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WITNESSES FOR COMPLAINANT.

WITNESSES FOR DEFENDANT.

COMPLAINANT'S EXHIBITS.

Amended Bill of Complaint.

Filed April 28, 1931.

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

Complainant, American Eagle Fire Insurance Company, a corporation of the State of New York, by leave of Court, first obtained, respectfully amends its bill heretofore filed in this cause to show unto your Honor that:

1. On March 25, 1925, Allen Raimondi being indebted to Grant Building and Loan Association, a corporation of the State of New Jersey, in the sum of $16,000 executed to it a bond of that date to secure that sum.

2. To secure the payment of said bond, said Allen Raimondi executed to said Grant Building and Loan Association a mortgage of even date with said bond, which mortgage was on March 31, 1925 recorded in the Office of the Register of Essex County in Book Y53 of Mortgages, pages 159-160.

3. By its policies of insurance complainant insured said Allen Raimondi as owner, and said Grant Building and Loan Association as mortgagee against loss or damage to said premises by fire.

4. Said policies each provided as follows:

> "Whenever this Company shall pay the mortgagee (or Trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability, therefor existed, this Company shall to the extent of such payment, be thereupon legally subrogated to all the rights of

the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of its claim."

5. On June 10, 1925 said Allen Raimondi wilfully and fraudulently burned said premises.

6. On May 10, 1926 said Grant Building and Loan Association, in consideration of the sum of $3050.16 paid to it by complainant, assigned to complainant by assignment in writing (a true copy of which is hereto annexed as Exhibit "A" and hereby made a part hereof) an undivided interest to the extent of $3050.16 in said bond and mortgage. Said assignment is in complainant's possession but has not been recorded.

7. There was due upon said bond and mortgage upon the date of said assignment the sum of $15,020.00 with interest thereon at six per cent per annum from January 11, 1926.

8. Said Grant Building and Loan Association agreed by said assignment to collect the monies due or to become due upon said bond and mortgage and to pay to complainant its share of all such monies, if, as and when collected. Said monies, when and as collected constituted trust funds in the hands of said Grant Building and Loan Association for the joint benefit of complainant and said Grant Building and Loan Association.

9. Said Grant Building and Loan Association has from time to time collected portions of said mortgage debt, but in violation of the trust assumed by it by said assignment has failed and refused to pay to complainant its proportionate share thereof, although repeatedly requested by complainant to do so.

10. On July 2, 1928 said Grant Building and Loan Association in fraud of complainant's rights and in violation of the trust assumed by it by said assignment caused said bond and mortgage to be surrendered and cancelled of record without making any payment to complainant, without notice to complainant, and without complainant's knowledge in spite of the fact that complainant was then and had been for a long time prior demanding payment of its proportion of the monies collected.

11. Complainant has no knowledge of the amount or amounts of said mortgage debt collected by said Grant Building and Loan Association, and said Grant Building and Loan Association has refused and still refuses to render to complainant any statement of the amounts so collected by it.

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

1. That the Grant Building and Loan Association, a corporation, may answer this bill of complaint and each statement made therein.

2. That said defendant Grant Building and Loan Association may be ordered and decreed to make a full and true discovery and disclosure of the sum or sums paid to it on account of principal and/or interest on said bond and mortgage and of the proportionate amount of said payments which are due to complainant.

3. That said defendant Grant Building and Loan Association may be ordered and decreed to pay to complainant its rightful share of the money which may be found owing to it on such accounting.

4. That defendant Grant Building and Loan Association account to complainant for the value of the security surrendered by said defendant, and

That said defendant be ordered and decreed to pay such value to complainant.

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

ARTHUR T. VANDERBILT,
Solicitor for and of Counsel
with Complainant.

"EXHIBIT A"

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

WHEREAS, the American Eagle Fire Insurance Company was insurer under its policies Nos. 15702 and 15560 of the premises located at and known as 124-126 South Jefferson Street, Orange, New Jersey, under which policies ALLEN RAIMONDI was the assured, and to which were attached mortgagee clauses creating liability on the part of the insurer to the Grant Building and Loan Association as Mortgagee, and

WHEREAS, on the 10th day of June, 1925 said premises were damaged by fire, for which damage

the said American Eagle Fire Insurance Company has denied liability to the assured, but for which it is liable to the said mortgagee under the said mortgagee clauses, and

WHEREAS, said mortgagee clauses provide that under these facts it is entitled to be subrogated to the rights and benefits of the mortgagee to the extent of its payment,

NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS, that the Grant Building and Loan Association, in consideration of the payment to it by the American Eagle Fire Insurance Company of the sum of Three Thousand and Fifty Dollars and Sixteen Cents ($3,050.16), hereby assigns unto the said American Eagle Fire Insurance Company an undivided interest to the extent of Three Thousand and Fifty Dollars and Sixteen Cents ($3,050.16) in a certain mortgage made by Allen Raimondi, given to secure the payment of Sixteen Thousand Dollars ($16,000) and interest, dated the 25th day of March 1925, and recorded on the 31st day of March, 1925, in the office of the Register of Essex County in Liber V 53 of Mortgages, at pages 159-160, covering premises at 124-126 South Jefferson Street, Orange, New Jersey, together with the bond or obligation described in said mortgage and the moneys due and to grow due thereon, and said undivided interest in said mortgage hereby assigned shall bear interest at the same rate as the principal of said mortgage and shall be paid by the mortgagee to the assignee named herein proportionately, if, as and when collected.

In the event it is necessary for the mortgagee to foreclose the mortgage herein referred to, the mortgagee and the assignee hereunder shall share in

the proceeds of such foreclosure in proportion to their respective interests.

To Have and to Hold the interest hereby assigned unto the assignee and to its successors and assigns forever; and the assignee covenants that there is now owing upon said mortgage, without offset or defense of any kind, the principal sum of Fifteen Thousand Twenty Dollars ($15,020), with interest thereon at six per cent per annum from the 11th day of January, 1926.

In Witness Whereof the Assignor has caused these presents to be signed by its proper officers thereunto duly authorized and its seal to be affixed, this 10th day of May, 1926.

Grant Building and Loan Association,

By Samuel Goldsmidt,
President.

Attest:
Jacob Kanengieser
Secretary.

On this 10th day of May, 1926, before me personally came Jacob Kanengieser to me known, who being by me duly sworn, did depose and say that he resides in the City of Newark, N. J., that he is the Secretary of the Grant Building and Loan Association, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

ABNER KALISCH,
Master in Chancery of N. J.

Notice.

IN CHANCERY OF NEW JERSEY.

Between
AMERICAN EAGLE FIRE INSURANCE CO., a corp.,
Complainant,
and
GRANT BUILDING & LOAN ASSOCIATION, a corp.,
Defendant.

Notice.

To: ARTHUR T. VANDERBILT,
Solicitor of Complainant.

Sir:

TAKE NOTICE that on Tuesday, the first day of April, 1930, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Chancery Chambers in the City of Newark, New Jersey, I shall apply to the Chancellor for an order striking out the bill of complaint filed by you in the above entitled cause for the following reasons:

1. For lack of jurisdiction in that

(a) Complainant has a complete and adequate remedy at law.

(b) The alleged assignment in complainant's bill upon which relief is sought, is without consideration.

(c) Complainant's bill is without equity.

Respectfully yours,

KALISCH & KALISCH,
Sol'rs. of Defendant.

Order.

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IN CHANCERY OF NEW JERSEY.

Between AMERICAN EAGLE FIRE INSURANCE COMPANY, a corporation, Complainant, and GRANT BUILDING & LOAN ASSOCIATION, a corporation, Defendant.	On Bill, &c. Order.

Defendant having heretofore served complainant with notice of motion to strike the bill of complaint, and the Court having heard and considered the argument of Harry Kalisch, Esq., Of Counsel with Defendant, and Arthur T. Vanderbilt, Esq., Of Counsel with Complainant,

It is, on this 8th day of April, 1930, ORDERED that defendant's motion to strike the bill of complaint for lack of jurisdiction be and the same hereby is denied.

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

Amended Answer.

IN CHANCERY OF NEW JERSEY.

Between AMERICAN EAGLE FIRE INSURANCE COMPANY, a corporation, Complainant, and GRANT BUILDING & LOAN ASSOCIATION, a corp., Defendant.	On Bill, &c. Amended Answer.

The amended answer of Grant Building & Loan Association, a corporation organized under the laws of the State of New Jersey.

This defendant, Grant Building & Loan Association, answering the bill of complaint says that:

1. It admits paragraph 1.

2. It admits paragraph 2, and further says that at no time did said Grant Building & Loan Assn., have possession of said premises.

3. On the twenty-seventh day of March, 1925, the said complainant did issue to said Allen Raimondi, a fire insurance policy covering the said mortgaged premises and indemnifying the said Allen Raimondi against loss or damage by fire for a period of three years from the date of said policy to an amount not exceeding Three Thousand Dollars loss or damage, if any, payable to said Grant Building & Loan Association, as first mortgagee, pursuant to the terms of said policy, (a copy of which is hereto annexed and made a part hereof). On the twentieth day of May, 1925, the said com-

plainant did issue to said Allen Raimondi a fire insurance policy covering the said mortgaged premises and indemnifying the said Allen Raimondi against loss or damage by fire for a period of three years from the date of said policy to an amount not exceeding Thirteen Thousand Dollars; loss or damage, if any, payable to said Grant Building & Loan Association, as first mortgagee, pursuant to the terms of said policy, (a copy of which is hereto annexed and made a part hereof). Both of said policies had attached thereto a mortgagee clause which provided as follows:

> "Whenever this Company shall pay the mortgagee (or Trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of its claim."

4. That on or about June 10, 1925, said premises were damaged and destroyed by fire, and became and were untentantable and uninhabitable.

5. Thereafter and within the time limited by law the said loss was paid by the said complainant to the said defendant, as mortgagee under the terms of said policy of insurance; the amount paid

by the said complainant to said defendant being $3050.16 for said fire loss.

6. This defendant admits the execution of the assignment mentioned in paragraph 3 of the bill of complaint, but alleges that said assignment was given because the said complainant insisted that the said policies of insurance required said assignment to be executed by the said Grant Building & Loan Association pursuant to the mortgagee clause of said policies, for the purpose of carrying out the subrogation clause in said fire insurance policies. The said complainant under said fire insurance policies were liable to the said Grant Building & Loan Association by reason of the fire loss and that the assignment of said mortgage by the said Grant Building and Loan Association to the said complainant was without consideration.

7. After the payment by the said complainant to the said defendant of the amount due under said policy of insurance, said defendant with the money received from said complainant restored said building so damaged by fire as aforesaid, for the purpose of keeping up the security given by said mortgage, and that no part of the said sum of $3050.16 remained after said defendant completed and paid for the repairs on said building; and that if said building had not been so restored as aforesaid it would have been so reduced in value and would have continued to depreciate in value and become uninsurable as a fire insurance risk that it would be almost worthless as a security under said mortgage debt, and defendant's right to recover the full amount of its mortgage claim would have become impaired, and after the building was restored it was not of sufficient value to carry a further lien

of $3050 in addition to the mortgage of $16,000 then held by this defendant on said property.

8. That the said mortgage held by the said defendant was a building and loan mortgage, payable in accordance with the usual terms of building and loan mortgages, and that said mortgage was not due at the time said insurance money was paid to the said defendant nor at the time the assignment of said mortgage was made by the said Grant Building & Loan Association to the said complainant; all dues and payments under said building and loan mortgage having been paid in accordance with the terms of said mortgage.

9. On the first day of April, 1926, Allen Raimondi and his wife, conveyed the said premises to the Columbia Realty Co., and on September 8th, 1926, Columbia Realty Co., conveyed said premises to Luigi Bruno, and on the same day Luigi Bruno executed a purchase money mortgage on said premises to the Columbia Realty Co., for $4000; said mortgage being afterwards assigned to Golden Realty Co., a corporation, who foreclosed it and purchased said premises at a Sheriff's sale, said Sheriff's deed being dated August 24th, 1927. The said last mentioned owner on June 19, 1928, paid the said defendant the sum of $12,659.20 to secure a cancellation of the aforesaid mortgage held by the said defendant. This amount was the balance demanded by the defendant, taking the principal of the bond and mortgage as $16,000 and excluding the sum of $3050.16 paid to said defendant by the complainant herein; said insurance money having previously been expended by the said defendant in repairing the damages to the aforementioned building and in restoration thereof.

Amended Answer.

This defendant humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

KALISCH & KALISCH,
Solicitors of Defendant.

Replication.

IN CHANCERY OF NEW JERSEY.

76—504

Between AMERICAN EAGLE FIRE INSURANCE COMPANY, a corporation, Complainant, and GRANT BUILDING & LOAN ASSOCIATION, a corporation, Defendant.	On Bill, &c. Replication.

The replication of American Eagle Fire Insurance Company, a corporation, complainant.

Complainant says that:

It reserves leave to, and notifies you that, it will move at or before the final hearing of this cause to strike out defendant's answer on the ground that it is frivolous, and states no facts constituting a defense to complainant's bill of complaint.

Replying to defendant's answer complainant says that:

Replication.

1. It admits that defendant did not have possession of the mortgaged premises.

2. It admits the issuance of the policies mentioned in paragraph 3, but as to the terms thereof begs leave to refer to said policies.

3. It admits that the mortgaged premises were damaged by fire, but has no knowledge or information sufficient to enable it to form a belief as to the remaining allegations of paragraph 4.

4. It admits the allegations of paragraph 5.

5. It admits all the allegations of paragraph 6, save the allegation that said assignment was without consideration, which it denies.

6. It has no knowledge or information sufficient to enable it to form a belief as to the allegations of paragraphs 7, 8 and 9 and therefore denies them.

ARTHUR T. VANDERBILT,
Solicitor of Complainant.

Order of Reference.

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IN CHANCERY OF NEW JERSEY.

Between AMERICAN EAGLE FIRE INSURANCE COMPANY, a corporation, Complainant, and GRANT BUILDING & LOAN ASSOCIATION, a corporation, Defendant.	On Bill, etc. Order of Reference.

This matter being opened to the court by Arthur T. Vanderbilt, solicitor for and of counsel with complainant, and Kalisch & Kalisch, solicitors for and of counsel with defendant, consenting hereto;

It is, thereupon, on this 29th day of April, 1930, ORDERED that the above stated cause be referred to Hon. J. H. Backes one of the Vice Chancellors of this Court, to hear the same for the Chancellor and report to him what order or decree should be made therein.

E. R. WALKER,
C.

We consent to the entry of the foregoing order.

KALISCH & KALISCH,
Solicitors of Defendant.

Final Decree.

IN CHANCERY OF NEW JERSEY.

Between AMERICAN EAGLE FIRE INSURANCE COMPANY, Complainant, and GRANT BUILDING & LOAN ASSOCIATION, Defendant.	On Bill, etc. Final Decree.

This cause coming on to be heard in the presence of Arthur T. Vanderbilt, solicitor of complainant, and Harry Kalisch, solicitor of defendant, Grant Building & Loan Association, and the Court having examined the pleadings and having taken proofs orally in open court and having heard and considered the arguments of counsel, and complainant having filed its amended bill in accordance with the instructions of this Court, and it appearing to the satisfaction of the Court that said defendant held a mortgage in the sum of $16,000 on property of one Raimondi; that on May 10, 1926, there was due upon said mortgage the sum of $15,020; that on May 10, 1926, said defendant assigned to complainant a $3,050.16 interest in said mortgage; that by said assignment defendant became trustee of said mortgage for the benefit of complainant to the extent of its interest therein; that on July 2, 1928, said defendant wrongfully surrendered and cancelled said mortgage without complainant's permission and without paying to complainant its interest therein; and the Court being

satisfied that said defendant should account to said complainant for the value of complainant's interest in said mortgage so surrendered and cancelled to the extent of said complainant's interest therein, and that said mortgage security at the time of such surrender and cancellation was worth more than sufficient to pay and satisfy said complainant's and said defendant's respective interests therein;

It is on this 28th day of April, 1931, Ordered, Adjudged and Decreed that said defendant pay to complainant, or its solicitor, the sum of $3,050.16, together with interest thereon from May 10, 1926.

It is further Ordered that said defendant pay to said complainant, or its solicitor, the cost of these proceedings to be taxed, including a counsel fee of $300.00 which is hereby allowed to said complainant.

It is further Ordered in case said defendant should fail to pay said complainant the aforesaid sums within ten days after the service upon it of a copy of this order and of said taxed costs, certified by the solicitor of the complainant to be true copies, that execution issue against the goods and chattels, lands, tenements, hereditaments and real estate of said defendant to make said sums according to the practice of this Court.

