

35  
**New Jersey Court of Errors and Appeals**

NEWARK TRUST COMPANY, a corporation,

*Complainant-Appellant,*

*vs.*

LACKAWANNA INVESTMENT COMPANY,

*Defendant-Respondent,*

*and*

ROLAND D. CROCKER, and CECIL H. MACMAHON, as Trustees in Bankruptcy of ROLAND D. CROCKER,

*Defendants.*

*On Bill, etc.*

**Brief of Defendant, Lackawanna Investment Company.**

**Statement of Facts.**

The facts briefly stated are as follows:

On November 1, 1910, Lackawanna Investment Company, a corporation, all the stock of which was owned by Roland D. Crocker and William B. Powell, desired to obtain a loan of \$5,000, giving as security some of its property in East Orange, New Jersey. Both Powell and Crocker were directors in Newark Trust Company and Crocker was a member of the executive committee and also its counsel. Crocker proposed that the Lackawanna Investment Company make a bond and mortgage to him for \$8,000, which he would then take to the Newark Trust Company and pledge as collateral for his note for \$5,000 and thus secure a loan of \$5,000, which he

would then turn over to the company. This was done. On November 1, 1910, Lackawanna Investment Company executed a bond and mortgage to Roland D. Crocker purporting to secure \$8,000, but for which in reality there was no consideration. On December 16, 1910, the mortgage was recorded and an assignment thereof to the Newark Trust Company was executed by Crocker and recorded. This assignment was made to secure the demand note of Roland D. Crocker for \$5,000 made on December 16, 1910, which note was bought by the Newark Trust Company and the proceeds of this loan were duly turned over by Crocker to the Lackawanna Investment Company. The note was the usual form of collateral note used by banks and contained the following clause: "The undersigned having deposited with said Trust Company as collateral security for the payment of this or any other liability or liabilities of the undersigned, direct or contingent, individual or firm, to said Trust Company now existing or which hereafter may be contracted, the following property, viz: Assignment of Mortgage, Lackawanna Investment Company to me for \$8,000, dated November 1, 1910." And the following: "On the non-performance of this promise or the non-payment at maturity of any of the other liabilities aforesaid \* \* \* sale may be made, etc." And also the following: "It is hereby agreed and understood that if recourse is had to collateral any excess of collaterals upon this note shall be applicable upon any other note, claim or endorsement held by said company."

In their statement of facts complainant's counsel at page 4 of their brief say: "They (Crocker and Powell) knew the form of collateral note used in the bank and that by the terms of the collateral note, the collateral security was

pledged to secure all indebtedness of the maker of the note." And again just a little later, "Powell had the same knowledge as director of the institution and signed a collateral note in precisely the same form on January 16, 1911, one month after the collateral note of Mr. Crocker." It is not true that Powell at that time knew the form of collateral note that was signed by Crocker. See his testimony in the State of Case, pages 27, 28 and 29.

On May 12, 1914, three years after the transaction above set forth, the bank loaned \$2,500 to one William F. Ackor upon security of his note endorsed by Crocker. There is no evidence that at the time of making the loan the bank had in mind or relied at all on the collateral pledged with Crocker's note for \$5,000. This note has never been paid, protest was waived and the note is an indebtedness of Crocker. The Newark Trust Company claims to hold the \$8,000 mortgage of Lackawanna Investment Company as collateral not only for the \$5,000 note of Crocker, but also for the Ackor note of \$2,500.

### POINT 1.

**The general rule in this state is that the assignee of a mortgage takes it subject to all equities of the mortgagor.**

Compiled Statutes of New Jersey at page 3418, section 31:

"That all mortgages on land in this state and all covenants and stipulations therein contained shall be assignable at law by writing, whether sealed or not, and such assignment shall pass and convey the estate of such assignor in the mortgaged premises, and the assignee may sue thereon in his own name; but in such suits there shall be

allowed all just set-offs and other defenses against the assignor that would have been allowed in any action brought by him and existing before notice of such assignment; all assignments made under this act by a married woman in her own right and without her husband shall be valid."

*Jones on Mortgages*, Seventh Edition, section 842:

"Where the debt secured by a mortgage is not created or evidenced by a negotiable promissory note, the assignee receives merely a chose in action and therefore takes the security subject to any equities and defenses against it in the hands of the original mortgagee whether or not he had notice thereof."

*Cyc.*, Volume 27, page 1320:

"Where the debt secured by a mortgage is created or evidenced in any other manner than by a negotiable promissory note, one taking it by assignment is the assignee of a chose in action and therefore takes the debt and the security subject to any equities or defenses existing against it in the hands of the original mortgagee, at the time of the assignment, whether or not he had notice or knowledge thereof."

*Shannon v. Marselis*, 1 N. J. Eq. 413.

*Bolles v. Wade*, 4 N. J. Eq. ~~461~~ 458

*Jacques v. Esler*, 4 N. J. Eq. 461.

*Cornish v. Bryan*, 10 N. J. Eq. 146.

*Dolman v. Cook*, 14 N. J. Eq. 56.

*Woodruff v. Depue*, 14 N. J. Eq. 168.

*Andrews v. Torry*, 14 N. J. Eq. 355.

*Conover v. Van Mater*, 18 N. J. Eq. 481.

*Coursen v. Canfield*, 21 N. J. Eq. 92.

*Kamena v. Huelbig*, 23 N. J. Eq. 78.

- Bennett v. Hadsell*, 23 N. J. Eq. 174.  
*Atwater v. Underhill*, 22 N. J. Eq. 599.  
*Bush v. Cushman*, 27 N. J. Eq. 131.  
*Whitney v. Franklin*, 28 N. J. Eq. 126.  
*Dewitt v. Van Sickle*, 29 N. J. Eq. 209.  
*Vredenburg v. Burnet*, 31 N. J. Eq. 229.  
*Woodruff v. Morristown Institution for Savings*, 34 N. J. Eq. 174.  
*Robeson v. Robeson*, 50 N. J. Eq. 465.  
*Magie v. Reynolds*, 51 N. J. Eq. 113.  
*Fisher v. Bull*, 52 N. J. Eq. 298.  
*Tate v. Security Trust Co.*, 63 N. J. Eq. 559.  
*Black v. Thurston*, 71 N. J. Eq. 643.  
*Voorhees v. Nixon*, 72 N. J. Eq. 791.  
*Riley v. Hopkinson*, 82 N. J. Eq. 469.

## POINT 2.

**There are only two exceptions to the general rule that the assignee of a mortgage takes it subject to all equities of the mortgagor.**

(A) WHEN THE MORTGAGE WAS IN THE FIRST INSTANCE GIVEN TO SECURE A NEGOTIABLE PROMISSORY NOTE AND THE ASSIGNEE IS A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE BEFORE MATURITY.

(B) WHEN THE MORTGAGOR IS ESTOPPED TO SET UP HIS EQUITY.

The transaction here under consideration does not come under the first exception for the following reasons:

1. The mortgage, which was pledged with the Newark Trust Company, was given in the first place to secure a bond (Exhibit C. 1, State of Case, page 29).

2. The Newark Trust Company does not hold the position of a *bona fide* purchaser for value without notice before maturity, as Crocker's note is made directly to the bank (Exhibit C. 4, State of Case, page 38).

We submit that it is the established doctrine of this State that the assignee of a mortgage given to secure a bond is bound by all equities existing against it in the hands of the original obligee, whether he has notice of them or not and whether he is a purchaser for value or not, unless the original obligor is estopped to set them up.

*American and English Encyclopaedia of Law*, Second Edition, Volume 20, at page 1041:

“An assignee of a mortgage takes subject to all equities or defenses existing in favor of the mortgagor as against the mortgagee at the time of the assignment, because as to such equities the mortgage instrument indicates on its face that the mortgagor is the debtor and the proper person of whom inquiry should be made as to any equities or defenses he may have and therefore if the assignee fails to obtain actual notice of these matters, it is due only to his own neglect.”

And again at page 1042:

“The mortgagor may, of course, be estopped to assert against the assignee those defenses or equities, which he has against the mortgagee, as where he has given to the assignee a certificate that he has no defense or set-offs against the mortgage, or even made statements to him to that effect.”

In *Robeson v. Robeson*, 50 N. J. Eq. 465, the Court of Errors and Appeals affirms an opinion

of Vice-Chancellor Pitney, in which the Vice-Chancellor makes the following clear statement:

“It is entirely clear that as against the personal representatives of Colonel Robeson the defense exists. It is also a well established rule that the assignee of a mortgage, taken years after it becomes due, takes it subject to all equities existing between the mortgagor and mortgagee; and that the mortgagor can only be deprived of such equity by such conduct on his part as estops him from setting it up against such assignee. It is also quite clear that in order to enable the assignee to take advantage of such estoppel he must be what is called a *bona fide* purchaser without notice; that is, he must have advanced his money or other thing of value upon the strength of the conduct out of which the estoppel arises. It is also well settled that he is only protected by the estoppel to the extent to which he has actually parted with his money or other valuable thing.”

In *Woodruff v. Morristown Institution for Savings*, 34 N. J. Eq. 173, at page 179, we have the following statement by Vice-Chancellor Van Fleet:

“Now while it is true that the title of the assignee of a mortgage is always subject to the equities of the mortgagor, it is also true that the mortgagor may by concealing his equities or misleading the assignee, place himself in a position where justice will be defeated if he is allowed to set up against the assignee, an equity, on which he would be entitled to prevail in a suit by his mortgagee.”

*Magie v. Reynolds*, 51 N. J. Eq. 113, at page 117. In this case Vice-Chancellor Pitney states the general doctrine, that an assignee of a bond and mortgage takes it subject to all the equitable defenses, which the original obligors and mortgagors have thereto. And at page 117 he continues:

“A mortgagor and obligor may, however, so conduct himself as to mislead a proposed assignee and estop himself from setting up his defenses; and I have looked with care into this case to see if I could find anything in the conduct of Mr. and Mrs. Reynolds, which would estop them as against Mrs. Magie.”

See also *Nixon v. Haslett*, 74 N. J. Eq. 789, at page 792; *Voorhees v. Nixon*, 72 N. J. Eq., 791, at page 796; *Riley v. Hopkinson*, 82 N. J. Eq., 469.

### POINT 3.

**It is an essential element of equitable estoppel or estoppel *in pais* that the person relying on the estoppel must have acted on the faith of the representation made and from which it is claimed that the estoppel arises.**

It will here be necessary to consider briefly the elements of estoppel by representation.

In *Bigelow on Estoppel*, Sixth Edition, 1913, page 603, we find the following definition:

“Estoppel by representation consists in holding for truth a representation acted upon when the person who made it or his privies, seek to deny its truth and to deprive the party who has acted upon it of the benefit obtained. The origin of the estoppel

is probably to be found in the doctrine of equity that if a representation be made to another *who deals upon the faith of it*, the former must make the representation good if he knew or was bound to know it to be false."

And again at page 604:

"In order to justify the interposition of equity in the case mentioned it is necessary to establish, not only the fact of misrepresentation or concealment, but also that it has been in a matter of substance or of importance to the interests of the other party and *that it has actually misled him*. If the misrepresentation was of a trifling or immaterial thing, or *if the party alleging it did not in fact trust in it or was misled by it*, or if it was vague or inconclusive in its nature, or if it was upon a matter of opinion or of fact equally open to the knowledge of both parties, in regard to which neither could be presumed to trust the other; in these and in the like cases equity will not grant relief."

And again at page 694:

"The rule is fundamental that unless the representation of the party to be estopped *has also been really acted upon*—the other party acting differently, that is to say, from the way he would otherwise have acted, so that to deny the representation would prejudice him—no estoppel arises."

Volume 16 *Cyc.*, at page 742:

"It is essential to an equitable estoppel that the person asserting the estoppel should have done or omitted some act or *changed his position in reliance upon the representa-*

*tions or conduct* of the person sought to be estopped."

In Lord Halsbury's Laws of England, Volume 13, pages 323 and 324, we find the following:

"Where one has either by words or conduct made to another a representation of fact either with knowledge of its falsehood or with the intention that it should be acted upon or has so conducted himself that another would, as a reasonable man, understand that a certain representation of fact was intended to be acted on, *and that other has acted on such representation and thereby altered his position to his prejudice*, -an estoppel arises against the party who made the representation, and he is not allowed to aver that the fact is otherwise than he represented it to be."

And again at page 383:

"*The representation must have been acted upon as true by the party to whom it was made.* A representation made to one person and acted on by him, cannot be taken advantage of by another to whom it was not made and who has not acted upon it. And it is not sufficient that the party complaining acted in a manner consistent with the truth of the representation if it appears that he was not influenced by it."

In all the cases in which equitable estoppel is discussed reference is made to the cases of *Pickard v. Sears*, 6 A. and E. 473, and *Freeman v. Cooke*, 2 Ex. 654, 18 L. J. Ex. 114 (1848), which cases seem to be regarded as the two leading and original cases on the subject among the English cases. In the former case in 1837 we

find the doctrine of estoppel *in pais* stated thus by Lord Denman:

“But the rule of law is clear, that where one by his words, or conduct wilfully causes another to believe the existence of a certain state of things and *induces him to act on that belief*, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time;”

And in the latter of the two cases we find the following statement by Mr. Baron Parke:

“By the term ‘wilfully,’ however, in that rule we must understand, if not that the property represents that to be true which he knows to be untrue, at least that he means his representation to be acted upon and *that it is acted upon.*”

These cases uphold the doctrine that the representation relied upon to create an estoppel *in pais* must have been relied on and acted on. The following English cases also uphold this doctrine:

*Piggott v. Stratton*, 1 De Gex, F. & J. 33, at page 51.

*Swann v. North British Australasian Co.*, 7 Hurlston & Norman, 604, at page 633.

*Markham and Darters Case*, 1899, 1 Ch. D., page 430.

*Cropper v. Smith*, 26 Ch. D., pages 705 and 706.

*Carr v. London & N. W. Ry.*, L. R. 10 C. P. 307.

