons, corporations, etc.

BY-LAWS.

At the regular monthly meeting the second Wednesday of each month, the office of the association shall be open to receive money at eight o'clock P. M. The office hours shall be determined by the Directors. 10

COMMITTEES.

There shall be the following committees appointed by the President: The Loan Committee, The Property Committee and The Investment and Finance Committee. 20

THE LOAN COMMITTEE.

The Loan Committee, consisting of three members, shall examine all properties offered for loans and make a written report to the Directors, to be filed with the other papers or mortgages, and shall be appointed for one year.

30

THE PROPERTY COMMITTEE.

The Property Committee, consisting of three members, shall have in charge all property owned or held by the association, keep the same in repair, insured, rented, if necessary, taxes paid, and keep

the Board informed about the same, and see that the rents are paid to the Secretary, and inspect properties on which the association has loans, and shall be appointed for one year.

THE INVESTMENT AND FINANCE
COMMITTEE.

10 It shall be the duty of this Committee, consisting of three members, to procure loans, to see that money is kept invested, audit the bills and assist the auditing committee and see that the monthly and annual reports are made, and shall be appointed for one year.

ORDER OF BUSINESS.

20 Roll Call, Reading of Minutes, Reports of Committees, On Loans, On Property, On Investment and Finance, Special, Communications, Unfinished Business, New Business.

EXHIBIT C8.

30 KNOW ALL MEN BY THESE PRESENTS, THAT We, Eva Bernstein Calverley and Benjamin F. Calverley, of the City of Atlantic City, County of Atlantic and State of New Jersey (hereinafter called the Obligors) are held and firmly bound unto VENTNOR BUILDING AND LOAN ASSOCIATION OF ATLANTIC CITY, N. J., a corporation incorporated to conduct the business of a building and loan association under the laws of the State of

New Jersey relating to such associations (hereinafter called the Obligee) in the sum of Twenty Thousand Dollars, lawful money of the United States of America, to be paid unto the said Obligee, its certain Successors or Assigns; to which payment well and truly to be made we do hereby bind and oblige ourselves, our and each of our heirs, executors, administrators and assigns jointly and severally firmly by these presents. Sealed with our seals. Dated the Twenty third day of October, in the year of our Lord one thousand nine hundred and twenty-two 10

WHEREAS the above named Obligors, have secured from the above named Obligee the advance or loan of the sum of Ten Thousand Dollars upon fifty shares of stock in the thirty-ninth series of the stock issued by the above named Obligee, said advance or loan having been made in anticipation of the maturity value of said shares of stock, and said advance being considered as a payment of the maturity value of said stock before it is due. 20

AND WHEREAS by an assignment bearing even date herewith, the said Obligors have duly assigned and transferred said shares of stock to the said Obligee as collateral security for the payment of said advance or loan, and the interest, dues, premiums, fines or other indebtedness that will arise by virtue thereof, according to the provisions of the Constitution and By-Laws of the Association of said Obligee.

AND WHEREAS the said Obligee cannot make said advance or loan to said Obligor upon said shares of stock unless said Obligors execute and deliver to the said Obligee a bond and warrant and mortgage upon real estate as security for the payment of said advance or loan and the other obligations herein created, according to the laws of the State of New Jersey, relating thereto, and the con- 30

stitution and By-Laws and the Rules and Regulations of the Association of said Obligee.

NOW THEREFORE, the condition of this obligation is such that if the above bounden Obligors or their heirs, executors, administrators, or any of them, shall and do well and truly pay or cause to be paid unto the above named Obligee, its certain attorney, successors or assigns the said just sum of Ten Thousand Dollars advanced in the manner and
10 for the purposes stated aforesaid, lawful money as aforesaid, at or before the time when each of the aforesaid shares of stock shall be worth a net sum of Two Hundred Dollars on the books thereof and said series of shares shall mature, together with monthly payments of interest thereon at the rate of one-half of one per centum per month, as is now or may hereafter be provided for in the Constitution and By-Laws of the said Obligee, dues
20 on aforesaid shares of stock at the rate of One Dollar per share per month, a monthly installment premium of Ten Cents for each one Hundred Dollars of said advance or loan, or fractional part thereof, figured upon said principal sum advanced as stated aforesaid, and such fines or other indebtedness as shall appear by the books of said Obligee to be due and payable, all of the said installments to be paid monthly, at such times and places and in such sums and amounts as herein provided for, and if not mentioned herein then as now are or may hereafter be
30 provided for and required by the Constitution and By-Laws of the said Association of said Obligee, without any fraud or further delay, and shall not apply for any deduction by reason of the accompanying mortgage from the taxable value of the real estate therein described and embraced, and shall pay all taxes, or any other State, Federal, Municipal, or public assessment levied upon said real es-

tate or the money secured hereby, and produce to the said Obligee, its Successors or Assigns, within ten days after the same become due and payable, receipts for all of said taxes or said other State, Federal, municipal, or public assessments, then the above obligation to be void, or else to be and remain in full force and virtue.

PROVIDED, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of said installments of interest, dues, premiums, fines or other indebtedness as specified aforesaid for the period of sixty days after any payment thereof shall fall due, or should said Obligors, or their heirs, executors, administrators or assigns at any time fail to keep the buildings on the lands described in the accompanying mortgage well and sufficiently insured against loss or damage by fire in reliable fire insurance companies, satisfactory to the Obligee, to an amount not less than Ten Thousand Dollars, with the New Jersey Standard subrogation clause attached thereto, assigned to, or the loss made payable to the said Obligee or its Assigns, as collateral security for the payment of the said advance or principal debt and said installments of interest, dues, premiums, fines or other indebtedness as stated aforesaid, and to deliver said policy or policies into the possession and keeping of said Obligee, or should the said Obligors, or their heirs, executors, administrators or assigns at any time fail to pay any tax assessed upon the lands described in the accompanying mortgage and the buildings and improvements thereon, or the money secured hereby, or any other State, Federal, municipal or public assessment levied against any of the same, for the period of ten days after the same is due and collectible by law, then, and in case of any default or failure aforesaid, the whole prin-

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principal debt or advance aforesaid shall become due and payable immediately and payment of said principal debt or advance and all interest, dues, premiums, fines or other indebtedness due, or that may grow due hereon, as stated aforesaid, may be enforced and recovered at once, anything herein contained to the contrary notwithstanding.

AND PROVIDED FURTHER, however, and it is hereby expressly agreed, that in the event of the
10 failure of said Obligors, or their heirs, executors, administrators or assigns, to place or pay for said fire insurance, or to pay said taxes or other assessments in the nature thereof as stated aforesaid at the expiration of ten days after the same become due and payable, the Obligee, its successors or assigns, may pay the same and the amount paid for said fire insurance and said taxes or other assessments in the nature thereof, may be charged
20 as a lien upon the said premises, added to the amount due under this obligation and collected with the other obligations payable as herein provided for, with legal interest from the date of said payments.

AND PROVIDED FURTHER, however, and it is hereby expressly agreed, that all of the provisions contained in the aforesaid laws of the State of New Jersey relating to building and loan association and the Constitution and By-Laws of said Obligee as are now in force or may hereafter be adopted that affect
30 the obligations hereby created, the said accompanying mortgage and said assignment of stock are to be considered as a part of this obligation, said mortgage and said assignment of stock, as fully and completely as if the same were embodied in detail herein and therein.

AND PROVIDED FURTHER, however, and it is hereby expressly agreed, that no credit shall be

claimed or allowed on the interest payments above provided because of any of said taxes or other assessments in the nature thereof paid by said Obligors, or their heirs, executors, administrators or assigns.

AND PROVIDED FURTHER, however, and it is hereby expressly agreed, that in the event of the default on the part of the Obligors or their heirs, executors, administrators or assigns, in the performance of any of the terms and conditions stipulated and agreed to be performed in this obligation, the aforesaid assignment of stock and the said accompanying mortgage, then, and in such case the Oblige, its successors or assigns, may cancel the aforesaid shares of stock duly assigned to said Oblige for the purposes therein and herein stated, at the then withdrawal value thereof as shown upon the books of said Oblige, and credit the same upon the amounts then due under this obligation and the accompanying mortgage and proceed for the collection of the balance then found to be due by foreclosure of the accompanying mortgage or otherwise, at the option of said Oblige, its successors or assigns. 10 20

And PROVIDED FURTHER, however, and it is hereby expressly agreed, that none of the monthly installments above provided for to be paid by the said Obligors, or their heirs, executors administrators or assigns, are to be credited as payments on account of the principal sum of said advance or obligation, except the installments paid as dues on said shares of stock. The installments of premium paid are a part of the consideration for said advance or loan and are to be considered as a part of the general profits of the Association of the said Oblige and no part of same are to be credited to the said Obligors, or their heirs, executors, admin- 30

istrators or assigns, except to share with all of the other shareholders in the general profits of said Association. The fines as stated aforesaid are to be charged monthly on the arrearage of the previous month as now or may hereafter be provided for and required by the Constitution and By-Laws of said Obligee.

10 AND PROVIDED FURTHER, however, and it is hereby expressly agreed, that when said shares of stock, duly assigned as stated aforesaid, mature that the Obligee may take the maturity value of same and use it to pay off or discharge the said advance or loan and the other obligations herein created, and should said Obligors, or their heirs, executors, administrators or assigns, desire to pay off or discharge said advance or loan, this Obligation and the accompanying mortgage prior to the maturity of said shares of stock, that then, and in such case, 20 said shares of stock shall be cancelled and withdrawn by said Obligors, or their heirs, executors, administrators or assigns, and the withdrawal value thereof credited upon the monies due under this Obligation and the accompanying mortgage and only the balance then found to be due paid by said Obligors, their heirs, executors, administrators or assigns.

30 AND PROVIDED FURTHER, however, and it is hereby expressly agreed, that if at any time hereafter, by reason of any default or failure aforesaid suit should be brought in any Court for the recovery of the amount of said principal sum advanced or loaned, as stated aforesaid, and said interest, dues, premiums, fines or other indebtedness above provided for, or judgment shall be obtained by virtue of the warrant of attorney annexed hereto, or proceedings to foreclose the accompanying mortgage shall be had an attorney's fee of two per cent. for

services, shall be payable by reason of such suit, judgment or proceedings, and shall be recovered in addition to all principal, interest, dues, premiums, fines, taxes or other indebtedness then due, besides costs of suit.

(Signed) Eva Bernstein Calverley (Seal)

“ Benjamin F. Calverley (Seal)

SEALED AND DELIVERED

In the presence of

(Signed) Ernest A. Lord

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To JOHN B. SLACK, ESQUIRE Esq.,

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

This is to authorize you to appear for us or either of us and in name in any Court of competent jurisdiction in case of the breach of the condition of the above Bond and confess judgment for the penalty therein contained, as of the last or any subsequent term, with cost of suit and release of errors; and this shall be your sufficient warrant. 20

WITNESS our hands and seals this Twenty-third day of October Anno Domini one thousand nine hundred and twenty-two

Eva Bernstein Calverley (Seal)

Benjamin F. Calverley (Seal)

SEALED AND DELIVERED

In the presence of

(Signed) Ernest A. Lord

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EXHIBIT C9.

THIS INDENTURE, made the twenty third day of October in the year of our Lord one thousand nine hundred and twenty two.

BETWEEN Eva Bernstein Calverley and Benjamin F. Calverley, her husband, of the city of Atlantic City, County of Atlantic and State of New Jersey, of the first part, and the Ventnor Building and Loan Association of the city of Atlantic City, County of Atlantic and State of New Jersey, a corporation incorporated to conduct the business of a building and loan association under the laws of the State of New Jersey, relating to such associations, of the second part:

WHEREAS the said Eva Bernstein Calverley and Benjamin F. Calverley, in and by their certain obligation or writing obligatory under their hands and seals duly executed and bearing even date herewith stand bound as therein stated unto the said party of the second part in the sum of twenty thousand dollars, lawful money of the United States of America, conditioned for the payment of the just sum of ten thousand dollars, advanced in the manner and for the purposes therein stated and the payment of the installments of interest, dues, premiums, fines or other indebtedness as therein provided for, pursuant to the covenants and conditions contained in said obligation or writing obligatory in manner and form following: *

* * * * *
The foregoing being an exact copy of said bond or obligation.

*Explanatory note: In order to avoid repetition, the copy of the bond contained in the mortgage is omitted.

NOW THIS INDENTURE WITNESSETH, that the said parties of the first part, as well, for and in consideration of the aforesaid advance or principal sum of ten thousand dollars, advanced as stated aforesaid, and for the better securing the payment of said advance or principal sum and the installments of interest, dues, premiums, fines, or other indebtedness as stated aforesaid, unto the said party of the second part, its successors and assigns, and in order to secure the complete performance and discharge of the covenants and conditions in the said obligation above recited and of the obligations created in this mortgage on the part of the said parties of the first part as for and in further consideration of the sum of one dollar in specie, well and truly paid to the said parties of the first part by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released, and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm unto the said party of the second part, its successors and assigns, all that certain tract or parcel of land and premises hereinafter particularly described situate in the city of Ventnor City, County of Atlantic and State of New Jersey.

BEGINNING in the northeasterly line of Richards Avenue one hundred (100) feet southeastwardly from the intersection of the northeasterly line of Richards Avenue with the southeasterly line of Atlantic Avenue and in the dividing line between lots two and three in block seventy two B on plan of Ventnor Beach Front Improvement Company and extending thence (1) southeastwardly, along the northeasterly line of Richards Avenue fifty (50) feet in front or width; thence (2) northeastwardly, between parallel lines of that width and parallel with

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Atlantic Avenue sixty two and five tenths (62.5) feet in length or depth being lot number three in Block seventy two B on plan aforesaid. Being the same premises conveyed to the said Eva Bernstein Calverley by deed from Rena Loveland Wheeler et vir, dated — and intended to be forthwith recorded in the Clerk's office of Atlantic County at Mays Landing, N. J.