It is further Ordered that a copy of this Order and of said taxed costs, certified by the solicitor of complainant as true copies, be served on said defendant within three days after the date hereof.

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

Opinion.

IN CHANCERY OF NEW JERSEY.

Between
AMERICAN EAGLE FIRE INSURANCE COMPANY,
Complainant,
and
GRANT BUILDING & LOAN ASSOCIATION,
Defendant.

Opinion.

A mortgagee, who has been paid a fire loss under a standard mortgage clause in a policy, holds the mortgage security *pro tanto* in trust for the insurance company under its right of subrogation and if he relinquishes the security he is liable for misappropriation of trust assets.

For complainant, ARTHUR T. VANDERBILT, ESQ.
For defendant, MESSRS. KALISCH & KALISCH.

BACKES, Vice Chancellor:

The defendant held a $16,000 building and loan mortgage on the property of one Rosmondi. The complainant, an insurance company, insured Rosmondi against loss by fire, primarily payable to the defendant as mortgagee; the policies contained the standard mortgage clause. Rosmondi set fire to the building in 1925, and the fire insurance company, denying liability to him, paid the loss, $3,050.16, to the mortgagee; and the insurance company claiming to be subrogated *pro tanto* to the mortgage security, the mortgagee assigned to it an undivided interest in the mortgage to the extent of

$3,050.16; the proportional interest on the mortgage debt accruing thereafter was to be paid over to the insurance company as the mortgagee collected it. The assignment was not recorded. The instrument is, in effect, a declaration in writing of the insurance company's rights by operation of law; the apparent outright assignment of an undivided interest being modified by the recitals which limited it to the right of subrogation; and that is admitted by the pleadings. At that time $15,020. was due on the mortgage, which was reduced by subsequent owners to $12,659.20, in installment payments, and on June 19, 1928 the balance was paid and the mortgage cancelled. The complainant's subrogated interest and right by assignment was altogether ignored. The bill is for an accounting.

Motion was made to dismiss the bill for want of jurisdiction, because of an adequate remedy at law, and was denied for the reason that the proceeds of the mortgage with which the defendant was charged, the amount whereof was unknown to the complainant, were held in trust. Monmouth County Fire Ins. Co. v. Hutchinson, 21 N. J. E. 107; Camden Fire Ins. Asso. v. Prezioso, 93 N. J. E. 318.

The defense set up in the answer is that the mortgagee used the insurance money to restore the fire damaged building, thereby re-establishing the mortgage security and that thus restored, the mortgaged premises were not sufficient security for and were not worth the amount of the then mortgage debt, $15,020, plus $3,050.16, laid out in repairing the building, and hence the complainant suffered no injury by the surrender of the mortgage. The building was new at the time of the fire; it cost $20,000 and the land was worth $2200 and in its

proof of loss the defendant estimated the value of the insured premises at $22,000; but we are not concerned with the value of the security as of that time. The question is what was the worth of the security when the defendant surrendered the mortgage? The defendant says $16,860 and at the hearing its real estate expert testified that was the fair market value of the mortgaged premises when the mortgage was surrendered in 1928 for $12,659.20. Over $4,000 of the security was relinquished; more than enough to pay the complainant's claim of $3,050.16 and interest thereon approximately $1,000.

The defendant's explanation is, as stated by counsel, that it did not understand that its outlay for restoring the building could be tacked on to the mortgage. Could it reasonably have supposed that the indemnity paid to it by the insurance company was to benefit the fire bug? The excuse is hard to believe, but if true, the defendant's gross ignorance of its rights and of its obligations to the complainant furnishes no justification. Whatever may have been its notion of the law, the fact that the defendant had assigned a part of the mortgage and that for a year before it gave up the mortgage, the complainant repeatedly demanded an accounting, must have excited some sense of responsibility to the complainant, and whatever may have been its motive, the fact remains that the defendant wilfully sacrificed the complainant's security and the suspicion will not down that it was not insensible of perpetrating a fraud on the complainant. The loss must fall on the defendant. It must account to the complainant.

The cause was tried on the theory of misappropriation of trust securities. The bill will be amended accordingly.

Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

AMERICAN EAGLE FIRE INSURANCE CO., a corporation, Complainant, vs. GRANT BUILDING & LOAN ASSOCIATION, a corp., Defendant.	On Bill, &c. Notice of Appeal.

The defendant, Grant Building & Loan Association of the City of Newark, a corporation, hereby appeals from the final decree made in the above entitled cause on March 24th, 1931, by the Chancellor on the advice of Vice Chancellor Backes and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

May 28, 1931.

KALISCH & KALISCH,
Solicitors for and of Counsel
with Defendant.

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

SAMUEL KALISCH,
Of Counsel.

Service of the within Notice of Appeal is acknowledged as of May 28, 1931.

ARTHUR T. VANDERBILT,
Sol'r of Compl.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

AMERICAN EAGLE FIRE INSURANCE CO., a corporation, Complainant-Appellee, vs. GRANT BUILDING & LOAN ASSOCIATION, a corp., Defendant-Appellant.	On Appeal from the Court of Chancery.

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of the Grant Building & Loan Assn., a corporation of the State of New Jersey, the appellant in the above-entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Backes, bearing date of March 24th, 1931, in a certain cause in said Court of Chancery wherein the said American Eagle Fire Ins. Co., was complainant, and said Grant Building & Loan Assn., was defendant, in this respect, to wit, that the said decree recites that by the assignment on May 10th, 1926, by defendant to complainant, of an interest in a certain mortgage held by defendant on the property of one Raimondi, defendant became trustee of said mortgage for the benefit of complainant to the extent of the interest thus assigned; that on

July 2nd, 1928, said defendant wrongfully surrendered and cancelled said certain mortgage without complainant's permission and without paying to complainant its interest therein; that said defendant should account to said complainant for the value of complainant's interest therein; that said mortgage security at the time of such surrender and cancellation was worth more than sufficient to pay and satisfy said complainant's and defendant's respective interests therein; and said decree adjudges that said defendant pay to said complainant the sum of $3,050.16, together with interest thereon from May 10, 1926; and said decree further adjudges that said defendant pay to said complainant the cost of the proceedings to be taxed including a counsel fee of $300.00.

2. And your petitioner appeals from the said decree of the Court of Chancery which decrees as aforesaid, and from the whole and every part thereof upon the ground that the same is erroneous in that the Chancellor should have adjudged in and by said decree, that under the terms of said assignment and the true construction to be placed thereon, and the evidence, that on July 2, 1928, said defendant did rightfully surrender and cancel said mortgage without complainant's permission and without paying to complainant any sum of money representing an interest claimed therein by complainant; that defendant need not account to complainant for the value of any interest in said mortgage claimed therein by complainant: that said mortgage security at the time of such surrender and cancellation was worth less than was sufficient to pay and satisfy complainant's claimed interest and defendant's interest therein, or complainant's claimed interest after payment

and satisfaction to the full amount of defendant's claim, which was the amount of money loaned to the mortgagee; that the assignment did not effect to give complainant greater or other rights than it had by equitable and conventional subrogation; that complainant's prayer for relief be denied, that the bill of complaint in the Court of Chancery be dismissed, and that complainant be taxed with the costs of the proceedings.

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

KALISCH & KALISCH,
Solicitors for and of Counsel
with Defendant.

HENRY KALISCH,
Of Counsel.

Testimony.

IN CHANCERY OF NEW JERSEY.

June 5, 1930.

Between
AMERICAN EAGLE FIRE INSURANCE COMPANY,
Complainant,
and
GRANT BUILDING & LOAN ASSOCIATION,
Defendant.

Transcript of shorthand notes of testimony taken in the above entitled matter before his Honor, JOHN H. BACKES, Vice Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Mr. Arthur T. Vanderbilt, for complainant; and Messrs. Kalisch & Kalisch (Mr. Harry Kalisch) for defendant.

Mr. Vanderbilt: The bill sets forth that on March 25th, 1925, Allen Rasmondi was indebted to the Grant Building & Loan Association in the sum of $16,000 and executed a bond to secure that sum. The execution of the bond is admitted in the answer. The bill next sets forth that to secure the payment of the bond he executed a mortgage which was recorded in Essex County; and he admits the execution of the mortgage. It next sets forth that on May 10, 1926, the Grant Building & Loan Association in consideration of the sum of $3,050.16 by assignment in writing assigned to the complain-

ant the American Eagle Insurance Company an undivided interest to the extent of that amount in the bond and mortgage to bear interest at the same rate as the principal of the mortgage, six per cent; that said Grant Building & Loan Association agreed by the said assignment to pay complainant a proportion of the interest to the complainant, if, as and when collected; that the Grant Building & Loan Association from time to time collected installments of interest and principal falling due on the bond and mortgage, but failed and neglected to pay the complainant its proportionate share of its receipts; that the complainant has requested it so to do; that the complainant has no knowledge of the amount of principal or interest so collected by the Grant Building & Loan Association, and although requested to account, it has refused and still refuses so to do.

The Court: What do they say, take the tail end?

Mr. Vanderbilt: No. They say they spent this money which came to them under the subrogation right, based on the standard mortgagee clause in the policy, to repair the property. We deny liability to the owner, Rosmondi, who was convicted of arson and sent to State Prison.

The Court: They assigned part of this mortgage.

Mr. Vanderbilt: Yes, sir. And then subsequently they took this money to repair the property, and later, as I get the facts now, the mortgage was paid off, and they contend that by using the money to repair the property and by the mortgage having been paid off, they are under no liability to us and there was no consideration for our assignment which they gave to us. We deny those facts, of course.

Mr. Kalisch: That is about what our defense is.

The Court: If that is what it is, there is nothing more to be said about it.

Mr. Kalisch: With this addition. We maintain that the mortgaged premises—(interrupted)

The Court: You admit the $8,000 mortgage has been paid off.

Mr. Kalisch: The $16,000 mortgage has been paid off. It was not due, of course, at the time of the fire or at the time of the issuance of the policy.

The Court: How much loss did you get?

Mr. Kalisch: $3,050.16 was the amount that the insurance company paid and with that $3,050—we expended the full amount, and I think more—I am not certain about that, but I have the two vouchers that were used—that were given to the general contractor to repair the property, and the property was restored to the condition it was in prior to the fire. We maintain we had a perfect right to do that to keep up the security to the condition that it was in at the time or before the fire. We maintain the only right that they have would come under the standard subrogation clause in the policy and we claim we had a perfect right to keep up the security by using this money to restore the property and if we have to return that money now instead of having our full claim as under the subrogation clause we are supposed to have and are entitled to get, we would be the loser by the amount that we have paid out, which would be the $3,050 which they claim they are entitled to get back under the subrogation clause and we haven't got that money any more and if we had not put it into the property we couldn't have got reinsurance. The property was delapidated and we had instructions from the chief of police that we would have to restore the property, that it was a menace to the

neighborhood, and so we restored it. Now that is the situation.

The Court: Are the facts admitted as counsel has stated?

Mr. Vanderbilt: Substantially. I want to put my assignment in evidence.

The Court: They got $3,050 from you and put it back to renew their security.

Mr. Vanderbilt: Yes, but they did not add it to the mortgage when they put it back in the property which they should have done if they were going to put it back.

The Court: How could they?

Mr. Vanderbilt: It is our contention that the money we gave them was in lieu of their entire security. They still had our policy which would protect them as to any future fire.

The Court: If they had no insurance and a fire occurred, then for the purpose of protecting their security it was their right in law to renew their security and add it to the mortgage.

Mr. Vanderbilt: Yes, your Honor.

The Court: Have you collected the mortgage since?

Mr. Kalisch: It has been fully paid off and we cancelled the policy.

The Court: Why didn't you add this?

Mr. Kalisch: We did not add it because we did not feel we were in law entitled to add to the security.

The Court: Then you might be held now.

Mr. Kalisch: Our reason is this, because the building—this is a building and loan mortgage and we are entitled to only eighty per cent—we are not entitled to loan more than eighty per cent.

The Court: You are entitled to more than eighty

per cent security. You are entitled to all the security you can get, aren't you?

Mr. Kalisch: If we were to add it to this mortgage we would be out $3,050. It is a rather intricate question. It is for me, at any rate. I would like an opportunity to submit a memorandum.

The Court: If you laid down on your job you are liable, aren't you?

Mr. Kalisch: I suppose so. We did what we thought we ought to do.

The Court: When you collected your money you forgot all about the other fellow.

Mr. Kalisch: We did not forget about it, but we did not think we were entitled to add it to the mortgage.

The Court: You could not cancel part of their security.

Mr. Kalisch: Then we would be the loser.

The Court: Not if the security is there.

Mr. Kalisch: It wasn't there; it wasn't worth that much more.

The Court: Then you should have foreclosed your mortgage and determined it. Those are defenses you might interpose. You haven't pleaded that.

Mr. Kalisch: I pleaded it was untenantable.

The Court: That doesn't prove anything as to value.

Mr. Kalisch: I would like an opportunity to present those facts. That is the fact. I do not think Mr. Vanderbilt wants to dispute the actual fact.

The Court: The Court only acts under evidence. I cannot take your statement.

Mr. Kalisch: I do not think Mr. Vanderbilt will deny the facts. If it is denied then I would like an opportunity of producing the proof, because it is an actual fact.

The Court: That property was worth no more than your mortgage?

Mr. Kalisch: The property would be worth no more than the mortgage if we had taken this $3,050 and added it on to the mortgage. The lien on the property would be then more than the value of the property.

The Court: Well, that may be in mitigation, assuming that you are liable. I am not holding that you are, or assuming that you are liable. That might be in mitigation, but that is a thing you ought to set up. I do not think your case is ready for decision, is it? It looks to me as though your case was not ready for decision.

Mr. Vanderbilt: I am ready to prove my case.

Mr. Kalisch: Those facts I would like to set up.

The Court: It is—is this a plain suit to recover this money?

Mr. Vanderbilt: No. It is a suit for discovery and accounting, your Honor. We have never been able to get from them a statement of what they have collected on the mortgage.

The Court: They collected the whole thing.

Mr. Vanderbilt: That was not disclosed in the bill. That is a matter which developed after the filing of the bill on motion to strike the bill made by Mr. Kalisch.

Mr. Kalisch: The answer says so. We have been paid.

The Court: Are you seeking to enforce that mortgage?

Mr. Vanderbilt: No.

The Court: Seeking to foreclose that mortgage?

Mr. Vanderbilt: No.

The Court: Was your assignment on record?

Mr. Vanderbilt: No, it was not, your Honor. The facts are relatively simple.

The Court: I am wondering whether the motion to strike should not have gone. Question of jurisdiction. If it is simply to recover on a promise—I don't remember the bill.

Mr. Vanderbilt: We argued that out. It is not a matter on promise. It is a matter in discovery and accounting for the amount due us from the holder of the mortgage for our proportionate share.

Mr. Kalisch: The claim was for the amount they gave to us for the fire loss. That is all they are interested in. That is what they want to get back, at least, by this suit, and I at that time thought it was a proper suit to bring in a court of law.

The Court: I assume the bill discloses a cause for action.

Mr. Vanderbilt: You decided so, your Honor.

The Court: Your bill does not ask for a lien on the property under your subrogation.

Mr. Vanderbilt: No; we are asking that they be compelled to make a full and true discovery and disclosure of the sum paid to it.

The Court: I will hold the matter now.

Mr. Kalisch: I do not want to be at a disadvantage. I haven't got this oral testimony at this time.

The Court: You haven't pleaded it.

Mr. Kalisch: Then I will ask permission to amend my answer to that effect and to be given an opportunity to prove it.

Mr. Vanderbilt: I offer in lieu of the actual mortgage which cannot be found, a certified copy of it.

(Paper marked Exhibit C-1).

Mr. Vanderbilt: I desire to offer assignment of a

partial interest in the mortgage from the Grant Building & Loan Association dated May 10, 1926.

(Paper marked Exhibit C-2).

Mr. Vanderbilt: Is it conceded, Mr. Kalisch that on behalf of the American Eagle Insurance Company I have many times asked for a statement of the amount which has been collected on account of the mortgage?

Mr. Kalisch: I think I told you at the time that it was all paid off. I am quite sure I did.

Mr. Vanderbilt: Will you produce my letters of June 23, 1927, August 23, 1927, October 6, 1927, June 19, 1929, November 13, 1929, November 22, 1929, and December 10, 1929?

Mr. Kalisch: You have copies.