*McCance v. L. & N. Ry.*, 7 H. & N., 477, at page 486.

That the above doctrine is also the law in this country is proven by the following cases:

*Tyler v. Odd Fellows Association*, 145 Mass., 134. In that case it was held that no act having been done in reliance on the statements made there was no estoppel.

*Butchers Association v. Boston*, 139 Mass, 290. Held the same.

*Winegar v. Fowler*, 82 N. Y., 315. Held the same.

*McMaster v. Insurance Co.*, 55 N. Y., 315. Defines elements of estoppel *in pais*.

*Continental National Bank v. National Bank of the Commonwealth*, 50 N. Y., 575. In this case it was held that there was an estoppel as the statements made had been relied on and acted on, and in *Voorhees v. Olmstead*, 66 N. Y., 113, we find the same ruling.

The following cases are also good authority for this doctrine:

*Manufacturers' Bank v. Hazard*, 30 N. Y., 226.

*Jones v. Merchants' Bank*, 55 Hun, 290, at pages 292 and 295 (8 N. Y. S. 382).

And we respectfully submit that the same doctrine is the law in our own state.

In *Den v. Baldwin*, 21 N. J. L., at page 403, we find Mr. Justice Carpenter stating the theory of equitable estoppel as follows:

“This equitable estoppel rests upon the principle that when any one has done an act or made a statement, which it would be fraud on his part to controvert or impair and such act or statement has so influenced any one *that it has been acted upon*, the party making it will be estopped and cut off from the power of retraction. It must

appear first, that he has done some act or made some admission inconsistent with his claim; secondly *that the other party has acted upon such conduct or admission*; and thirdly that such party will be injured by allowing such conduct or admission to be withdrawn."

The above statement by Mr. Justice Carpenter is quoted with approval by Mr. Justice Potts in *Martin v. Righter* (Court of Errors and Appeals), 10 N. J. Eq., at page 526, and is made the basis of the decision.

In *Kuhl v. Jersey City*, 23 N. J. Eq., 84, we find Chancellor Zabriskie quoting with approval from the judgments rendered in *Pickard v. Sears*, *supra*; *Howard v. Hudson*, 2 El. & Black 1; *The Welland Canal Co. v. Hathaway*, 8 Wend., 483, statements directly upholding the above doctrine.

In *Mutual Life Insurance Co. v. Norris*, 31 N. J. Eq., 583, we find Vice-Chancellor Van Fleet stating the rule thus:

"To constitute such an estoppel (equitable) the defendant must have done an act or made an admission, the natural effect of which was to influence the conduct of the complainants, *and which has induced them to change their position or condition* so that if he is now permitted to deny the truth of his words or conduct, the complainants must suffer harm."

In this case it was held that there was no equitable estoppel as there has been no reliance on the representations made.

In *Hollins v. American Union Electric Co.*, 56 Atlantic 1041, page 1046, we find Vice-Chancellor

Stevenson making the following statement in giving judgment:

“In regard to the claim that whatever the fact may have been, Mr. Hollins was estopped to set up that the money so paid in was a loan when he had represented to the creditors that it was not a loan, but a payment of the purchase price of something. The answer, I think, is absolute that *there is no proof here at all that anybody, stockholder or creditor, was misled or changed his position in any way whatever. That essential element of an estoppel is entirely lacking*; and therefore if I should find—which I do not—that Mr. Hollins joined in the gross fraud of Mr. Young in preparing this scandalously deceptive statement and publishing it to the credit agencies there would not be an estoppel made out against Mrs. Hollins.”

*Dunham v. Ewen*, 15 Atlantic 245, supports this doctrine.

In *Central R. R. v. MacCartney*, 68 N. J. L., at page 175, we find Mr. Justice Pitney stating the essential elements of equitable estoppel as follows:

1. “That the party against whom the estoppel is urged has on a previous occasion by words or conduct made a representation or concealment of material facts inconsistent with the facts forming the basis of his present claim.”

2. “That such party either knew the facts to be otherwise than represented or except for gross negligence would have known; or that he pretended to know the facts when he knew that he did not know them.”

3. "That such representation or concealment was made either with the intent to influence the conduct of another or else was made under such circumstances that a reasonably prudent man would suppose it was intended to be acted upon as true."

4. "That the party to whom it was made was ignorant of the facts and had no convenient opportunity to ascertain them."

5. "*That the latter party in good faith, relied upon the representation or conduct of the other party and thereby was led into such a course of conduct that he will now be substantially prejudiced if the other party be permitted to repudiate his former action or representation.*"

In the above case the Railroad Co. sued for a balance of a freight bill. It had previously sent incorrect bills for freight and these had been paid, and taking these bills as correct, the defendant had proceeded to pay for the goods delivered, deducting from the price, as he was entitled to do, the freight charges. Held, that the Railroad Co. was estopped to deny that the first bills were correct as they had been acted on in good faith.

In *Musconetcong Iron Works v. D. L. & W. R. R. Co.*, 78 N. J. L. 717, we find the Court of Errors and Appeals approving the above statement of the elements of equitable estoppel and again in *O'Donnell v. McCann*, 77 N. J. Eq., we find Vice-Chancellor Walker at pages 200 and 201 approving the above statement and denying that in the case before him there was an equitable estoppel because those asserting the estoppel had not been misled by the representations relied on nor had they changed their position on

the faith of them. Reference is also made to the following cases:

*Breslin v. Fries-Breslin Co.*, 70 N. J. L. 284.

*Sun Dredging Co. v. Ottens*, 84 N. J. L. 745, 746.

*Vineland v. Fowler Waste Manufacturing Co.*, 86 N. J. L. 342.

*Delaware and Atlantic Telephone Co. v. Beverly*, 86 N. J. L. 677.

#### POINT 4.

**The Lackawanna Investment Company is not estopped to set up its equity against the Newark Trust Company by reason of any representations made by Crocker to the bank, because there is absolutely no proof that the bank acted upon the faith of these representations when it bought the note of William F. Ackor on May 12, 1914.**

This fact is admitted by counsel for complainant. (See brief, page 5, l. 15.) Further, the only parts of the testimony that deal with this note *are* pages 17, 18 and 19 of the state of the case, direct examination of Mr. F. H. Kilpatrick, and page 26, lines 26-39, direct examination of Mr. Phillips. This part of the testimony does not prove that the bank had in mind the Lackawanna Investment Company mortgage and the *Crocker* collateral note when it bought the Ackor note endorsed by Crocker. This being so, an essential element of estoppel is lacking, and the Lackawanna Investment Company can show that the debt to secure which the mortgage in question was given was \$5,000 and no more, that being the only consideration for the giving of the said mortgage.

We wish here to reply briefly to the points of complainant's counsel's brief.

As their first point they state that Lackawanna Investment Company is not entitled to relief in equity as it does not come with clean hands. They then make much of the fact that the mortgage was made for \$8,000 to deceive the bank. We can only say that so far as Lackawanna Investment Company is concerned the deception was not intended to harm the bank nor has it in fact suffered any harm thereby, since it did not loan to Ackor on the faith of representations made. The Lackawanna Investment Company is now and always has been ready to pay to the bank \$5,000 with interest. So far as the Lackawanna Investment Company is concerned the only purpose of the deception, culpable as it was, was to get around a rule of the trust company which related to the value of the securities pledged. (See state of case, pages 21-25, testimony of William B. Powell, cross and re-direct.) It is nowhere even suggested by complainant that with respect to the value of the mortgage, complainant has suffered by reason of the false representation.

The second point made by complainant's counsel is that equity follows the law and that the assignee of a mortgage securing a promissory note takes it free from equitable defenses. On this point it is submitted that the above statement is only true if the mortgage was in the first instance given to secure a promissory note. See references and cases cited on this point in complainant's brief. In this case the mortgage was given in the first instance to secure a bond. (Case, page 29; Exhibit C. 1.) Even giving the rule the construction most favorable to complainant it avails nothing, for the rule contemplates

the holder of a note which has been transferred to a holder in due course, while in this case the Newark Trust Company is the payee of the note. (Exhibit C. 4, case, page 38.) Surely the maker of a note to secure which a mortgage is given may raise defenses as against the payee, and in this case Lackawanna Investment Company is not even the maker. Take the following hypothetical case. A gives B a bond and mortgage for \$5,000 on January 1, 1916, and receives all the money. On June 1, 1916, A pays \$2,500 on account of the mortgage to B. On September 1, 1916, B assigns the bond and mortgage to his bank as collateral for a loan of \$4,000 made on security of his note for that amount. Apply the rule as contended for by complainant's counsel and the bank would be able to enforce the mortgage for \$4,000, which would be absurd.

The third point made by complainant's counsel is that the equity of Lackawanna Investment Company is a latent equity and that Newark Trust Company holds the mortgage free from latent equities. We have looked in vain for any case in which an assignee was held to hold a mortgage free from an equity of a mortgagor because his equity was a "latent equity." We find, as we have set forth in Point 2 of our brief, that the assignee of a mortgage takes it subject to all equities of the mortgagor unless (1) the mortgage was originally given to secure a negotiable instrument or (2) the mortgagor has created an estoppel. We do not find the equities of mortgagors classified as latent or patent. We do find that equities of third persons are frequently referred to as "latent equities."

Complainant's counsel states that the facts in *Tate v. Security Trust Co.*, 63 N. J. Eq. 559, are much like the facts in this case, and they state

(at page 13, l. 22, in their brief) that Tate, the complainant, had executed a mortgage. This is incorrect; the mortgage in that case was executed by a man named Stehle and Tate was a third person who claimed some interest in the mortgage. His equity was a "latent equity" of a third person and therefore an assignee for value without notice would hold the mortgage free from the equity. That case in no way affects our contention that the assignee of a mortgage takes it subject to all equities of the mortgagor.

See cases cited under Point 1 and see extract from judgment of Reed, *V. C.*, in *Tate v. Security Trust Co.* in complainant's brief, page 3, l. 20.

The fourth point made by complainant's counsel is that Crocker had full authority from Lackawanna Investment Company to pledge the mortgage and the company is bound by the terms of the pledge. As a matter of fact Crocker was authorized to pledge the mortgage as collateral for a loan of \$5,000 and no further.

Testimony, pages 19-25.

Crocker was not authorized to sign any particular form of note, and knowledge of the form of note used has not been brought home to the Lackawanna Investment Company. It could only be brought home to this company through Powell, and Powell's testimony is that he did not know at the time the loan was obtained by Crocker what form of note was used by the bank, or that it was customary to have collateral pledged to secure other indebtedness present or future of pledgor. (See testimony of William B. Powell, state of case, page 27, line 31, to page 29, line 27.)

Take the situation as you will, consider it from any angle, and it is always the same ques-

tion that crops up. How can a bond and mortgage nominally for \$8,000, for which only \$5,000 consideration was given, be enforced for a greater sum than \$5,000 and interest? Every time we come back to estoppel. Even admitting for the purpose of argument that Crocker drops out and that Lackawanna Investment Company was dealing directly with the bank and made the note and represented that there was \$8,000 due on the mortgage, there would still be nothing to put substance into the mortgage, over the \$5,000 advanced, unless the Lackawanna Investment Company is estopped to deny that \$8,000 is due. The clause in the collateral note cannot increase the amount due on the mortgage. It only makes the mortgage and the amount due thereon collateral for other debts of Crocker's. The only possible way to make the \$5,000 mortgage an \$8,000 mortgage is by proving an estoppel. This we submit has not been done, as the complainant has not submitted any proof that in making the loan of \$2,500 to William F. Ackor, it relied on the representations made that this mortgage was an \$8,000 mortgage.

Respectfully submitted,

LEHLBACH & JOHNSON,  
*Solicitors for and of Counsel with  
Lackawanna Investment Company  
Defendant-Respondent.*

ARCHIE H. ORMOND,  
*On the Brief.*

# New Jersey Court of Errors and Appeals.

Between	}	<i>On Bill, etc.</i>	10
NEWARK TRUST COMPANY, a Corporation,			
<i>Complainant,</i>			
<i>and</i>			
LACKAWANNA INVESTMENT COMPANY ET ALS.,	}	<i>Brief of Complainant.</i>	
<i>Defendants.</i>			

## STATEMENT OF FACTS. 20

The cause of action in the case at bar arises on a bill filed by the Newark Trust Company, to foreclose a mortgage made and executed by the Lackawanna Investment Company, one of the defendants, dated the 1st day of November, 1910, in the principal sum of \$8,000. on property located in the City of East Orange. The bond and mortgage are payable to Roland D. Crocker, and are in the usual form of bond with mortgage security therefor. On December 16th, 1910, Roland D. Crocker assigned the bond and mortgage to Newark Trust Company, by an assignment of mortgage regular in form, which assignment of mortgage recited that it was given as collateral security for the payment of a note of \$5,000. with interest at six per cent. per annum, dated on the same date as that of the assignment. In this assignment Mr. Crocker cove-

30

40

nanted that there was due and owing upon the bond and mortgage the sum of \$8,000. and interest from the date thereof. On the said 16th day of December, 1910, Roland D. Crocker signed a note, payable on demand to Newark Trust Company, for the sum of \$5,000. with interest at six per cent. in the usual collateral note form, which recites the assignment of the \$8,000. mortgage of the Lackawanna Investment Company, and further recites:

10 "The undersigned having deposited (assignment of mortgage) with Newark Trust Company as collateral security for payment of this or any other liability or liabilities of the undersigned, direct, contingent, individual or firm, to said Trust Company, now existing or which may hereafter be contracted." It also recites that "The said trust company shall have power to sell, assign or deliver the whole

20 or any part thereof \* \* \* at any public or private sale \* \* \* on the non-performance of this promise or the non-payment, at maturity, of any other liabilities aforesaid, at any time or times thereafter. \* \* \* And after deducting all costs and expenses for collection, \* \* \* to apply the residue of the proceeds of such sale or sales to pay any or all of said liabilities to said Trust Company or its assigns." And in italics appear in the note the following proviso:

30

"It is hereby agreed and understood that if recourse is had to collaterals, any excess of collaterals upon this note shall be applicable upon any other note, claim or endorsement held by said company."