10 TOGETHER with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

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

20 PROVIDED ALWAYS NEVERTHELESS, that if the said parties of the first part, or their heirs, executors, administrators or assigns, do and shall well and truly pay or cause to be paid unto the said party of the second part, or to its certain attorney or attorneys, successors or assigns, the aforesaid debt or sum of ten thousand dollars, advanced as stated aforesaid, and said installments of interest, dues, premiums, fines, or other indebtedness in the manner and on the days and times hereinbefore mentioned and appointed for the payment
 30 thereof, and shall do and perform all of the terms and conditions set out in said bond or obligation and this the accompanying mortgage, as agreed upon, without any fraud or further delay and without any deduction, defalcation or abatement to be made, for or in respect of any taxes, charges or assessments whatsoever that then and from thenceforth as well this present indenture and the estate

hereby granted as the said obligation above recited shall cease, determine and become absolutely null and void, to all intents and purposes anything hereinbefore contained to the contrary thereof, in anywise notwithstanding.

And the said parties of the first part, for themselves, their heirs, executors, administrators or assigns do covenant and agree to and with the said party of the second part, its successors and assigns, that the said party of the second part, its successors or assigns shall and may from time to time and at all times after default shall be made in the performance of any proviso or condition herein contained or in said obligation above recited, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy, all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said parties of the first part, their heirs, executors, administrators or assigns or of any other person or persons whatsoever. 10 20

And it is further covenanted and agreed by and between the parties to these presents that all of the covenants and conditions set out in the above recited bond or obligation accompanying this mortgage are hereby made a part of the covenants and conditions of this mortgage and the lands and premises herein conveyed are charged with a lien for the complete performance of all of said covenants and conditions hereinabove recited from said bond. 30

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

Eva Bernstein Calverley (Seal)
Benj. F. Calverley (Seal)
Benjamin F. Calverley (Seal)

118 *Complainant's Mortgage to Association*

Signed, sealed and delivered
in the presence of
Page 1 line 3 "F" interlined
before signing.
Ernest A. Lord

10 State of New Jersey, Atlantic County, ss.

BE IT REMEMBERED, that on this twenty third day of October in the year of our Lord one thousand nine hundred and twenty two, before me, the subscriber a Notary Public personally appeared Eva Bernstein Calverley and Benjamin F. Calverley, who I am satisfied are the grantors mentioned in the above deed or conveyance and I having first made known to them the contents thereof, they ac-

20 knowledged that they signed, sealed and delivered the same as their voluntary act and deed; and the said Eva Bernstein Calverley, being of full age on a private examination apart from her said husband, before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified.

Ernest A. Lord

Notary Public.

30 Received and recorded October 24, 1922 at 8 A. M.
Edwin A. Parker, Clerk.
Mortgage Book No. 245 page 67.

EXHIBIT C10.

KNOW ALL MEN BY THESE PRESENTS, That I, Eva Bernstein Calverley of the City of Atlantic City, County of Atlantic and State of New Jersey having this day secured from the Ventnor Building and Loan Association of Atlantic City a corporation incorporated to conduct the business of a building and loan association under the laws of the State of New Jersey relating to such associations, an advance or loan of Ten Thousand Dollars, upon fifty shares of stock in the thirty-ninth series of said Association, being represented by Certificate, No. 39031 of the shares of stock in said Association, in anticipation of the maturity value of said stock, in said Association, in anticipation of the maturity value of said stock, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto the said Association, its Successors and Assigns, as collateral security for the payment of said advance or loan, and the interest, dues, premiums, fines or other indebtedness that may arise by virtue thereof, according to the terms and conditions of the bond and mortgage bearing even date herewith, and also given to secure said advance or loan and the other conditions mentioned therein, all my right, title and interest of, in and to said shares of stock above recited. 10 20 30

It being the intention and purpose of these presents at the maturity of said shares of stock when the same are worth Two Hundred Dollars each on the books of said Association that the said maturity

value of same is to be used by said Association to cancel my indebtedness to the said Association by virtue of said advance or loan and all other liabilities arising thereunder and by virtue thereof. In consideration of said advance or loan, all of the terms and conditions set out in said bond and mortgage are to bind and effect said shares of stock duly assigned herewith and in case of default on my part
10 in any of the conditions and covenants set out in said bond and mortgage, it is understood and agreed that said Association can cancel said shares of stock at the then withdrawal value thereof, and credit the same upon the amount then due for said advance or principal sum, interest, dues, premiums, fines or other indebtedness, according to the terms and conditions of said bond and mortgage, and proceed to collect the balance then due by foreclosure of said
20 bond and mortgage, or otherwise at the option of said Association.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-third day of October in the year of our Lord one thousand nine hundred and twenty-two.

(Signed) Eva Bernstein Calverley
Signed, Sealed and Delivered
in the presence of
Ernest A. Lord

EXHIBIT D8.

March 8th, 1926.

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Mr. Charles M. Armstrong,
#8045 York Road,
Elkins Park, Pa.

Dear Sir:

Replying to yours of the 13th inst. concerning mortgage account of Mrs. Calverley, would advise you that I did not know the property was to be offered at Sheriff's sale on the 31st inst. and would advise you that the amount required to satisfy our mortgage as of March 31st, 1926 is \$6524.18 plus a fire insurance bill amounting to \$18.38 and would further advise you that unless this amount is paid during this month there will be an additional fine of \$4.10 for such delinquency. 20

Yours very truly,

Secy.

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CONCLUSIONS.

(Filed Sept. 25, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between EVA B. CALVERLEY, <i>Complainant,</i> and VENTNOR BUILDING & LOAN ASSN., <i>et al.</i> , <i>Defendants.</i>	}	On Bill, &c. Conclusions.
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1. At a judicial sale of real property subject to a building and loan mortgage, upon which payments, not only on dues, but also in lump-sum had been made, announcement was made that the sale was made subject to the building and loan association mortgage of \$10,000 (the face amount of the mortgage allowing no credits).
- 30 2. The attorney who gave the sheriff said statement knew payments had been made, but did not know the exact amount.
3. The loan was primarily secured upon 50 shares of stock, which were assigned as security for the loan, and the bond and mortgage were given in addi-

tional security therefor. Held, that the land was sold subject only to the amount due the building and loan association, after giving credits for the amount paid as dues, etc., and also for the amount otherwise paid on account.

4. That the fact that the purchaser had ascertained the correct amount due the association before the sale, placed upon him no duty to challenge the statement of the sheriff.

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MR. WALTER CARSON for the complainant.

MR. JOHN B. SLACK for the defendant, Ventnor Building & Loan Association.

MESSRS. CASSMAN & GOTTLIEB for the defendant, Sherman H. Block.

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INGERSOLL, V. C.:

It should be first stated, that at the hearing of this case the Ventnor Building and Loan Association, by its counsel stated that that association, as defendant, had no interest in this case and all counsel requested me to sit (notwithstanding my being a director of said association), I did so.

On October 23rd, 1922, complainant obtained of the defendant a loan of \$10,000, the terms of which 30 are set out in the bond and warrant and mortgage, then given by the complainant and her husband, as follows:

“WHEREAS the above named Obligors, have secured from the above named Obligees the advance or loan of the sum of Ten Thousand Dol-

lars upon fifty shares of stock in the thirtieth series of the stock issued by the above named Obligee, said advance or loan having been made in anticipation of the maturity value of said shares of stock, and said advance being considered as a payment of the maturity value of said stock before it is due.

10 AND WHEREAS by an assignment bearing even date herewith, the said Obligors have duly assigned and transferred said shares of stock to the said Obligee as collateral security for the payment of said advance or loan, and the interest, dues, premiums, fines or other indebtedness that will arise by virtue thereof, according to the provisions of the Constitution and By-Laws of the Association of said Obligee.

20 AND WHEREAS the said Obligee cannot make said advance or loan to said Obligors upon said shares of stock unless said Obligors execute and deliver to the said Obligee a bond and warrant and mortgage upon real estate as security for the payment of said advance or loan and the other obligations herein created, according to the laws of the State of New Jersey, relating thereto, and the Constitution and By-Laws and the Rules and Regulations of the Association of said Obligee.

30 NOW THEREFORE, the condition of this obligation is such that if the above bounden Obligors or their heirs, executors, administrators or any of them, shall and do well and truly pay or cause to be paid unto the above named Obligee, its certain attorney, successors or assigns, the said just sum of Ten Thousand Dollars advanced in the manner and for the purpose stated aforesaid, lawful money as aforesaid, at or before the time when each of the aforesaid shares

of stock shall be worth a net sum of Two Hundred Dollars on the books thereof, and said series of shares shall mature, together with monthly payments of interest thereon at the rate of one-half of one percentum per month, as is now or may hereafter be provided for in the Constitution and By-Laws of the said Obligee, dues on aforesaid shares of stock at the rate of One Dollar per share per month, a monthly installment premium of Ten Cents for each One Hundred Dollars of said advance or loan, or fractional part thereof, figured upon said principal sum advanced as stated aforesaid, and such fines or other indebtedness as shall appear by the books of said Obligee to be due and payable, all of the said installments to be paid monthly, at such times and places and in such sums and amounts as herein provided for, and if not mentioned herein then as now are or may hereafter be provided for and required by the Constitution and By-Laws of the said Association of said Obligee, without any fraud or further delay. * * *”

One, Eva J. Armstrong, the daughter of the complainant, obtained a judgment by default against her mother. By virtue of the execution issued in said proceedings the premises were sold by the sheriff to the defendant, Block.

At the time of the sale, it was announced that it was sold subject to Ventnor Building and Loan Association's mortgage of \$10,000 and a second mortgage of \$2500, with approximately two years' interest due.

Prior to the sale, the present complainant had made payments in accordance with the terms of the

mortgage, and also paid on account of the principal thereof the sum of \$1800.

The attorney of the plaintiff knew that payment had been made on account of the building and loan mortgage, but not knowing the exact amount thereof announced that "the sale would be made subject to Municipal assessments and taxes, whatever they may be, taxes 1925, \$374.13, paving assessment bill \$35 unpaid, also first mortgage Ventnor Building
10 and Loan Association \$10,000, second held by plaintiff \$2500 with approximately two years' interest due." This clause was upon the conditions of the sale and the testimony of the sheriff was that,

"It was written in this manner. I conducted that as I conduct all sales. The sale was announced. The advertisement was read. The conditions of sale were read and I inquired of the attorney, Mr. Reeves, if he had any statement to make and Mr. Reeves then made the
20 statement which you have just read, which was on this blank before the sale was cried even, then the bid was made and the conditions of sale as to the purchase signed by Mr. Block."

There can be little, if any, doubt as to the judgment obtained by Mrs. Armstrong. It manifestly was by consent of the present complainant and the testimony and occurrences are strongly suggestive that the attorney for the daughter was also acting,
30 if not for the mother, at least with her approval.

The bill alleges:

"3. As collateral security for the payment of said loan of \$10,000 complainant also subscribed for and assigned to said Ventnor Building and Loan Association fifty shares of its stock, and pay all dues and charges thereon and in connec-

tion therewith and all interest becoming due upon said bond and mortgage from and beginning with the month of July, 1922, to and including the month of November, 1925."

It is manifest that the loan was primarily secured (as stated in the bond) upon the fifty shares of stock, which were assigned as collateral security for the loan, and that the said bond and mortgage was, according to the law as governing said associations, 10 given in additional security therefor.

The said stock being of considerable value at the time of sale, the question is whether the payments theretofore made on said indebtedness, and the payment of the said sum of \$1800 should be credited upon the indebtedness to the Ventnor Building and Loan Association, or whether the stock is the property of the said complainant.

As to the payment of the sum of \$1800, this is clearly a payment on account of the indebtedness, 20 and was so made.

The only question is: What amount was due the Ventnor Building and Loan Association at the time of the sale, by reason of the loan made by it to Calverley? Manifestly, all payments made on account thereof must be credited in accordance with the terms as set out in the mortgage and other securities executed by Mrs. Calverley.

It will be noted that any case heretofore decided has been upon the theory that the stock was assigned as collateral security to the mortgage as was set forth in this bill. In this case, however, the stock was the original security for the loan, and all payments made thereon, must be credited either as interest, other charges, or on account of principal. 30

Article II, Sect. 7, of the constitution of the said association provides:

“When the shares of stock upon which mortgages or other loans have been granted shall have reached the matured value of two hundred dollars each, this amount shall be credited to the borrower and the loan or loans shall be fully paid and satisfied, if all dues, interest, fines and other indebtedness have been paid in full.”

Article XIV, Sect. 1, provides:

- 10 “Every member twenty-one years of age or over shall, for each share held in his own right, be entitled to a loan of two hundred dollars, and whenever a loan is offered, and there is more than one applicant, it shall be disposed of by the Board to the person first applying for same, provided his loan is granted.”

20 It would appear absurd to believe that if the stock was paid in full, the mortgage would be non-effective; but that if any amount, no matter how small, remain due, the owner of the land would be entitled to no credit whatever thereon.

In other words, if at the time of sale the shares of stock had reached its matured value of \$200 each, the amount should be credited to the borrower and the loans be fully paid; but if the sale of said shares should have reached only \$195 each, no credit could be made.

30 At the conclusion of the hearing I stated:

“Gentlemen, doesn't this resolve itself into two questions; the first of which can be divided into two parts: First, can announcement made by the sheriff, by direction of the attorney of the plaintiff, manifestly false upon its face, bind the purchaser who signs that condition of sale? It is admitted in this entire case, on the first

sub-division of that question, that \$1800 had been paid on account of the principal and that there was only due on the mortgage as principal the sum of \$8,200. That fact was known by counsel or attorney who gives the information to the sheriff and is known also by the purchaser. It must have been known by the owner of the land who—it is not testified whether she was present or not at the sale. Now, is the purchaser bound by that condition of sale in 10 so far as the \$1800 payment on account of the principal is concerned?