Mr. Vanderbilt: I desire to offer the letters of June 23, 1927, August 23, 1927, October 6, 1927, June 19, 1929, November 13, 1929, November 22, 1929, and December 10, 1929, to Mr. Harry Kalisch from myself.

(Papers marked Exhibit C-3).

JOHN N. OCHS, sworn for complainant.

Direct-examination by Mr. Vanderbilt:

Q. You are State Agent of New Jersey for the complainant, American Eagle Insurance Company? A. Yes, sir.

Q. And have been for how long? A. For two years, sir.

Q. How long have you been connected with the American Eagle Insurance Company? A. Seven years.

Q. Has the American Eagle Insurance Company ever received any payment from the Grant Building & Loan Association?

The Court: The bill admits it.

COMPLAINANT RESTS.

Mr. Kalisch: I would like to renew my application. As I said before I would like to amend the answer so as to include that it would be impaired security, the amount we expended to repair these premises, and so far as our proof is concerned the mortgage has been put in, and there are two checks which we want to offer showing the amount expended to restore the premises, and the rest will have to be oral testimony to show that the security would be impaired if we added it to the mortgage which then existed —if we added the amount that was expended to restore the property. That is in addition to my motion to dismiss the bill on the ground that there was an adequate remedy at law, which I would like to renew.

The Court: Their claim is that you collected for them as their trustee.

Mr. Kalisch: I do not understand that there is any trusteeship.

The Court: If they had an assignment and you took their money, that would be a trusteeship.

Mr. Kalisch: That assignment was merely carrying out the subrogation clause of the policy.

The Court: That is another question.

That doesn't relate to jurisdiction. Your motions are inconsistent.

Mr. Kalisch: My motion is inconsistent?

The Court: Absolutely. You want to come in and you want to go out. You want me to dismiss and at the same time you ask me to give you leave to plead further.

Mr. Kalisch: If your Honor finds that the Court of Chancery has jurisdiction, then it is absolutely necessary for me to amend my answer to show that the security would not be there.

The Court: I have already passed on the jurisdictional question. That is ended. Can you have your witnesses here Monday morning?

Mr. Kalisch: Monday morning, yes, sir.

The Court: The amendment should be made today, Mr. Kalisch, and presented to the other side.

Adjourned until June 9, 1930.

IN CHANCERY OF NEW JERSEY.

June 9, 1930.

Between
AMERICAN EAGLE FIRE INSURANCE COMPANY,
Complainant,
and
GRANT BUILDING & LOAN ASSOCIATION,
Defendant.

Continuation of hearing pursuant to adjournment.

FRANK H, TAYLOR, sworn for defendant.

Direct-examination by Mr. Kalisch:

Q. Mr. Taylor, you are a real estate broker? A. Yes, sir.

Q. Have been for how long? A. Possibly forty-five years.

Q. In the city of Orange? A. East Orange, covering all the Oranges and Maplewood. My office is in East Orange.

Q. You were asked to examine the property on Jefferson Street, 124 and 126 South Jefferson Street. A. Yes, sir.

Q. Orange? A. Yes, sir.

Q. When did you do that? A. Friday, June 6th, 1930.

Q. And who asked you to do that? A. It came from Mr. Arthur Vanderbilt's office.

Q. Did you examine it? A. I did, yes, sir.

Q. What did you determine the value to be? A. I didn't arrive at the value as it is today. I was not asked to do that.

Q. You were not asked by Mr. Vanderbilt? A. No.

The Court: As of what date?

Witness: 1928—the year 1928.

The Court: The whole year?

Witness: During the whole year, yes, sir.

The Court: Value stationary during the year, the whole year?

Witness: I was informed—(interrupted).

The Court: Was the value stationary through that year?

Witness: No, sir—it was comparatively stationary. There was a lull and the market was poor and values were practically stationary that year.

Q. What value did you place upon it? A. 1928 I placed the value of $16,860.

Q. That is 1928? A. 1928; with the understanding that the house was in good tenantable condition at that time.

Q. It was in good tenantable condition at that time? A. I was asked to appraise the property—(interrupted)

Q. It was in good tenantable condition at that time? A. I was informed that it was in—to appraise it—I was asked to appraise the property in 1928 with the understanding that the house was in a good tenantable condition at that time.

The Court: What was the amount of the mortgage?

Mr. Kalisch: Building and loan mortgage $16,000.

Mr. Vanderbilt: $12,000.

Mr. Kalisch: It had been reduced down. The original mortgage was $16,000. It was reduced down, I think it was two years.

Mr. Vanderbilt: No cross-examination.

By the Court:

Q. What is it worth today? A. I would say that property is worth probably $13,000 today; $13,000 to $13,500. Depreciation due to its present condition.

Q. As to—(interrupted) A. As to the difference between good tenantable condition in 1928 and its present condition which is deplorable.

Q. In what way deplorable? A. It needs decorating and painting throughout, fixing up and made presentable; painting outside and decorating inside; the doors are hanging off the hinges; some of the plaster is down; roof leaks.

Q. Property not occupied? A. All vacant except one tenant, an Italian family occupies one of the apartments paying thirty-five dollars a month.

Q. You do not know what condition it was in in 1928. A. I don't know; I was simply informed, to appraise it as if it was in good tenantable condition at that time.

Q. What did you picture it to be at that time? A. I pictured it to be a four family house in good condition that I could probably rent at the basis of about forty dollars an apartment not requiring any decorating or painting.

Q. You mean as of that time. A. As of that time.

Q. As of that time all decorated and painted. A. Yes, sir; nice order to satisfy the tenants.

JAMES C. McMILLAN, sworn for defendant.

Direct-examination by Mr. Kalisch:

Q. You are fire chief of the department up in Orange? A. I am.

Q. Do you know the property 124-126 Jefferson Street in Orange? A. I do.

Q. Do you recall the fire that took place there back in 1925, I believe the year was? A. June 10th.

Q. June 10th, 1925. And did you see the property during the fire? A. I did.

Q. Will you just tell us the condition you found the property to be in?

The Court: During the fire?

Mr. Kalisch: He was present after the fire and at the fire.

Q. What was the result of it?

The Court: Of what?

Mr. Kalisch: Of this fire, on the building.

Q. What condition did you find it in after the fire? A. I found a fire there with eleven tubs of gasoline and streamers between them at places. The place evidently had been set on fire. A large plant had been built in order to burn this building.

The Court: What?

Witness: Plant. We call it a plant when they set a fire or build a paraphernalia to set fire to a building. A large plant had been built to burn this building which consisted of eleven butter tubs or lard tubs of gasoline with streamers of paper saturated with gasoline running from one tub to the other. It

was all on the level floor. The cellar was small in that and it had been set afire also. I am speaking now of the two floors with the cement wall in between the two floors. On the first floor eleven tubs of gasoline were distributed between the two apartments, one on each side of this particular wall or fire proof wall, that it was supposed to be—we found eleven tubs of gasoline with streamers of paper dipped in one tub and saturated with gasoline and running to the other tub and one tub was in the cellar of 126. When the fire came up and reached this china closet—there was a china closet in each one of these apartments—they had evidently neglected to open the door and the fumes of the gas blew it and created an explosion which blew some of the doors—the doors of the china closet off, set fire to the apartments on both sides and burned the two back bedrooms that were down across the hall that entered from the side. There was a front entrance from Jefferson Street through the building, first one—(interrupted)

Q. How high a building was this? A. Two and a half story, four families under one roof. The building faces west and the entrance was, one side from Madison Street—it was on the corner of Madison and South Jefferson Street—one entrance from Madison Street on the side was half way back and another entrance on an alley way that ran from Jefferson Street on the other side. Now, in this entrance, small hallway, there was a tub of gasoline placed on each side, and a streamer ran from the other tub that was in this china closet that I speak of that created the explosion. Now,

that whole hall on both sides was on fire. It was impossible to enter through that door at all until we had put the fire out. One of the men was badly burned and sent to the hospital trying to enter. We put the fire out, and the back rooms which had a tub of gasoline in each were on fire so that I would estimate the loss to be about three thousand dollars.

The Court: The fire was rather a success.

Witness: No, the fire was not a success because we had gotten the alarm and we had gotten there too soon. Much of the plant was still intact.

The Court: It wasn't a very good job.

Witness: No, it wasn't a very good job. The man who did it didn't understand setting fire to a house.

The Court: How is that?

Witness: The man who built it didn't understand setting fire to a house.

The Court: There should have been a vent upstairs.

Witness: He left the door onto the porch open so that there was a draft, also tore out the partition on both sides so that the fire would go up; he also tore the partition out —plaster board partition out underneath the stairs so that the fire would go up and then left two doors entering on the porch upstairs—he left them open to create a draft.

Q. As a result of that fire was the building tenantable at all or occupiable? A. No.

Q. No—it wasn't? A. It was not.

(No cross-examination).

Mr. Kalisch: We want to prove the two checks we paid for the repairing of the building, $2,000 and $800. The witness that is coming has the return vouchers showing that the money from the insurance company, $2800, was used to restore the building.

Mr. Stoffer: I will stipulate that. Will you in turn stipulate that Mr. Canongeezer witnessed the sworn proofs of loss submitted by the Grant Building & Loan Association to the defendant—to the complainant in this case?

Mr. Kalisch: It looks like his signature, that is all I can say. I want to cross-examine Mr. Canongeezer on that statement.

The Court: He will only be offered to prove the formal execution of a paper which you admit, subject to correction.

Mr. Kalisch: Subject to correction.

(Paper marked Exhibit C-1 of this date).

The Court: Are you proving the witness' signature?

Mr. Stoffer: He is the notary who took the proof of loss of the building and loan association. Your president made the proof of loss after the notary had taken his oath.

Mr. Kalisch: Rasmondi was the owner of the building. He went to jail.

BERNARD PERL, sworn for complainant.

Direct-examination by Mr. Stoffer:

Q. What is your business? A. Well, I am an insurance broker at present.

Q. Have you been in the building business? A. Yes, sir.

Q. You have been a builder contractor? A. Not builder. I am a carpenter by trade.

Q. In 1928 did you have occasion to appraise the value of the property 124-126 South Jefferson Street, Orange? A. Yes, sir.

Q. For whom did you make that appraisal? A. For the Power Building & Loan Association.

Q. How long have you been making appraisals for building and loans? A. Since I am in the Power, about five years.

Q. When in 1928 did you make this appraisal? A. That was on May 23, 1928.

Q. Did you inspect the property? A. Yes, sir.

The Court: Who is the Power?

Mr. Stoffer: Power Building & Loan Association.

The Court: Connected with this suit?

Mr. Stoffer: No.

Q. Have you had experience in the construction of buildings? A. Yes, sir.

Q. How many years? For how many years have you been constructing buildings? A. Well, I am a carpenter by trade, but I only am appraiser for the Power & Loan Association.

Q. Did you ever build a house? A. Yes, I did.

Q. All by yourself? A. I hired mechanics myself and built—I couldn't do it all myself.

Q. How many houses did you build—were you a builder? A. Not for somebody else; only for myself.

Q. How many did you build? A. I think around three of them.

Q. How long ago? A. I built one about twenty-

two—twenty-three—twenty years ago; then I built one about—rebuilt it about seven years ago.

Q. Well, the third one. You said you built three. A. One of them I built; two of them I rebuilt.

Q. What? A. One I built altogether and two I rebuilt; two years ago I built one.

Q. When you inspected the property in May, 1928, in what condition did you find it? A. In pretty good condition.

The Court: That means nothing to me.

Q. Describe the condition of the property. A. Well, everything was all painted—the house was painted; there was nothing broke; it was tenantable; tenants paid forty dollars a month. We found it was in good condition; there was no repairs needed at that time.

Q. What, in your opinion, was the value of the house when you made your inspection in 1928?

Objected to.

The Court: Objection sustained.

You might be able to qualify him.

Mr. Stoffer: It would be rather difficult. I do not want to take the time. I have other qualified people.

The Court: Rosmondi owned this building. He made the mortgage.

Mr. Kalisch: Rosmondi was the mortgagor. He occupied the building and he obtained this mortgage, and in 1928, there was $12,000 due on the mortgage. At the time of the fire there was $15,200 due the building and loan, at the time of the fire.

The Court: The mortgage was paid off by somebody.

Mr. Kalisch: Subsequently the mortgage was paid off.

The Court: By Rosmondi?

Mr. Kalisch: No; it passed through two or three different hands. April 6, 1926, Rosmondi and his wife conveyed the mortgaged premises to the Columbia Real Estate Company and on September 8, 1926, the same year, the Columbia Real Estate Company conveyed the premises to Ludwigi Bruno and on the same day Bruno executed a purchase money mortgage to the Columbia Real Estate Company for $1,000 and they assigned the mortgage to the plaintiff in another suit in the law courts, the Clayton Realty Company and the mortgage was foreclosed and property purchased at the sheriff's sale by the realty company.

The Court: Who paid off the mortgage?

Mr. Kalisch: They paid off that mortgage.

The Court: When?

Witness: On the 19th of June, 1928.

BENJAMIN F. ROBBINS, sworn.

Direct-examination by Mr. Stoffer:

Q. What is your business? A. General building contractor and appraiser.

Q. How many years have you been in that business? A. Thirty-five—

Q. Have you built properties? A. I have.

Q. Have you during the period regularly appraised properties? A. I have.

Q. Did you in 1925 make an appraisal?

The Court: No. Not important. You must qualify him. As far as I know he may have made the appraisals in Germany.

Q. Mr. Robbins, where have you been in business? A. In this city, in this state.

Q. Have you made appraisals in Orange? A. I have.

Q. Tell us approximately how many. A. I have appraised over 21,000 buildings in all.

Q. We are talking about Orange. A. I can't tell you the exact number there. I probably—several hundred—two or three hundred.

The Court: What knowledge have you of the value of property in Orange?

Witness: I built houses in Orange, sir.

The Court: That's what I want to know. How many houses did you build there?

Witness: I don't know, but I must have built fifteen or twenty.

The Court: And become very familiar with the value of property in Orange?

Witness: Not with real estate, not with the ground, but with buildings.

The Court: With buildings.

Witness: Yes, sir.

The Court: I thought you were qualifying as to the land.

Q. No. Just as to the buildings. Were you familiar with values in 1925?

The Court: Are you a mechanic?

Witness: Yes, sir.

The Court: What kind of a mechanic?

Witness: I learned my trade as a carpen-

ter and mason, but I was a general contractor.

Q. Mr. Robbins, in 1925, did you make an inspection of the property?

The Court: 1925?

Mr. Stoffer: Yes, sir; the time of the fire.

Q. Did you make an inspection of the property 124-126 South Jefferson Street? A. I did.

Q. That was after the fire had taken place? A. It was.

Q. Did you make an estimate of the amount of damage? A. Yes, sir.

Q. And did you also make an estimate of the sound value of the property, the building? A. Yes, sir.

Q. Just prior to the fire? A. Yes, sir.

Q. What did you arrive at as the sound value of the property prior to the fire? A. As I remember I think I said it was $20,000 at that time.

The Court: You are now speaking of the structure?

Witness: Yes, sir.

Q. Assuming, Mr. Robbins, the sum of $3,000 was spent by the Grant Building & Loan in repairing the fire damage, would that have placed the building back in the condition prior to the fire?

The Court: No. What was the sound value?

Q. What was the value of the property after the fire? A. Before the repairs had been made, sir?

Q. Before the repairs had been made.

The Court: What was the loss?

Mr. Kalisch: $3,000.

Q. What was the loss? A. I think my figures on the loss was between twenty-six and twenty-seven hundred dollars, as I remember it.

Q. Now, assuming that the sum of $3,000 was spent in making repairs to the damage which you saw—(interrupted)

The Court: If the damage was twenty-six or twenty-seven hundred and they spent twenty-eight why then they made it whole, didn't they?

Mr. Stoffer: I just want to have it on the record.

The Court: You do not have to.

Q. Mr. Robbins, what, in your oinion would be the depreciation of this building from normal use between 1925 and January, 1928—June, 1928? Depreciation. I want to get the value at the time the Grant Building & Loan discharged the mortgage. A. I would say about ten per cent.

The Court: Annually?

Witness: No, sir.

Cross-examination by Mr. Kalisch:

Q. The value you put on prior to the fire included the land value? A. It did not, sir.

Q. So the building, you say, was worth $20,000? A. Yes, sir.

Q. And after the fire and before the repairs, what did you consider the building to be worth? Did you see it? A. I saw the building before it had been repaired, yes, and my figures for making the repairs was—(interrupted)

Q. I am not asking you that. I am asking you what was—what would you say the value of that property was after the fire and before the repairs? A. About twenty-seven hundred less, about $17,300.