40 Interest was paid on the note from time to time, but no principal, and there was due upon it at the time of the decree in the case the sum of \$5,205.83.

Subsequent to the date of that note one William F. Ackor, on May 24th, 1914, executed a certain promissory note, payable to the order of himself, and endorsed by Roland D. Crocker, in the sum of \$2,500., which note was purchased by the Newark Trust Company, in the usual course of business, before maturity. This note, when it fell due, was presented for payment, and protest waived by Roland D. Crocker. Mr. Ackor subsequently went into bankruptcy, and the note is unpaid at the present time, with the exception of a small amount, paid by a dividend declared in the matter of the Crocker bankruptcy. There was due on said note, at the time of the final decree, \$2,914.24. 10

The claim of the Newark Trust Company is that the note of William F. Ackor endorsed by Roland D. Crocker comes within the terms of the collateral note of \$5,000., and that in foreclosing the bond and mortgage they are entitled to hold the security of the mortgage for the payment of the note of William F. Ackor, upon which Roland D. Crocker was liable. 20

The defense set up by the Lackawanna Investment Company is that the company can only collect the amount due on the \$5,000. note, from the mortgaged premises, and that that sum, with interest, is all that can be claimed by the complainant in this foreclosure action, and denies the right of the complainant to recover the amount due on the William F. Ackor note, by this proceeding. 30

The testimony shows that the Lackawanna Investment Company was organized by Roland D. Crocker and William B. Powell. That they were the only persons financially interested therein, and were two of its three directors, the third being a 40

dummy, and Powell was its president and treasurer, and Crocker its vice president and secretary. (See testimony of William B. Powell, State of the Case, p. 23.) The circumstances surrounding the making and execution of the bond and mortgage by the Lackawanna Investment Company are related by Mr. Powell, who states that the Lackawanna Investment Company needed to obtain the sum of \$5,000. That Crocker advised Powell that if the company would execute a bond and mortgage for \$8,000., it would be easier for that company to secure a loan of \$5,000., because if the mortgage should appear to represent a larger amount than the amount of money borrowed, the trust company to whom the application was to be made would be the more ready to grant the collateral loan. (State of Case, p. 19, l. 30, and p. 21, l. 28, and following.) The intention on the part of both Crocker and Powell was to borrow the money from the Newark Trust Company, complainant, of which company both were directors. As such directors they knew of its rule with respect to collateral, that no collateral loans could be made by the bank where the amount loaned exceeded eighty per cent. of the value of the collateral. Their knowledge of this circumstance is chargeable to the Lackawanna Investment Company, as they were the company. They also knew the form of collateral note in use in the bank, and that by the terms of the collateral note the collateral security was pledged to secure all indebtedness of the maker of the note. Crocker's knowledge of this fact came directly from the fact that he signed the note in question, as well as knowledge which he had acquired as director of the institution. Powell had the same knowledge as director of the institution, and signed a collateral note in pre-

cisely the same form on January 16th, 1911, one month after the collateral note of Mr. Crocker. (See Exhibit C 13.) The bank purchased the note of William F. Ackor in May, 1914, for the sum of \$2,500. This particular note was a repurchase of a previous existing note liability of Ackor, upon which Crocker had been an endorser. The original liability was created on September 12th, 1913, or three years subsequent to the execution of the bond and mortgage of the Lackawanna Investment Company, and the execution of the collateral note in question. The bank purchased the Ackor note, strengthened by Crocker's endorsement, in the usual course of the business of the bank, and it does not appear in the evidence, at the time the note was purchased, that the security therefore pledged, when the \$5,000. note was given, was referred to in any way.

10

The bank now demands that its collateral note be given effect, in accordance with its terms, and that the collateral pledged by Crocker be held as security for all of Crocker's indebtedness.

20

#### POINT I.

*Lackawanna Investment Company is not entitled to relief in equity, as it does not come with clean hands.*

30

The Lackawanna Investment Company executed its bond and mortgage to Roland D. Crocker, in the sum of \$8,000., without receiving any cash or other value therefor. The purpose of the execution of such bond and mortgage was to enable Crocker to pledge the mortgage as collateral security and to borrow on his own note, the sum of \$5,000. for the company, and from the Newark Trust Company, in

40

which he was a director. Mr. Powell is asked to describe how the bond and mortgage came into existence, and answers as follows:

10 A. The bond and mortgage was given to Roland D. Crocker for the purpose of raising the sum of \$5,000. to reduce the original mortgage, that was held by the owner of the property, and he spoke to me that the reason for making this \* \* \* is that it would be much easier to secure the loan of \$5,000.

Q. At the time when the bond and mortgage were actually executed by the officers of the company, did any money pass from Mr. Crocker to the corporation?

A. No, sir.

(State of Case, p. 19, l. 37, to p. 20, l. 14.)

20 When asked to explain the basis of the transaction, Powell testifies again as follows:

30 A. Mr. Crocker was my counsel, personally, besides I had been associated together in this company with him, and he was a director of the Newark Trust and on the executive committee as well as counsel. As I recall, the directors at that time only met once a month; the executive committee, I believe, met weekly, and his statement was just as I gave it to you there, to secure this loan of \$5,000.

Q. Did he give you any reason?

A. Yes; it would be easier to obtain \$5,000. by making the mortgage for a larger amount.

40 Q. Did he explain how it would be easier to obtain?

A. The advantage in this way, they were making that mortgage for \$8,000 to secure \$5,000; in other words, if a man went in with collateral for \$10,000 and only asked \$7,000 he would get it apparently easier than he would if he asked for \$9,000.

Q. You knew this mortgage was going to be used as collateral in some bank; did you know what bank it was to be used in? 10

A. The loan was to be secured from the Newark Trust Company.

Q. You knew that was to be used as collateral for a loan of \$5,000?

A. Yes.

(State of Case, p. 21, l. 30, p. 22, l. 23.) 20

The purpose of creating a mortgage of \$8,000. is evident, and that purpose was to deceive the officers of the bank to whom application was made for a loan into supposing that they had received a valuable \$8,000. security. The bond and mortgage are drawn to Roland D. Crocker, and not to the bank direct, in order that this might not be discovered by the bank authorities. To further effectuate that deception, Mr. Crocker signed an application for the loan with the Newark Trust Company, reciting that the mortgage is for \$8,000. (see exhibit C 5), and in the assignment itself, to the bank, he covenants that there is due on the mortgage the sum of \$8,000. (Exhibit C 3, State of Case, p. 37, l. 30.) No investigation on the part of the bank or the delivery of any estoppel agreement could have protected them. The Lackawanna Investment Company, by its officers, made every representation 30 40

possible to deceive the bank into the belief that they were obtaining an \$8,000. security which had an equity of \$3,000. above the loan which was then placed with the bank. To permit the Lackawanna Investment Company to now come forward and claim that they should be relieved in equity from the burden of their mortgage, is to countenance deception. Such a defense is unconscionable, and violates under the most fundamental rules of equity —that suitors in the Court of Chancery shall come with clean hands.

Complainant insists that the defendant is not entitled to any standing in this court.

#### POINT II.

*Equity follows the law and an assignee of a mortgage securing promissory note, takes it free from equitable defenses.*

It appears from the evidence in the case that the obligation of Roland D. Crocker to the Newark Trust Company was that of a negotiable promissory note. It was a collateral note in the usual form, and a definite promise to pay on demand, the sum of \$5,000. The law is well established that in such cases the note is the primary obligation, and the terms of the note must govern in any transactions concerning the same.

“But they would, in such case, have been negotiable securities protected in the hands of bona fide holders for value against secret defenses, and their immunity from such defenses would have been communicated to the mortgage itself. In *Kennicott v. Wayne County*, 83 U. S. 452, it was said that where a note se-

cured by a mortgage is transferred to a bona fide holder for value before maturity, and a bill is filed to foreclose the mortgage, no other or further defenses are allowed against the mortgage than would be allowed were the action brought in a court of law upon the note."

Chicago Ry. Equipment Co. *v.* Merchants' National Bank, 136 U. S. 268.

10

"The assignment of a note underdue, raises the presumption of the want of notice, and this presumption stands until it is overcome by sufficient proof. The case is a different one from what it would be if the mortgage stood alone, or the note was non-negotiable, or had been assigned after maturity. The question presented for our determination is, whether an assignee, under the circumstances of this case, takes the mortgage as he takes the note, free from the objections to which it was liable in the hands of the mortgagee. We hold in the affirmative (citing cases). \* \* \* Here the amount due was the face of the note and interest, and that could have been recovered in an action at law. Equity could not find that less was due. It is a case in which equity must follow the law. Powell on mortgages, cited supra, says: 'But if the debt were on a negotiable security, as a bill of exchange collaterally secured by a mortgage, and the mortgagee, after payment of part of it by the mortgagor, actually negotiated the note for the value, the endorsee or assignee would, it seems, in all events, be entitled to have his money from the mortgagor on liquidating the account,

20

30

40

although he had paid it before, because the endorsee or assignee has a legal right to the note, and a legal remedy at law, which a court of equity ought not to take from him, but to allow him the benefit of on the account."

*Carpenter v. Longan*, 16 Wall. (U. S.) 271.

10 "An assignee for value, of a negotiable note before due, takes it free from equity. \* \* \* The mortgage rather is regarded as following the note, and taking the same character, and it is the generally recited doctrine that the assignee of a mortgage securing a negotiable note, given it in good faith before maturity, takes it free from equities existing between the parties."

20 Jones on Mortgages, 7th Ed., Vol. 2, Sec. 834.

The same doctrine is referred to with approval in the case of *Magie v. Reynolds*, 51 N. J. E. 113.

30 "The principal underlying this rule is that the mortgage is a mere incident of the debt which it is intended to secure, and a defence to the debt is a defence to the mortgage. If the mortgage is given to secure a negotiable promissory note, and the note is negotiated for value in the ordinary way before maturity, the holder will hold it and the mortgage free from all defenses. 2 Jones Mort., sec. 1487, and cases there cited. But if the mortgage be given to secure a non-negotiable instrument, the assignee takes it subject to all defences to the bond or other instrument manifesting the indebtedness."

40

See also, *Watson v. Wyman*, 161 Mass. 96.

The \$5,000. note of Roland D. Crocker specifically declares that the collateral which is placed as security therefor shall stand as security for any future indebtedness, including that arising by way of endorsement, which Crocker might owe to the Newark Trust Company. The note of Ackor endorsed by Crocker comes within the terms of the note. Notes of precisely the same purport have been given full effect in the course of law of New Jersey. In the case of *Meisel v. Merchants' National Bank*, 85 N. J. L. 253, 88 Atl. 1067, this court considered the effect of a collateral note similar to the one in bar. We quote from the syllabus in the case:

“A note was given to a bank, and contained, besides the promise to pay \$300, a recital that certain shares of stock had been deposited with the bank as collateral security, and also provided that “if recourse is had to the collaterals, any excess of collaterals upon this note shall be applicable to any other note or claim held by said bank against me.” Thereafter the maker executed and delivered to the bank another note for \$275, and before the maturity of either, assigned to another person his equity in the collateral. When the \$300. note fell due such assignee tendered \$300. to the bank and demanded the collateral. Held, that the pledge was available for the payment, not only of the \$300. note, but also for the payment of the unmatured note for \$275, and that the bank was justified in refusing to deliver the collateral.”

In the case of *Irving v. Mutual Trust Company*,

10

20

30

40

82 N. J. E. 629, 90 Atl. Rep. 274, the effect of a note similar to the one at bar was again discussed, and again the court determines that the bank is entitled to hold the note as against any obligations existing on the part of the principal debtor.

10 Therefore, following these cases, and giving full effect to the collateral note, and of the equitable rule that an assignee of a mortgage given to secure a note takes it free from any equities, and that equity follows the law, it is insisted by the complainant, that it is entitled to enforce its mortgage in accordance with the terms of the collateral note, which secures not only that item of indebtedness, but also the Ackor item.

### POINT III.

20 *Newark Trust Company holds the mortgage free from latent equities.*

30 The general rule has been well established in the courts of New Jersey, that the assignee of a mortgage takes subject to equities existing in favor of the mortgagor. There is an exception to this rule, however, in the case of latent equities. The theory of the rule is that when an assignee takes a mortgage he has every opportunity to protect himself by inquiry from the mortgagor, as to the amount of his mortgage and whether there exist defenses to the same. It is not uncommon for assignees to take estoppel agreements to protect themselves against such equities. It is clear in the case at bar, however, that the equity is a latent equity, which the utmost care on the part of the Newark Trust Company could not have discovered. The officers of the Lackawanna Investment Company had made every possible representation to the bank that the

40

mortgage was a valid lien for \$8,000. It was created, as we have before indicated, to deceive the Newark Trust Company into the belief that it was an \$8,000. security. The equity therefore was unquestionably a secret or latent equity, and undiscoverable by the complainant, by the use of the greatest care.

In the case of *Tate v. Security Trust Company*, 63 N. J. Eq. 559, the court holds: 10

“The general rule that an assignee takes subject to the equities existing in favor of a mortgagor does not apply in this case, because the equity of Tate was a secret equity. While there is some conflict between the cases (*Davis v. Cressman*, 12 Dick. 619), I think the rule should be settled in this state that a bona fide assignee for value of a mortgage takes it free from all latent equities existing in favor of third parties.” 20

In that case the circumstances were similar to the one at bar. Tate, the complainant, had executed a mortgage of \$4,000. to enable Charles S. and William Solomon to raise \$3,000. upon their note for that amount, to be secured by the said \$4,000. mortgage. The note was thereupon discounted by the defendant, Security Trust Company of Camden, and the mortgage delivered as security. Subsequently the trust company refused to re-deliver the mortgage, claiming to hold the same as security for other indebtedness due to them from the Solomons. The court, after reciting the above rule, finds that the case does not come within it, by reason of the fact that the indebtedness which the bank sought to hold was one which existed prior to the assignment and making of the mortgage, and that the 30 40

Security Trust Company was therefore not a purchaser for value. We do not believe that this is sound distinction, but even assuming that it is well taken, it does not exist in this case, as the indebtedness of Crocker on the Ackor note was created subsequent to the date of the assignment and the execution of the collateral note.