Secondly, is he bound on that condition of sale for the amount of money which this woman has paid into the building and loan association, regardless of any other question except the question of the condition of sale and the fact that the money is paid? These two sub-divisions make the first question to be determined.

If he is not bound by that, there is the sub-sequent question. If he is bound by that condi- 20 tion, it seems unnecessary to determine the remaining question, which is: Is the holder of building and loan association stock, which has been assigned as collateral for a loan of money advanced by the building and loan association to the owner of the stock and who also, as a condition of that loan on the stock gives a bond and mortgage as additional collateral for the same loan, and who, thereafter by her own act 30 or by the act of the law becomes divested of the title to the land, is or is not the original owner of the stock, who has assigned it as collateral, entitled to a credit to her personally for the amount of payments made on account of the principal of the mortgage or is that a payment on account of the principal of the mortgage for

which the purchaser is entitled to a credit? In other words, does the purchaser, either at private or public sale of a property subject to a building and loan association buy that property subject to the then amount due the building association, after crediting all payments or is that sale made subject to the principal of the mortgage, all payments thereon reverting to the holder of the land?

10 Now, are they not the two legal propositions—one, as I say, subdivided?

Because of the peculiar condition of this case, the Court is bound to consider whether or not this announcement by the sheriff, by reason of the information given to him by the counsel, whether or not there has been collusion between the plaintiff and the defendant, and whether if that announcement was made, whether or not Mrs. Calverley can take advantage of that statement under the circumstances.

20

The fact that her daughter was the plaintiff—and it is quite manifest that it was a friendly suit, because they were together afterwards, apparently family relations were not disturbed at all—together with the fact that the same attorney represented Mrs. Calverley in at least the preparation of the petition for surplus money to the extent, at least, that it was sent by him to the Justice of the Supreme Court with a statement that if it was filed *pro se*, of course, and that on the file there is no statement of attorney *pro se*, or anywhere else and it is in the same form that all other papers apparently were in the same case.

30

Mr. Carson: I think, if your Honor please, at the end of the paper signed by Mrs. Caverley as attorney *pro se*.

The Court: Yes, it is so marked, petitioner attorney *pro se*, but the papers were prepared and mailed by the same attorney of the daughter. I simply call attention to that fact because that may enter into the matter."

I will advise a decree in accordance with the above views.

10

FINAL DECREE.

(Filed Oct. 10, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between

EVA B. CALVERLEY,
Complainant,

and

VENTNOR BUILDING AND
LOAN ASSOCIATION, *et*
als.,

Defendants.

On Bill, &c.
Final Decree.

30

This cause coming on to be heard upon bill, answers and replication, before the Honorable Robert H. Ingersoll, the Vice-Chancellor to whom, by a previous order made herein, it was referred to hear the same for the Chancellor, in the presence of Walter Carson, solicitor for and of counsel with the com-

plainant, John B. Slack, solicitor for and of counsel with the defendant Ventnor Building and Loan Association, Cassman & Gottlieb, solicitors for and of counsel with the defendants Sherman H. Bloch, Julia F. Bloch and Benjamin B. Bloch; and the pleadings and proofs having been read, and the argument of the respective counsel having been heard and considered, and the Court having considered said pleadings, proofs and arguments, and it appearing to the
10 Court that the complainant is not entitled to the relief sought ad prayed for by her in her bill of complaint.

It is, on this tenth day of October, 1929, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the complainant's bill be and the same is hereby dismissed with costs.

E. R. WALKER,
C.

20 Respectfully advised,
R. H. INGERSOLL,
V. C.

NOTICE OF APPEAL.

(Filed Dec. 7, 1929.)

IN CHANCERY OF NEW JERSEY.

	10
Between	
EVA B. CALVERLEY,	}
<i>Complainant,</i>	
and	
VENTNOR BUILDING AND	
L O A N ASSOCIATION,	
SHERMAN H. BLOCH,	On Bill, &c.
JULIA F. BLOCH AND	Notice of Appeal.
BENJAMIN B. BLOCH,	
<i>Defendants.</i>	20

The complainant, Eva B. Calverley, hereby appeals from the final decree advised in the above stated cause by the Honorable Robert H. Ingersoll, Vice-Chancellor, and made by his Honor the Chancellor, on the tenth day of October, 1929, whereby it was ordered, adjudged and decreed that the complainant's bill be dismissed with costs, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes. 30

WALTER CARSON,
*Solicitor of and of Counsel
with Complainant.*

Dated, November 29, 1929.

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

WALTER CARSON,
*Of Counsel with Com-
plainant.*

10

PETITION OF APPEAL.

(Filed Dec. 26, 1929.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

20	Between EVA B. CALVERLEY, <i>Complainant-Appellant,</i> and VENTNOR BUILDING AND L O A N ASSOCIATION, SHERMAN H. BLOCH, JULIA F. BLOCH AND BENJAMIN B. BLOCH, <i>Defendants-Respondents.</i>	} On Appeal from the Court of Chancery. On Bill, &c. Petition of Appeal.
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*To the Honorable the Court of Errors and Appeals
in the last resort in all cases:*

The petition of Eva B. Calverley, the complainant-appellant in the above stated cause, respectfully shows that:

Petitioner finds herself aggrieved by a final decree advised by the Honorable Robert H. Ingersoll, Vice-Chancellor, and made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the tenth day of October, 1929, in a certain cause in the said Court of Chancery wherein the petitioner, the said Eva B. Calverley was complainant and Ventnor Building and Loan Association, Sherman H. Bloch, Julia F. Bloch and Benjamin B. Bloch, were defendants; 10
and petitioner appeals from the said final decree of the Chancellor upon the following grounds:

That the said final decree adjudges that the bill of complaint filed by the complainant in the said cause be dismissed with costs; that the said final decree does not adjudge and declare the rights of the complainant with respect to the shares of stock in defendant Ventnor Building and Loan Association subscribed for by complainant and the lump-sum payment of \$1800 made to said association by com- 20
plainant, as stated in the bill of complaint; that the said final decree does not adjudge and declare the rights of complainant with respect to the lands and premises described in the said bill and with respect to the mortgage of \$10,000 placed upon said property by complainant in favor of the defendant Ventnor Building and Loan Association, as set forth in the said bill; that the said final decree does not ad-
judge and declare that the defendants, Sherman H. Bloch and Julia F. Bloch, acquired the lands and 30
premises described in the bill subject to the full amount of the said mortgage of \$10,000, and have no rights in or with respect to the said shares of stock in defendant Ventnor Building and Loan Association so far as the payments made thereon by complainant, including the said lump-sum payment of \$1800, are concerned, and have no rights in or

with respect to the said payments or any of them; that the said final decree does not adjudge and declare that complainant is entitled to receive from said Ventnor Building and Loan Association, or out of the said mortgaged lands and premises, all moneys paid by her on account of said shares of stock in the said building and loan association, including said lump-sum payment of \$1800, and that upon receipt by said association of the matured
10 value of said stock in the amount of the balance of its said mortgage of \$10,000, complainant is entitled, by subrogation, to have the said mortgage and to foreclose the same for the purpose of obtaining out of the mortgaged lands and premises all moneys paid by complainant to said association on account of said shares of stock and on account of said mortgage, including the said lump-sum payment of \$1800; and that the said final decree is not agreeable to equity and is not in favor of complainant in accordance with the prayers of her said bill
20 of complaint.

Petitioner, therefore, prays that the said final 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 Honorable Court may seem proper.

WALTER CARSON,

*Solicitor of and of Counsel
with Complainant-Appellant.*

ANSWER TO PETITION OF APPEAL.

(Filed Jan. 3, 1930.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

EVA B. CALVERLEY,
Complainant-Appellant,
and

VENTNOR BUILDING AND
L O A N ASSOCIATION,
SHERMAN H. BLOCH,
JULIA F. BLOCH AND
BENJAMIN B. BLOCH,

Defendants-Respondents.

On Appeal from the
Court of Chancery.
On Bill, &c.
Answer to Petition of
Appeal.

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The answer of Ventnor Building and Loan Association, a corporation incorporated to conduct the business of a building and loan association under the laws of the State of New Jersey, one of the above named defendants-respondents, to the petition of appeal of Eva B. Calverley, the above named appellant. 30

This defendant-respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless, admits that a decree was, on October 10, 1929, made and entered in the Court of Chancery of

New Jersey, in the above entitled cause, for the purpose in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this defendant-respondent begs leave to refer thereto when the same shall be produced.

This defendant-respondent is advised and believes that the said decree is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this defendant-respondent.

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JOHN B. SLACK,

*Solicitor for and of Counsel
with Defendant-Respon-
dent, Ventnor Building
and Loan Association.*

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ANSWER TO PETITION OF APPEAL.

(Filed Jan 8, 1930.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between
EVA B. CALVERLEY,
Complainant-Appellant,
and
VENTNOR BUILDING AND
LOAN ASSOCIATION, *et*
als.,
Defendants-Respondents.

} On Appeal from the
Court of Chancery.
Answer to Petition of
Appeal.

20

The answer of the respondents Sherman H. Bloch, Julia F. Bloch and Benjamin B. Bloch to the petition of appeal of Eva B. Calverley, the above named appellant.

These respondents, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless, admits that a decree was, on October 10, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth, but as to the substance and form of said decree, these respondents beg leave to refer thereto when the same shall be produced.

30

These respondents are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these respondents.

CASSMAN & GOTTLIEB,

Solicitors for and of Counsel with respondents Sherman H. Bloch, Julia F. Bloch and Benjamin B. Bloch.

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NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

EVA B. CALVERLEY,
Complainant-Appellant,

and

VENTNOR BUILDING AND LOAN ASSOCIATION, SHERMAN
H. BLOCH, JULIA F. BLOCH and
BENJAMIN B. BLOCH,
Defendants-Respondents.

ON BILL, &c.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF ON BEHALF OF APPELLANT.

STATEMENT OF THE CASE.

The present appeal is from a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor, on the advice of the Honorable Robert H. Ingersoll, one of the Vice-Chancellors, dated the tenth day of October, nineteen hundred and twenty-nine, whereby the bill of the complainant, the appellant, was dismissed.

The bill was filed by the complainant, Eva B. Calverley, under the Act of 1924 (P. L. 1924, Chap. 140), to obtain a declaratory decree establishing her rights with respect to 41 shares of stock in the defendant Ventnor Building and Loan Association, assigned by her to the Association as collateral security for a mortgage loan upon her real estate, on which stock she had paid the required dues for approximately three and a half years, and also with respect to the sum of \$1,800 paid by her to the Association in two lump sums in reduction of the mortgage debt. Subsequently the complainant's real estate was sold, subject (according to the conditions of sale) to the full amount of the Association's mortgage, by the Sheriff of Atlantic County upon an execution on a judgment obtained against her in the New Jersey Supreme Court by her daughter, Eva J. Armstrong. Since then the purchaser at the sheriff's sale, the defendant, Sherman H. Bloch, without any agreement with the complainant, has paid and is paying to the Association, and the Association is accepting, the monthly installments of dues upon the stock and also the monthly installments of interest and premium on the mortgage loan. The complainant continues to be the stock-

holder of record, and the accounts of the Association, both as to the stock and the mortgage, still stand in her name. Mr. Bloch, the purchaser, has no stock in the Association, nor does he have a pass-book, the Association having declined to issue one to him. The original pass-book remains in the possession of the complainant.

GROUNDS OF APPEAL.

Vice-Chancellor Ingersoll held that the dues paid by the complainant on her stock were applied *pro tanto* upon the mortgage debt, and that the purchaser therefore acquired the real estate subject to the Association's mortgage but reduced in amount to the extent of the dues paid, and also reduced to the extent of the \$1800 paid on account; that the complainant had no further interest in the stock, or in the dues paid by her thereon, or in the payment of \$1800; that the stipulation in the sheriff's conditions of sale that the property was sold subject to the full amount of \$10,000 of the Association's mortgage was not binding upon the purchaser; and that the complainant's bill should be dismissed.

This appeal is taken upon the ground that the decree of dismissal is erroneous, and upon the further ground that a decree should have been made in favor of the complainant adjudging that she is entitled, upon proper terms, to be reimbursed to the extent of the withdrawal value of her stock and also

to the extent of the \$1,800 which she paid in reduction of the mortgage debt.

FACTS.

In 1922 the complainant, Eva B. Calverley, obtained a loan of \$10,000 from the Ventnor Building and Loan Association. The transaction was in the usual form. Mrs. Calverley gave the Association her bond and mortgage covering her dwelling-house property, 105 S. Richards Avenue, Ventnor, and took out 50 shares of stock in the 39th series of the Association, which she assigned to it as additional security (Exhibits C8, C9, C10, Case, pages 106-120). Complainant paid the dues back to July, 1922, when the series opened.

In March, 1924, the complainant placed a second mortgage of \$2,500 upon the property in favor of her daughter, Eva J. Armstrong (Case, page 50, lines 2-10). On the same date Mrs. Calverley paid the Association \$1,700 and, a few days later, paid to it the further sum of \$100, and thereupon received a credit of \$1,800 upon the principal of the mortgage (Case, page 41, lines 35-36; page 42, lines 5-7). After that the mortgage was carried, and is still carried, on the books of the Association in the amount of \$8,200 (Case, page 46, lines 18-22). At the time the \$1,800 was paid Mrs. Calverley was permitted to withdraw nine shares of her stock and she duly received the withdrawal value thereof from the Association (Case, page 46, lines 24-32).