Q. Would $2700 restore the property to the condition in which it was before the fire? A. That was my estimate for repairing it, and I saw it, sir.

Q. Who did you represent when you made this estimate? A. I made some figures for Mr. Graves.

Q. Who is he? A. Mr. Graves is the insurance adjuster representing one of the companies.

Q. What company? A. I don't know.

Q. Do you know whether it was the American Eagle Insurance Company? A. I haven't the least idea.

Q. Had you done business for him before? A. Yes, sir.

Q. And you don't know who he represented? A. Mr. Graves is connected with the general adjustment bureau; he represents many companies at different times.

Q. And you don't know what company was interested in this adjustment? A. I do not.

Q. Now from the time you made the appraisal or inspection after the repairs and up to June, 1928, how many times did you see the building? A. I saw it a number of times in passing, but I don't know how many.

Q. How many? A. I will have to guess. I suppose twenty-five.

Q. And do you live up near there? A. I live in Short Hills.

Q. How did you happen to pass by there? A. I have occasion to go to Orange to make appraisals on a number of buildings. I have one up there

now I have just appraised.

Q. I don't care what you have now. You happened to go to Orange, you say. A. Yes, sir; I'll tell you how I happened to go to Orange. I was up there about a—(interrupted)

The Court: You went there.

Witness: Yes, sir.

Q. Did you go inside of the building? A. No.

Q. At no time since the repairs were made up to June 1928 you were inside of that building, at no time. A. Not after the repairs had been made.

Q. So that the most that you could say is that you passed by this building and from a casual observation of it you fixed the value as of June, 1928? A. Yes, sir. I had the building in mind on account of the explosion. I noticed the building, but was not inside.

Redirect-examination by Mr. Stoffer:

Q. In your opinion how old was this building when you inspected it in 1925? A. It was brand new, apparently nobody had lived in it. It was in very good condition and a brand new building.

The Court: Have you inspected it after the fire?

Witness: No, sir; I did not. I had no occasion, of course, to notice it.

The Court: When you saw it in 1928 what was the appearance?

Witness: I didn't see it inside in 1928, but in passing I noticed that men had been working there and the appearance outside was quite as it was.

The Court: Had the appearance of being properly and fully restored?

Witness: Yes, sir.

FRANK H. TAYLOR, recalled by complainant.

Recross-examination by Mr. Stoffer:

Q. What in your opinion was the value of the land at 124-126 South Jefferson Street in June, 1928? A. Seventy-five dollars a front foot; thirty-five feet front amounts to $2625.

Redirect-examination by Mr. Kalisch:

Q. What would you consider the property worth, the land and buildings in June, 1928? A. Sixteen thousand eight hundred and sixty dollars.

Q. That is the value you put on it? A. Yes, sir.

Q. That is the land and buildings. A. Land and buildings.

JULIUS C. RAAB, sworn for complainant.

Direct-examination by Mr. Vanderbilt:

Q. What is your business? A. Manager and valuation engineer of the Louis G. Kilgus Company, builders.

Q. How long have you been in that business? A. Twenty-four years in the building of structures.

Q. How many years in that capacity? A. Four years with the Kilgus company.

Q. Have you participated in the construction of buildings? A. Yes, sir.

Q. Are you a mechanic? A. Carpenter and graduated engineer also.

Q. What kind of an engineer? A. Civil engineer.

Q. Are you familiar with the value of property in Orange, New Jersey? A. Building construction values, yes, sir.

Q. Building construction. Did you in 1925 inspect the property 124-126 South Jefferson Street? A. I did, in October, 1925.

Q. October. Was that after the—(interrupted) A. Yes, sir; that was after.

Q. After the fire. A. After the fire.

Q. And after the building had been repaired—after the damage? A. Right after the building had been repaired I visited the building.

Q. What was the condition of the building at that time? A. Ready for occupancy.

Q. What business had you in doing that? A. I was appraiser on the fire loss concerning the Grant Building & Loan Association.

Q. Could you tell at that time how old the building was? A. The building at the time of the fire was a new building, newly constructed building.

Q. What, in your opinion was the value of the building when you inspected it in October, 1925? A. Before the fire or after?

Q. After the repairs were made. A. The building was worth $20,016.

The Court: Was the building recently restored?

Witness: Yes, sir.

The Court: Fully?

Witness: Yes, sir.

The Court: As sound as before?

Witness: I believe it would be, yes, sir.

Q. What, in your opinion, would be a fair allowance for depreciation between the time of your inspection in 1925 and June, 1928?

Mr. Kalisch: One moment, your Honor. I would like to know whether this witness—(interrupted)

The Court: Same question asked of the other witness.

Mr. Kalisch: I want to know whether he has inspected it since that time or whether it is simply a hypothetical question he is putting to him. I don't know which it is. I object to the question at the present time.

The Court: Are you familiar with the property now?

Witness: I am.

The Court: What do you allow for depreciation from 1925 to 1928?

Witness: Approximately ten per cent.

The Court: How much per year?

Witness: Well, theoretically, for frame buildings, it is five per cent the first year and two and a half per cent for the years afthat. That is theoretical and allowable by the Government, but we usually, in practice, take our own judgment from past experience, compared with new buildings.

The Court: Depreciation more the first year than the rest?

Witness: Yes, sir, because there is shrinkage and settlement and innumerable amount of repairs during the first year, such as plaster and things of that kind.

The Court: You mean to say the depreciation is gradually less as the house grows older?

Witness: No. The first year, and then after that we theoretically figure a consistent depreciation—average two and a half per cent a year.

The Court: For how long?

Witness: Oh, approximately forty or fifty years. Some buildings wouldn't. It depends. Some buildings wouldn't last that long; some buildings I have seen a hundred years old—I have seen one lately—architecturally they depreciate.

The Court: Architecturally they depreciate.

Witness: Yes, sir; style, just like clothes or anything else. Try to take a house a hundred years old and sell it under its architectural features today you will find out there wasn't the value to it as if they put the new folderols on—different decorations.

Cross-examination by Mr. Kalisch:

Q. When did you make this inspection in 1925, what month? A. It was the—if I recall from the records, it was in the latter part of September or first of October.

Q. Have you got the records here? A. No, sir; I haven't; I can produce them though.

Q. Is that what you are testifying from now, the records? A. No, I am not. I am testifying from memory.

Q. From your own recollection. A. Yes, sir.

Q. You say that in 1925, in what month—the latter part of the year? A. I believe it was somewhere the latter part. I remember some correspondence but I do not recall.

Q. And what time of the day did you go in there? A. I do not recall. It might have been the afternoon or might have been the morning.

Q. Go in with anybody or go in alone? A. Mr. Kilgus.

Q. This gentleman who just preceded you on the stand? A. No, sir; Mr. Kilgus today is in Trenton; he isn't present at all.

Q. And did you go through the entire house? A. Oh, yes.

Q. That was before the repairs? A. That was before the repairs.

Q. And after the repairs you say you saw it? A. Yes, sir.

Q. When after the repairs? A. I don't recall the exact date. I remember visiting the premises with Mr. Kilgus because I think there was some argument between him and the building and loan association which does not involve this case at all.

Q. Did you make any notation of what you found as to the value or the condition you found it in? Did you make any record of it? A. Yes, sir; I believe there is notes in our office, records of the condition of the building after the repairs.

Q. After the repairs? A. Yes, sir.

Q. And you place what value on it after the repairs? A. $20,000, and a few dollars over $20,000.

Q. That is on the building or is it on both building and land? A. That is on the building. I do not appraise land at all. I am not qualified.

Q. And you say there is a depreciation of ten per cent the first year? A. No. I said five per cent. Theoretical depreciation of five per cent the first year and two and a half per cent for the years after.

Q. That is with care of the building. A. Yes, sir; building well maintained. That is the Governmental theoretical depreciation.

Q. And did you visit the premises at any time in 1925 after the repairs, to 1928, in June? A. No, I did not.

Q. That was the last time you saw it, was after the repairs. A. Yes, sir.

Q. Was it occupied? A. That I can't recall.

Q. You do not know of seeing anything in the place, any furniture. A. Every time I visited it there has been more or less furniture. There is furniture in there today.

Q. Then you did visit it after the repairs were made? I mean after that first time that you inspected it. A. Yes, sir; I visited the building here last Friday, June 6th. You asked me between 1928 and '25 and I answered that question.

Q. That you didn't visit in that interval. A. After the repairs had been completed I made one visit, that was in 1925.

Q. All right. Now, did you make another visit between that one and 1928? A. No, I did not.

Q. Well, what did you mean when you just said you had made several calls there and—to look at the premises just now. Will you read that answer? A. No, I didn't testify to that.

Q. You haven't seen it since that one in 1925 after the repairs were made. You then inspected it. A. Up until today?

Q. Yes. A. Yes, I did.

Q You saw it then after 1928. A. Yes, sir; I saw it June 6, 1930.

Q. Oh, that is the other day. A. Yes, sir. You are asking me— Pardon me, counsellor, you are asking me between 1925 and 1928.

Q. I know that. A. Then you are coming over to 1930.

Q. How did you happen to go there on June 6, 1930? A. To try and check up on our appraisal of the value as of 1928 with comparable appraisal, as of today and 1925.

Q. Is it the same value in 1930, June 6th, as it was in 1928?

Mr. Vanderbilt: I object to 1930. 1930 is long after the Grant Building & Loan cancelled the mortgage.

Q. (Question read.) A. Value as of today is approximately fifteen per cent greater than in 1928.

Q. What do you say it is worth today? A. $23,000.

Q. You say it is worth $23,000? A. To replace that building.

Q. No; the condition of the building. A. The building today—(interrupted)

The Court: You mean it would cost fifteen per cent more to replace the building?

Witness: Yes, sir; twenty thousand, two hundred ninety eight dollars sound value as of 1930, June 6th.

The Court: In the condition in which you found it.

Witness: Yes, sir; that is the sound value, your Honor.

Q. Did you inspect it? Did you go into the building and inspect it? A. Yes, sir; I did.

Q. Each room? A. Each room.

Q. What was the condition of it? A. Deplorable.

Q. In what way? A. Well, I will read the list

of it. Starting on the exterior, on the rear, the gutters have all been rotted away, leaders have been falling away; cellar hatchway doors, the battens and hinges have rotted away. On the interior, the basement, through moisture running through, the rain water and sediment, through the cellar there is evidence of the concrete floor beginning to deteriorate; the boilers, steam pipes are all beginning to rust; they were covered with rust. On the first floor, the two rear bedrooms are in fair shape. The kitchen is all piled up with rubbish; the gas range is rusted; the hot water heater has rusted. Between the kitchen—I am talking about on the first floor—on the left side as you go in there is a door broken off and hanging on the hinges; the electric fixtures throughout have been damaged; whether it is by usage or youngsters getting in I haven't any idea, but that is the general condition. The buildings are all unlocked. Anybody goes in and nobody questions who goes in.

Q. Is it occupied? A. Going in, the second floor on the right hand side is occupied.

Q. And the condition that you found, how long do you suppose that has existed? A. That possibly could have been—except the rusting part—could have happened if youngesters go in there, could break the doors down between now and tomorrow, but the rusting I should imagine has been a condition which occurred over the winter.

Q. What makes you say that? How do you know that? A. Well, usually you have steady damp weather, moisture and snow coming into those rear doors, the cellar, and stays there for the rest of the winter until we get warm weather.

Q. It could have hapened in 1929 and 1928 in the winter, couldn't it? A. It could have.

The Court: Did you make an estimate of the cost of restoration?

Witness: No, I did not.

The Court: Any idea at all what it would cost to put it back in good condition?

Witness: I think approximately between fifteen hundred and two thousand dollars. I will say fifteen hundred as a maximum will put it back.

The Court: Would put it back.

Witness: Yes, sir.

The Court: In good condition?

Witness: I wouldn't say it is in good condition. It is a type of building—(interrupted).

The Court: What would it cost to put it back in good condition?

Witness: I don't know. Good condition? About fifteen hundred.

Redirect-examination by Mr. Vanderbilt:

Q. Do you know how much of the deterioration you have been describing was caused prior to June, 1928 A. There is only one thing I possibly could testify as to that, that is the galvanized iron leaders and gutters. That naturally takes some time.

Q. That takes two or three years? A. That takes two or three years. The rest of the work could have happened in the last period of a year.

COMPLAINANT RESTS.

Frank H. Taylor—Recalled—Direct.
Frank H. Taylor—Recalled—Cross.

FRANK H. TAYLOR, recalled for defendant.

Direct-examination by Mr. Kalisch:

Q. Mr. Taylor, you are in the insurance business as well as real estate? A. Yes, sir; agent for several companies.

Q. And you inspected this property recently? A. On Friday, June 6, 1930.

Q. You have heard described the condition that it was in directly after the fire by Chief McMillan and the other witnesses. A. Yes, sir.

Q. Would you say that after that fire without the property being restored or repaired that it would be an insurable risk?

The Court: The answer is No.

Witness: I beg pardon?

The Court: Your answer would be No, wouldn't it?

Witness: It would all depend on the moral hazard. If the moral hazard was good we would insure it.

The Court: Not the same bird who burned it.

Witness: Not the same insurer.

Cross-examination by Mr. Vanderbilt:

Q. After the property had been repaired and placed in good condition it would then become insurable. A. Not the same owner. The moral hazard would have to be good.

The Court: He would have to change his name.

Witness: Yes, sir.

A. SIGMUND KANANGIEZER, sworn for complainant.

Direct-examination by Mr. Vanderbilt:

Q. I show you a paper, sworn proof of loss submitted by the Grant Building & Loan Association to the American Eagle Fire Insurance Company and ask you if you witnessed the signature of the president of the Grant Building & Loan Association as notary. A. Yes, sir.

Mr. Vanderbilt: The paper has already been marked in evidence as Exhibit C-1 of this date.

Cross-examination by Mr. Kalisch:

Q. Who made this out, do you know? Just take a look at it. A. Part of it is my writing.

Q. Made out by you, the entire paper. A. No, sir; not the entire paper.

Q. Who made the rest of it out that you did not make out? A. That I couldn't remember. It is not my writing or any writing I am familiar with. Very likely made by the insurance company when it was received by me.

Q. What insurance company? A. American Eagle Insurance Company.

Q. The complainant in this case. Do you know where they got their information from? Did they get it from you? A. Not as to whether the fire was—(interrupted)

Q. As to value. A. They got the information from me as to the amount of the original mortgage, the amount paid in as of June 10, 1925, the balance due on the mortgage $15,750.

Q. Just prior to the paying off of this mortgage

had the dues been paid? A. Regularly, no.

Q. Had they been paid—was there any arrearages? A. Considerable arrearages.

Q. Well, by reason of the arrearages the mortgage was not due, was it? A. We hadn't foreclosed it.

The Court: Callable?

Witness: It was callable, but we had not foreclosed it.

Q. Now these repairs that were made, who made them? A. Samuel Bender made the repairs, general contractor.

Q. Did you pay him? A. Yes, sir.

Q. Have you got the vouchers?

The Court: You have already agreed upon that.

Redirect-examination by Mr. Vanderbilt:

Q. How much was paid on account of the mortgage between the date of the fire and the time your building and loan association cancelled the mortgage in June 1928? A. I couldn't tell without being asked before to bring that record. I wasn't asked to bring any record. Mr. Kalisch asked for the two checks when he telephoned me; that is all I know.

Q. You have no records to show that? A. Yes, sir, in my office; not here. That would require every year's payroll.

Q. You certified as notary that this proof of loss had been sworn to, did you not? A. Yes, sir.

The Court: You have had your turn.

Mr. Vanderbilt: Mr. Kalisch asked questions on redirect—on cross that seem to in-

sinuate that he had written something into this proof of loss.

The Court: You may ask as to that.

Q. Do you know whether this proof of loss was complete at the time when you certified as notary that the president swore to it?

The Court: It is presumed so. Why do you ask?

Mr. Vanderbilt: They have cast doubt upon it.

The Court: There is no doubt cast upon it, as to whether it was filled out at the time.

TESTIMONY CLOSED.

The Court: Have the testimony written out and send in your briefs.

Exhibit C-1.

Aniello Raimondi, *et ux.*
to
The Grant B. & L. Ass'n. $16,000.

On July 2nd, 1928 the original mortgage here recorded or registered was produced by J. H. Halprin, receipted by the Pres. and Sec'y. of the corporation, cancelled and made void.

Howard S. Dodd,
Register,
A. G.