10 It is therefore insisted that following the doctrine of the case of *Tate v. Security Trust Company*, supra, the complainant is entitled to enforce its mortgage free from the alleged equity of the Lackawanna Investment Company, and that the mortgage stands as security for the Crocker indebtedness on the Ackor note, as well as on the \$5,000 collateral note.

#### POINT IV.

20 *Roland D. Crocker had full authority from Lackawanna Investment Company to make pledge of mortgage, and the company is bound by the terms thereof.*

30 The Lackawanna Investment Company executed its bond and mortgage to Roland D. Crocker for the purpose of borrowing the sum of \$5,000 from the Newark Trust Company. The occasion of the loan was to enable the Lackawanna Investment Company to reduce an original mortgage then a lien on the property of the company and held by a former owner thereof. (State of the case, p. 19, l. 37.) The money, when obtained, was actually paid to the holder of the mortgage and for the benefit of the Lackawanna Investment Company. (State of the case, p. 20, l. 34.)

40 It was the intention of the Lackawanna Investment Company that Crocker should borrow the

money, using the bond and mortgage as collateral. He was authorized to make the pledge, and did so in the manner authorized. The contract of the pledge as set out in the note, is a general, not a specific pledge. The terms of the contract were fully known to Crocker as he signed the note. They were also known to Powell, the only other person interested in the Lackawanna Investment Company. Powell signed a note, himself, in precisely the same form, in January, 1911, a month after this transaction was completed, and also as Director of the Newark Trust Company had full knowledge. As all the parties comprising the Lackawanna Investment Company knew of the pledge, and its terms, the Lackawanna Investment Company is chargeable with their knowledge.

10

“One may make a valid pledge of property belonging to another, if he has the owner’s consent to use it in this way. \* \* \* Such consent may be either express or implied. One person may pledge the property of another, provided it be with the express or tacit consent of the owner.”

20

Jones on Collateral Securities and Pledges, 3rd Edition, Sec. 53.

If one may make a binding pledge of another’s property, surely the pledge here made by Crocker is binding. He had the authority to make the pledge in the terms in which it was made. The pledge is general and provides that the bond and mortgage shall stand as security “for any liability or liabilities of the undersigned,” namely, Roland D. Crocker. The Ackor note is a liability of Crocker. The Lackawanna Investment Company having authorized the pledge and having accepted its benefits, can not now repudiate its burdens.

30

40

It is therefore insisted that the terms of the pledge are binding on the Lackawanna Investment Company and that the complainant is entitled to enforce collection of all Crocker's indebtedness to the complainant, by the present action of foreclosure of the mortgage given by that company, including the note of \$2,500.

POINT V.

10

*Estoppel theory not applicable.*

20

The theory of the defense in the case, at the time of the trial, was based upon the ground that the Newark Trust Company, not having specifically relied upon the bond and mortgage of the Lackawanna Investment Company at the time of the purchase of the Ackor note, could not hold the security against the alleged equity of the Lackawanna Investment Company. This is the theory upon which the trial court decided the case. It found all the other elements of an estoppel present, but that of reliance. Finding that the Newark Trust Company took the note in the usual course of business, it found as a fact that it did not rely upon the agreement, and decided that it could not hold the security to secure the amount due on the Ackor note.

30

It is insisted that the case, and the rights of the complainant, are not dependent upon an estoppel, but upon a positive contract. The right of a bank to hold securities pledged on collateral notes of this character does not appear to have been determined in the cases which have been tried in New Jersey upon any basis of estoppel. In neither the case of *Meisel v. Manufacturers' National Bank* (supra), nor in that of *Irving v. Mutual Trust Company* (supra), where similar notes were en-

40

forced, was there any such ruling laid down. In the case of *Irving v. Mutual Trust Company* the court held:

“Except the letter of November 12th, relating to this note, there was *no specific pledge* of the collateral as security for any particular debt other than the note of \$4,900. given when the original written pledge was executed, and that was to secure ‘this or any other liability now existing or which hereafter may be contracted,’ and the collateral was applicable to any existing, or subsequent, debt of the pledgor in the order selected by the pledgee, even if part of the loans were secured by endorsers.” 10

“It is contended that the pledge to the extent of the liability of the Hardwood Company upon its endorsement of the eleven notes discounted by it between July 17th and 24th, is not within the exception of the provision in favor of purchasers in good faith and for a present fair consideration. Indeed, it is intimated that there was no pledge at all to that extent because nothing was said at the time of discounting the eleven notes as to the warehouse receipts being treated as collateral security for the liability which the Hardwood Company thereby came under to the appellee bank. But it was not essential that anything should have been said at that time upon the subject. The provision in the contract of pledge entered into when the \$21,000 note was executed, that it should cover any liability thereafter contracted, was sufficient without more to create a pledge to secure the liability subsequently created.” 20 30

*Love v Export Storage Co.*, 19 A. B. R. at 195, 143 Fed. 1. 40

It is therefore contended that the rights of the complainant depend upon the positive terms of its contract, which equity will enforce the same as the law courts will, and does not depend upon an estoppel.

#### SUMMARY.

It is therefore respectfully insisted:

- 10     1. That the defendant does not come into the Court of Equity with clean hands.
2. That equity follows the law, and will give the same effort to a promissory note that the law would give.
3. That an assignee of a mortgage securing a promissory note, takes it free from equitable defenses.
- 20     4. That the complainant holds the mortgage free from latent equities.
5. That Lackawanna Investment Company is bound by the terms of the pledge made by its agent.
6. That the right of the complainant depends on a contract, not on an estoppel.

Respectfully submitted,

30

RAYMOND, MOUNTAIN, VAN BLARCOM  
& MARSH,

*Solicitors for and of Counsel with  
Complainant-Appellant.*

40

## INDEX.

---

	PAGE
Notice of Appeal.....	1
Petition of Appeal.....	2
Answer to Petition of Appeal.....	4
Bill to Foreclose.....	5
Answer to Bill of Complaint.....	9
Replication .....	11
Order of Reference.....	12
State of Case.....	13
Conclusions .....	49
Final Decree .....	53

### TESTIMONY.

Frederick H. Kilpatrick:	
Direct .....	14
William B. Powell:	
Direct .....	19
Cross .....	21
Redirect .....	24
Recalled, Cross .....	28
Gordon B. Phillips:	
Direct .....	25

### EXHIBITS.

	Offered Page	Printed Page
C1.—Bond, dated November 1, 1910 .....	14	29

	Offered Page	Printed Page
C2.—Mortgage, dated November 1, 1910 .....	14	31
C3.—Assignment, dated December 16, 1910 .....	14	36
C4.—Note, dated December 4, 1910	15	38
C5.—Application for Loan, dated October 19, 1910.....	15	40
C6 and C7.—Abstracts of Title....	15	42
D8.—Collateral Loan Sheet.....	17	..
C9.—Draft, dated December 16, 1910 .....	17	45
C10.—Note, dated May 12, 1914...	17	45
C11.—Waiver, dated September 14, 1914 .....	18	46
C12.—Search on Title for Fore- closure Purposes .....	19*	..
C13.—Note, dated January 16, 1911	29	46

Notice of Appeal.

In Chancery of New Jersey.

Between	}	10
NEWARK TRUST COMPANY, a corporation, Complainant-Appellant,		
and	} On Bill, etc.	
LACKAWANNA INVESTMENT COMPANY, ROLAND D. CROCKER, and CECIL H. MACMAHON, as Trustees in Bankruptcy of Roland D. Crocker, Defendant-Respondent.		20

The complainant, Newark Trust Company, a corporation of the State of New Jersey, hereby appeals from so much of the final decree made in this Court in the above stated cause, as declares that the claim of the said complainant to have the sum of \$2,914.24, paid out of the proceeds of the said mortgaged premises, as described in the bill of complaint in the said cause,

30

40

*Petition of Appeal.*

is disallowed, to the Court of Errors and Appeals,  
the last resort in all causes.

Dated, September , 1917.

RAYMOND, MOUNTAIN, VAN BLARCOM & MARSH,  
Solicitors for and of Counsel with Com-  
plainant.

10

**Petition of Appeal.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between

NEWARK TRUST COMPANY, a cor-  
poration,

20

Complainant-Appellant,

and

LACKAWANNA INVESTMENT COM-  
PANY, ROLAND D. CROCKER,  
and CECIL H. MACMAHON, as  
Trustees in Bankruptcy of Ro-  
land D. Crocker,

Defendant-Respondent.

30

On Bill, etc.

To the Honorable Court of Errors and Appeals,

THE LAST RESORT IN ALL CAUSES:

The petitioner, Newark Trust Company, a cor-  
poration of the State of New Jersey, the ap-  
pellant in the above stated cause respectfully  
shows that the petitioner finds itself aggrieved  
by a final decree made in the Court of Chancery  
by his Honor, Edwin Robert Walker, Chan-

40

*Petition of Appeal.*

cellor of the State of New Jersey, bearing date the 4th day of September, 1917, in a certain cause wherein the said Newark Trust Company, a corporation, was complainant, and the Lackawanna Investment Company, Roland D. Crocker, and Cecil H. MacMahon, as trustees in bankruptcy of Roland D. Crocker, were defendants, in this respect, to wit: The said decree adjudges that the claim of Newark Trust Company to have the sum of \$2,914.24 raised and paid out of the proceeds of said mortgaged premises be, and the same hereby is, disallowed.

10

And your petitioner humbly appeals from that part of the said decree of Chancery, on the ground that the same is erroneous; for that the said Court should have determined that the sum of \$2,914.24, being the amount due to said complainant on account of a certain note made by one William F. Acker, on the 12th day of May, 1914, and endorsed by Roland D. Crocker, on which there was due to the said complainant at the date of said decree, the sum of \$2,914.24, was chargeable to the mortgaged premises as described in the bill of complaint, and said complainant was entitled to have said sum raised and paid out of the proceeds of the sale of said mortgaged premises.

20

30

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

RAYMOND, MOUNTAIN, VAN BLARCOM & MARSH,  
Solicitors of and for Counsel with Appellant.

40

**Answer to Petition of Appeal.**NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10	Between NEWARK TRUST COMPANY, a corporation, Complainant-Appellant,  and LACKAWANNA INVESTMENT COMPANY, ROLAND D. CROCKER, and CECIL H. MACMAHON, as Trustees in Bankruptcy of Roland D. Crocker, Defendant-Respondent.	}	On Bill, etc.
20			

The answer of Lackawanna Investment Company, the above named respondent, to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a  
 30 decree was, on the fourth day of September last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity and it prays that the same

40

*Bill to Foreclose.*

may be affirmed with costs to be adjudged to this respondent.

LEHLBACH & JOHNSON,  
Solicitors for and of Counsel  
with Defendant-Respondent,  
Lackawanna Investment Company.

10

**Bill to Foreclose.**

## IN CHANCERY OF NEW JERSEY.

To His Honor, Edwin Robert Walker, Esquire,  
Chancellor of the State of New Jersey.

The complainant, Newark Trust Company, a corporation of the State of New Jersey, having its principal office in the City of Newark, County of Essex and State of New Jersey, respectfully shows that,

20

1. On December 16th, 1910, the Lackawanna Investment Company, a corporation of the State of New Jersey, being indebted to one Roland D. Crocker in the sum of eight thousand dollars (\$8,000.00), made and executed to him a bond of that date to secure that sum, payable in one year with interest at six per centum per annum, payable half yearly from the date of the bond.

30

2. To secure the payment of said bond the said Lackawanna Investment Company, a corporation of the State of New Jersey, executed a mortgage of even date with the bond, and thereby conveyed to him in fee the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage, having been first duly acknowl-

40

*Bill to Foreclose.*

edged and the certificate of acknowledgment endorsed thereon, was recorded in the Register's Office of Essex County, in Book T 26 of Mortgages, for said County, page 397.

10 3. The mortgaged premises are located in the City of East Orange, County of Essex and State of New Jersey, and are more particularly described as follows:—

20 BEGINNING at the corner formed by the intersection of the easterly line of North Eighteenth Street with the northerly line of Fourth Avenue; thence along said line of Fourth Avenue south forty-six degrees forty-two minutes east one hundred seventy-six feet; thence at right angles with said line of Fourth Avenue northeasterly  
30 one hundred ten feet; thence parallel with said line of Fourth Avenue southwesterly fifty-five feet, more or less, to a point where this line intersects a line running from the point of beginning, north eighty-seven degrees thirty-eight minutes east; thence south eighty-seven degrees thirty-seven degrees thirty-eight minutes west one hundred fifty-five feet, more or less, to the place of beginning.

30 4. That on December 16th, 1910, the said Roland D. Crocker assigned the said bond and mortgage to the Newark Trust Company by Assignment of Mortgage bearing date the sixteenth day of December, 1910 and recorded on the nineteenth day of December, 1910, in Book 96 of Assignments for Essex County, on page 220.