From the time the mortgage was obtained by Mrs. Calverley in 1922 down to and including February, 1926, she paid the required dues upon her stock

and also the interest and premium on the loan. No payments were made by her to the Association after February, 1926 (Case, page 41, lines 18-20).

In January, 1926, the said Eva J. Armstrong obtained a judgment against Mrs. Calverley, her mother, in the New Jersey Supreme Court, for \$6,208.41. As appeared from the Supreme Court file in evidence, the suit was upon a judgment obtained by Mrs. Armstrong in the State of Pennsylvania upon two notes, with warrants to confess judgment, made by Mrs. Calverley in favor of her daughter, one note for \$5,118.32 being dated December 4, 1922, and the other, for \$1,000, being dated March 16, 1925. No answer was filed by Mrs. Calverley in the New Jersey action and judgment by default was entered against her for the amount named. Execution issued upon the judgment and the Sheriff of Atlantic County levied upon Mrs. Calverley's furniture and household goods on the premises at Ventnor, and also upon the real estate.

No levy was made by the sheriff upon Mrs. Calverley's stock in the Ventnor Building and Loan Association (Case, page 25, lines 5-10).

The sheriff sold the personal property covered by the levy on March 31, 1926. Later, the same day, he sold the real estate, the highest bid, \$9,000, being made by the defendant-respondent, Sherman H. Bloch (Case, page 27, lines 8-20).

Prior to the date advertised by the sheriff for the public sale of the real estate, the secretary of the Building and Loan Association informed different persons who had become interested in the sale of the property, among them being the said Sherman H. Bloch, that the mortgage of the Association had been reduced to \$8,200, and that by the application of dues and withdrawal value profit, the mortgage could be satisfied for some \$6,500

(Case, page 72, lines 30-36; page 73, lines 1-15). The secretary also, by letter, informed Mr. Armstrong, husband of the judgment plaintiff, that the amount required to satisfy the Association's mortgage, as of March 31, 1926, was \$6,524.18, in addition to a fire insurance premium (Exhibit D8, Case, page 121). Mr. Armstrong had been requested by Edmund H. Reeves, Esq., attorney of Eva J. Armstrong, the judgment plaintiff, to ascertain the encumbrances against the Ventnor property (Case, page 37, lines 30-35).

At the place designated for the sheriff's sale of the real estate, but before the sale began, Harry Gottlieb, Esq., Mr. Bloch's attorney, made inquiry of Edmund H. Reeves, Esq., attorney of the judgment plaintiff, as to what charges there were against the property, and was informed that the sale would be made subject to the full amount of the mortgage of \$10,000 held by the Building and Loan Association and subject to the second mortgage of \$2500 and municipal liens (Case, page 34, lines 30-37; page 35, lines 1-13). The reason given by Mr. Reeves for the statement that the property would be sold subject to the full amount of \$10,000 of the mortgage of the Building and Loan Association was that the sheriff had not levied upon Mrs. Calverley's stock in the Association (Case, page 35, lines 8-15). It does not appear that Mr. Reeves knew of the reduction of the mortgage to \$8,200 by the lump sum payments of \$1,800, as distinguished from the payments made by Mrs. Calverley as dues upon the stock.

When the sheriff announced the sale of the real estate, he asked whether the attorney of the judgment plaintiff had any announcement to make, whereupon Mr. Reeves publicly stated that the property would be sold subject to the Building and Loan

Association's mortgage in the amount of \$10,000, and the second mortgage of \$2500 held by the judgment plaintiff, with interest, and subject to certain taxes and other municipal assessments, some of which he stated (Case, page 28, lines 3-12; page 27, lines 23-32). This announcement, which was heard and not objected to by Mr. Bloch, was written down by the sheriff at the foot of the printed conditions of sale (Case, page 28, lines 10-36). Bids were then called for, the sale proceeded, and the property was finally struck off to Mr. Bloch on his bid of \$9,000. He then signed the conditions of sale, which included the stipulation with respect to the mortgages and other liens (Exhibit C4, pages 85-86).

A few days later, at Mr. Bloch's request, Mrs. Calverley, accompanied by Mr. and Mrs. Armstrong, went to the office of Harry Gottlieb, Esq., in Atlantic City, where a conference took place with regard to Mrs. Calverley's claims in connection with her payments to the Building and Loan Association, and a settlement was proposed on behalf of Mr. Bloch; but Mrs. Calverley refused to make an adjustment for less than the full amount which she had paid to the Association on account of dues and principal (Case, page 76, lines 16-30).

Some time after this conference Mr. Bloch made settlement with the sheriff and received a deed for the property, dated April 8, 1926 (Case, page 29, line 10), and recorded April 13, 1926.

About a week after the date of the sheriff's deed, and prior to the record thereof, the defendant, Benjamin B. Bloch, father of the defendant, Sherman H. Bloch, took an assignment of the second mortgage of \$2500 on the property held by the said Eva J. Armstrong. This assignment is dated April 7, 1926, the day before the date of the sheriff's deed;

but it was conceded by counsel that the assignment was actually made on the day on which it was acknowledged, April 16, 1926. A declaration of no offset was obtained from Mrs. Calverley. This is likewise dated the day before the date of the sheriff's deed; but it was, in fact, made on April 16, 1926, the date on which it was acknowledged, which was about a week after Mrs. Calverley's title had been conveyed by the sheriff to the said Sherman H. Bloch (Case, page 49, lines 10-21).

Subsequently, Mr. Bloch, the purchaser at the sheriff's sale, placed a third mortgage on the property in favor of his father, the defendant, Benjamin B. Bloch, for \$9,000.

Since he acquired title under the sheriff's deed, the said Sherman H. Bloch has regularly paid, and the Building and Loan Association has accepted and is accepting, the monthly installments of dues payable upon Mrs. Calverley's stock, and also the interest and premium payable upon the mortgage indebtedness of \$8,200. No stock certificate or pass-book has been issued by the Association to Mr. Bloch (Case, page 70, lines 5-20), and the accounts on the books of the Association as to the stock and the mortgage still stand in Mrs. Calverley's name (Case, page 45, lines 7-16), and the pass-book remains in her possession.

The surplus money resulting from the execution sale, after satisfying the judgment, was paid by the sheriff to Mrs. Calverley, pursuant to a rule made by Justice Campbell (part of Exhibit C1, Case, pages 84-85). The petition for this rule was signed by Mrs. Calverley as attorney *pro se* (part of Exhibit C1; Case, pages 82-83). It was drawn by Edmund H. Reeves, Esq., attorney of the said Eva J. Armstrong, and was forwarded by him to Justice Campbell with a letter in which he stated that, inas-

much as his client had received the amount due on her judgment, he had no objection to payment of the surplus money to the defendant, Eva B. Calverley (Case, page 36, lines 29-37; page 37, lines 1-10). Mr. Reeves consented to the rule as plaintiff's attorney (Case, page 85).

The defendant, Sherman H. Bloch, testified that he had spent money on the property since it had been conveyed to him by the sheriff (Case, page 63, lines 20-21; page 68 and page 69).

ARGUMENT.

1. The dues paid by the complainant on her stock in the Building and Loan Association were not applied to reduce the mortgage debt pro tanto, but merely increased the value of the stock. Hence, at the time of the sheriff's sale of the real estate, there was no credit upon the mortgage to the extent of the dues paid, and the value of the complainant's stock remained intact.

Furthermore, the purchaser had actual knowledge, some time before the sale, that the mortgage was carried on the books of the Association at \$8,200, and that the dues paid had not been applied to effect a further reduction of the mortgage.

Nor did the purchaser of the real estate at the sheriff's sale acquire the equitable right, on the principle of marshalling or otherwise, to have the stock, now or at maturity, applied to the mortgage debt. If the stock be so applied, the complainant is entitled, by subrogation, to be reimbursed out of the property.

The law is settled, we believe, that the regular payment of dues upon stock of a Building and Loan

Association pledged as security for a mortgage loan does not reduce the mortgage *pro tanto*. Apart from the fact that they are pledged, the shares of a borrowing member have the same status as the shares of a non-borrowing member.

In the case of *State, Washington Building and Loan Association, Prosecutor v. Hornbacker* (42 N. J. L., 635), the Court of Errors and Appeals, in disposing of an argument denying that bonds given to the Building and Loan Association by borrowing members remained good for the full amount until the collateral shares reached the maturity value of \$200 each, said, in part (page 638):

“* * * The unsoundness of the argument in support of this denial, consists in not observing the distinct and separate existence of the stock, on the one hand, and the bond on the other—the distinct and separate relation borne to the company, on the one hand, by its stockholder, and on the other by its borrower. A connection is sought to be established between the stock held by the stockholder and the bond held by the company, by virtue of which, as payments are made on the stock, they are to be treated as payments on the bond, so that one steadily merges in or becomes offset by the other. But while, in a general way, this view may seem fair, because an exchange of one for the other is the result expected to happen, it is still not the view warranted by the terms of the company’s constitution, nor by the terms of the bond. By the condition of the bond, the borrower is to pay interest monthly, on the principal borrowed, at the rate of six per cent. per annum. No time is named for the payment of the principal, because if the borrower, in

addition to the interest, pays also the monthly installments on the stock, he cannot be compelled to pay the principal in cash, but may, when his stock becomes paid up, exchange his stock for such principal debt. This is so provided in the condition of the bond. But until so exchanged, they are distinct in legal contemplation as well as in form. The stock is a collateral security for, and not a credit on, the bond. There is nothing to prevent the borrower from paying the principal, if he pleases, and taking up his hypothecated shares. By the condition of the bond, if the interest remain unpaid for more than six months, the whole principal becomes payable at once."

In the case of *Sudbury v. Merchantville Building and Loan Association*, affirmed by the Court of Errors and Appeals on Vice-Chancellor Reed's opinion (*Sudbury v. Merchantville Building and Loan Association*, 57 N. J. Eq., 342), it was held that:

"* * * it is entirely settled that payment of dues upon the stock is not a payment upon the mortgage debt and does not *ipso facto* work an extinguishment *pro tanto* of the mortgage."

To the same effect is the decision of Vice-Chancellor Backes in the case of *Shawell v. Shawell* (90 N. J. Eq. 452).

The rule followed in the cases cited, Vice-Chancellor Ingersoll held to be inapplicable to the present controversy, basing his decision in this respect upon the view that the stock was the original and primary security for the loan; from which it was

concluded that the dues paid upon the stock were applied as credits upon the mortgage debt (Conclusions Case, page 127, lines 6-10; lines 32-36). This reasoning, it is respectfully submitted, is erroneous.

Upon the question whether the dues paid upon the stock reduced the mortgage debt, it is, we contend, immaterial to determine whether the stock or the mortgage was the original and primary security for the loan. For even if it be assumed that the stock was the original and primary security—a doubtful assumption in view of the fact that the stock has little value at the beginning—it does not follow that the dues paid monthly on the stock were immediately applied to reduce the loan. The stock is not itself the debt. If it be conceded, as it must be, that the stock is but one of the securities for the debt — whether primary or secondary — it follows that some appropriate action must be taken by the Association, pursuant to its contract with the borrowing member, to apply the security to the indebtedness. Such action has never been taken.

The contract between the complainant and the Building and Loan Association is embodied in the Constitution and By-laws of the latter, and in the stock assignment, bond, and mortgage executed by the complainant. These instruments do not, we respectfully submit, support the conclusion that the dues paid monthly upon the stock are applied, as paid, to reduce the mortgage loan *pro tanto*.

The Constitution and By-laws of the Ventnor Building and Loan Association appear to be substantially in the usual form.

Section 1 of Article XIV of the Constitution (Case, page 101, lines 33-36), provides that every member of the age of twenty-one years or over shall, for each share of stock in his own right, be entitled to a loan of Two Hundred Dollars.

This clause fixes the borrowing capacity of a member.

Section 2 of Article XIV of the Constitution (Case, page 102, lines 8-16), provides that whenever a member shall become entitled to a loan he shall pay a premium of ten cents for each hundred dollars, or fraction thereof, per month, and shall

“* * * secure the payment to the satisfaction of the Board of Directors by mortgage upon sufficient real estate or pledge; and in case there are buildings on said real estate, the same shall be first insured and kept insured as long as the directors shall require and the policies assigned to the Association and shall also assign to the Association, for every loan of \$200, at least one share of stock of this Association.”

Section 7 of Article II of the Constitution (Case, page 92, lines 8-14) is as follows:

“Sec. 7. When the shares of stock upon which mortgages or other loans have been granted shall have reached the matured value of two hundred dollars each, this amount shall be credited to the borrower and the loan or loans shall be fully paid and satisfied, if all dues, interest, fines and other indebtedness have been paid in full.”

Section 8 of Article II of the Constitution (Case, page 92, lines 18-21) provides that:

"Sec. 8. When the value of any series of shares shall be \$200 a share, the stockholders holding free shares shall receive the full value of their shares."

Section 3 of Article XII of the Constitution (Case, page 100, line 36; page 101, lines 1-5) which relates to non-payment by members, concludes as follows:

" * * * If he be a borrower on bond and mortgage and shall fail to pay the interest premiums or fines for sixty days after the same become due, then the principal sum of such mortgage shall, at the option of the directors, become due and payable at once."

The assignment by which the complainant transferred to the Association as security her fifty shares of stock in the 39th series (Exhibit C10; Case, pages 119-120), after reciting that the complainant had obtained an advance or loan of ten thousand dollars upon fifty shares of stock in the 39th series, in anticipation of the maturity value thereof, contains the following (Case, page 119, lines 33-36; page 120, lines 1-4):

" * * * it being the intention and purpose of these presents at the maturity of said shares of stock when the same are worth \$200 each on the books of said Association that the said maturity value of same is to be used by said Association to cancel my indebtedness to the said Association by virtue of said advance or loan and all other liabilities arising thereunder and by virtue thereof * * * ."