THIS INDENTURE, Made the twenty-fifth day of March in the year of our Lord One Thousand Nine Hundred and Twenty-five. Between Aneillo Raimondi and Elizabeth Raimondi, his wife, of the City of Orange in the County of Essex and State of New Jersey, party of the First Part; AND The Grant Building and Loan Association, a corporation located in the City of Newark, in the County of Essex and State of New Jersey, party of the Second Part. WHEREAS, the said party of the First Part, are justly indebted to the said party of the Second Part, in the sum of Sixteen thousand ($16,000.00) dollars, lawful money of the United States of America, secured to be paid by their certain bond or obligation, bearing even date with these presents, in the penal sum of Thirty-two thousand ($32,000.00) dollars lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of Sixteen thousand ($16,000.-00) dollars, lawful money as aforesaid, to the said party of the Second Part, its successors or assigns, in the manner following, viz.: By the payment of Twenty-five Cents every week on each of the shares of the capital stock of said Association owned by Aneillo Raimondi and Elizabeth Raimondi, his

wife, and standing in their names on the books of said Association, and assigned to said party of the Second Part as collateral security for the payment hereof, and on which this loan is based, Monday of each and every week hereafter, or at such other time as may hereafter be appointed for that purpose, until the said shares shall have matured, together with interest on said sum of ———— to be computed from the second day of February, 1925 at the rate of six per cent. per annum and fixed installment premium payment and payable weekly at the same time and in the same manner as the stock-payments aforesaid, and also all fines that may become due, as provided for by the Constitution and By-Laws of said Association, which have been duly assented to by said party of the First Part and are made a part hereof. AND it is hereby expressly agreed, that should any default be made in the payment of the said weekly interest, installment premium, or installment on said shares, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest, installment premium, or installment on said shares remain unpaid and in arrear for the space of four weeks 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 arrear for the space of four weeks or should the said party of the First Part refuse or neglect for ten days after demand to produce and exhibit to the party of the Second Part the vouchers show-

ing the payments of such tax, assessment, water rent or other lien due and payable, then and from thenceforth, 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 ——— or the unpaid residue thereof with all arrearage of interest thereon, fines, shall at the option of the said party of the Second Part, or its legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired; anything thereinbefore contained to the contrary thereof in any wise notwithstanding, as by the said bond or obligation, and the conditions thereof, reference being thereunto had, may more fully appear. NOW THIS INDENTURE WITNESSETH, That the said party of the First Part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said 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 aliened, released, conveyed and confirmed, and by these presents, do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the Second Part, and to its successors and assigns forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Orange in the County of Essex and State of New Jersey.

BEGINNING on the southeasterly corner of South Jefferson Street and Madison Street; thence (1)

running southerly thirty- five feet to land of now or formerly Merklin; thence (2) running easterly along said land one hundred feet; thence (3) running northerly to Madison Street thirty-five feet; thence (4) running westerly along Madison Street one hundred feet to South Jefferson Street the point or place of Beginning. Being the same premises conveyed to the party of the first part by Banjamin J. McFarland, Jr., by deed dated May 10, 1915 and recorded in Book D56-453.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the First Part, of, in and to the same, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said party of the Second Part, its successors and assigns, to its and their own proper use, benefit and behoof forever. AND the said party of the First Part, and their heirs the above described and granted premises, and every part thereof, with the appurtenances, in the quiet and peaceable possession of the said party of the Second Part, its successors, legal representatives and assigns against every person whomsoever will warrant and forever defend. PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the First Part, their heirs, executors or administrators, shall well and truly pay unto the said party of the Second Part, its successors or assigns, the said sum of mon-

ey mentioned in the condition, of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void. 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 lands above conveyed, insured against loss or damage by fire, in some safe and responsible insurance company or companies to an amount approved of by the said party of the Second Part, its successors or assigns, and assign the policy and certificate thereof to the said party of the Second Part; and in default thereof it shall be lawful for the said party of the Second Part to effect such insurance, and the premium and 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, payable on demand with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums. AND the said Aniello Raimondi, the owner of the lands above described, for himself, his heirs and assigns does further covenant and agree to and with the said party of the Second Part, its successors and assigns, that he or they will not claim and shall not be entitled to any credit on the interest payable on this mortgage for taxes paid on the real property embraced herein, but will pay and bear all such taxes, so that the mortgagee shall receive the rate of interest above agreed on without reduction or abatement.

Exhibit C-1.

In Witness Whereof, the said party of the First Part have hereunto set their hands and seals the day and year first above written.

ANIELLO RAIMONDI Seal

her

ELIZABETH x RAIMONDI Seal

mark

Signed, Sealed and Delivered
in the presence of
Abner Kalisch.

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

Be It Remembered That on this twenty-fifth day of March in the year of Our Lord One Thousand Nine Hundred and Twenty-five before me the subscriber, a Master in Chancery of New Jersey personally appeared Aneillo Raimondi and Elizabeth Raimondi, his wife, who, I am satisfied, are the mortgagors mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; And the said Elizabeth Raimondi, being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

ABNER KALISCH,
A Master in Chancery of New Jersey.

Received in the office March 31st, A. D., 1925, at 2:53 P. M. No. 105.

Exhibit C-1.

Office of
REGISTER OF DEEDS AND MORTGAGES
Essex County, New Jersey.

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

I, Howard S. Dodd, Register of Deeds and Mortgages of the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the record of a certain Mortgage made by Aniello Raimondi, et ux. to The Grant B. & L. Ass'n. and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book Y-53 of Mortgages for said County on pages 159-160.

In Testimony Whereof, I have hereunto
(Seal) set my hand and official seal this
5th day of June A. D. 1930.

HOWARD DODD,
Register of Deeds and Mortgages.

Exhibit C-2.

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

Whereas, the American Eagle Fire Insurance Company was insurer under its policies Nos. 15702 and 15560 of the premises located at and known as 124-126 South Jefferson Street, Orange New Jersey, under which policies Allen Raimondi was the assured, and to which were attached mortgagee clauses creating liability on the part of the insurer to the Grant Building & Loan Association, as Mortgagee, and

Whereas, on the 10th day of June, 1925 said

premises were damaged by fire, for which damage the said American Eagle Fire Insurance Company has denied liability to the assured, but for which it is liable to the said mortgagee under the said mortgagee clauses, and

Whereas, said mortgagee clauses provide that under these facts it is entitled to be subrogated to the rights and benefits of the mortgagee to the extent of its payment,

Now, Therefore,

Know all Men by These Presents, that the Grant Building & Loan Association, in consideration of the payment to it by the American Eagle Fire Insurance Company of the sum of Three Thousand and Fifty Dollars and Sixteen Cents ($3,050.16), hereby assigns unto the said American Eagle Fire Insurance Company an undivided interest to the extent of Three Thousand and Fifty Dollars and Sixteen Cents ($3,050.16) in a certain mortgage made by Allen Raimondi, given to secure the payment of Sixteen Thousand Dollars ($16,000.), and interest, dated the 25th day of March, 1925, and recorded on the 31st day of March, 1925, in the office of Register of Essex County, in Liber Y 53 of Mortgages, at pages 159-160, covering premises at 124-126 South Jefferson Street, Orange, New Jersey, together with the bond or obligation described in said mortgage and the moneys due and to grow due thereon, and said undivided interest in said mortgage hereby assigned shall bear interest at the same rate as the principal of said mortgage and shall be paid by the mortgagee to the assignee named herein proportionately, if, as and when collected.

In the event it is necessary for the mortgagee to foreclose the mortgage herein referred to, the mortgagee and the assignee hereunder shall share in

Exhibit C-2.

the proceeds of such foreclosure in proportion to their respective interests.

To Have and to Hold the interest hereby assigned unto the assignee and to its successors and assigns forever; and the assignee covenants that there is now owing upon said mortgage, without offset or defense of any kind, the principal sum of Fifteen Thousand Twenty Dollars ($15,020), with interest thereon at six per cent (%) per annum from the 11th day of January, 1926.

In Witness Whereof the Assignor has caused these presents to be signed by its proper officers thereunto duly authorized and its seal to be affixed, this 10th day of May, 1926.

GRANT BUILDING & LOAN ASSOCIATION,

By Samuel Goldman,
President.

Attest:
Jacob Kanengieser,
(Seal) Secretary.

On this 10th day of May, 1926, before me personally came Jacob Kanengieser, to me known, who being by me duly sworn, did depose and say that he resides in the City of Newark, N. J., that he is the Secretary of the Grant Building & Loan Association, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

ALEX KALISCH,
Master in Chancery of N. J.

Exhibit C-1 of June 9, 1930.

American Eagle Fire Insurance Co.

Policy Number	Amount of Policy
15560	$13000.00
Agency at	Date of Expiration
Newark, N. J.	March 27, 1928

Sworn Statement in
PROOF OF LOSS
at the
Grant Building & Loan Ass'n
for premises at 124-126 Jefferson Street,
Orange, N. J.

By the above numbered Policy of Insurance you insured Grant Building & Loan Association, as Mortgagee, against loss by fire upon the property described under Schedule "A", according to the terms and conditions of the said Policy and all forms, endorsements, transfers and assignments attached thereto.

(1) *Other Insurance*: There was other additional insurance upon the property covered by the said Policy to the amount of $3,000.00, as more particularly specified in the apportionment attached under Schedule "C," besides which there was no Policy or other contract of insurance, written or oral, valid or invalid.

(2) *Time and Origin*: A fire occurred on the 10th day of June, 1925, about the hour of ..... o'clock.....M. The cause and origin of the said fire were: Supposedly incendiary.

(3) *Occupancy*: The building described, or containing the property described was occupied at the time of the fire as follows, and for no other purpose whatever: Not occupied at time, but ready for occupancy, as specified in policy.

(4) *Title and Interest*: The property described

Exhibit C-1 of June 9, 1930.

in this Policy, and on which loss is claimed, belonged at the time of the said fire to your assured in fee simple, and no other person or persons had any interest, lien or incumbrance thereon, except: Allen Raimondi, who has assigned all rights to said Grant B. & L. Association.

(5) *Changes*: Since the said Policy was issued there has been no assignment thereof, or change of ownership, use, occupancy, possession, location or exposure of the real or personal property described, or of your assured's interest therein, except: None.

(6) *The Cash Value* of said property at the time of the fire was	$22,000.00
(7) *The Whole Loss and Damage* as stated under Schedule "B" was	$ 3050.16
(8) *The Amount Claimed* under the above numbered Policy is	$ 2478.26

The said fire did not originate by any act, design or procurement on the part of your assured, or this affiant; nothing has been done by or with the privity or consent of your assured or this affiant, to violate the conditions of the Policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were in the building damaged or destroyed, and belonging to, and in possession of the said assured at time of said fire; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished on call, and considered a part of these proofs.

It is expressly understood and agreed that the furnishing of this blank to the assured or the pre-

paring of proofs by an adjuster, or any agent of the above company is not a waiver of any rights of said company.

Grant Building & Loan Association,
Samuel Goldman, President,
(Seal) Assured.

State of New Jersey
County of Essex
Subscribed and Sworn to before me
this 26th day of April, 1926.
A. Sigmund Kanengieser,
Notary Public.

SCHEDULE "A"—POLICY FORM

Below are complete copies of all written or printed forms attached to the Policy.

Item 1, $.....on frame building occupied as four family apartment—situate 124-26 S. Jefferson St., Orange, N. J.

SCHEDULE "B"

Statement of Cash Value and Loss and Damage

		Loss and Damage
Original mortgage	$16000.00	
Paid in as of June 10th, '25	260.00	
Balance due on mortgage	$15740.00	
Loss as fixed by appraisal		3050.16

SCHEDULE "C"—APPORTIONMENT

Policy No.	Expires	Name of Company	First Item Insures	Pays
15560	3-27-28	American Eagle	13000.00	2478.26
15702	5-20-28	American Eagle	3000.00	571.90
	Totals:		16000.00	3050.16

Exhibit C-1 of June 9, 1930.

Endorsed—Sworn Statement in Proof of Loss to the American Eagle Fire Insurance Company of New York.—Assured: Grant Building & Loan Ass'n as Mortgagee—Policy No. 15560—Amount of Policy: $13000.00—Amount claimed :$2478.26 —Date of Loss: June 10, 1925.

American Eagle Fire Insurance Co.

Policy Number	Amount of Policy
15702.	$3000.00
Agency at	Date of Expiration
Newark, N. J.	5-20, 1928

Sworn Statement in
PROOF OF LOSS
to the
Grant Building & Loan Association
for premises at 124-126 So. Jefferson Street,
Orange, N. J.

By the above numbered Policy of Insurance you insured Grant Building & Loan Association, as mortgagee against loss by fire upon the property described under Schedule "A," according to the terms and conditions of the said Policy and all forms, endorsements, transfers and assignments attached thereto.

(1) *Other Insurance*: There was other additional insurance upon the property covered by the said Policy to the amount of $13000.00, as more particularly specified in the apportionment attached under Schedule "C," besides which there was no Policy or other contract of insurance, written or oral, valid or invalid.

(2) *Time and Origin*: A fire occurred on the 10th day of June, 1925, about the hour of ..... o'clock .... M. The cause and origin of the said fire were: Supposedly incendiary.

Exhibit C-1 of June 9, 1930.

(3) *Occupancy*: The building described, or containing the property described, was occupied at the time of the fire as follows, and for no other purpose whatever: Not occupied at time, but ready for occupancy, as specified in policy.

(4) *Title and Interest*: The property described in this Policy, and on which loss is claimed, belonged at the time of the said fire to your assured in fee simple, and no other person or persons had any interest, lien or incumbrance thereon, except: Allen Raimondi, who has assigned all rights to said Grant B. & L. Association.

(5) *Changes*: Since the said Policy was issued there has been no assignment thereof, or change of ownership, use, occupancy, possession, location or exposure of the real or personal property described, or of your assured's interest therein, except: None.

(6) *The Cash Value* of said property at the time of the fire was	$22000.00
(7) *The Whole Loss and Damage* as stated under Schedule "B" was	3050.16
(8) *The Amount Claimed* under the above numbered Policy is	$571.90

The said fire did not originate by any act, design or procurement on the part of your assured, or this affiant; nothing has been done by or with the privity or consent of your assured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were in the building damaged or destroyed, and belonging to, and in possession of the said assured at time of said fire; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to

Exhibit C-1 of June 9, 1930.

the extent of said loss, has in any manner been made. Any other information that may be required will be furnished on call, and considered a part of these proofs.

It is expressly understood and agreed that the furnishing of this blank to the assured or the preparing of proofs by an adjuster, or any agent of the above company is not a waiver of any rights of said company.

Grant Building & Loan Association,
Samuel Goldman, President,
Assured.

State of New Jersey
County of Essex
Subscribed and Sworn to before me
this 26th day of April, 1926.
A. Sigmund Kanengieser,
Notary Public.

SCHEDULE "A"—POLICY FORM

Below are complete copies of all written or printed forms attached to the Policy.

Item 1, $..... on frame building (not over four families) situated #124-26 S. Jefferson St., Orange, N. J.

SCHEDULE "B"

Statement of Cash Value and Loss and Damage.

Sound Value (Est.)	22000.00	
Loss		
As fixed by appraisal		3050.16
Totals:	22000.00	3050.16

Exhibit C-1 of June 9, 1930.

SCHEDULE "C"—APPORTIONMENT

Policy No.	Expires	Name of Company	First Item Insures	Item Pays
15560	3-27-28	American Eagle	13000.00	2478.26
15702	5-20-28	American Eagle	3000.00	571.90
	Totals:		16000.00	3050.16

Endorsed: Sworn statement in Proof of Loss to the American Eagle Fire Insurance Company of New York—Assured: Grant Building & Loan Association, as Mortgagee—Policy No. 15702—Amount of Policy: $3000.00—Amount claimed: $571.90—Date of Loss: June 10, 1925.

Exhibit C-3.

June 23, 1927.

Harry Kalisch, Esq.,
Kinney Building,
Newark, N. J.

American Eagle—Raymondi—Grant B & L

Dear Mr. Kalisch:

American Eagle Fire Insurance Company has turned over to me the partial assignment of mortgage from the Grant Building & Loan Association to it dated May 10, 1926.

I am advised that more than a year has passed since the execution of the assignment and no interest whatever has been paid to the American Eagle. I would appreciate it very much if you would take this up with the building and loan association and arrange for either quarterly or semi-annual payments of interest during the currency

of the mortgage. I would also deem it a favor if you would advise me when the mortgage will mature and when the American Eagle may expect payment under its assignment.