40 5. That on December 16th, 1910, said Roland D. Crocker made and executed his certain promis-

*Bill to Foreclose.*

sory note to the complainant in the amount of five thousand dollars (\$5,000) payable on demand, and assigned as collateral security for the payment of this or any other liability or liabilities of the said Roland D. Crocker, direct or contingent to the said complainant, the said bond and mortgage of Lackawanna Investment Company as aforesaid. And it was further understood and agreed that if recourse should be had to collaterals, any excess of collaterals on the said promissory note should be applicable upon any other note, claim or endorsement held by the said complainant. 10

6. That on or about May 12th, 1914, one William F. Ackor made and executed his certain promissory note in the principal sum of twenty-five hundred dollars (\$2500) payable four months after date, with interest at six per centum, which said note being endorsed by the said William F. Ackor was endorsed by Roland D. Crocker; and said note having been duly presented for payment at the time when it became due, payment was refused and protest waived by said Roland D. Crocker. 20

7. That on or about the fifteenth day of December, 1914, Roland D. Crocker was duly declared a bankrupt by the United States District Court, for the District of New Jersey, and Cecil H. MacMahon was appointed trustee of the estate of the said Roland D. Crocker, bankrupt, and that he duly qualified and has taken upon himself the burden of the administration of the said estate. 30

8. That there is now due and owing to said Newark Trust Company the sum of five thou- 40

*Bill to Foreclose.*

10 sand dollars (\$5,000) on said note bearing date December 16th, 1910, as aforesaid, together with interest from January 1st, 1917, and twenty-five hundred dollars (\$2500 ) on the said note endorsed by said Roland D. Crocker, with interest from May 12th, 1914, no payment having been made on account thereof except the payment of eighty-two dollars and ninety-one cents (\$82.91) on the twentieth day of April, 1916.

9. That the Lackawanna Investment Company, Roland D. Crocker or Cecil H. MacMahon, as trustee in bankruptcy of Roland D. Crocker, have always been in possession of the mortgaged premises.

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

1. That Lackawanna Investment Company, Roland D. Crocker, and Cecil H. MacMahon, as trustee in bankruptcy of Roland D. Crocker, who are the defendants to this suit, may answer this bill of complaint without oath, and each statement therein made:

30 2. That an account may be taken of the amount due on complainant's mortgage.

3. That the defendants, or any one of them, may be decreed to pay complainant the amount so found due, with interests and costs, by a short day, to be appointed by this Court; and that in default of such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands; or

40 4. That a decree may be made for the sale of the mortgaged premises to raise, and pay to

*Answer to Bill of Complaint.*

complainant, the amount so found due on its mortgage, with interest and costs;

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

RAYMOND, MOUNTAIN, VAN BLARCOM & MARSH,  
Solicitor and Counsel with Complainant.

10

**Answer.**

## IN CHANCERY OF NEW JERSEY.

Between

NEWARK TRUST COMPANY, a corporation of the State of New Jersey,

20

Complainant,

and

LACKAWANNA INVESTMENT COMPANY, a corporation of the State of New Jersey, and others,

On Bill, etc.

Defendants.

30

The answer of the defendant, Lackawanna Investment Company, a corporation.

This defendant, answering the bill of complaint, says that:

1. Defendant admits the execution of the bond referred to in Paragraph 1 of the bill of complaint, but says that said bond bears date of

40

*Answer to Bill of Complaint.*

10 November 1, 1910, and defendant denies that at the date of said bond said Lackawanna Investment Company was indebted thereon to Roland D. Crocker, in any sum whatsoever, but defendant says that said Roland D. Crocker, under an agreement between himself and this defendant, later advanced to defendant the sum of five thousand dollars (\$5,000.) on account of the principal to be secured by said mortgage.

2. Paragraphs 2 to 4, inclusive, are admitted.

20 3. Defendant admits so much of Paragraph 5 as states that Roland D. Crocker executed a promissory note for \$5,000. to complainant and that he assigned said bond and mortgage to complainant as collateral security for the payment of said note, and defendant believes that the \$5,000. which said Crocker advanced to it on said mortgage was derived from said note, but defendant has no knowledge or information sufficient to form a belief as to the other statements contained in said Paragraph 5.

30 4. This defendant has no knowledge or information sufficient to form a belief as to the statements contained in Paragraph 6.

5. Paragraph 7 is admitted.

6. This defendant has no knowledge or information sufficient to form a belief as to the statements contained in Paragraph 8.

7. Paragraph 9 is admitted.

40 8. Defendant, further answering, says that said bond and mortgage were given to said Roland D. Crocker to secure advances to be made

*Replication.*

by him to defendant, and defendant avers that complainant, as assignee of the said bond and mortgage, is in no better position than said Roland D. Crocker, and can enforce said bond and mortgage against defendant only for the sum and to the extent that the said Roland D. Crocker might have enforced the same, and that said bond and mortgage are only enforceable against this defendant to the extent of \$5,000. with interest from January 1, 1917, which sum this defendant admits is due upon said mortgage.

LEHLBACH & JOHNSON,  
Solicitors of Defendant,  
Lackawanna Investment Company.

**Replication.**

IN CHANCERY OF NEW JERSEY.

Between  
NEWARK TRUST COMPANY, a corporation of the State of New Jersey,  
Complainant,  
and  
LACKAWANNA INVESTMENT COMPANY, a corporation of the State of New Jersey, and others,  
Defendants.

On Bill to  
Foreclose.

The complainant joins issue on the answer of

10

20

30

40

*Order of Reference.*

the defendant, Lackawanna Investment Company.

RAYMOND, MOUNTAIN, VAN BLARCOM & MARSH,  
Solicitors of Complainant.

**Order of Reference.**

10

IN CHANCERY OF NEW JERSEY.

Between

NEWARK TRUST COMPANY, a corporation of the State of New Jersey,

Complainant,

20

and

LACKAWANNA INVESTMENT COMPANY, a corporation of the State of New Jersey, *et al.*,  
Defendants.

On Bill to  
Foreclose.

On motion of Raymond, Mountain, Van Blarcom & Marsh, solicitors of the complainant.

30

It is hereby, on this 14th day of March, 1917, ordered, that the above entitled cause be referred to Vice Chancellor Lane, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,  
Clerk.

40

*Appearances.*

We hereby consent to the making of the above order.

LEHLBACH & JOHNSON,  
Solicitors for Defendant,  
Lackawanna Investment Company.

June 25, 1917. 10

IN CHANCERY OF NEW JERSEY.

Between

NEWARK TRUST COMPANY,  
Complainant,

and

LACKAWANNA' INVESTMENT COM-  
PANY *et als.*,  
Defendants. 20

Testimony taken in the above entitled cause on June 25, 1917, Chancery Chambers, Newark, New Jersey, before Hon. Merrit Lane, Vice-Chancellor.

APPEARANCES:

Mr. THEODORE McMARSH (of Raymond, Mountain, VanBlarcom & Marsh) for the Complainants. 30

Mr. FREDERIC L. JOHNSON (of Lehlbach & Johnson) for the Defendant, Lackawanna Investment Company.

40

*Frederick H. Kilpatrick, direct.*

FREDERICK H. KILPATRICK, sworn.

Direct examination by Mr. Marsh:

Q. Where do you live? A. 896 South Nineteenth Street, Newark, New Jersey.

Q. Are you connected with the Newark Trust Company? A. Secretary-treasurer.

10 Q. And how long have you been connected with the company? A. Since the organization of the bank, 1909.

Q. Were you connected with it in December, 1910, in the early part of 1911? A. Yes.

Q. And in what capacity were you then connected with that bank? A. Loans, I had the loans.

Q. Loan clerk? A. Loan clerk, yes.

20 Q. I show you this paper known as the bond; is that in the possession of the Newark Trust Company? A. Yes.

Q. And produced from the Newark Trust Company to-day? A. Yes.

Bond offered in evidence and marked Exhibit C1.

30 Q. And the mortgage in the same situation? A. Yes, sir.

Mortgage offered in evidence and marked Exhibit C2.

Q. That paper (handing witness paper) is the assignment of the bond and mortgage in question? A. Yes.

Assignment offered in evidence and marked Exhibit C3.

40 Q. I show you that paper, and ask you what

*Frederick H. Kilpatrick, direct.*

that is? A. Collateral note of Roland D. Crocker, \$5,000.

Q. Is that Mr. Crocker's signature on that note?

A. Yes, sir.

Q. Is that the note that was made at the time that the assignment of the bond and mortgage transaction took place? A. Yes.

Note offered in evidence and marked Exhibit C4.

10

Q. I show you that paper, and ask you what that is? A. This is Mr. Crocker's application for the loan.

Q. Is that Mr. Crocker's signature? A. Yes, that is Mr. Crocker's signature.

Q. That also is part of the transaction? A. Part of the papers with the loan.

20

Mr. Johnson: I would like to enter a formal objection to the offer of this paper on the ground that any representation made by Crocker, the then owner of the bond and mortgage then to be assigned to the complainant, would not be binding upon this defendant.

The Court: Let it be marked.

Marked Exhibit C5.

30

Q. And these two instruments are the abstract of title furnished to the bank at that time? A. Yes.

Offered in evidence.

The Court: Admitted subject to the same objection.

Marked Exhibits C6 and C7.

40

*Frederick H. Kilpatrick, direct.*

Q. In December, 1910, was Mr. Crocker connected with the Newark Trust Company? A. Yes.

Q. In what capacity? A. As counsel.

Q. Any other? A. Director.

10 Q. And did he continue as such until he left the State? A. No, he resigned sometime previously, I can't remember the exact date, it was about, I think, six months ahead.

Mr. Johnson: Fix it approximately, please.

Q. Can you fix the date when Mr. Crocker departed? A. 1914.

Q. What month, do you know? A. September.

Q. September, 1914, it was? A. Yes.

Q. Has the note been paid? A. No, sir.

20 Q. Will you tell us how much is due on that? A. Yes, I have the records of that.

By the Court:

Q. How much? A. \$5,000 principal, and the interest I have figured up to date, the figures are right there.

By the Court:

30 Q. How much? A. About seventy-six something, I think it is.

By Mr. Johnson:

Q. To what date does the interest run? A. The interest I figure is from the 1st of January, this year.

40 Q. Will that do you in fixing the amount due? A. Yes, there was two quarters, one seventy-five, and the interest on that quarter up to date \$71.60, makes the total due \$146.67 interest.

*Frederick H. Kilpatrick, direct.*

By the Court:

Q. Interest plus the \$5,000 principal? A. Yes, sir.

Q. And what is this sheet? A. It is collateral loan sheet taken from our collateral loan books.

Q. And that refers to the Roland D. Crocker—  
A. That is Roland D. Crocker loan, \$5,000, with records of the interest and any other collateral loan he might have had.

10

Offered in evidence and marked Exhibit D8.

Q. I show you that, and ask you what that is?  
A. That is draft of the Newark Trust Company to the order of Roland D. Crocker, \$5,000, dated December 16, 1910, and it was given in payment of the above loan, we have mentioned that, collateral loan.

20

Q. That is the check? A. It is endorsed by Roland D. Crocker.

Offered in evidence and marked Exhibit C9.

Q. I show you that, and ask you what that is?  
A. Promissory note of W. F. Acker, dated May 12, 1914, for a period of four months, \$2,500, with interest, endorsed by Acker and Roland D. Crocker.

30

Q. Is that the signature of Roland D. Crocker?  
A. Yes.

Marked Exhibit C10.

Q. I also show you this paper, and ask you what that is? A. Do you want me to read it?

Q. No. What is it? A. It is waiver protest of

40

*Frederick H. Kilpatrick, direct.*

Roland D. Crocker on the note which I have just read, Acker's note.

Formal waiver offered in evidence and marked Exhibit C11.

10 Q. Has any part of that note been paid? A. There was a payment made on the principal of that note, yes.

Q. Can you tell us what is due on the principal of that to-day? A. Yes; amount of payment was \$82.91 on April 20, 1916, and that left balance due of \$2,469.17, and there is interest due to this date \$421.54, which makes the total amount due on that note \$2,890.71.

20 Q. I show you these cards, and ask you what they are? A. Those are the note liability cards showing the records of the notes purchased.

Q. For whom he has liability cards? A. William F. Acker's cards—

The Court: Are they important?

30 Mr. Marsh: They are important in this particular, to fix the original date only as to when Crocker appeared in the bank. This is not that first note that was made by Acker and endorsed by Crocker; this is a repurchase, and I want to fix the first date subsequent to the date of the mortgage.

Mr. Johnson: I am willing to admit the Acker indebtedness now represented by the notes marked so and so was originally created September 12, 1913.

A. Yes, that is right.

40 Mr. Johnson: Mr. Roland D. Crocker at

*William B. Powell, direct.*

that time being endorser of the Acker note acquired by your company.

Mr. Marsh: That is the situation I wanted to show by that note; if that is admitted I suppose there is no occasion to offer these cards.

I would like to offer the search on the title for foreclosure purposes.

Marked Exhibit C12.

10

---

WILLIAM B. POWELL, sworn.

Direct examination by Mr. Johnson:

Q. You are an officer of the defendant, Lackawanna Investment Company? A. Yes.

Q. What is your office now? A. President and treasurer.

20

Q. Were you connected with that company in 1910? A. Yes, sir.

Q. In what way? A. President and treasurer.

Q. Was Mr. Roland D. Crocker connected with the company? A. He was secretary and vice-president.

Q. He was stockholder, was he? A. Yes.

Q. And a director? A. Yes.

Q. Mr. Crocker obtained from the Lackawanna Investment Company, as appears from the complainant's case, a bond and mortgage which have been marked in evidence, for \$8,000. Will you tell briefly how that bond and mortgage came to be executed and what consideration, if any, was given for the bond and mortgage? A. The bond and mortgage was given to Roland D. Crocker for the purpose of raising the sum of \$5,000 to reduce the original mortgage; that was held by

30

40

*William B. Powell, direct.*

the owner of the property, and he spoke to me that the reason for making this—

Mr. Marsh: I object to what Crocker said.

The Court: I will admit it.

10 A. (continuing): The reason for making this \$8,000, is that it would be much easier to secure the loan of \$5,000.

Q. At the time when the bond and mortgage were actually executed by the officers of the company did any money pass from Mr. Crocker to the corporation? A. No, sir.

Q. Had any money passed from Mr. Crocker to the corporation? A. No, sir.

20 Q. Did money pass thereafter from Mr. Crocker to the corporation? A. After he secured the loan.

Q. After the execution of the bond and mortgage? A. Yes.

Q. How much? A. Crocker paid to Appleton—

Mr. Marsh: What book are you using?