Similar language is used in the bond which the complainant and her husband gave to the Associa-

tion (Exhibit C8; Case, pages 106-113). This instrument, after reciting that Mrs. Calverley had obtained an advance or loan of ten thousand dollars upon fifty shares of stock in the 39th series of the Association, in anticipation of the maturity value thereof, proceeds, in part, as follows (Case, page 108, lines 3-24):

“* * * Now, therefore, the condition of this obligation is such that if the above bounden obligors or their heirs, executors, administrators or any of them, shall and do well and truly pay or cause to be paid unto the above named obligee, its certain attorney, successors or assigns, the said just sum of ten thousand dollars advanced in the manner and for the purposes stated aforesaid, lawful money as aforesaid, at or before the time when each of the aforesaid shares of stock shall be worth a net sum of two hundred dollars on the books thereof and said series of shares shall mature, together with monthly payments of interest thereon at the rate of one-half of one per centum per month as is now or may hereafter be provided for in the Constitution and By-laws of the said obligee, dues on aforesaid shares of stock at the rate of one dollar per share per month, a monthly installment premium of ten cents for each one hundred dollars of said advance or loan or fractional part thereof, figured upon said principal sum advanced as stated aforesaid and such fines or other indebtedness as shall appear by the books of said obligee * * * etc.”

From the terms of the bond it will be observed that no specific date for payment of the principal is fixed, but that it must be paid not later than the

time when each of the shares of stock shall be worth two hundred dollars on the books of the Association. Monthly installments of principal are not provided for. If it was intended that the sum of fifty dollars paid each month as dues should go at once to reduce the debt, a definite date for payment of the whole principal would naturally be stipulated as in the case of the ordinary installment mortgage. The bond also provides that interest is payable monthly on the just sum of ten thousand dollars—not upon an amount of principal progressively reduced. The monthly installment of premium is also figured upon the whole amount of the loan.

The mortgage given by the complainant to the Association (Exhibit C9, Case, pp. 114-117) recites the bond at length.

The foregoing excerpts from the Constitution of the Association and papers executed by the complainant show, we think, that the plan or scheme of operation of the Ventnor Building and Loan Association is the ordinary and usual one, and that as in the cases cited above, the regular monthly payment of dues upon stock pledged as security for a mortgage loan does not, under the contract between the borrowing member and the Association, reduce the loan *pro tanto*, but that when the stock reaches its matured value it will be applied by the Association in satisfaction of the debt.

The complainant's pass-book also indicates that the monthly payments of dues made by her were not applied by the Association in reduction of the mortgage. As appears from Exhibit C7 (Case, pages 87-89) the complainant, from July, 1922, to March, 1924, paid dues each month in the amount of \$50 and interest and premium in the amount of \$50 and \$10. Manifestly, if the dues were applied each month

to a reduction of the loan, the interest and premium would show a corresponding reduction. After the payment of \$1800 made by the complainant to the Association in March, 1924, and the withdrawal of 9 shares, the complainant paid the Association each month \$41 dues, \$41 interest, and \$8.20 premium, the premium being ten per cent of \$8200 principal. If the monthly payments of dues were applied to the debt, that fact would be reflected in a reduction of the monthly interest and premium charges.

Likewise the books of the Association indicate that the dues paid by the complainant were not applied to reduce the mortgage. The only change in the amount of the mortgage on the books of the Association is the reduction from \$10,000 to \$8,200 resulting from the complainant's payment of \$1,800 in March, 1924. Mr. Howard, secretary of the Association, testified (Case, page 46, lines 18-22) that the mortgage was still being carried on the date of hearing, December 7, 1927, in the amount of \$8,200.

The defendant, Sherman H. Bloch, purchaser of the property at the sheriff's sale, is making the same monthly payments to the Association that the complainant was making just prior to the sale; namely, \$90.20 per month, consisting of \$41 dues, \$41 interest, and \$8.20 premium (Case, page 45, line 36; page 46, line 1).

Mr. Bloch had actual knowledge before the date of the sale that the mortgage stood on the books of the Building and Loan Association in the amount of \$8,200 and that it was necessary to apply the

value of the complainant's stock to effect reduction to sixty-five hundred odd dollars. Mr. Bloch, on cross-examination by counsel for the Building and Loan Association, testified as to his conversation with the secretary (Case, page 67, lines 31-37):

“Q. As a matter of fact didn't he tell you that the principal was \$8,200?

A. Yes, \$8,200, yes.

Q. And that the stock was worth sufficient money which would make the sixty-five hundred odd dollars necessary to secure cancellation of that mortgage?

A. Yes, he did.”

Mr. Howard, secretary of the Association, testified as follows with respect to the information which he had given out prior to the sale (Case, page 72, lines 31-36; page 73, lines 1-15):

“By Mr. Tripician:

Q. Mr. Howard, did you ever inform Mr. Bloch that the principal on the mortgage was less than \$8,200?

A. My answer won't be a direct answer to you, but around the time of the sheriff's sale I had numerous people come in and ask me the amount due the Association. I told them the principal was \$8,200, then I showed them where they had a credit by dues and by a withdrawal value profit; in other words, showed them the amount due to satisfy the Ventnor Building and Loan Association, as far as their mortgage went.

Q. And you didn't tell him the principal of the mortgage itself had been reduced so that there was only sixty-five hundred odd dollars due?

A. I told him the principal was \$8,200 and credit by dues paid and profit allowed on withdrawal, yes, always stated that way, the principal sum and then called attention to the credit.”

Mr. Bloch was thus fully informed, prior to the sale, that the balance of principal of the Association's mortgage was \$8,200, and that only by the application of Mrs. Calverley's stock could a further reduction be obtained, and that the stock had not as yet been applied to make such further reduction.

Having purchased the real estate at the sale, Mr. Bloch continues to pay to the Association not only the interest and premium on the mortgage, but also the monthly dues payable upon Mrs. Calverley's stock, although he has no assignment of her interest. His assumption is, evidently, that when the stock matures it will be applied to satisfy the Association's mortgage and that the real estate will then be exonerated therefrom; and in this way he expects to receive the benefit of the dues paid by Mrs. Calverley upon the stock over a period of years.

But Mr. Bloch, we contend, is not entitled to the advantage of the dues paid by the complainant. He is not a party to the contract between her and the Association. He has no assignment of her interest in the shares. He is a stranger to the transaction between the complainant and the Association. Nor is he, as purchaser of the real estate at a sheriff's sale (and having, besides, actual notice of the existence of the Association's mortgage), entitled, in equity, on the principle of marshalling, or otherwise, to require the Association to have recourse to Mrs.

Calverley's stock for the purpose of exonerating the real estate. (*Sternberger v. Sussman*, 69 N. J. Eq. 199; *Herbert v. Mechanics' B. and L. Association*, 17 N. J. Eq. bottom of page 499.)

In short, as the matter now stands, Mrs. Calverley's 41 shares of collateral will ultimately be applied to satisfy the mortgage on the property of the defendant, Sherman H. Bloch, a result inequitable itself, but rendered doubly inequitable by reason of the fact that Mr. Bloch purchased the property subject to the Association's mortgage in at least the amount of \$8,200.

We submit, therefore, that when the stock, at maturity, is applied to the mortgage of the Association, the complainant will be entitled to be subrogated to its rights in order that, through the mortgage, she may be reimbursed out of the property to the extent of the dues paid by her on the stock, with a proportionate share of the profits.

The right of subrogation rests upon principles of natural justice and equity. There is, consequently, wide variation in the facts of the decided cases, and we have not been able to find a case quite like the present one. A somewhat analogous situation will be found in *Shawell v. Shawell* (90 N. J. Eq., 452), decided by Vice-Chancellor Backes. It was there held that a surviving husband in possession of real estate as tenant by the courtesy, who continued to pay the dues upon stock of a Building and Loan Association assigned to it by the deceased wife as security for a mortgage loan, was entitled to be subrogated to the rights of the Association, upon ma-

turity of the stock, in order that he might recover out of the property the amount contributed by him as dues. Vice-Chancellor Backes said, in part (bottom of page 454) :

“* * * While it is true that, as between the shareholder and the Association, the payment of dues is to be treated as in discharge of the shareholder's liability on his subscription to the stock, the compulsory payment by the complainant nevertheless entitles him to an equity in the shares; and as the shares and the mortgage together constitutes the security for the debt, and as the payment in full of the shares will automatically discharge the mortgage, so far, at least, as the Association is concerned, his right to subrogation will at that time reach out to the mortgage. In other words, the complainant's right of subrogation presently extends only to the shares; but, when the Association applies the dues he will have paid on the shares in satisfaction of the mortgage, his right to subrogation to that security will then be complete
* * * ”

In the Shawell case both the husband and the wife had, at different times, contributed dues to mature the stock. The heirs of the wife, as owners of the property, were held not entitled, in equity, to the benefit of the dues paid by the surviving husband, and his right to ultimate reimbursement out of the property was recognized by the Court. In the present case contributions toward the maturity of stock have been made, at different times, by Mrs. Calverley and by the defendant, Sherman H. Bloch, and for the reasons already stated we think that Mrs. Cal-

verley is entitled to have her right to ultimate reimbursement recognized by the decree.

The complainant's right to subrogation, for which we contend, is not adverse to the rights of the second and third mortgages of \$2500 and \$9,000. Conceding that these encumbrances are entitled, in equity, to require the Association to apply the value of the stock to its mortgage, such rights will be fully protected if, upon the maturity of the stock and the application thereof to the first mortgage, the property is then sold by virtue of that mortgage, but subject to the second and third mortgages, to raise out of the defendant's equity the amount of reimbursement to which the complainant is entitled.

2. The purchaser of the real estate at the sheriff's sale bought the property expressly subject to the full amount of \$10,000 of the mortgage of the Building and Loan Association.

He is, therefore, in equity, estopped from asserting as against the complainant or the Association that there was a less amount due upon the mortgage.

The complainant is consequently entitled, by subrogation, to be reimbursed out of the property to the extent also of the \$1800 which she paid on account in 1924, in addition to her right to be reimbursed for the dues paid on the stock.

At the place designated for the sheriff's sale of the real estate, but before the sale was held, Mr. Gottlieb, as attorney of the defendant Sherman H. Bloch, made inquiry of Edmund H. Reeves, Esq., attorney of the judgment plaintiff, Eva J. Armstrong, as to what the charges were against the property.

Mr. Reeves' uncontradicted testimony with respect to this conversation and the conduct of the sale was as follows: (Case, pages 34-35):

“Q. Referring to the sale of the real estate, did you, prior to the bidding at the sheriff's sale, make an announcement?

A. I did.

Q. Publicly or privately?

A. Well, I made a public announcement and I made a private announcement.

Q. Will you state what the public announcement was that you made?

A. When the sheriff asked me if I had any statement to make I said, 'This sale is subject to a Building and Loan mortgage held by the Ventnor Building and Loan Association in the amount of ten thousand dollars; also subject to a second mortgage held by the plaintiff in the amount of \$2500 on which interest has not been paid since the date of that mortgage amounting to approximately three hundred dollars; also subject to taxes for 1925, which amount I do not know, but I am advised by the tax collector is so much,' and I stated that amount, 'and also subject to any other municipal assessments.'

Q. You said that you made a private announcement; what do you mean by that?

A. Well, before the sale, just a few minutes before the sale, Mr. Gottlieb —

Q. You mean before the sale was called?

A. Yes. Before any sales were called in the sale room, Mr. Gottlieb approached me and asked me what charges were against this property. I asked him if he was interested in buying the property and he said that he represented a man who might be interested and I then said,

'The sale will be subject to a ten thousand dollar mortgage held by the Ventnor Building and Loan Association, a twenty-five hundred dollar mortgage held by the plaintiff, with interest on that mortgage for approximately two years, and also subject to municipal liens or assesments.' Mr. Gottlieb said to me, 'That is not correct about the ten thousand dollar mortgage. There is not that amount due the Building and Loan Association.' I said, 'That makes no difference. We are not selling the stock of the defendant. We have no levy on that. We have no interest in it and we are selling subject to the full amount of the mortgage of ten thousand dollars and I shall so make the announcement.' Mr. Gottlieb said nothing further and that was the end of that conversation.

Q. You refer to Mr. Gottlieb, you mean counsel present today?*

A. I do.

Q. Did you know who he was counsel for at that time?

A. The purchaser at that sale."

Shortly after this conversation between Mr. Reeves and Mr. Gottlieb, the sheriff announced the sale of the complainant's property, read the advertisement and the printed conditions of sale (Exhibit C4, Case, pages 85 and 86) and then asked whether the attorney of the judgment plaintiff had any statement to make, whereupon, Mr. Reeves made the announcement referred to in his testimony quoted above. This announcement, which Mr. Bloch testified he heard, was written down by the sheriff at the foot of the printed conditions of sale and ap-

pears in the following words (Exhibit C4, Case, page 86):

“Sold subject to Municipal assts & taxes whatever they may be, taxes 1925 \$374.13 paving asst bill 35.00 unpaid also 1st mtg sub Ventnor B&L 10000 2nd mtg held by pltf 2500 with approx 2 years int. due.”

The sheriff then called for bids and the sale proceeded, the highest and last bid being \$9,000, made by the defendant Sherman H. Bloch, to whom the property was struck off. Mr. Bloch then signed the conditions of sale, which contained the printed and written terms referred to (Exhibit C4, Case, page 86, lines 21 and 22).

The sheriff testified as follows with respect to the conditions of sale and the manner in which the sale was conducted (Case, page 28, lines 1-12):

“Q. Will you state whether that was written there before it was signed by Mr. Bloch?”

A. It was written in this manner. I conducted that as I conduct all sales. The sale was announced. The advertisement was read. The conditions of sale were read and I inquired of the attorney, Mr. Reeves, if he had any statement to make and Mr. Reeves then made the statement which you have just read, which was on this blank before the sale was cried even, then the bid was made and the conditions of sale as to the purchase signed by Mr. Bloch.”