With best personal regards,

Very truly yours,

August 23, 1927.

Harry Kalisch, Esq.,
Kinney Building,
Newark, N. J.

American Eagle—Raymondi—Grant
B & L Association

Dear Mr. Kalisch:

Will you please advise me as to the present status of the above matter, as I am being pressed for a report by my client, American Eagle Fire Insurance Company? They are demanding payments of interest during the currency of the mortgage. I would also appreciate it if you would advise me when this mortgage matures and when the American Eagle Fire Insurance Company may expect payment under its assignment.

Thanking you for your attention to this matter, I remain,

Cordially yours,

Exhibit C-3.

October 6, 1927.

Harry Kalisch, Esq.,
790 Broad Street,
Newark, N. J.

American Eagle—Raymondi and Grant B & L Association.

Dear Mr. Kalisch:

The American Eagle Fire Insurance Company has written me a critical letter demanding that I get the above matter cleared up at once. I would appreciate it if you would take the matter up with the Building & Loan so that we may have the situation adjusted within the next few days. Will you let me hear from you so I can make a report to the company?

With best personal regards,

Very truly yours,

June 19, 1929.

Harry Kalisch, Esq.,
Kinney Building,
Newark, N. J.

Re: *American Eagle—Raimondi.*

Dear Mr. Kalisch:

In May, 1926, the Grant Building & Loan Association gave to the American Eagle Fire Insurance Company a partial assignment in the sum of $3050.16 in the mortgage made by Allen Raimondi in the amount of $16,000.

The Building & Loan Association has never paid to the American Eagle any interest on this assign-

Exhibit C-3.

ment though it certainly must have received it. On June 23, 1927, August 23, 1927, October 6, 1927 and February 2, 1928, I communicated with you in reference to the matter and was advised that the Building & Loan Association at its very next meeting would take care of the matter.

It is now fifteen months since I last heard from you. I therefore write to ask you to favor me with a statement of the amount remaining due on the bond and mortgage, showing the date of the last interest payment, and I must ask you to take immediate steps to satisfy the claim of my client, or else I will be compelled to start suit.

With best personal regards,

Very truly yours,

EG:JK

November 13, 1929.

Harry Kalisch, Esq.,
Kinney Building,
Newark, N. J.

American Eagle—Raimondi.

Dear Mr. Kalisch:

The American Eagle Fire Insurance Company has again taken up with me the matter of the partial assignment of the mortgage from the Grant Building and Loan Association to it, dated May 10, 1926, covering the Raimondi property.

I am instructed to obtain from you a statement in writing as to the amount of principal and also the amount of interest paid on the mortgage from the date of the assignment, May 10, 1926, to date.

If for any reason this is not forthcoming from your association within a reasonable time, I have

been further instructed to take appropriate legal action with reference thereto.

Very truly yours,

November 22, 1929.

Harry Kalisch, Esq.,
Kinney Building,
Newark, N. J.

American Eagle—Raimondi

Dear Mr. Kalisch:

I would appreciate it very much if you would let me have a prompt reply to my letter of November 13, 1929. I am being pursued by my client, and unless I have the matter promptly disposed of I will be obliged to start proceedings to obtain the desired information.

Very truly yours,

ATV—J

December 10, 1929.

Harry Kalisch, Esq.,
Kinney Building,
Newark, N. J.

Re: *American Eagle—Raimondi.*

Dear Mr. Kalisch:

Will you please let me have the letter you promised to send me setting forth the status of the Ramondi mortgage, together with a brief outline of the circumstances surrounding the transaction at present?

Very truly yours,

EG:JK

ADDENDUM.

This addendum is annexed to the State of Case pursuant to instructions from this Court, and will be considered as part of the State of Case should the Court consider it proper to do so.

AGREEMENT, made this tenth day of March nineteen hundred and Twenty-six BETWEEN Columbia Realty Co., A corporation of New Jersey, having its principle office, City of Newark, party of the first part, and Allen Raimondi and Elizabeth Ramondi, of the City of Newark, County of Essex and State of New Jersey, parties of the second part:

WITNESSETH, as follows: The party of the first part, in consideration of One Dollar, paid by the parties of the second part, the receipt of which by the party of the first part is hereby acknowledged, and also in consideration of the conveyance by the parties of the second part of the real property hereinafter mentioned, hereby agree to grant and convey to the parties of the second part, at a valuation for the purpose of this contract of

ALL

AND the parties of the second part, in consideration of One Dollar paid by the part of the first part, the receipt of which by the party of the second part is hereby acknowledged, and also in consideration of the conveyance by the parties

of the first part of the real property hereinbefore mentioned, agrees to grant and convey to the parties of the first part, at a valuation for the purposes of this contract of

ALL that tract of land and premises in the City of Orange, County of Essex, New Jersey. Being a four-family frame dwelling known and designated as #124-126 So. Jefferson Street, Orange, N. J., and more particularly described as follows:

BEGINNING at the intersection of the Easterly line of Jefferson Street with the Southerly line of Madison street, thence (1) running along the said southerly side of Madison Street South fifty-four degrees 52 minutes east 100 feet to the northwesterly corner of land conveyed by George Spottiswood and wife to Anne Flaherty by deed dated September 22, 1921; thence (2) along her land south twenty-five degrees twenty minutes west thirty-five feet; thence (3) north fifty-four degrees forty minutes west one hundred feet to the said Jefferson Street; thence (4) along the easterly side thereof north thirty-five degrees twenty-minutes east thirty-five feet to the place of BEGINNING.

The party of the first part is to give to the parties of the second part a certain mortgage now on the property known and designated 105 Morris Ave. Union, New Jersey, the original amount eighteen hundred dollars ($1800) paid down to sixteen hundred and fifty dollars ($1650.00). Being a one family frame dwelling, David Hall being the owner of the said mentioned property. Said mentioned mortgage is

payable twenty-five dollars ($25.00) per month with six per cent interest paid monthly, said mortgage is due eighteen months from March 15th, 1926. It is also understood that the party of the first part is to pay to the party of the second part two hundred dollars upon the signing of agreements and also Sixteen hundred dollars in cash upon the delivery of the deed.

Said premises which are to be conveyed by the parties of the second part are to be conveyed subject to the following incumbrances:

Subject to a Building and loan mortgage in the amount of Sixteen thousand dollars paid down nineteen months the back shares of the said mentioned Building and loan mortgage are to revert to the said parties of the first part. Real Estate taxes are to be apportioned passing of title. It is also understood and agreed that the parties of the second part will have the property 124-126 So. Jefferson Street, Orange, in first class manner and the repairs will be made before the delivery of the deed.

It is further understood and agreed that the property is free and clear from all encumbrances except the above mentioned building and loan mortgage in the amount of sixteen thousand dollars.

The difference between the values of the respective premises, over and above incumbrances shall be deemed for the purposes of this contract to be

Dollars in favor of the part of the part, and the said part of the part agree to pay the same as follows:

It is understood and agreed that both the party of the first and party of the second part

are to pay to W. L. Vanderhoof, Agent each the sum of fifty dollars for services and commission rendered.

Each of the parties to these presents hereby agrees to convey the property above described, as sold by that party, free from all incumbrances, except as above specified, and to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered to the other party, or to the assigns of the other party (the deed to be drawn in each case at the cost of the vendor), a proper warranty deed containing full covenants, duly executed and acknowledged to convey and assure to the grantees an absolute fee of said premises.

Said deeds shall be delivered and exchanged on second the April day of 1926 at 10 o'clock A. M., at the office of W. L. Vanderhoof No. #309 Main Street in the Orange, New Jersey.

Each of the parties hereto assumes the risk of loss or damages by fire prior to the completion of this contract on the premises owned by them respectively. The rents of the said premises, insurance premiums and interest on mortgage, if any, shall be adjusted, apportioned and allowed up to the day of taking title.

If there be water meters on the premises, the respective sellers shall furnish readings to dates not more than thirty days prior to the time herein set for closing title and the unfixed meter charges for the intervening time shall be apportioned on the basis of such last readings.

All personal property appurtenant to or used in the operation of said premises is represented to be owned by the respective sellers and is included in this exchange.

Contract of Exchange.

This contract covers all right, title and interest of the respective sellers, of, in and to any lands lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the premises to be conveyed to the centre line thereof, or all right, title, and interest of the respective sellers in and to any awards made or to be made in lieu thereof, and the sellers will execute and deliver to the purchasers, on closing of title or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of such awards.

And It Is Understood, that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Witness

COLUMBIA REALTY CO. (Seal)

By Frank Calabrese, President.

Sam Monestero (Seal)

Attest

W. L. Vanderhoof,
Secretary.

Aniello Raimondi
her
Alisa X Raimondi
mark.

Frederick Vanderhoof.

Contract of Exchange.

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

BE IT REMEMBERED, That on this day of in the year of our Lord One Thousand Nine Hundred and , before me, the subscriber, personally appeared who, I am satisfied, the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon acknowledged that, signed, sealed and delivered the same as voluntary act and deed, for the uses and purposes therein expressed; and the said being by me privately examined, separate and apart from said husband , further acknowledged that signed, sealed and delivered the same as voluntary act and deed, FREELY, without any fear, threats or compulsion of said husband.

No.....

Columbia Realty Co., a
corp. of New Jersey.

WITH

Allen Raimondi and
Elizabeth Raimondi.

CONTRACT OF EXCHANGE

Deed — Aniello Raimondi et ux to Columbia Realty Company.

ANIELLO RAIMONDI ET UX
TO
COLUMBIA REALTY CO.

THIS INDENTURE, Made the 1st day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-six BETWEEN Aniello Raimondi & Alisa Raimondi, his wife, of the City of Orange in the County of Essex and State of New Jersey, of the first part, AND Columbia Realty Company, a body corporate of the State of New Jersey party of the second part, WITNESSETH, That the said party of the first part, for and in consideration of One Dollar and other good and valuable consideration lawful money of the United States of America, to them 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 being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, its successors and assigns, forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Orange in the County of Essex and State of New Jersey.

BEGINNING at the intersection of the easterly line of Jefferson Street with the Southerly line of Madison Street; thence (1) running along the said southerly side of Madison Street south fifty-four degrees fifty-two minutes east one hundred feet to the northwesterly corner of land conveyed by George Spottiswood and wife to Anne Fla-

herty by deed dated September 22, 1891; thence (2) along her land south twenty-five degrees twenty minutes west thirty-five feet; thence (3) north fifty-four degrees forty minutes west one hundred feet to the said Jefferson Street; thence (4) along the easterly side thereof north thirty-five degrees twenty minutes east thirty five feet to the place of BEGINNING. Being the same premises conveyed to the parties of the first part by John Randall and wife by deed dated March 15, 1911 and recorded in Book Z 48, page 41 and by Benjamin J. McFarland, Jr. by deed dated May 10, 1915 and recorded in Book B 56 of Deeds, page 453. *The above described premises are conveyed expressly subject to a first mortgage now held by the Grant Building & Loan Association in the original sum of $16,000.00.*

TOGETHER with all and singular the houses, buildings, trees, ways, waters, 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, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to the proper use, benefit and behoof of the said party of the second part, its successors and assigns forever; and the said Aniello Raimondi & Alisa Raimondi, his wife do for themselves, their heirs, executors and administrators, covenant and agree to and with the said party of the second part, its successors and assigns, that they the said Aniello Raimondi & Alisa Raimondi, his wife, are the

true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever: And Also that the said party of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid; And Also that Aniello Raimondi & Alisa Raimondi, his wife, will Warrant, secure, and forever defend the said land and premises unto the said party of the second part, its successors and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Aniello Raimondi Seal
Alisa
her
Elizabeth X Raimondi Seal
mark

Signed, Sealed and Delivered
in the presence of
E. W. Mascia

Deed — Aniello Raimondi et ux to Columbia Realty Company.

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

BE IT REMEMBERED, That on this first day of April in the year of our Lord One Thousand Nine Hundred and Twenty-six, before me, the subscriber, An Attorney at Law of the State of New Jersey, personally appeared Aniello Raimondi & Alisa Raimondi, his wife, who, I am satisfied, are the grantors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; and the said Alisa Raimondi, wife as aforesaid being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, Freely, without any fear, threats or compulsion of her said husband.

Egidio W. Mascia, An Attorney at Law of N. J.

Received in the office April 3rd A. D. 1926 at 10:33 A. M. No. 68

Deed — Aniello Raimondi et ux to Columbia Realty Company.

OFFICE OF

REGISTER OF DEEDS AND MORTGAGES

ESSEX COUNTY, NEW JERSEY

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

I, GEORGE STICKEL, Register of Deeds and Mortgages of the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the record of a certain DEED made by ANIELLO RAIMONDI ET UX TO COLUMBIA REALTY CO. and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book V 73 of DEEDS for said County on pages 447-448

IN TESTIMONY WHEREOF, I have
(SEAL) hereunto set my hand and official seal
this 5th day of MARCH A. D. 1931

GEORGE STICKEL,
Register of Deeds and Mortgages

Deed — Aniello Raimondi et ux to Columbia Realty Company.

COMPARED
BY
57 & 68

OFFICE OF
REGISTER OF DEEDS AND MORTGAGES
ESSEX COUNTY, NEW JERSEY

Certified Copy of
DEED

ANIELLO RAIMONDI ET UX

TO

COLUMBIA REALTY CO.

Recorded APRIL 3RD, A.D. 1926
In Book V 73 of
DEEDS Pages 447-448

Mortgage—Luigi Bruno to Columbia Realty Co.

THIS INDENTURE,

Made the eighth day of September in the year of our Lord One Thousand Nine Hundred and Twenty-six

Between LUIGI BRUNO, single of the Town of West Orange in the County of Essex and State of New Jersey party of the First Part;

And COLUMBIA REALTY COMPANY a corporation of the State of NEW JERSEY party of the Second Part;

Whereas, the said party of the First Part is justly indebted to COLUMBIA REALTY COMPANY the said party of the Second Part, in the sum of FOUR THOUSAND Dollars, lawful money of the United States of America, secured to be paid by A certain bond or obligation, bearing even date with these presents, in the penal sum of EIGHT THOUSAND Dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of FOUR THOUSAND Dollars, lawful money as aforesaid, to the said party of the Second Part, its successors or assigns, on the Eighth day of September which will be in the year One Thousand Nine Hundred and Twenty-eight and interest thereon, to be computed from the 8th day of September, 1926 at and after the rate of six per cent. per annum and to be paid semi-annually.

And it is thereby expressly Agreed, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable as above expressed; or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed

or acquired upon the premises described in this mortgage, and become due and payable; or should the said party of the First Part, his heirs, executors, administrators or successors in title to said premises fail to keep the building or buildings now or hereafter located thereon insured against loss or damage by fire and assign the policy or policies for such insurance to the said party of the Second Part, its successors or assigns, and such insurance be effected and premium or premiums therefor paid by the said party of the Second Part, its successors or assigns, pursuant to the agreement contained in this mortgage; and should the said interest, or any part thereof, remain unpaid and in arrear for a period 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 arrear for a period of sixty days; or said insurance premium or premiums so paid by the said party of the Second Part, its successors or assigns, remain unpaid for a period of thirty days after demand therefor by the said party of the Second Part, its successors or assigns, upon the said party of the First Part, his heirs, executors, administrators or successors in title; then and from thenceforth, 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 FOUR THOUSAND DOLLARS or so much thereof as shall then remain unpaid, with all arrearage of interest thereon, shall, at the option of the said party of the Second Part, its successors or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not

then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now, THIS INDENTURE WITNESSETH, That the said party of the First Part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to him in hand paid by the said party of the Second Part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm, unto the said party of the Second Part, and to its successors and assigns forever,

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Orange in the County of Essex and State of New Jersey.

BEGINNING on the southeasterly corner of South Jefferson Street and Madison Street; thence (1) running southerly thirty-five feet to land of now or formerly Merklin; thence (2) running easterly along said land one hundred feet; thence (3) running northerly to Madison Street thirty-five feet; thence (4) running westerly along Madison Street one hundred feet to South Jefferson Street and the point and place of BEGINNING.

Being the same premises conveyed to the party of the first part by deed of even date and about to be recorded.

This mortgage is given as a purchase money mortgage and to be paid as follows:

Three Hundred Dollars, with interest after six months from the date thereof, Six-6-Hundred Dollars and interest after one year from the date thereof; Three Hundred Dollars, and interest after eighteen months from the date thereof and the balance with interest at the end of two years.