A. Check book.

30 Q. You are reading from something? A. This is my personal check book here, showing the transaction.

Q. You are reading something. Tell me when this which you are reading from, was written and who wrote it. A. I did. December 23, 1910. \$4,400 was paid to Appleton, \$500 was deposited in the bank, and \$67.22 was paid Appleton for interest; there was a balance of \$32.78 which stood against moneys that Mr. Crocker has loaned the company.

40

*William B. Powell, cross.*

The Court: The net result is that \$5,000 was advanced, isn't it?

Mr. Johnson: All but thirty—

A. \$32.78, but he had loaned the company's moneys to pay the obligation. This company was not a self-supporting company and we each had to contribute equally as far as possible to maintain it, and he had loaned or advanced money and I had done the same; this \$32 was against that, making a total of \$5,000.

10

Q. Did Mr. Crocker advance any other moneys than the \$5,000 which you have now mentioned to the company as consideration for this bond and mortgage? A. No, sir.

Cross examination by Mr. Marsh:

Q. You were connected with the Newark Trust Company in December, 1910? A. Yes, sir.

20

Q. In what capacity? A. Director.

Q. And you continued as such until when? A. Until this year.

Q. Until this year? A. Yes.

Q. As I understand, Mr. Crocker stated to you that it would be much easier to secure \$5,000 if the mortgage was made \$8,000? Will you please explain the basis of that, if you know? A. Mr. Crocker was my counsel, personally, besides I had been associated together in this company with him, and he was a director of the Newark Trust and on the executive committee as well as counsel. As I recall, the directors at that time only met once a month; the executive committee I believe met weekly, and his statement was just as I gave it to you there, to secure this loan of \$5,000—

30

40

*William B. Powell, cross.*

Q. Did he give you any reason? A. Yes; it would be easier to obtain \$5,000 by making the mortgage for a larger amount.

By the Court:

10 Q. Did he explain how it would be easier to obtain? A. The advantage in this way, they were making that mortgage for \$8,000 to secure \$5,000; in other words, if a man went in with collateral for \$10,000 and only asked \$7,000 he would get it apparently easier than he would if he asked for \$9,000.

20 Q. You knew this mortgage was going to be used as collateral in some bank; did you know what bank it was to be used in? A. The loan was to be secured from the Newark Trust Company.

By the Court:

Q. You knew that was to be used as collateral for a loan of \$5,000? A. Yes.

Q. Did you know that the loan was to be used for what is known as collateral loan? A. I could only explain the method in which I have, that he was to put up this mortgage for this amount to secure a loan of \$5,000.

30 Q. You know there are loans in the Newark Trust Company that are secured as collateral loans, do you not? A. Yes.

Q. And you know there is a rule of the bank that the collateral must exceed the value of the security before they can pass the loan, do you not? A. Yes.

40 Q. And that was in effect at the time this mortgage was assigned to the bank? A. Yes. I was not as familiar with conditions at the time

*William B. Powell, cross.*

that took place as I was later, that is, familiar with the banking end, because I had never had any banking experience.

By the Court:

Q. Who were the other directors of the company? A. There was a Mr. Lambie.

By the Court:

10

Q. Did Mr. Lambie know about loaning this money? A. I don't think he did; he held a share of stock that belonged to Mr. Parker.

By the Court:

Q. He didn't take any interest? A. No.

By the Court:

Q. Mere dummy director? A. Yes.

20

By the Court:

Q. You and Mr. Crocker were the operating directors? A. Yes, sir.

By the Court:

Q. And were in sole management of the affairs of the company? A. Yes, sir.

By the Court:

30

Q. Sole control? A. Yes, sir.

By the Court:

Q. Were there any other stockholders beside you? A. No.

By the Court:

Q. You and Crocker together held the stock? A. Yes, sir.

Q. At the same time that this mortgage was

40

*William B. Powell, redirect.*

made to Mr. Crocker there was a mortgage made under similar circumstances to you, was there not? A. That was later, January, the next year.

Q. Is that the mortgage in question?

The Court: Has that anything to do with this case?

10 Mr. Marsh: I want to show that Mr. Powell did exactly the same thing with his mortgage to the bank.

The Court: What difference does that make?

Mr. Marsh: It all bears out a basis on which an estoppel might lie.

The Court: Something done afterward?

Mr. Marsh: It was done within a month, the mortgage was dated before.

20 The Court: You have got as much out of this witness as you can. He frankly confesses that the purpose of the company was to have this mortgage used by Crocker in order to get from the Newark Trust Company \$5,000, and it was to be an \$8,000 mortgage. What more can it be? If that legally creates an estoppel that is one thing; if it don't, you can't get any assistance from something that was done afterwards.

30

Redirect examination by Mr. Johnson:

Q. When Mr. Crocker told you he was going to raise the money on the mortgage that was signed for \$8,000 from the Newark Trust Company was the amount that he was to raise stated? A. \$5,000.

40 Q. Since Mr. Crocker left the City and State,

*Gordon B. Phillips, direct.*

who has been paying interest on this mortgage?

A. Lackawanna Investment Company.

Q. Before he left who paid interest on it? A. Lackawanna Investment Company.

Q. To whom did the Lackawanna Investment Company pay interest? A. Newark Trust Company.

Examined by the Court:

10

Q. On the amount of \$8,000? A. \$5,000.

Q. \$5,000? A. Yes, sir.

Q. That is on the note? A. That is on this loan.

Q. Was that paid direct to the Newark Trust Company? A. Yes, sir.

Q. By the Lackawanna Investment Company? A. Yes.

20

Mr. Johnson: We rest.

Mr. Marsh: The only other evidence is that that I suggested before of the minutes showing this transaction.

The Court: If you think it is important put it in.

---

GORDON B. PHILLIPS, sworn.

30

Direct examination by Mr. Marsh:

Q. Where do you live? A. West Orange.

Q. In the year 1910, were you connected with the Newark Trust Company? A. I was.

Q. Are you now? A. No, sir.

Q. For how long has that been since you have been connected with it? A. I went to the trust company when they opened in 1909, and was there until December 31, 1914.

40

*Gordon B. Phillips, direct.*

Q. And you were an officer? A. Yes, sir.

Q. Which? A. Vice-president and secretary.

Q. What is this book? A. Minute book.

Q. Is that your signature? A. Yes.

10 Q. Will you just read the entry in those minutes with respect to the Crocker loan and state the date of the meeting? A. The date is October 19, 1910. "Application from Director Crocker for loan of \$5,000 secured by assignment of mortgage for \$8,000 on premises north-east corner of Fourth Avenue and North Eighteenth Stret, East Orange, New Jersey, was presented. On motion of Mr. McGuire, seconded by Mr. Pennington, said application was referred to the appraisal committee and if recommended by said committee the loan was ordered granted."

20 Q. Do you know whether that is the only entry in the minute book with respect to that application for loan? A. In that particular meeting?

Q. In the minutes? A. Oh, in the book?

Mr. Johnson: If you say so I will admit it.

By the Court:

30 Q. Is there anything in that minute book with respect to this \$2,500 loan of Acker? A. I think Mr. Acker at that time was director of the company, and if that is so, application would probably go before the committee of the Board; I am not positive as to that, I would have to look it up.

Mr. Marsh: This book is not dated late enough; it only goes down to February, 1913.

40 Q. In December, 1910, was there any rule or

*William B. Powell, cross.*

regulation of the bank with respect to collateral loans? A. Why, the rule of the bank was that a collateral loan should not exceed eighty per cent. of the value of the collateral. Of course, the State Law, as you know, provides that ninety per cent. only can be loaned on collateral under the trust company act.

Q. There was a regulation at the bank? A. The regulation at the bank was eighty per cent., that was the custom at the institution. 10

Q. Do you know whether that regulation was known to Mr. Crocker and to Mr. Powell? A. They were both directors, they should have known it; I can't speak for them; it was known to me as director.

Minutes of the Board of Directors of the Newark Trust Company, held November 14, 1910, previous meeting having been held on October 10, 1910. Present: W. B. Day, F. R. Moeller, R. D. Crocker, William A. Baker, Robert B. Stoutenburgh, William Pennington, F. M. Shultz, W. B. Powell, G. B. Phillips, and in the minutes "Minutes of meeting of Executive Committee held since the last meeting of the Board were read." 20 30

WILLIAM B. POWELL, recalled.

Examined by the Court:

Q. Did you know the form of this collateral note? A. Did I know the form that Mr. Crocker signed?

Q. Yes. A. I never had occasion to use it unless I signed one, at the time I signed it. 40

Q. I don't mean that. Did you know as a di-

*William B. Powell, cross.*

rector that the bank, at the time this mortgage was executed, that when a mortgage was pledged it was always pledged with a note of the character such as this, it had the effect of pledging it not only for that liability then created and presently created, but for any other liability that might be subsequently created? A. No, sir, I did not.

10 Q. You didn't pay very much attention to the affairs of the bank? A. I was director and the directors met once a month, but the Executive Committee were the one that really did the work.

Q. Didn't you know, as a matter of fact, that it is ordinary banking custom to take collateral of this kind, that is, the bank holds collateral not only for the then presently created obligation, but for any other obligation that the debtor can  
20 subsequently create? A. No, sir; not at that time.

Q. You did not? A. No, sir.

Examined by Mr. Marsh:

Q. When did you find out that there was such a regulation?

The Court: Not regulation, but custom.

30 Q. Or custom, then? A. Well, I couldn't give any definite date, but it was considerably later.

By the Court:

Q. You knew it when you signed the the collateral note referred to for which the mortgage was made to you was pledged? A. I couldn't answer that because I don't know whether he signed the same form or note, I can't say that positively.

40 Q. That is your signature? A. Yes, sir.

*Exhibits.*

Q. Does that contain any recital as to payment of—

The Court: No, don't put it that way; just offer it.

Mr. Marsh: I offer note of William B. Powell, January 16, 1911, \$5,000.

Marked Exhibit C13.

Mr. Johnson: May I object to the admission of that note on the ground it is later in point of time? 10

Q. When you signed that note, did you make any comment about it or object to the form of it in any way? A. I don't think it was pointed out to me at the time, and all that I considered was the \$5,000 that appeared on the note in the assignment of the mortgage. 20

By the Court:

Q. You say when you signed that note you really did not know what was in it? A. No, I did not.

---

**Exhibit C1.**

KNOW ALL MEN BY THESE PRESENTS, That We, Lackawanna Investment Company, a corporation of New Jersey, having its principal office in the City of Newark, County of Essex and State of New Jersey, is held and firmly bound unto Roland D. Crocker, of the City of East Orange, in the County of Essex and State of New Jersey, in the sum of Sixteen thousand Dollars, to be paid to the said Roland D. Crocker, his executors, administrators or assigns, to which payment well and truly to be made said corporation doth bind itself and its successors firmly by these presents. 30  
40

*Exhibits.*

Sealed with the corporate seal of the said corporation and dated the first day of November, nineteen hundred and ten.

10 The condition of the above obligation is such, that if the above bounden Lackawanna Investment Company, or its successors shall well and truly pay or cause to be paid, unto the above named Roland D. Crocker, his executors, administrators or assigns, the just and full sum of eight thousand dollars, the first day of November, which will be in the year nineteen hundred and eleven and the interest thereon to be computed from the date hereof at the rate of six per cent. per annum, and to be paid semi-annually, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

20

And it is hereby expressly agreed that should any default be made in the payment of the said interest or any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond and to become due and payable, and should the said interest remain unpaid and in arrears for the space of thirty days or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrears for the space of thirty days, then and from thence forth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Eight Thousand Dollars, with all arrear-

30

40

*Exhibits.*

ages of interest thereon, shall at the option of the said Roland D. Crocker, or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

10

LACKAWANNA INVESTMENT CO.,  
per Wm. G. Powell, Pres't

Signed, sealed and delivered in the presence of

JAMES D. LAURLIE,  
Sec'y

[SEAL.]

**Exhibit C2.**

THIS INDENTURE, made the First day of November, in the year of our Lord One Thousand Nine Hundred and ten, between Lackawanna Investment Company, a corporation of the State of New Jersey, having its principal office in the City of Newark, in the County of Essex and State of New Jersey of the First Part;  
AND Roland D. Crocker, of the City of East Orange in the County of Essex and State of New Jersey, of the Second Part;

20

30

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Eight thousand dollars, Money of the United States of America, to it in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, has given, granted,

40

*Exhibits.*

10 bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the second part and to his heirs and assigns forever, ALL that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark, in the County of Essex, and State of New Jersey:

20 Beginning at the corner formed by the intersection of the easterly line of North Eighteenth Street with the northerly line of Fourth Avenue; thence along said line of Fourth Avenue South forty-six degrees forty-two minutes east one hundred and seventy-six feet; thence at right angles with said line of Fourth Avenue north-easterly one hundred and ten feet; thence parallel with said line of Fourth Avenue southwesterly fifty-five feet more or less to a point where this line intersects a line running from the point of beginning north eighty-seven degrees thirty-eight minutes east thence south eighty-seven degrees thirty-eight minutes west one hundred and fifty-five feet more or less to the place of beginning.