Immediately after the sale, when Mr. Gottlieb, Mr. Reeves, Mr. and Mrs. Armstrong and Mr. Bloch happened to be going down in the elevator together, the sale was referred to and Mr. Reeves again called

attention to the fact that the sale had been made subject to the full amount of the mortgage of the Building and Loan Association (Case, page 35, lines 30-37; page 36, lines 1-8).

A day or two after the sale, as testified by Mr. Bloch (Case, page 62, lines 10-35; page 63, lines 1-2; page 64, lines 10-30; page 65, lines 9-35) Mrs. Calverley, accompanied by Mr. and Mrs. Armstrong, her son-in-law and daughter, went to Mr. Gottlieb's office where Mrs. Calverley's claims resulting from her payments to the Building and Loan Association were discussed and an amicable adjustment was proposed. Mrs. Calverley, however, refused to settle for anything less than the full amount which she had paid to the Building and Loan Association on account of principal and stock. The testimony of Mrs. Armstrong is to the same effect. She stated also that the meeting was the result of a telephone call from Mr. Bloch, who asked her to accompany her mother to Atlantic City for the conference (Case, page 75, lines 9-20; page 76, lines 16-30; page 77, lines 20-25).

Although he thus had full knowledge of the terms and conditions upon which the sheriff's sale was held, and was fully informed of Mrs. Calverley's claims with respect to the money paid by her to the Building and Loan Association, Mr. Bloch took no proceedings to be relieved of his bid; and, after his conference with Mrs. Calverley following the sale, made settlement with the sheriff and received a deed for the property dated April 8, 1926, which was recorded April 13, 1926.

In view of the uncontested facts with respect to the sheriff's sale and the conditions of that sale as

signed by the purchaser, it follows, we submit, that Mr. Bloch acquired the property subject to the full amount of \$10,000 of the Building and Loan Association's mortgage; and that he is consequently estopped in equity from asserting, either as against the Association or the complainant, that the amount due upon the mortgage, at the time of the sale, was less than \$10,000.

The equitable principle is established that the purchaser at a judicial or execution sale who, with knowledge, buys subject to a mortgage for a specific sum, is thereafter estopped from denying that the mortgage is a valid lien for such amount.

In the case of *Warwick v. Dawes* (26 N. J. Eq. 548), the Court of Errors and Appeals held that the purchaser of real estate at a foreclosure sale upon a second mortgage could not, later, contest the first mortgage, even though it was void for usury, where it appeared that at the sale the solicitor gave public notice that the property was to be sold subject to the first mortgage, and that before the sale the purchaser had knowledge of the amount and subsequently said that he would pay it. The Court said, in part (top of page 556):

“ * * * It is thus apparent that the appellee got this property for just \$800 less than he would if this mortgage had not been regarded as a legal lien on it; and that the second mortgagee failed from the same cause to realize this same amount on his decree, which, it appears, was not satisfied by the sale * * * Nothing can be more inequitable than the claim of this purchaser; he asks the Court to help him violate the fair understanding on which the sale was made, and his own express promises, in order that he may retain money which

does not of right belong to him, and for which he has given absolutely nothing in the way of consideration. In my opinion, the equitable principle already stated, and the circumstances attending this sale, preclude the appellee from maintaining, successfully, so unfair a position.”

In *Camden Safe Deposit and Trust Company v. Citizens' Ice Company* (71 N. J. Eq., 221), it appeared that at a receiver's sale property had been struck off and sold subject to the Trust Company's mortgage. Upon subsequent foreclosure thereof, the purchaser attempted to interpose defenses on the ground that the mortgage was *ultra vires* and, therefore, void, and that the bonds secured by the mortgage had not been paid for at par. The Court of Errors and Appeals denied the right of the purchaser to assert such defenses against the mortgage. Chief Justice Gummere, delivering the opinion of the Court, said, in part (middle of page 223):

“* * * It is equally apparent that the Pennsylvania Iron Works Company by purchasing the premises subject to the complainant's mortgage got them for a sum less, by just the amount of the mortgage, than it would have done if the sale had been made free from its lien, and reduced by this amount the sum which otherwise would have been raised to satisfy the debts due to the creditors of the insolvent corporation. The injustice of such a claim as it now sets up must condemn it * * *”

It is obvious that, in the case at bar, the sale of the complainant's property subject to the full amount of the \$10,000 mortgage would have the effect of reducing proportionately the amounts of the bids, and this would necessarily have the effect

of diminishing the amount of surplus money available for the judgment debtor.

In the case of *F. R. Patch Mfg. Co. v. William A. Gahagan Co.* (93 N. J. Eq., 73), affirmed by the Court of Errors and Appeals upon the opinion of Vice-Chancellor Griffin (93 N. J. Eq., 223), it was held that the purchaser of certain personal property upon an execution sale expressly subject to a chattel mortgage could not defend against the foreclosure of the mortgage upon the ground that the mortgage was void because not recorded. Referring to the purchaser at the execution sale, Vice-Chancellor Griffin said, in part:

“* * * he heard the announcement that the sale would be made subject to complainant’s mortgage without protest, with the result that persons who otherwise might have bid may have refrained from doing so because of the prior lien of upwards of \$1,000. The acknowledgment of the complainant’s lien made it unnecessary for it to bid to protect its interest. He accepted a bill of sale in strict compliance with the terms of bidding. If he should now prevail he would obtain the property for about \$1,000 less than it might otherwise have sold for, with the result that the complainant’s lien will be lost and the Gahagan Company continue liable on its notes aggregating \$1,000 and interest. To countenance such a contention would be giving aid in support of fraud, a thing that can hardly be expected from a court of equity.”

The Court of Errors and Appeals applied the principle of the cases cited in *Peoples Building and Loan Association v. Vaniewsky, et al.* (85 N. J. Eq. 551) at top of page 556.

Upon the authority of these decisions the defendant, Sherman H. Bloch, will not be permitted to question the amount of the mortgage of the Building and Loan Association. He acquired the property expressly subject to the full amount of that lien and is clearly estopped as against the Association from contesting it. This estoppel, we contend, is also available to Mrs. Calverley, as owner of the property which was sold upon the execution, and as owner of the collateral pledged to secure the mortgage. The bidding at the sale was specifically subject to a first mortgage of \$10,000 and a second mortgage of \$2500, and such terms were included in the conditions of sale signed by the purchaser. The necessary effect of these terms was to reduce the amounts of the bids proportionately and, in consequence, to reduce the surplus proceeds of the sale payable to the complainant as the judgment debtor. Although she had paid the Association \$1800 on the mortgage, reducing it to \$8,200, the terms of sale had the necessary effect of reimposing the mortgage upon her property to the full amount of \$10,000, thereby reducing the amounts of the bids and the surplus money. The complainant, therefore, is in the position of having paid \$1800 on the mortgage and of being also short that amount in the surplus proceeds of the sale. The purchaser, having acquired the property subject to the full amount of the lien, has no just ground of complaint if, in his hands, the premises must answer for a mortgage of \$10,000.

The complainant, therefore, we contend, is entitled in equity to the benefit of the estoppel resulting from the terms and conditions of the sheriff's sale; and, upon the principle of subrogation already discussed, she has the equitable right to have recourse ulti-

mately to the Association's mortgage for the purpose of obtaining reimbursement from the property to the extent of the \$1,800 paid by her on account of the mortgage in addition to the amount paid by her as dues on the stock.

No difficulty, we think, results from the fact that the \$1800 was paid in reduction of the principal of the mortgage and was so credited on the books of the Association. Where the right of subrogation exists, equity will, if the ends of justice require, treat as reinstated and unsatisfied a mortgage that has been paid and cancelled, and will enforce such mortgage against the property in the interest of one who has furnished the funds with which it was paid. An illustrative case of this type (not, however, resembling the present case in its facts) is *Serial Building and Loan and Savings Institution v. Ehrhardt* (95 N. J. Eq. 607), where the principle is applied and some of the leading cases are reviewed by Vice-Chancellor Bentley.

3. The Question of the Complainant's Good Faith.

With respect to the announcement made by Edmund H. Reeves, Esq., at the sheriff's sale to the effect that the property would be sold subject to the full amount of \$10,000 of the mortgage of the Building and Loan Association, Vice-Chancellor In-

gersoll stated (Conclusions, Case, page 130, lines 12-20):

“Because of the peculiar condition of this case, the Court is bound to consider whether or not this announcement by the sheriff, by reason of the information given to him by the counsel, whether or not there has been collusion between the plaintiff and the defendant and whether, if that announcement was made, whether or not Mrs. Calverley can take advantage of that statement under the circumstances.”

Mr. Reeves, as attorney of Mrs. Armstrong in the action in the New Jersey Supreme Court, assumed full responsibility for the announcement that was made at the sale. He testified, upon cross-examination and upon questioning by the Court, as follows (Case, page 38, lines 1-26):

“Q. What was your object in making the announcement that it was sold subject to a first building and loan mortgage of ten thousand dollars?

A. I didn't want to guarantee to sell something that we couldn't deliver. I represented the plaintiff in that case and I was interested in seeing that we stated encumbrances in full for the protection of the plaintiff in delivering the title under that sale. We had no levy on the stock and I felt that any question between Eva B. Calverley and the building and loan association and any purchaser was a matter in which I wasn't concerned or my client, and that we were concerned in making a statement so that everybody might have notice of the encum-

brances under any interpretation in the full amount.

Q. Your announcement was purely the encumbrances of record?

A. That is correct.

By the Court:

Q. Although you had been advised that the building and loan association mortgage had been reduced in principal you refrained from making such an announcement?

A. I did."

Mr. Reeves testified that he had requested Mr. Armstrong, husband of the plaintiff in the action, to ascertain what the liens were against the Ventnor property (Case, page 37, lines 1-6). Mr. Armstrong had, therefore, obtained a letter from the secretary of the Building and Loan Association, dated March 8, 1926, in which he advised that the amount required to satisfy the mortgage of the Association was \$6,524.18 (Exhibit D8, Case, page 121). The secretary did not state how the amount named was arrived at, and it is a fair inference that Mr. Reeves supposed that the difference between the face of the mortgage, \$10,000, and the amount named by the secretary, \$6,524.18, was represented entirely by the value of Mrs. Calverley's stock. It nowhere appears in the case that Mr. Reeves had been informed of the two lump-sum payments aggregating \$1800 made by the complainant in reduction of the mortgage in 1924.

If the attorney of the judgment-plaintiff had known of the lump-sum payments of \$1800, as distinguished from the payment of dues upon the stock, it is, we think, inconceivable that he would have announced that the sale would be made subject to a first mortgage of \$10,000. Such announcement,

under the facts, was favorable neither to his own client nor to Mrs. Calverley, the judgment debtor. In view of the actual facts, it was clearly and unnecessarily disadvantageous to the sale from the standpoint of both the plaintiff and the defendant in the judgment: as to the plaintiff, because it jeopardized her chances of collecting the full amount of her judgment and costs; and as to the defendant in the judgment, because it would reduce the amount of any surplus money that might arise from the sale, compelling her to engage in litigation to recover the \$1800 through the Association's mortgage. The fair inference to be drawn from what happened is, we think, the natural inference that the attorney of the judgment plaintiff did not know of the \$1800 paid on the mortgage, but supposed that all moneys received by the Association had been paid as dues upon the stock.

And with respect to the relation of the stock to the mortgage, the announcement made by Mr. Reeves was in conformity with his understanding of the law. He was aware of the fact that the sheriff had not levied upon the complainant's stock in the Building and Loan Association, and he was, properly we think, unable to perceive how the value of that stock would constitute a credit upon the mortgage, in the absence of an assignment or levy and sale, and therefore, he declined to announce that the mortgage stood reduced to the amount named in the secretary's letter (Case, page 121). Perhaps the attorney should have made no announcement at all. However that may be, we think it evident that the announcement which he did make was made in good faith in the light of the facts and the law as he understood them, and we respectfully submit that there is no ground for the inference that there was any bad faith or collusion.

Furthermore, the purchaser at the sheriff's sale is not in a position to complain with respect to the terms of the sale. He was not misled or deceived. On the contrary, he and his counsel were fully informed before the bidding began that the property would be sold subject to the full amount of the mortgage. They heard, without protest, the announcement of the conditions of the sale, and Mr. Bloch personally signed the conditions when the sale was concluded.

The Vice-Chancellor also refers to a possible question of the good faith of the New Jersey action which resulted in a judgment by default against the complainant in favor of her daughter. The Vice-Chancellor stated (Conclusions, Case, page 126, lines 25-31):

“There can be little, if any, doubt as to the judgment obtained by Mrs. Armstrong. It manifestly was by consent of the present complainant and the testimony and occurrences are strongly suggestive that the attorney for the daughter was also acting, if not for the mother, at least with her approval.”

No party to the cause questioned the validity or propriety of the judgment, and the title of the defendant is, of course, based upon it. The suit was upon a judgment obtained in the State of Pennsylvania (Exhibit C1, Case, pages 80-81). The Pennsylvania judgment was by confession upon two notes, one for \$5,118.32, dated December 4, 1922, more than three years before the New Jersey action, and the other for \$1,000, dated March 16, 1925, some ten months before the action. That Mrs. Calverley

owed this money to her daughter, according to the tenor of the notes and the judgment is not brought into question by the pleadings or by the testimony. The fact of the relationship of mother and daughter between the plaintiff and the defendant does not, we submit, warrant the inference that the debts and the proceedings to collect them were not in good faith. The inference to be drawn from the facts is, we think, that the mother owed the money to the daughter and that both recognized that the time had come to collect it. That the friendly relations of the mother and daughter were not disturbed by the suit, to which fact attention is called by the Vice-Chancellor (Conclusions, Case, page 130, lines 23-25) is not, we think, evidence of bad faith.