This mortgage is made only subject to a first mortgage in the nominal sum of $16,000.00 held by the Grant Building and Loan Association.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the First Part, of, in and to the same, and every part and parcel thereof, with the appurtenances:

TO HAVE AND TO HOLD the above granted and described premises with the appurtenances, unto the said party of the Second Part, its successors and assigns, to its own proper use, benefit and behoof forever.

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the First Part, his heirs, executors, adminis-

trators or successors in title, shall well and truly pay unto the said party of the Second Part, its successors or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said LUIGI BRUNO, for himself, his heirs, executors, administrators and successors in title, does covenant and agree to pay unto the said party of the Second Part, its successors or assigns, the said sum of money and interest, as mentioned above and expressed in the condition of the said bond.

And it is Agreed that the said party of the First Part, his heirs, executors, administrators or successors in title to said mortgaged premises, shall and will keep the building or buildings now or hereafter located thereon insured against loss or damage by fire in some safe and responsible insurance company or companies, for a sum not less than FOUR THOUSAND Dollars, and assign the policy or policies therefor to the said party of the Second Part, its successors or assigns as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be law for the said party of the Second Part, its successors or assigns, to effect such insurance, and the premium or premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and

payable by the said party of the First Part, his heirs, executors, administrators or successors in title, on demand of the said party of the Second Part, its successors or assigns, with legal interest.

AND IT IS ALSO AGREED that neither the said mortgagor , heirs, executors, administrators or successors in title to said mortgaged premises, shall be entitled to any credit on the interest payable on this mortgage for the taxes which may be levied on said mortgaged premises or for any part of such taxes.

IN WITNESS WHEREOF, the said party of the First Part, has hereunto set his hand and seal the day and year first above written.

LUIGI BRUNO (L. S.)

Signed, Sealed and Delivered in the Presence of

E. W. MASCIA

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

BE IT REMEMBERED, That on this Eighth day of September in the year One Thousand Nine Hundred and Twenty-six, before me the subscriber, an Attorney-at-Law of New Jersey personally appeared LUIGI BRUNO, single who, I am satisfied, is the mortgagor named in and who executed the within mortgage, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed;

EGIDIO W. MASCIA,
An Attorney-at-Law of N. J.

Mortgage—Luigi Bruno to Columbia Realty Co.

Rubber Stamp. Received Registers Office Sep 13 1926 2:22 P. M. Essex County Newark, N. J.

IN CHANCERY OF NEW JERSEY.

Golden Realty Co. a corporation
Complainant

and

Sabatina Realty Co., a corporation, et als.,
Defendants

ON BILL TO FORECLOSE.

Marked by me Exhibit "B" on the part of the Complainant in the above entitled matter this 27th day of May, 1927.

JOSEPH J. QUINN
Master in Chancery of New Jersey.

147—From an Individual to a Corporation. Int., Ins., Tax and Assm't. Conditions Printed. (Revised 1924)

Rubber Stamp—Compared by 46 & 17

MORTGAGE

Luigi Bruno,
single
To
Columbia Realty Company.

Dated, September 8th 1926

Received in the Register's Office of the County of Essex, N. J., on the 13th day of September A. D., 1926, at 2:28 o'clock in the afternoon, and registered in Book H-58 of Mortgages for said County, on pages 581

HOWARD S. DODD
Register

Law Offices
EGIDIO W. MASCIA
24 Commerce St.
Newark, N. J.

Assignment of Mortgage—Columbia Realty Co. to Golden Realty Co.

KNOW ALL MEN BY THESE PRESENTS:

That Columbia Realty Company, a Corporation of New Jersey party of the first part; in consideration of the sum of One Dollar and other good and valuable consideration lawful money of the United States of America, to it in hand paid by Golden Realty Company party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto the said party of the second part, its successors or Assigns a certain Indenture of Mortgage bearing date the eighth day of September One Thousand Nine Hundred & Twenty-six made by Luigi Bruno on lands in the City of Orange, to secure the payment of the sum of Four Thousand ($4000.00) Dollars, which mortgage is *is* recorded in the Register's office of the County of Essex in Book H 58 of Mortgages, pages 581.

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 or assigns forever subject only to the proviso in the said Indenture of Mortgage mentioned: AND it does hereby make, constitute, and appoint the said party of the second part; its true and lawful attorney, irrevocable, in its 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 it might or could

do if these presents were not made. And it does 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 Four Thousand ($4000.00) Dollars with interest from Sept. 8th, 1926.

In Witness Whereof, the said party of the first part have caused its common seal to be hereto affixed and attested by its Secretary, and these presents to be signed by its President, the Thirteenth day of September, 1926.

COLUMBIA REALTY COMPANY

By Frank Calabrese
President

Signed, sealed and delivered
in the presence of

Attest:

Sam Monistero
(seal) Secretary

Assignment of Mortgage—Columbia Realty Co. to Golden Realty Co.

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

BE IT REMEMBERED, That on this 14th day of September, in the year of our Lord One Thousand Nine Hundred and Twenty-six, before me the subscriber, a
personally appeared Sam Monistero who being by me duly sworn on his oath, says that he is the Secretary of the

COLUMBIA REALTY COMPANY

Company the grantor named in the within Instrument; that FRANK CALABRESE is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

SAM MONISTERO

Sworn and subscribed before me, at
Newark, N. J. the date aforesaid.

EGIDIO W. MASCIA
An Atty at Law of New Jersey.

Assignment of Mortgage—Columbia Realty Co. to Golden Realty Co.

Rubber Stamp — Received Registers Office Dec 29 1926 10:24 A. M. Essex County Newark, N. J.

IN CHANCERY OF NEW JERSEY.

Golden Realty Co., a corporation,
Complainant

and

Sabatina Realty Co., a corporation, et als.,
Defendants.

ON BILL TO FORECLOSE.

Marked by me Exhibit "C" on part of the Complainant in the above entitled matter this 27th day of May, 1927.

JOSEPH J. QUINN
Master in Chancery of New Jersey.

Assignment of Mortgage—Columbia Realty Co. to Golden Realty Co.

Rubber Stamp—Compared by 44 & 19

ASSIGNMENT OF MORTGAGE.

Columbia Realty Company

To

Golden Realty Company

Dated, September 13th 1926

Received in the Register's Office of the County of Essex, N. J. on the 29th day of December A. D., 1926, at 10:24 o'clock, in the forenoon, and Recorded in Book 183 of Assignments of Mortgages for said County, on pages 539-540.

HOWARD S. DODD
Register

MICHAEL J. QUIGLEY
Counsellor at Law
738 Broad Street
Newark, N. J.

Deed—Columbia Realty Co. to Luigi Bruno.

COLUMBIA REALTY CO. TO LUIGI BRUNO

THIS INDENTURE, Made the Eighth day of September in the year of our Lord One Thousand Nine Hundred and Twenty-six BETWEEN Columbia Realty Company, a corporation of the State of New Jersey, having its business office in the City of Newark, in the County of Essex in said State of New Jersey, party of the First Part; AND Luigi Bruno of the Town of West Orange in the County of Essex and State of New Jersey, party of the Second Part; WITNESSETH, That the said party of the First Part, for and in consideration of One Dollar and other good and Valuable Consideration, lawful money of the United States of America, to the Corporation aforesaid 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 being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, remise, release, enfeoff, convey and confirm to the said party of the Second Part, and to his heirs and assigns forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Orange, in the County of Essex and State of New Jersey.

BEGINNING on the southeasterly corner of South Jefferson Street and Madison Street; thence (1) running southerly thirty-five feet to land of now or formerly Merklin; thence (2)

running easterly along said land one hundred feet; thence (3) running northerly to Madison Street thirty-five feet; thence (4) running westerly along Madison Street one hundred feet to South Jefferson Street and the point and place of BEGINNING. Being the same premises conveyed to the party of the first part by deed recorded—*This conveyance is made expressly subject to a mortgage in the nominal sum of $16,000 held by the Grant Building & Loan Association.*

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the First Part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances. TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the Second Part, his heirs and assigns, to his own proper use, benefit and behoof forever. AND the said Columbia Realty Company, for itself, its successors or assigns does covenant, grant and agree, to and with the said party of the Second Part, for himself, his heirs and assigns, that the said Columbia Realty Company, at the time of the sealing and delivery of these presents, was lawfully seized, in its own right of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances and has good right, full power and lawful authority

to grant, bargain, sell and convey the same in manner and form aforesaid; And that the said party of the Second Part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the First Part, its successors or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever. And Also, that the said party of the First Part, and its successors or assigns, and all and every other person or persons, whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises, by, from, under or in trust for it or them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the Second Part, his heirs and assigns, make, do and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the Second Part, his heirs and assigns forever, as by the said party of the Second Part, his heirs or assigns, or counsel learned in the law, shall be reasonably advised or required. And the said Columbia Realty Company, its successors or

assigns, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the Second Part, his heirs and assigns, against the said party of the First Part, and its successors or assigns, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, SHALL AND WILL WARRANT, and by these presents FOREVER DEFEND.

In Witness Whereof, the said party of the First Part hath caused its Corporate Seal to be hereto affixed and attested by its Secretary and these presents to be signed by its President the day and year first above written.

Columbia Realty Company,

by Frank Calabrese
President

Signed, Sealed and Delivered
in the presence of

Attest:

Sam Monistere
Secretary

Columbia
Realty
Company
Corporate Seal
1925
New Jersey

Deed—Columbia Realty Co. to Luigi Bruno.

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

BE IT REMEMBERED, That on this Eighth day of September, in the year of our Lord One Thousand Nine Hundred and Twenty-six, personally appeared Sam Monistere, who being by me duly sworn doth depose and make proof to my satisfaction that he is the Secretary of, and well knows the Corporate Seal of Columbia Realty Company, the Grantor named in the foregoing Deed, that the seal thereto affixed is the proper Corporate Seal of the said Corporation, and that the same was so affixed thereto, and the said Deed signed and delivered by Frank Calabrese who was at the date and execution thereof, President of said Corporation, in the presence of said Deponent, as the voluntary act and deed of the said Corporation, and that the said Deponent thereupon signed the same as subscribing witness.

Sam Monistere

Sworn to and subscribed before me,
the 8th day of Sept. 1926.
Egidio W. Mascia
An Atty at Law of New Jersey.

Received in the office September 13th, A. D. 1926 at 2:27 P. M. No. 53

Deed—Columbia Realty Co. to Luigi Bruno.

Office of
REGISTER OF DEEDS AND MORTGAGES
Essex County, New Jersey

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

I, GEORGE STICKEL, Register of Deeds and Mortgages of the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the record of a certain DEED made by COLUMBIA REALTY CO. TO LUIGI BRUNO and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book Y-74 of DEEDS for said County on pages 496-498

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 5th day of MARCH A. D. 1931.

(SEAL)

GEORGE STICKEL,
Register of Deeds and Mortgages

Rubber Stamp:

Compared
by 48 & 30

Office of
Register of Deeds and Mortgages
Essex County, New Jersey

CERTIFIED COPY OF
DEED

COLUMBIA REALTY CO.
TO
LUIGI BRUNO

Recorded September 13th. 1926
In Book Y-74 of DEEDS Pages 496-498

Deed — Conrad Deuchler, Sheriff, to Golden Realty Company.

To all Persons to whom these Presents shall come, or whom they may concern:

I, CONRAD DEUCHLER, Sheriff of the County of Essex, in the State of New Jersey, send Greeting:

WHEREAS, on the Twentieth day of June, in the year of our Lord, nineteen hundred and Twenty-Seven, a certain writ of Fieri Facias was issued out of the Court of Chancery of the State of New Jersey, directed and delivered to me, CONRAD DEUCHLER, then and still being Sheriff of the said County of Essex, and which said writ is in the words or to the effect following—THAT IS TO SAY:

New Jersey to wit: The State of New Jersey to the Sheriff of the County of Essex:

GREETING:

WHEREAS, on the Second day of June, in the year of our Lord nine-
(L. S.) teen hundred and Twenty-Seven, by a certain decree made in our Court of Chancery before our Chancellor at Trenton, in a certain cause therein depending, wherein the Golden Realty Co., a corporation, is Complainant, and Sabatina Realty Co., a corporation, Luigi Bruno and Morris Schechter, Trustee, are Defendants, it was ordered, adjudged and decreed that

certain mortgaged premises with the appurtenances in the bill of complaint in the said cause particularly set forth and described be sold, that is to say, All that certain tract or parcel of land and premises situate, lying and being in the City of Orange, County of Essex and State of New Jersey:

Deed — Conrad Deuchler, Sheriff, to Golden Realty Company.

BEGINNING on the Southeasterly corner of South Jefferson Street and Madison Street; thence running Southerly thirty-five feet to land of now or formerly Merklin; thence running Easterly along said land one hundred feet; thence running Northerly to Madison Street thirty-five feet; thence running Westerly along Madison Street one hundred feet to South Jefferson Street and the point and place of BEGINNING.

Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the revisions and remainders, rents, issues, and profits thereto, and also all the estate, right, title, interest, use, property, claim and demand of the said Defendants, of, in, to and out of the same, be sold to pay and satisfy in the first place, unto the Compainant, on its mortgage bearing date September 8th, 1926, the sum of Four thousand One hundred seventy-four dollars and twenty cents ($4,174.20) for principal and interest together with lawful interest thereon from the 27th day of May, 1927, until the same be paid and satisfied, and also the costs of the said Complainant; and in the second place unto the defendant, Morris Schecter, Trustee, on his mortgage bearing date January 31st, 1927, the sum of Six thousand One hundred forty-seven ($6,147.) dollars together with lawful interest thereon from the 27th day of May, 1927, until the same be paid and satisfied, and also the costs of the said Defendant, Morris Schechter, Trustee; and that for that purpose a writ of Fieri Facias should issue, directed to the Sheriff of the County of Essex, commanding him to make sale as aforesaid, and that the surplus money

arising from such sale, if any there be, should be brought into the said Court, subject to the further order of the said Court, as by the said decree remaining as of record, in our said Court of Chancery, at Trenton, doth and may more fully appear.

And Whereas, the costs of the said complainant, on its mortgage dated September 8th, 1926, have been duly taxed at One hundred seventy nine dollars and forty cents.

And Whereas, the costs of the said Defendant, Morris Schechter, Trustee, on his mortgage dated January 31st, 1927, have been duly taxed at nine dollars and six cents.

Therefore, you are hereby commanded, that you cause to be made of the premises aforesaid by selling the same, for that purpose the said sum of Four thousand one hundred seventy-four dollars and twenty cents, ($4,174.20), together with lawful interest thereon as aforesaid, and also the sum of costs with lawful interest thereon from the date of the Master's Report and also the said sum of Six thousand One hundred and forty-seven ($6,147.00) dollars together with lawful interest thereon from the date of said Master's Report; and that you have those moneys before our said Chancellor, in our Court of Chancery, aforesaid, at Trenton, on the Nineteenth day of September next, to render to the said complainant, or to its solicitors, and to the Defendant, Morris Schechter, Trustee, and also the surplus money, if any there be, to abide the further order of our said Court, according to the decree aforesaid. And you are to make return at the time and place aforesaid, by certificate, under your hand, of the manner in which you shall have executed this our writ, together with this writ.

Deed — Conrad Deuchler, Sheriff, to Golden Realty Company.

WITNESS, EDWIN ROBERT WALKER, Esquire, our Chancellor, at Trenton aforesaid, the Twentieth day of June, in the year of our Lord, one thousand nine hundred and Twenty-Seven.

M. J. Quigley, Solicitor — Thomas Barber, Clerk.

As by the record of the said writ of Fieri Facias in the office of the Clerk of the said Court of Chancery, in Book S 11 of Executions, page 109 &c., may more fully appear, AND WHEREAS I, the said CONRAD DEUCHLER, as such sheriff as aforesaid, did, in due form of law, advertise the said lot of land and premises to be sold under and by virtue of the said writ of Fieri Facias, at public vendue, to be held at the Court House in the City of Newark, on Tuesday, the Ninth day of August, A. D., nineteen hundred and Twenty-Seven, at two o'clock in the afternoon of that day.