30 TOGETHER with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining. ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in, and to the same, and of, in and to every part and parcel thereof: TO HAVE AND TO HOLD,  
40 all and singular the above described tract or lot of land and premises, with the appurtenances,

*Exhibits.*

unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

PROVIDED ALWAYS, and it is agreed by and between the parties to these presents, that if the said Lackawanna Investment Company do and shall well and truly pay, or cause to be paid, to the said party of the second part, or to his certain attorney or attorneys, heirs, executors, administrators, or assigns, the sum of Eight thousand dollars in one year from the date hereof, with lawful interest for the same, at the rate of six per centum per annum, payable semi-annually, according to the conditions of a certain Bond bearing even date herewith; made by the said Lackawanna Investment Company to said Roland D. Crocker, without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever; then and from henceforth these presents and said obligation, and everything herein and therein contained, shall cease and be void; anything herein and therein contained to the contrary in any wise notwithstanding; AND the said party of the first part and its successors does covenant and grant to and with the said party of the second part, his heirs, and assigns, that the said party of the first part, its successors and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payments of which this mortgage is made for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mort-

10

20

30

40

*Exhibits.*

10 gage or any part thereof; and the said party of  
the second part his heirs and assigns, shall and  
may from time to time, and at all times after  
default shall be made in the performance of the  
proviso or condition herein contained, peaceably  
and quietly enter into, have, hold, use, occupy,  
possess and enjoy all and singular the above grant  
ed and bargained premises, with the appurtenan-  
ces, without the let, suit, trouble, hindrance or  
denial of the said Lackawanna Investment Com-  
pany, and its assigns, or of any other person or  
persons whatsoever. AND it is also agreed by  
and between the parties to these presents, that  
the said party of the first part shall and will keep  
the buildings erected and to be erected upon the  
20 lands above conveyed, insured against loss or  
damage by fire in some safe and responsible In-  
surance Company or Companies, to an amount  
not less than Eight thousand dollars, and assign  
the policy and certificate thereof to the said  
party of the second part as collateral security  
for the payment of the principal and interest  
aforesaid; and in default thereof, it shall be law-  
ful for the said party of the second part to  
effect such insurance, and the premium and  
30 premiums paid for effecting the same shall be  
a lien on the said mortgaged premises, added to  
the amount of the said Bond or obligation, and  
secured by these presents, and payable on de-  
mand with legal interest.

IN WITNESS WHEREOF, the said party of the  
first part has caused these presents to be signed

*Exhibits.*

by its president and its common seal to be here-  
to affixed, the day and year, first above written.

LACKAWANNA INVESTMENT CO.,

per Wm. B. Powell,

President.

(Seal)

Signed, sealed and Delivered }

in the presence of }

JAMES D. LAMBIE,

Secretary.

10

State of New Jersey, }

County of Essex. }

ss. :

BE IT REMEMBERED, That on this 5th day  
of December, in the year of our Lord One Thou-  
sand Nine Hundred and ten, before me, the  
subscriber, a Master in Chancery of New Jersey,  
personally appeared James D. Lambie who,  
being by me duly sworn, doth depose and make  
proof to my satisfaction that he well knows  
the corporate seal of Lackawanna Investment  
Company, the grantor mentioned in the within  
Indenture; that the seal thereto affixed is the  
proper corporate seal of the said company; that  
the same was so affixed thereto and the said deed  
signed and delivered by William B. Powell, who  
was at the date and execution thereof, the presi-  
dent of said company, in the presence of the said  
deponent, as the voluntary act and deed of the

20

30

40

*Exhibits.*

said company, and that the said deponent thereupon signed the same as subscribing witness.

JAMES B. LAMBIE.

Sworn and subscribed to before me }  
on the day and year aforesaid. }

ATWOOD D. DECOSTER,

Master in Chancery,

of New Jersey.

10

Received in the Register's office of Essex Co. on the 16th day of December, A. D. 1910, at 1:22 o'clock, in the afternoon and recorded in Book T26 of Mortgages for said County, at pages 397-399.

THOMAS P. ALWORTH,

Register.

20

---

**Exhibit C3.**

30

KNOW ALL MEN BY THESE PRESENTS, That I, Roland D. Crocker, of the City of East Orange, Essex County, New Jersey, party of the first part, in consideration of the sum of Five Thousand Dollars, lawful money of the United States, to me in hand paid by Newark Trust Company, a corporation of New Jersey, having its principal office in the City of Newark, Essex County, New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, that certain Indenture of Mortgage bearing date the first day of November, Nineteen hundred and Ten, made by Lackawanna Investment Company to me, on

40

lands in said City of East Orange, to secure

*Exhibits.*

the payment of the sum of Eight Thousand Dollars, which mortgage is recorded in the Register's Office of the County of Essex in Book of Mortgages, pages TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD, the same unto the said party of the second part, its successors and assigns, for and as collateral security for the payment of my demand note of even date herewith for the payment of said sum of Five Thousand Dollars with interest at six per cent. per annum, held by said party of the second part, subject only to the proviso in the said Indenture of Mortgage mentioned. 10

And I do hereby make, constitute and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name or otherwise, but at its proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made. 20

And I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage the sum of Eight Thousand Dollars and interest from the date thereof. 30

IN WITNESS WHEREOF I have hereunto set my hand and seal this sixteenth day of December, in the year of Our Lord One Thousand Nine Hundred and Ten.

ROLAND D. CROCKER.

Signed, sealed and delivered }  
 in the presence of }  
 Harry H. Poole. 40

*Exhibits.*

State of New Jersey, County of Essex, ss.:

10 Be it Remembered, that on this sixteenth day of December, Nineteen hundred and ten, before me, an Attorney at law of New Jersey, personally appeared Roland D. Crocker, who, I am satisfied, is the assignor named in and who executed the foregoing deed of assignment, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed.

HARRY H. POOLE,

Attorney at law of New Jersey.

20 Received in the Register's office of Essex Co., on the 19th day of December, 1910, at 1:22 o'clock in the afternoon, and recorded in Book 96 of Assignment of Mortgages for said County.

---

**Exhibit C4.**

\$5000 00/100          NEWARK, N. J., Dec. 16, 1910.

30 On demand after date, for value received, I promise to pay to NEWARK TRUST COMPANY, or order, at its banking house, with interest at the rate of 6% per annum, Five Thousand and 00/100 Dollars, the undersigned having deposited with said Trust Company as collateral security for payment of this or any other liability or liabilities of the undersigned, direct or contingent, individual or firm, to said Trust Company now existing, or which hereafter may be contracted, the following property, viz: Assignment mortgage Lackawanna Investment Co. to me for Eight  
40 thousand dollars dated Nov. 1st 1910, with full power and authority to said Trust Company, or

*Exhibits.*

its President, or Treasurer, to sell, assign and deliver the whole, or any part thereof, or any substitutes therefor, or any additions thereto, at any Brokers' Board, or at any public or private sale, at the option of said Trust Company, or its President, or Treasurer, or its or their, or either of their Assigns, on the non-performance of this promise, or the non-payment at maturity of any of the other liabilities aforesaid, or at any time or times thereafter, without demand of payment, advertisement, or notice of sale, which are hereby expressly waived; and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale, or sales, to pay any or all of said liabilities to said Trust Company, or its assigns, as its President or Treasurer, or assigns, shall deem proper, returning the over-plus to the undersigned; and upon any sale at public auction or at Brokers' Board the holder hereof may purchase the whole or any part of such securities, discharged from any right of redemption. And the undersigned agrees to be and remain liable to the holder hereof for any deficiency, and to pay the same upon demand of the holder hereof.

In case of depreciation, according to the judgment of the holder hereof in the market value of the security hereby pledged, or which may hereafter be pledged for this loan, the undersigned agrees to make a payment on account, so that the said market value shall always be at least twenty per cent. more than the amount unpaid of this Note, or else to make such further additional deposits of securities as may be necessary to maintain such margin, adopting either course that the holder hereof may require. In

10

20

30

40

*Exhibits.*

case of failure to do so, or in the event of insolvency of the undersigned, or of any endorser or guarantor of this Note, this Note shall be due and payable forthwith at the option of the holder hereof, anything hereinbefore expressed to the contrary notwithstanding, and the holder may immediately reimburse himself by sale of the security as hereinbefore provided, also holding and applying the balance of any deposit account of the undersigned with said Trust Company. *And it is hereby agreed and understood, that if recourse is had to collaterals, any excess of collaterals upon this Note shall be applicable upon any other note, claim or endorsement, held by said Company.*

In case of the substitution of any other securities for those above mentioned, or of any additions to the collaterals at any time securing this Note, the provisions hereof shall apply to all such substituted new or additional collaterals.

In case of default by the undersigned and the payment of this Note by any guarantor or endorser, the said Trust Company is hereby expressly authorized, if it so elect, to surrender to the person making such payment, any or all collaterals held for the payment hereof.

ROLAND D. CROCKER.

---

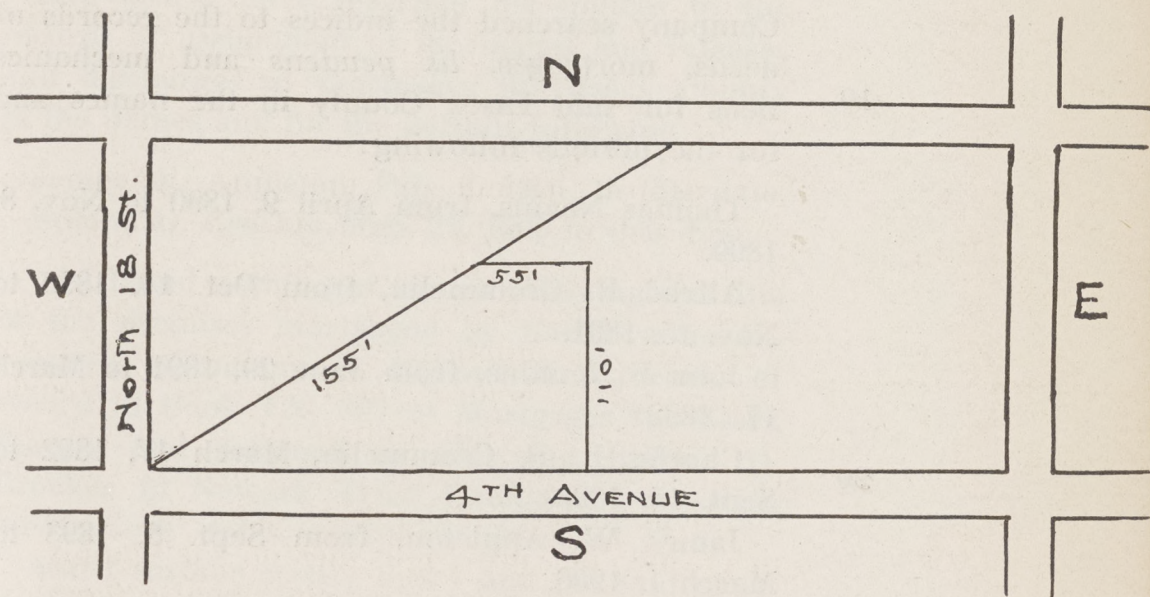
**Exhibit C5.**

**NEWARK TRUST COMPANY**

Newark, N. J., October 19, 1910. The undersigned desires to procure a loan of \$5,000., on the bond of Lackawanna Investment Company secured by Mortgage for \$8,000, on the following property: Location No., . on North side

*Exhibits.*

of 4th Avenue, E. Orange, N. J., Dimensions of Ground 180 x 100; Dimensions of Building, none; Building Materials, none; Paved, macadamized; Sewered, yes; Value of Ground, \$18,000.



And in consideration of said loan, I agree to pay all necessary search fees and for drawing of papers, and also authorize the Association to place the Fire Insurance on the said property in such company as they may select.

Signature ROLAND D. CROCKER,

Address 776 Broad St., City.

We have examined the property within described, and value it as follows:

LAND, \$12,000.00 BUILDINGS, \$ and recommend that a loan of \$5,000.00 be granted.

GEO. F. KING,

W. F. ACKER,

Committee.

*Exhibits.***Exhibit C6.**

## CERTIFICATE.

State of New Jersey, County of Essex, ss.:

10 I hereby certify that I have for Newark Trust Company searched the indices to the records of deeds, mortgages, *lis pendens* and mechanics liens for said Essex County in the names and for the periods following:

Thomas Nevins, from April 9, 1890 to Nov. 8, 1890.

Alfred B. Crommelin, from Oct. 14, 1890 to Nov. 15, 1891.

John F. Jenkins, from June 29, 1891 to March 17, 1892.

20 Charles L. B. Crommelin, March 17, 1892 to Sept. 15, 1893.

James W. Appleton, from Sept. 8, 1893 to March 1, 1906.

William B. Powell, from Feb. 7, 1906 to Oct. 25, 1908.

Lackawanna Investment Company from Oct. 19, 1908 to this date.

30 And also I have searched the indices to the records of attachment, sheriff bonds, judgment, recognizances and miscellaneous liens for said County of Essex in the names and for the periods following:

Alfred B. Crommelin, Dec. 15, 1890 to Nov. 15, 1891.

John F. Jenkins, Dec. 15, 1890 to March 17, 1892.

40 Charles L. B. Crommelin, Dec. 15, 1890 to Sept. 15, 1893.

James W. Appleton, from Dec. 15, 1890 to March 1, 1906.

*Exhibits.*

William B. Powell, Dec. 15, 1890 to Oct. 25, 1908.

Lackawanna Investment Company, Jan 1, 1908 to this date.

And also I have searched the indices to the records of assignment of mortgages and releases and discharges of mortgages for Essex County in the names and for the periods following: 10

James W. Appleton, Feb. 7, 1906, to this date.

Roland D. Crocker, Feb. 27, 1906 to this date.

And I find nothing of record affecting the title of the premises mortgaged by Lackawanna Investment Company to Roland D. Crocker, of record in Book T26, 397 of Mortgages for Essex County and assigned by the said Roland D. Crocker to Newark Trust Company by assignment above states, except as above set forth. 20

And I further certify that I find the said mortgage made by Lackawanna Investment Company to Roland D. Crocker, to be a first and valid lien on the premises therein described and that the same is vested in Newark Trust Company as assignee by virtue of a good and valid assignment of the same; and that there is of record no release or discharge of the same nor any other assignment thereof. 30

Dated December 16th, 1910.

WM. J. PENNINGTON, JR.,  
Attorney at Law.

State of New Jersey, County of Essex, ss.:

I hereby certify that I have seen and inspected original certificates of search in the New Jersey 40

*Exhibits.*

Supreme Court from which it appears that there are no decrees from chancery, judgments, attachments or other lien of record therein in the names and for the periods following:

Alfred B. Crommelin, from Dec. 15, 1890 to Nov. 15, 1891.