Reference is also made by the Vice-Chancellor to the fact that Edmund H. Reeves, Esq., prepared the form of petition and rule in the Supreme Court action upon which the surplus money resulting from the sale was paid to Mrs. Calverley (Conclusions, Case, page 130, lines 25-38). This was done at the request of Mr. Armstrong some time after the sheriff's sale. The petition was signed by Mrs. Calverley as attorney *pro se* and bears her affidavit taken in the State of Pennsylvania, April 22, 1926 (Exhibit Case, pages 82-83). The petition was forwarded by Mr. Reeves to Justice Campbell, with a letter, wherein Mr. Reeves stated that he knew of no reason why the defendant should not receive the surplus money. As plaintiff's attorney he consented to the rule that was signed (Case, page 36, lines 29-36; page 37, lines 1-10; Exhibit, pages 84, 85).

We respectfully submit that the attorney's action in giving information with respect to obtaining the surplus money and preparing a form of petition

which, when executed by the mother as attorney *pro se*, he forwarded to the Justice of the Supreme Court, with a consent rule, was but an act of professional courtesy which it was proper for him to perform under the circumstances. His client had collected her judgment and had no further interest in the matter, except the natural and not improper interest that her mother should receive the surplus money to which she was entitled.

These aspects of the case to which Vice-Chancellor Ingersoll has referred in his conclusions as bearing upon the subject of good faith are not, we respectfully contend, sufficient to charge the complainant with any improper or inequitable conduct.

4. Conclusion. Summary of Complainant's Rights.

In conclusion, it is submitted, that the complainant is entitled to a decree establishing her rights substantially as follows:

First, the right to be subrogated to the mortgage rights of the Building and Loan Association for the purpose of recovering from the mortgaged premises the dues which she has paid upon the collateral stock, with proportionate share of the profits of the series. This right she has independently of the terms of the sheriff's sale because the collateral shares are her property, to the extent that they represent the dues paid by her. Her right in this respect is strengthened by, but is not dependent upon, the fact that the defendant, Sherman H. Bloch, purchased the property with knowledge that the mortgage had not been reduced below \$8,200, the value of the 41 shares at maturity, and by the further fact that he contracted to purchase the property at the sheriff's

sale subject to the full amount of the \$10,000 mortgage.

Second, the right to be subrogated to the mortgage rights of the Building and Loan Association for the purpose of recovering from the mortgaged premises also the \$1,800 paid by her on account of the mortgage. This right is based upon the fact that the defendant, Sherman H. Bloch, purchased the property at the sheriff's sale expressly subject to the full amount of the \$10,000 mortgage, and is thereby estopped from contesting it as a valid lien for that amount; which estoppel is available to the complainant by reason of the fact that she has furnished \$1,800 toward the satisfaction of the mortgage.

The exercise of these rights is subordinate to the right of the Building and Loan Association to receive the balance of \$8200 of its loan by the application of the maturity value of the 41 shares thereto; but when the Association has been paid, the complainant will be entitled to exercise her rights of subrogation to the mortgage lien—subject, however, to the second and third mortgages of \$2500 and \$9,000, respectively—for the purpose of obtaining reimbursement out of the equity of the defendant, Sherman H. Bloch, in the property, to the extent of the dues paid by the complainant to mature the stock, with proportionate share of the profits of the series, and also the sum of \$1800 already paid by her on account of the mortgage debt, with interest from the date of the sheriff's sale, from which time the purchaser is, in equity, chargeable with interest upon the full amount of the Association's mortgage.

Respectfully submitted,

WALTER CARSON,

*Solicitor of and of Counsel
with Appellant.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

EVA B. CALVERLEY,
Complainant-Appellant,

and

VENTNOR BUILDING AND LOAN ASSOCIATION, SHERMAN
H. BLOCH, JULIA F. BLOCH AND BENJAMIN B.
BLOCH,
Defendants-Respondents.

ON BILL, &C.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF FOR RESPONDENTS.

PRELIMINARY STATEMENT.

The statement of facts as stated in the appellant's brief is substantially correct with the exception of the reference made therein to the conditions of the sheriff's sale. The attorney for the judg-

ment creditor made the announcement that the real estate was sold subject to a building and loan mortgage of \$10,000. The attorney did not state that it was sold subject to the full amount of said mortgage (Case, page 86, lines 10 to 14; page 38, lines 4 to 19). It does appear that Mr. Reeves, the attorney for the appellant, knew of the reduction of the building and loan mortgage from \$10,000 to \$8200 by lump-sum payments, and the Vice-Chancellor specially questioned Mr. Reeves why he refrained from making a statement of the true facts which were within his knowledge (Case, page 38, lines 21 to 25).

In the lower court, the appellant abandoned her case insofar as the Building and Loan Association was concerned, and admitted that the appellant was in no position to contest the prior rights of the Building and Loan Association as to the application of the sums received by the Association from the appellant on account of the loan. Because of this admission, this brief is filed on behalf of the Ventnor Building and Loan Association as well as the other defendants.

Likewise, in the argument and brief of the appellant in the Court of Chancery, the appellant had abandoned her case as against the defendant Benjamin B. Bloch, who is the holder of the second and third mortgages on the property, and does not question the equitable rights incident to the holder of said mortgages to have the payments made by the appellant to the Building and Loan Association first applied by the Association to the reduction of the first building and loan mortgage.

Regardless of these admissions, the appellant still contends that as against the purchaser at the sheriff's sale, the appellant still retains an interest

in the shares of stock which she had assigned to the Building and Loan Association as security for the loan, and that that interest has a value which the appellant endeavors to obtain on the theory of subordination.

ARGUMENT OF LAW.

I.

UNDER THE DOCTRINE OF MARSHALLING OF ASSETS, THE APPELLANT CAN HAVE NO INTEREST IN THE BUILDING AND LOAN ASSOCIATION SHARES.

The respondents claim that the only purpose which the shares of stock can have is to repay the loan made on said shares when each share shall be worth \$200 at their maturity value; that the appellant, by her very contract with the Building and Loan Association, agreed that the mortgage should be paid off when the amount paid upon the principal of the loan shall equal the full principal of said mortgage.

The appellant admits that as against the Building and Loan Association, the Association has a prior right to the application of any sums paid by the appellant on account of the loan made by it.

The right of a subsequent mortgagee who holds a mortgage on property subject to a building and loan mortgage to have the Building and Loan Association first exhaust its collateral before resorting to the common security to pay its debt, has recently been affirmed by Vice-Chancellor Backes in

the suit of *Schaefer v. Metzger, et al.*, 147 Atl. 774. Under that decision, the second mortgagee has a right to compel the Building and Loan Association to exhaust any assets of the debtor which it may have in its possession, and, in this case, any payments made on the shares of stock before resorting to the common security, which is the real estate. This theory the appellant does not controvert.

It must be clear, then, that until the holder of the second and third mortgages and the Building and Loan Association are paid the full amount of their loans, the appellant has no tangible or attachable interest in the shares of stock. The appellant is asking the Court to instill life in the mortgage upon the last payment made to the Building and Loan Association and subordinate the appellant's rights as to the amount paid by her to the rights of the Building and Loan Association in the Association's mortgage. This is directly contrary to the agreement made between the appellant and the Building and Loan Association.

Under the same theory of marshalling of assets, a judgment creditor who obtained a judgment on real estate of a debtor, which real estate is subject to a building and loan mortgage, has the same right that a subsequent mortgagee would have to compel the Building and Loan Association to exhaust that asset which the judgment creditor and the Building and Loan Association do not have in common, and it must naturally follow, then, that if the judgment creditor has this right, a purchaser of real estate under said judgment has the same right that the judgment creditor would have to have the Building and Loan Association apply the payments made upon the shares of stock for which the mortgage is collateral security, because the rights of the judg-

ment creditor inure to the benefit of the purchaser. A judgment is as much a subsequent lien upon the real estate of the debtor as a mortgage.

Assuming for the present that even though the Association and the holder of the subsequent mortgage encumbrances have a prior right to the application of the payments made by the appellant as against the appellant, that the appellant, in spite of those facts, has a prior right to those payments as against the purchaser, we must then consider the various questions that arise as to the equitable rights of the appellant as against the purchaser. This subject must of necessity be subdivided because the appellant's claim is based upon credits of two different characters:

1. As between the appellant, who was the original owner of the property, and the purchaser of the property at the sheriff's sale, who is entitled to the credit of \$1800 which was made in two extra lump-sum payments upon the principal of the \$10,000 building and loan mortgage?

2. Was the purchaser at the sheriff's sale, subject to the building and loan mortgage, entitled to the credit of the monthly payments made by the original owner who has been divested of the title to the land by the sale?

I.

APPELLANT CAN HAVE NO INTEREST IN THE BUILDING AND LOAN MORTGAGE FOR THE LUMP-SUM PAYMENTS AGGREGATING \$1800 PAID TOWARD THE REDUCTION OF THE MORTGAGE.

In considering the first point, it is admitted by the appellant that upon the payment of the lump sum of \$1800 upon the principal sum of the building and loan mortgage, nine shares of stock of the Association which the appellant assigned as security for the loan made to her were cancelled and withdrawn by the action of said payment and the acceptance by the Association, and the loan was thereupon reduced to \$8200.

If the purchaser took subject to a \$10,000 building and loan mortgage encumbrance, as is contended by the appellant, he could not have taken it because of the fact that the indebtedness to the Association was at the time of the sale \$10,000, because at that time the loan had been absolutely reduced to \$8200. If he did take it subject to \$10,000, the appellant must show some further facts that would have influenced the rights between the parties to bring about this contention. This contention seems to be that the sheriff's statement that the property was sold subject to a \$10,000 building and loan mortgage imposed the duty upon the purchaser to reimburse the appellant for the difference between the reduced amount of the mortgage and the original principal sum.

(a)

THE SHERIFF IS NOT JUSTIFIED IN IMPOSING TERMS ON THE PURCHASER DIFFERENT FROM THOSE IMPOSED BY LAW.

The appellant has stressed the fact that the purchaser is bound under the conditions of the sale to assume the building and loan mortgage in the full amount of \$10,000 because of the fact that the announcement was made that the property was sold subject to a \$10,000 building and loan mortgage, which announcement was written by the sheriff upon the paper containing the conditions of the sale, and the conditions of sale were signed by the purchaser.

What effect, if any, did this statement, which was not made by the appellant or by anyone on her behalf but by the attorney of the judgment creditor selling the assets of the appellant and which statement was noted by the sheriff on the conditions of the sale, have upon the credit of \$1800 representing the extra payments? At this point we must distinguish between what are conditions of a public sale, and what are announcements. It is a well settled principle of law that the officer selling under judicial process has simply a naked power to sell according to the mandate of the Court. He may adopt conditions of sale amply sufficient to secure the compliance by the purchaser with his bid, but he cannot impose any liability upon the purchaser with respect to the property sold which would not result by law from his purchase.

This principle was thoroughly discussed in the case of *Stevenson v. Black*, 1 N. J. Eq. 338, and

Hackensack Water Co., Reorganized v. DeKay, 36 N. J. Eq. 548.

In the case of *Stevenson v. Black*, *supra*, the Court, at page 345, said:

“I am clearly of the opinion that there is no new contract created by the additional terms of sale in favor of these complainants. The property was sold subject to the encumbrance, whatever that might be, in the same way that other property similarly situated is always sold. The sheriff could only sell and convey the right of Howell, the mortgagor, which was the right to redeem; that was the right purchased by Black subject to all proper equities, and these are to be ascertained by the known and settled principles of equity and not by the terms which the sheriff or creditor may, without authority, choose to impose.”

The announcement at the sale, in the present case, was made by Edmund H. Reeves, Esq., attorney for the judgment creditor, and his testimony in this respect is as follows (Case, page 37, lines 24 to 29):

“By Mr. Gottlieb:

Q. You did not represent the complainant in this case at the time of the sale?

A. I did not.

Q. And did she authorize you to make a statement for her?

A. She did not.”

The appellant is attempting to fasten an announcement made by the attorney representing the judgment creditor, whose interest in the suit was opposed to the interest of the appellant, as a condition of the sale binding upon the purchaser, and is endeavor-

oring to hold that announcement as a condition of the sale. The conditions of the sale are clear and definite. The announcement is mere surplusage.

(b)

NO ESTOPPEL CAN OPERATE AGAINST THIS PURCHASER IN DENYING THAT AS TO THE APPELLANT, THE MORTGAGE IS NOT A VALID LIEN FOR THE FULL AMOUNT.

The appellant lays stress upon the case of *Warwick v. Dawes*, cited with importance in the appellant's brief. An examination of that case will disclose that the facts are not identical with the facts in this case. The facts in the present case are similar to the facts in the case of *Hackensack Water Co., Reorganized v. DeKay*. In that case, the Court compared and distinguished the case of *Warwick v. Dawes*, and thoroughly considered the question of estoppel. The opinion of the Court on that point is as follows:

“The facts are wholly unlike those upon which this Court held, in *Warwick v. Dawes*, 11 C. E. Gr. 548, that a purchaser at a judicial sale was estopped. There, the purchaser, who sought to invalidate a mortgage, bought the mortgaged premises at another foreclosure sale, in the presence of the mortgagee's solicitor, expressly subject to the mortgage in question and agreed to pay the amount due on it.”

The purchaser buys at a sheriff's sale subject to the existing encumbrances and no more. The judgment plaintiff was in no position to change the

status and conditions of those encumbrances after the judgment was entered. The purchaser purchased at the sale and the sheriff's deed vests in him as good and perfect an estate in the premises as a person against whom the execution was issued, was seized of or entitled to, at or before the said judgment, and as fully and to all intents as if such person had sold said lands and premises to the purchaser and had received the consideration money, and had signed, sealed and delivered a deed for same. The effect of the above principle was set out in the case of *Hackensack Savings Bank v. Morse*, 46 Eq. 166.