10 John F. Jenkins, Dec. 15, 1890 to March 17, 1892.

Charles L. B. Crommelin, Dec. 15, 1890 to Sept. 15, 1893.

James W. Appleton, from Dec. 15, 1890 to March 1, 1906.

William B. Powell, from Dec. 15, 1890 to Oct. 25, 1908.

20 Lackawanna Investment Company, Jan. 1, 1908 to this date.

Dated December 16th, 1910.

WM. J. PENNINGTON, JR.,  
Attorney at Law.

State of New Jersey, County of Essex, ss.:

30 I hereby certify that I have seen and inspected original search for taxes, sales, and assessments liens affecting the property described in mortgage made by Lackawanna Investment Company to Roland D. Crocker of record in Book T 26 of Mortgages for Essex County on pages 397, etc., and from the same it appears that there are no such liens of record affecting said property.

Dated December 16th, 1910.

WM. J. PENNINGTON, JR.,  
Attorney at Law.

40

*Exhibits.***Exhibit C9.**

## NEWARK TRUST COMPANY.

No. 1094 Newark, New Jersey, December 16,  
1910. Pay to the order of Roland D. Crocker,  
\$5,000.00 Five Thousand and 00 Dollars.

To the National Newark Banking Co., Newark, N.  
J. Not over five thousand \$5,000\$. G. B.  
PHILLIPS, Vice-President, F. H. KILPATRICK,  
Treasurer.

10

ROLAND D. CROCKER. Credit Account, New-  
ark Trust Co., F. H. KILPATRICK, Treas.

**Exhibit C10.**

\$2,500.00 Newark, N. J., May 12th, 1914.  
Four months after date I promise to pay to the  
order of myself, Twenty-five hundred and 00/100  
Dollars at Newark Trust Co., Without defalcation  
Value received Int 6% .

20

W. F. ACKOR.

Due 9/14/14.

(Endorsed.)

W. F. ACKOR

ROLAND D. CROCKER

Pd. on Prin. 4/20.16 8291.

In the U. S. District Court, District of New  
Jersey, The matter of Roland D. Crocker, Bank-  
rupt, Filed herein Dec. 15, 1914, EDWIN G.  
KAINS, Referee in Bankruptcy.

30

40

*Exhibits.***Exhibit C11.**

Newark, N. J.,  
Sept. 14, 1914.

To Newark Trust Company,  
Newark, N. J.

Sirs:

10

For one dollar and other valuable considerations to me in hand paid I hereby waive demand for payment, protest and notice of protest on note of William F. Acker falling due on this date amounting to the sum of Twenty-five hundred Fifty-two dollars and eight cents and endorsed by me.

ROLAND D. CROCKER.

20

**Exhibit C13.**

\$5,000 00/100

Newark, N. J., January 16, 1911.

30

On demand after date, for value received, I promise to pay to NEWARK TRUST COMPANY, or order, at its banking house, with interest at the rate of 6% per annum, Five thousand and 00/100 Dollars, the undersigned having deposited with said Trust Company as collateral security for payment of this or any other liability or liabilities of the undersigned, direct or contingent, individual or firm, to said Trust Company now existing, or which hereafter may be contracted, the following property, viz: Assignment of mortgage with full power and authority to said Trust Company, or its President, or Treasurer, to sell, assign and deliver the whole, or any part thereof, or any substitutes therefor, or any

40

*Exhibits.*

additions thereto at any Brokers' Board, or at any public or private sale, at the option of said Trust Company, or its President, or Treasurer, or its or their, or either of their Assigns, on the non-performance of this promise, or the non-payment at maturity of any of the other liabilities aforesaid or at any time or times thereafter, without demand of payment, advertisement, or notice of sale, which are hereby expressly waived; and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale, or sales, to pay any or all of said liabilities to said Trust Company, or its assigns, as its President or Treasurer, or assigns, shall deem proper, returning the overplus to the undersigned; and upon any sale at public auction or at Brokers' Board the holder hereof may purchase the whole or any part of such securities, discharged from any right of redemption. And the undersigned agrees to be and remain liable to the holder hereof for any deficiency, and to pay the same upon demand of the holder hereof.

In case of depreciation, according to the judgment of the holder hereof in the market value of the security hereby pledged, or which may hereafter be pledged for this loan, the undersigned agrees to make a payment on account, so that the said market value shall always be at least twenty per cent. more than the amount unpaid of this Note, or else to make such further additional deposits of securities as may be necessary to maintain such margin, adopting either course that the holder hereof may require. In case of failure to do so, or in the event of insolvency of the undersigned, or of any endorser

10

20

30

40

*Exhibits.*

or guarantor of this Note, this Note shall be due and payable forthwith at the option of the holder hereof, anything hereinbefore expressed to the contrary notwithstanding, and the holder may immediately reimburse himself by sale of the security as hereinbefore provided, also holding and applying the balance of any deposit account of the undersigned with said Trust Company. *And it is hereby agreed and understood, that if recourse is had to collaterals, any excess of collaterals upon this Note shall be applicable upon any other note, claim or endorsement, held by said Company.* In case of the substitution of any other securities for those above mentioned, or of any additions to the collaterals at any time securing this Note, the provisions hereof shall apply to all such substituted new or additional collaterals.

In case of default by the undersigned and the payment of this Note by any guarantor or endorser, the said Trust Company is hereby expressly authorized, if it so elect, to surrender to the person making such payment, any or all collaterals held for the payment hereof.

WM. B. POWELL.

30

40

**Conclusions.**

IN CHANCERY OF NEW JERSEY.

Between

NEWARK TRUST COMPANY,  
Complainant,

and

LACKAWANNA INVESTMENT COM-  
PANY *et al.*,  
Defendants.

On Bill &c.

10

Messrs. RAYMOND, MOUNTAIN, VAN BLAR-  
COM & MARSH, for Complainant.

Messrs. LEHLBACH & JOHNSON, for De-  
fendants.

20

LANE, V. C.—This is a bill to foreclose a mort-  
gage made on November 1st, 1910, by the Lacka-  
wanna Investment Company, the defendant, to  
Roland D. Crocker, purporting to secure the pay-  
ment of the sum of eight thousand dollars in one  
year. On December 16th, 1910, the said Crocker  
assigned the mortgage to the complainant as  
collateral to his note for five thousand dollars.  
A written assignment was made and recorded.  
The assignment in terms is as collateral security  
for the payment “of my demand note of even  
date herewith for the payment of the sum of five  
thousand dollars, with interest at six per cent.  
per annum.” The collateral note contained the  
following language: “The undersigned having  
deposited with said Trust Company as collateral  
security for payment of this *or any other liability*

30

40

*Conclusions.*

or liabilities of the undersigned, direct or contingent, individual or firm, to said Trust Company now existing, or which hereafter may be contracted, the following property, viz: Assignment of mortgage Lackawanna Investment Company to me for eight thousand dollars, dated November 1st, 1910." And the following: "On non-  
10 performance of this promise, or the non-payment at maturity of any of the other liabilities aforesaid, \* \* \* sale may be made, etc." And the following: "It is hereby agreed and understood, that if recourse is had to collateral any excess of collaterals upon this note shall be applicable upon any other note, claim or endorsement, held by said company."

20 The stock of the Lackawanna Investment Company was all owned by Roland D. Crocker and one Powell. They and one other, a dummy, constituted its Board of Directors. Powell was a member of the Board of Directors of the Newark Trust Company. Crocker was also a member of its Board of Directors and of its Executive Committee. He was its counsel and was as well the personal counsel of Powell. The Lackawanna Investment Company desired to obtain  
30 from the Newark Trust Company five thousand dollars. Crocker represented to Powell that it would be easier to obtain a loan of five thousand dollars with a mortgage for eight thousand dollars rather than five thousand as collateral. That there should be this excess was rendered necessary by a rule of the banking institution known to Powell which required that the advance should not exceed eighty per cent. of the  
40 value of the collateral. The loan was granted;

*Conclusions.*

the mortgage pledged; the five thousand dollars were advanced and paid to the Lackawanna Investment Company, and this is the only sum that was ever paid on account of the mortgage. On the 12th day of May, 1914, approximately three years after the transaction hereinbefore referred to, the bank loaned twenty-five hundred dollars to one Ackor and took his note endorsed by Crocker. This note was never paid. Protest was waived and the indebtedness is an indebtedness of Crocker. The bank claims to hold the mortgage as collateral not only to the five thousand dollar Crocker note but as collateral to the Ackor note. There is no evidence that the bank advanced the money to Ackor upon the faith of its holding the assignment of the mortgage. There is no proof of any facts excusing the failure of the bank to produce such evidence which might possibly lead the Court to presume that the bank advanced the money upon the faith of this security. If it had been shown that the officer who made the loan on the Ackor note was inaccessible, it might be argued that the Court should presume that the bank having this collateral in its possession relied, to some extent, upon it in making the loan.

I am forced to conclude that the bank did not, in making the loan on the Ackor note, rely in any degree upon the fact that it held this mortgage. Counsel for the bank relies upon the case of *Tate v. Security Trust Company*, 63 Eq. 559. Giving that case the force and effect contended for by counsel, to wit, that if the bank is a *bona fide* purchaser for value it is

10

20

30

40

*Conclusions.*

not bound by the equity of the Lackawanna Investment Company, the question remains as to what extent the bank is a purchaser for value. Only to such extent is it entitled to protection. *Lawsh v. Trenton Banking Company*, 99 Atl. 617. It certainly is a purchaser for value to the extent of the five thousand dollars originally paid. But when it advanced twenty-five hundred dollars to Ackor, not relying in any degree upon its possession of this assignment, did it increase its investment in the security by twenty-five hundred dollars? I think not. It seems to me that it is only where money is advanced upon the faith of the security, either actually proven or presumed, that the bank can prevent a third party from setting up his equity. As before stated, in this case, there are no facts shown which would indicate that the bank relied upon the security, nor are there any facts shown which would induce the Court to presume it. It is not even argued that the Court has a right to assume that there was any such reliance. The bank rests upon the technical terms of the contract with Crocker as evidenced by his collateral note.

The view that I have taken renders it unnecessary for me to consider to just what extent the doctrine of *Tate v. Security Trust Company supra*, goes. I express no opinion upon that point.

There will be a decree for complainant for the sum of five thousand dollars with interest.

**Final Decree.**

## IN CHANCERY OF NEW JERSEY.

Between

NEWARK TRUST COMPANY, a corporation,  
Complainant,

and

LACKAWANNA INVESTMENT COMPANY, ROLAND D. CROCKER, and  
CECIL H. McMAHON, as trustees  
in bankruptcy of ROLAND D.  
CROCKER,

Defendants.

On Bill, etc.

10

20

This matter coming on to be heard on bill, answer, replication and proofs, in the presence of Raymond, Mountain, Van Blarcom & Marsh, Solicitors of the Newark Trust Company, complainant, and Lehlbach & Johnson, solicitors of the Lackawanna Investment Company, a corporation of the State of New Jersey, defendant, and it appearing that the complainant's bill has been heretofore taken as confessed against the defendant, Roland D. Crocker, and Cecil H. McMahon, trustees in bankruptcy of Roland D. Crocker.

30

And it further appearing to the Court that the Lackawanna Investment Company did, on the first day of November, nineteen hundred and ten, execute and deliver to Roland D. Crocker its certain bond and mortgage, in the principal

40

*Final Decree.*

sum of \$8,000, on the lands and premises described in the bill of complaint, and that the said Roland D. Crocker did, on the sixteenth day of December, nineteen hundred and ten assign said bond and mortgage to the complainant as collateral security for the payment of his note in the sum of \$5,000, bearing even date therewith, on which there is now due to the said Newark Trust Company the sum of \$5,205.83.

And it further appearing to the court that the said Newark Trust Company did, on the twelfth day of May, nineteen hundred and fourteen, purchase from one William F. Ackor, a certain note in the sum of \$2,500, endorsed by Roland D. Crocker, on which there is now due the sum of \$2,914.24;

And it further appearing to the Court that the said Newark Trust Company is not entitled to have the said sum of \$2,914.24, paid out of the proceeds of the sale of the lands secured by said mortgage, but is entitled to have the said sum of \$5,205.43 paid therefrom.

And it further appearing that it is necessary and advisable that the whole of the said mortgaged premises should be sold to raise and pay the sum of \$5,205.43 with interest, from date hereof, so due to complainant as aforesaid.

It is thereupon, on the 4th day of September, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree that the said mortgaged premises be sold to raise and satisfy the money claim due to the said

*Final Decree.*

complainant, that is to say the sum of \$5,205.83, with lawful interest thereon to be computed from the day of the date hereof, with costs of this cause to be taxed.

And it is further ordered, that the claim of the Newark Trust Company to have the sum of \$2,914.24, to be raised and paid out of the proceeds of said mortgaged premises be and the same hereby is disallowed. 10

It is further ordered that a writ of *feri facias* do issue for the purpose aforesaid out of this Court, directed to the Sheriff of the County of Essex, commanding him to make sale, according to law, of the said mortgaged premises, and that out of such money to pay to the complainant or its solicitors, the said debt, interest and costs, and in case more money shall be raised by the said sale than shall be sufficient to answer such payment, that such surplus be brought into this Court to abide the further order of the Court, unless otherwise previously disposed of by this Court; and that the said Sheriff make return without delay of his proceedings, by virtue of the said writ. 20

And it is further ordered, adjudged and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree. 30

It is further ordered, adjudged and decreed, that the sum of \$50 be allowed to the solicitors of the complainant, instead of the retaining fee now allowed to counsel for complaint, and that the same be allowed in said 40

*Final Decree.*

taxed bill of costs, and collected with the other items of said bill.

E. R. WALKER.

C.

Respectfully advised,  
Merritt Lane,  
V. C.

10

A true copy.

ROBERT H. McADAMS,

Clerk.

[337]

20

30

40