If the judgment creditor in this case can be permitted to say that the mortgage on the property was \$10,000, when he knew that the principal thereof had been reduced to at least \$8200, nothing can stop anyone from rising at a sheriff's sale and announcing that the mortgage encumbrances upon the premises were greatly in excess of the original principal sum of said mortgage. For example, the announcement could have been made "subject to a building and loan mortgage in the sum of \$15,000," rather than the true principal sum of \$10,000, and under the same argument of counsel for the appellant, the purchaser would be obliged by some decree to assume not only the difference between the original amount of the mortgage and the balance due thereon, but also an additional payment of \$5,000 in excess of the original principal sum of the building and loan mortgage.

Assuming, for the purpose of discussing the further facts in this case, that the announcement can be considered as a condition, we must consider what obligation that condition imposed on the purchaser.

(c)

THE PROPERTY WAS NOT SOLD SUBJECT TO THE REPAYMENT OF THE AMOUNT PAID UPON THE BUILDING AND LOAN MORTGAGE.

Mr. Reeves, the attorney for the judgment creditor, announced that the appellant's property was sold subject to a \$10,000 building and loan mortgage. He did not announce, as the facts in the appellant's brief wish us to believe, that whoever bought the property bought the same subject to the full amount of the building and loan mortgage, or, more especially, that the purchaser would be obliged to pay such amount to the original owner as said owner may have paid upon the building and loan mortgage. Mr. Reeves admitted that when he made the statement, he did not intend to convey that thought or that it should be interpreted in that manner. As he stated, he was merely making an announcement as to the original amount of the mortgage encumbrances on record (Case, page 38, lines 1 to 29).

II.

APPELLANT CAN HAVE NO INTEREST IN THE BUILDING AND LOAN SHARES AS TO THE INSTALLMENT PAYMENTS MADE TO THE BUILDING AND LOAN ASSOCIATION.

(a)

APPELLANT HAS NO WITHDRAWAL INTEREST IN THE SHARES OF STOCK WHICH ONLY EXIST FOR THE REPAYMENT OF THE LOAN.

The appellant lays great stress upon the fact that the cases hold that the monthly payments upon a loan from a Building and Loan Association do not become immediate reductions upon said loan, and upon this theory claimed that the appellant still has an interest in the shares of stock which she had assigned to the Association, for the full amount paid in.

It may be conceded that the payments made upon the shares of stock are not an immediate reduction on the mortgage, but, on the other hand, what interest the appellant may have in the installment payments to the building and loan are never subject to withdrawals from the Building and Loan Association except under the conditions of the loan. The purchaser bought subject to the encumbrances, and the conditions that may be contained therein. The building and loan mortgage, according to its conditions, must be cancelled when the shares of stock mentioned

specifically in said mortgage are worth the sum of \$200 each. This form of building and loan is different from the form as discussed in the case cited by the appellant. In this case, when the shares are worth \$200 each, the mortgage must be paid off. The mortgage and the stock are so tied together that they cannot be severed without the extinguishment of the mortgage. The appellant had no withdrawal interest in those shares at the time of the sale or at any other time, and any interest which she had must always be applied to the reduction of the mortgage in case of default or to pay off the mortgage in case of the maturity of the shares.

Unless there is an absolute agreement between the purchaser and the vendor for the repayment of the paid in amount, the appellant cannot receive this credit from the Building and Loan Association or the purchaser. Even if this were not true, there could be no declaratory decree for any amount due the appellant because her interest has no definite value.

In the case of *Greenville Building and Loan Assn. v. Wholey*, 68 N. J. Eq. 92, the Court held that under a judicial sale, the existence of the stock of the Building and Loan Association was a mere shell, and that upon the payment of the last installment, the mortgage debt is paid without regard to the value of the shares, and the borrower's interest in the Association ceases.

Assuming the argument of the appellant that she is entitled to the amount paid in at the maturity of the shares to be true, how is she to ascertain that amount at this time. The Association may be in the hands of a receiver, and the shares may be worth nothing, and in that event the purchaser would receive no credit of the sum paid by the appellant.

(b)

THERE IS NO MEETING OF THE MINDS IN THE SALE OF REAL ESTATE SUBJECT TO A BUILDING AND LOAN MORTGAGE WHERE NO PROVISION IS MADE FOR THE REPAYMENT OF THE BACK PRINCIPAL AND THE TAKING OF AN ASSIGNMENT OF THE BUILDING AND LOAN STOCK.

Under this heading we must consider the question: As between the purchaser and the appellant, who is entitled to the payments made upon the shares of stock in monthly installments, which amount to approximately \$1,722.00?

In the case of *Street v. Harris*, 93 N. J. Eq. 83, a contract was entered into by the vendor and the purchaser for the sale of a building "subject to a first mortgage now encumbering the property held by the C. B. & L. Assn. in the sum of \$36,000." In stating the facts, Vice-Chancellor Griffin, at page 84, said:

"One thing apparently not foreseen by the parties, upon which their minds did not turn, was the adjustment to be made of the money paid in on account of the shares of stock as well as the assignment thereof to the purchaser subject to the collateral pledge. * * * I do not deem it necessary to go further into this matter beyond pointing out that the minds of the parties did not meet on this contract, and, therefore, a court of equity should not enforce it."

This case was affirmed by the Court of Errors and Appeals in 93 N. J. Eq. 503, and under the same

title of the case, the Supreme Court in 1 N. J. Misc. Repts. 367, held that the vendor was compelled to refund the money received by her as a deposit, the Court having found that the vendor had failed to perform her contract.

The case of *Street v. Harris* raised the same point that arises in this case with regard to the credit of installment payments, with the exception, of course, that the sale in that case was between individuals instead of a purchase by an individual at a judicial sale. There being no express contract at the time of the sheriff's sale between the appellant or her agent and the purchaser as to the credit paid in monthly installments upon the principal of the building and loan mortgage, there could be no meeting of the minds at the time of the sale between the purchaser and the appellant as to the assignment of the shares of stock, which were security for the loan of the appellant, to the purchaser and the repayment by the purchaser of the sum paid in by the appellant. The purchaser, before bidding at the sale, was informed by the secretary of the Building and Loan Association that the building and loan mortgage had been reduced in one manner or another to \$6,595. He testified further that he made his bid for the property of the appellant upon the assumption by him that he would be obliged to pay for the cancellation of the building and loan mortgage only the sum of \$6,595 (Case, page 61, lines 20 to 26.) It is an admitted fact that a few days after the sale, Mr. Bloch, the purchaser, and the appellant met and endeavored to settle any alleged claim that the appellant might have, which was exactly what happened in the case of *Street v. Harris*. At the time of the conference, it was definitely understood by the appellant that the purchaser refused to recog-

nize her interest in the lump-sum payments made by her and her interest in the monthly installment payments made by her upon the loan from the Building and Loan Association. With knowledge of the fact that the purchaser refused to pay the disputed credits, the appellant accepted from the sheriff a check in the sum of \$2,614.10, representing the surplus money arising out of the sale.

Assuming for the instant that the appellant retained an interest in the shares of stock similar to the interest of the vendor in *Street v. Harris*, this act was a waiver of the credit which she alleged was due. Let us assume that in the case of *Street v. Harris* the vendor, realizing that the purchaser refused to repay the credit on the building and loan mortgage and decided to take the balance of the purchase price in accordance with the agreement of sale and deliver a deed for the property, could the vendor thereafter sue the purchaser for the difference between the balance of the building and loan mortgage and the original sum of that mortgage? Would this act of accepting the money with knowledge of the refusal to recognize that credit be interpreted as a confirmation of the sale by the sheriff? If the appellant desired to press her claim for the building and loan credits, she should not have filed a petition for surplus money and accepted that sum from the sheriff. She should have definitely refused to confirm the sale and proceeded to set aside the sale, which she had a right to do.

(c)

APPELLANT IS GUILTY OF LACHES IN NOT APPLYING TO EQUITY FOR RELIEF BEFORE THE DELIVERY OF THE DEED.

In the case of *Mutual Life Insurance Company v. Goddard*, 33 N. J. Eq. 482, it was held:

“A sheriff's sale made by virtue of process issued out of this court may be set aside on petition and without bill even after the sale had been carried into effect by the delivery of a deed. A person whose property has been sold at a judicial sale to his injury will always, if he applies promptly and without fraud, have the sale set aside upon showing that he was prevented from attending the sale by fraud, mistake or accident.”

In the case of *Hall v. Urganhart, et als.*, 11 N. J. Eq. 318, the Court held:

“A party who is guilty of laches is not entitled to have a sale opened. A party who has notice of the sale and does not appear and make defense has no right to ask to have the sale opened on any ground which he might have interposed as a defense, unless he was prevented from making his defense by fraud or mistake. Even then, if he is present at and consents to the sale, he thereby waives his rights.”

It can readily be seen that if the appellant was not satisfied with the sale, she could have had the sale set aside because of the statement which she could have alleged was detrimental to her interests.

She could have filed a bill to have the sale set aside on the ground that a statement made by a person who did not represent her materially affected her property at the sheriff's sale, but apparently she did not care to set this sale aside. She seemed satisfied with the sale and accepted the proceeds thereof rather than to refuse to accept the proceeds and proceed promptly to have the sale set aside and a new sale ordered.

(d)

THE ACTS OF THE APPELLANT HAVE CHANGED THE POSITION OF THE PURCHASER.

If the appellant had desired to set the sale aside she should have done so promptly. The sale took place on March 31, 1926, and the bill was filed by the appellant on January 3, 1927, over nine months from the date of the actual sale. During that time, the position of the purchaser had changed. As his testimony showed, he purchased this residence for his own personal use as a dwelling, and had expended thereon several thousand dollars. Had the appellant come to equity in good faith, she would have filed her bill immediately after the sale to have the sale set aside, and if it were decided that the statement made at the sale was detrimental to her interest, that by a mistake or fraud her interests had been jeopardized, a new sale could have been ordered. The sale was not an illegal sale, but may be deemed to be voidable at the pleasure of the appellant. If the appellant chose to have the sale set aside, she could have proceeded to file her bill in this Court for such relief. If, however, she

deemed it advisable to complete the transaction, she had, therefore, made her election.

(e)

APPELLANT DOES NOT COME INTO
EQUITY WITH CLEAN HANDS.

There is still further a more important principle involved in this case. The Court has already found from the facts that at the time the announcement was made by Mr. Reeves, attorney for the judgment creditor, there was only due on the principal sum of the building and loan mortgage the sum of \$8200, and that this fact was known to the attorney who made the announcement, the judgment creditor, the purchaser, and likewise the Vice-Chancellor found that this fact must have been known to the appellant. The Court further found that the appellant and the judgment creditor, who was her daughter, were friendly because they were together afterwards, apparently friendly relationships were not disturbed at all.

The respondents desire to call the Court's attention to the remarks of Mr. Reeves after the sale (Case, page 36, lines 6 to 8):

“And I again said, ‘Well, the sale was subject to the full amount of the mortgage.’”

What could be the purpose of that remark? It could only mean one thing, that Reeves felt he had caught an outside purchaser in a trap. How could the significant “well” be otherwise interpreted when one considers his testimony as to his conversation with Mr. Gottlieb, attorney for the purchaser, prior to said sale (Case, page 30, line 30; page 31, lines

1 to 14), and the object of his announcement, which he stated in his testimony (Case, page 38, lines 17 and 19).

There must also be considered the fact that the attorney for the judgment creditor prepared the petition for the appellant for the surplus money, and that he acted for the appellant subsequent to the sale and acted for her in obtaining the surplus money. If the statement made by the attorney can, by a stretch of the imagination, be presumed to mean the assumption by the purchaser of the full principal sum of the building and loan mortgage, then the statement made at the sheriff's sale by the attorney was manifestly false upon its face, and at the time the statement was made, it was known to be false by the announcer.

The Court of Chancery, being a Court of conscience, rightly refused to assist the appellant who asked for the equity of that Court. The conclusion of the Vice-Chancellor showed he was deeply impressed with the theory of collusion on the part of the appellant and the judgment creditor (Case, page 130, line 12 to 36).

(f)

PUBLIC POLICY MAKES IT IMPORTANT THAT A PURCHASER AT A SHERIFF'S SALE SHOULD NOT BE DRAWN INTO CONTROVERSY.

In the case of *VanDuyne v. VanDuyne*, 16 N. J. Eq. 93, the Court held:

“The purchaser of these premises acted in entire good faith, and had no connection with the parties or with the subject-matter of the controversy in the cause, but attended the sale

for the purpose of purchasing a farm for his own occupation after he had sold his own. * * *
As a measure of public policy, it is of the utmost importance that a person thus purchasing at a sheriff's sale should not be drawn into controversy or have his rights as a purchaser impugned for matters over which he has no control, and for which he is in no wise responsible except upon the most cogent necessity for the protection of the rights of others. If the purchasers at judicial sales come to understand they purchase with the hazard of litigation founded on an error or mistaken exercise of discretion by the sheriff, it will unavoidably tend to divert persons from bidding, and operate detrimentally upon the rights of all parties interested."

To compel the purchaser to now recognize the alleged interest of the appellant under the stated facts would surely endanger the whole system of public sale.

We respectfully submit that for the reasons above discussed, the decree should be affirmed.

Respectfully submitted,

CASSMAN & GOTTLIEB,

*Solicitors for and of counsel
with Defendants-Respondents
Sherman H. Bloch,
Julia F. Bloch and Benjamin B. Bloch.*

JOHN B. SLACK,

*Solicitor for and of counsel
with Defendant-Respondent
Ventnor Building
and Loan Association.*

February Term, 1930.

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