By public advertisements signed by myself, and set up at five or more public places in the said County of Essex, one of which was in the City where said real estate is situated, of the time and place appointed for such sale, for at least three weeks preceding the time appointed for said sale, and publishing the same in the "Newark Ledger" and the "Daily Courier" two of the newspapers printed and published in the said County, where the lands above described are situated, the same being designated for the publication of the laws of this State, and circulating in the neighborhood of said real estate, for at least once a week during four consecutive calendar weeks, the last publication within seven days next preceding the time so appointed for selling the same, one of which said newspapers to wit: "Newark

Ledger'' is printed and published at Newark, the County seat of said County, at which time and place I did accordingly offer and expose the said lot of land and premises for sale at public vendue under and by virtue of the said writ of Fieri Facias. And thereupon GOLDEN REALTY CO., of the City of Newark, of the County of Essex and State of New Jersey, did bid for the same the sum of One Thousand Dollars, ($1000.00); and no other person bidding as much, I did then and there, openly and publicly, in due form of law, between the hours of twelve and five in the afternoon, strike off and sell the said lot of land and premises for the sum of One Thousand Dollars, ($1000.00), to the said GOLDEN REALTY CO., it being then and there the highest bidder for the same, and the said sale having been confirmed by an order of the said Court of Chancery, dated Twenty-Fourth day of August, A. D. nineteen hundred and Twenty-Seven.

NOW, THEREFORE, KNOW YE, That I the said CONRAD DEUCHLER, as such Sheriff as aforesaid, under and virtue of the said writ of Fieri Facias, and in execution of the power and trust in me repose, and also for, and in consideration of the said sum of One Thousand Dollars, ($1000.00), to me in hand paid, the receipt whereof I do hereby acknowledge, and therefrom acquit, exonerate and forever discharge the said GOLDEN REALTY CO., its successors and assigns, have granted, bargained, sold, assigned, transferred and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey, unto the said GOLDEN REALTY CO., its successors and assigns all and singular, the said lot of lands and premises, with the appurte-

nances, privileges, and hereditaments thereto belonging or in any way appertaining: TO HAVE AND HOLD the same unto the said GOLDEN REALTY CO., its successors and assigns, to its and their only proper use, benefit and behoof forever, in as full, ample and beneficial a manner as by virtue of the said writ of Fieri Facias I may, can or ought to convey the same.

And I, the said CONRAD DEUCHLER, for myself, my heirs, executors and administrators, do hereby covenant, promise and agree to and with the said GOLDEN REALTY CO., its successors and assigns, that I have not, as such Sheriff as aforesaid, done or caused, suffered or procured to be done, any act, matter or thing, whereby the estate hereby intended to be conveyed in and to the said lot of land and premises, with the appurtenances, is, may or can be changed, charged, encumbered, or defeated in any matter whatever.

In Witness Whereof, I, the said CONRAD DEUCHLER, as such Sheriff as aforesaid, have hereunto set my hand and seal this Twenty-Fourth day of August, in the year of our Lord, nineteen hundred and Twenty-Seven.

CONRAD DEUCHLER Sheriff. (seal)

Signed, Sealed and Delivered
in the Presence of

Philip R. Van Duyne.

Deed — Conrad Deuchler, Sheriff, to Golden Realty Company.

NEW JERSEY, ESSEX COUNTY, ss.

I, CONRAD DEUCHLER, Sheriff of the County aforesaid, do solemnly swear that the land and real estate described in this deed, made by me to GOLDEN REALTY CO., of the City of Newark, of the County of Essex and State of New Jersey, was by me sold by virtue of a good and subsisting execution, as is therein recited, that the money ordered to be made has not been, to my knowledge or belief, paid or satisfied, that the time and place of sale of the said land and real estate was by me duly advertised, as required by law, and that the same was cried off and sold to a bonafide purchaser for the best price that could be obtained.

CONRAD DEUCHLER Sheriff

Sworn before me, one of the Masters in Chancery of the State of New Jersey, on this First day of September in the year of our Lord nineteen hundred and Twenty Seven and I having examined the Deed above mentioned, do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described.

PHILIP R. VAN DUYNE
Master in Chancery of New Jersey.

Deed — Conrad Deuchler, Sheriff, to Golden Realty Company.

Chancery A-312.

Rubber Stamp—Received Registers Office Jun 20 1928 10:20 A. M Essex County Newark, N. J.

DEED.

CONRAD DEUCHLER, Sheriff

To

GOLDEN REALTY CO.

Rubber Stamp—Compared by 39 & 34

Received in the Register's Office of the County of Essex, N. J. on the 20th day of June A. D. 1928, at 10:20 A. M. and recorded in book N 78 of Deeds for said County, page 176-178

HOWARD S. DODD Register.
Register

Consideration....$1000.00

Dated, August 24, 1927

M. J. Quigley 738 Broad St.

38

New Jersey Court of Errors and Appeals

AMERICAN EAGLE FIRE INSURANCE CO., a corporation, Complainant-Appellee, vs. GRANT BUILDING & LOAN ASSOCIATION, a corp., Defendant-Appellant.	On Bill, &c. On Appeal from the Court of Chancery.

BRIEF OF DEFENDANT-APPELLANT.

Statement of Facts.

On March 25, 1925, pursuant to the granting of a loan to them of $16,000, Allen Raimondi and Elizabeth Raimondi, his wife, to secure the sum loaned to them by defendant-appellant (hereinafter referred to as the Association), executed to the Association a bond, and a mortgage of even date with the bond, payable in accordance with the usual building and loan association mortgage, (Exhibit C-1; State of Case, p. 63). The mortgaged premises are known as 124-126 So. Jefferson St., in the City of Orange. Thereafter complainant-appellee (hereinafter referred to as the insurance company), did issue to Raimondi two fire insurance policies covering the said mortgaged premises, undertaking to indemnify him against loss or damage by fire, loss or damage, if any, payable to the Association as first mortgagee. Both of the policies had attached thereto a mortgagee clause which provided as follows:

> "Whenever this company shall pay to the mortgagee (or Trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, this company shall, to the extent of such payment, be thereafter legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option, pay to the mortgagee (or Trustee) the whole principal due or to grow due on the mortgage with interest and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation shall impair the right of the mortgagee (or Trustee) to receive the full amount of its claim."

On or about June 10, 1925, the mortgagor by his own criminal act set fire to the building, for which act he was indicted, convicted and sentenced to the State Prison. By reason of his arson the Insurance Company disclaimed liability to the mortgagor, but conceded liability to the Association and paid to it the amount of the loss, being $3050.-16. At the instance of the Insurance Company the Association executed to it on May 10, 1926, a writing, assigning to the Insurance Company, by way of subrogation, an undivided interest to the extent of the indemnification in the aforementioned mortgage (Exhibit C-2; State of Case, p. 69).

By reason of the fire the building was damaged and destroyed and became so dilapidated and fell into such a condition of ruin and decay as to be and continue untenantable, unsafe and further uninsurable; so that it became necessary for the Association, in order to maintain its security, and on the mortgagor's failure to do so, to repair the building and restore it. The cost of the restoration was at least the amount of the insurance

money received (State of Case, p. 27, l. 14, p. 28, l. 12).

On March 10, 1926, Raimondi entered into a written contract for the exchange of the mortgaged premises with the Columbia Realty Co., the conveyance being made expressly subject to the Association's mortgage in the amount of $16,000. (Recorded in Bk. V-73, pp. 447-448, Essex County). On September 13, 1926, the Columbia Realty Co., conveyed to one Luigi Bruno, receiving back a purchase money mortgage which contained a recital that the conveyance was made subject to the Association's mortgage in the amount of $16,000. (Deed recorded in Bk. Y-74, pp. 496-498, Essex County; Mortgage registered in Bk. H-58, p. 58; Essex County). An assignment of this junior mortgage was made by a writing of even date to the Golden Realty Co. (Recorded in Bk. 183, pp. 539-40, Essex County). On August 24, 1927, the Golden Realty Co., foreclosed this junior mortgage and received a Sheriff's deed to the land and building (Recorded in Bk. N-78, pp. 176-178, Essex County). On July 2, 1928, the Golden Realty Co., paid the Association the amount of $12,659.20, being the balance due the Association on the loan taking the principal of bond and mortgage as $16,000, and on the same day the Association surrendered the bond and mortgage and caused the mortgage to be cancelled of record.

Thereafter the Insurance Company commenced proceedings against the Association to recover the sum of $3050.16, and interest thereon from May 10, 1926, and on March 24, 1931, a decree in favor of the Insurance Company and against the Association was entered, the *ratio decidendi* being that the Association should have tacked on to its mortgage of $16,000 the amount of money it received from the Insurance Company as indemnification,

and not have surrendered the security and cancelled the mortgage except on the receipt of money from the Golden Realty Co., on the basis of the mortgage being security for $19,050.16. From this decree the Association appeals, and in its Brief it will respectfully contend that the Chancellor committed error in so adjudging and decreeing.

LAW AND ARGUMENT.

POINT I.

The Association could not have tacked on to the mortgage the amount of the indemnification.

1. In his opinion the learned Vice-Chancellor who advised the decree in the case by indirection states that it was the legal duty of the Association, on being indemnified by the Insurance Company, to tack on to the mortgage the amount expended in restoring the building. (State of Case, p. 20, ll. 17-22). Indeed, the decree can have no other basis than the principle of tacking; for the subrogation to the rights under the securities was under *the express limitation that it shall in no case impair the right of the Association to recover the full amount of its claim.* (State of Case, p. 2, ll. 10-12). Only if the mortgage became in effect security for a loan of $19,000 instead of $16,000 is the decree justifiable. *The single question presented, then, is this: Could the Association, on May 10, 1926, when it made the assignment to the Insurance Company, have tacked to its mortgage the outlay for restoring the building; have demanded an additional $3000 from the assignee of the equity of redemption?*

In 19 R. C. L., par. 303, the authors say:

> "The authorities are not in accord as to whether a mortgagee can require the mortgagor as a condition to redemption after default, to pay, in addition to the obligation secured by the mortgage, another debt or other debts due the former from the latter, but not so secured. In some jurisdictions the broad rule is asserted that the payment of a debt not secured by a mortgage cannot be exacted as a condition of redemption. However, other courts hold that while a mortgagee seeking to foreclose cannot require the mortgagor to pay other debts as a condition of redemption, a mortgagor going into equity to redeem may be required to pay not only the mortgage debt, but all other debts due from him to the mortgagee on the theory that he who seeks equity must do equity. But this does not apply against a subsequent mortgagee or creditor seeking to redeem."

In a preceding passage, par. 165 the same authors, in treating of the question *what* obligations the mortgage secures, say:

> "While in some jurisdictions a mortgagee may require a mortgagor, who seeks to redeem from the mortgage, to pay both the mortgage debt and other indebtedness due the former by him, * * as a general proposition an obligation is not secured by a mortgage unless it comes fairly within the terms thereof. The mortgage cannot be extended by construction to cover debts different from those described."

In 41 C. J. p. 466, it is stated that in the absence of a valid agreement between the parties, a mortgage executed as security for a particular debt, present or prospective, will not be enforced as security for another and different debt. "The

common law doctrine of tacking," the authors go on to say, "in so far as it would permit the holder of a mortgage given for the express purpose of securing a particular debt to add to his claim any other debt or demand against the mortgagor and stretch the security of the mortgage to cover it also, is not recognized in this country and such tacking is not permitted either on redemption or foreclosure of the mortgage except as to money which the mortgagee necessarily expends to protect his security, as in the case of taxes and assessments, or insurance."

On page 581 of the same work, the American law is stated thus:

> "The doctrine of tacking as applied in the English Court of Chancery has not been recognized or allowed at all in the United States, being not only harsh and unreasonable, but entirely contrary to the spirit and purpose of the recording laws; and an oral agreement for a valuable consideration cannot be enforced for the purpose of attaching a new debt to that which the mortgage was originally given to secure."

Hilliard in his *Abridgment of the American Law of Real Property,* vol. 1, pp. 287-88 says:

> "In England, upon the maxim, that he who will have equity must do equity, it has been held, that a mortgagor cannot redeem the mortgaged estate without paying, not only the mortgage debt, but a subsequent bond given by him to the mortgagee for money borrowed. But the principle is not adopted, as against an assignee of the equity of redemption, or any subsequent incumbrancer; who may always redeem without paying any independent claim held by the mortgagee against the mortgagor * * * The principle is, that subsequent advances cannot be tacked to a

> prior mortgage, to the prejudice of a *bona fide* junior incumbrancer * * * ."

Washburn, in his *Treatise on the American Law of Real Property* (3rd Ed.), Vol. II, p. 142, states that the doctrine of tacking is not recognized in the United States. More particularly, he says:

> "In Pennsylvania, it is expressly held, that a mortgage is security only for the specific debt for which it was given, while in other of the States, the courts have allowed a mortgagee to hold the premises against a mortgagor, his heir or devisee, until all subsequent advances made by the mortgagee to the mortgagor shall have been paid, in case such mortgagor, his heir or devisee, shall seek to redeem the mortgaged premises. But this does not apply as to purchasers or incumbrancers whose rights arise after the making of such mortgage; nor is it allowed to the mortgagee if he undertakes to enforce his mortgage by foreclosure."

2. Thus it is clear that generally the doctrine of tacking is repudiated in the American jurisdictions. The principle is given recognition only under the following conditions; namely, *first,* when the question arises between the immediate parties, that is, the mortgagor and the mortgagee, and when it is the mortgagor who is seeking the aid of equity; and, *second,* when the debt to which it is sought to extend the security is one which arose by reason of the mortgagee having paid taxes, assessments or insurance. In the case at bar it is very material to note the following circumstances; namely, *first,* that the assignment to the insurance company was entered into on May 10, 1926, (State of Case, p. 71, l. 17); *second,* that previous to this date, namely on March 10, 1926, the Columbia Realty Company, by reason of a contract of ex-

change made by it and the mortgagor, Raimondi, became the owner of the equity of redemption; *third,* the assignment to the insurance company was never recorded (State of Case, p. 22, ll. 24-25; p. 30, l. 40, p. 31, l. 1); *fourth,* that it was not the mortgagor, but a subsequent purchaser of the equity of redemption, who had bought without notice of the insurance company's claim, that paid the balance due on the loan to Raimondi, and at whose instance the mortgage was cancelled of record. The conclusion is indubitable that the Association could not have charged the Golden Realty Co., with Raimondi's debt, and have refused to have the mortgage cancelled except on payment of the balance on the basis of security for $19,000. It was not Raimondi who then was owner, but one who took legal title without notice of the insurance company's claim, which was at the most an equity. The subsequent purchaser of the legal title, who bought the equity of redemption subject to a $16,000, mortgage could not be prejudiced by an unrecorded assignment to the insurance company or an undisclosed equity of the Association's.

3. The courts of our State have taken a position on the subject of tacking that is consonant with that of the authorities quoted. A consideration of the opinions and decisions will make it clear that no right of the insurance company's was violated when the mortgage was cancelled of record.

In *Van Wagner* v. *Van Wagner,* 7 N. J. E. 27 at p. 33, the Court, in an opinion written by Chancellor Halstead, held generally that a mortgage is not security for moneys due from mortgagor to mortgagee on other accounts; and this despite the fact that the suit was between the original parties.

In *Flanagan* v. *Westcott,* 11 N. J. E. 264, and in *Ferry* v. *Meckert,* 32 N. J. E. 38, it was held that in order effectually to extend a mortgage to secure the payment of debts other than the principal loan, an express agreement between the parties to the mortgage is necessary.

In *Bell* v. *Fleming's Executors,* 12 N. J. E. 490, at p. 494, the Court, per Green, *C. J.,* in considering the validity of a mortgage to secure future advances, said:

> "All that the registry act contemplates is, that notice shall be given of the extent of the security, *and that the encumbrance shall not exceed the amount specified in the record.*" (Italics supplied).

Chancellor Green, again, in *Andrews* v. *Torrey,* 14 N. J. E. 355, at p. 358 said:

> "The mortgage was then given for a specific purpose; to that purpose exclusively it must be applied. Any other disposition of the security is a fraudulent misrepresentation, against which the mortgagor would be entitled to relief in equity."

In *Hoy* v. *Bramhall,* 19 N. J. E. 562, it was held, in a suit between the mortgagor and the mortgagee, that the former *by his own act* may revive or extend the mortgage; because in equity he will be estopped from denying that it is entitled to the effect his own act was intended to give to it. Obviously the reason assigned cannot obtain in the case. There can work no equitable estoppel against the subsequent innocent assignee of the equity of redemption.

In *Atwater* v. *Underhill,* 22 N. J. E., 599, Depue, *J.,* at p. 603, said:

> "A mortgage which has been satisfied may be given a new vitality by a re-delivery by the mortgagor or a third person, upon a new consideration, or for a purpose different from that for which it was made. Robinson v. Urquhart, 1 Beas. 515; Hoy v. Bramhall, 4 C. E. Green, 563. But to give such effect to the mortgage, the re-pledging must be made by the authority of the person whose estate is sought to be held for the performance of the new obligation * * * *A mortgage given for a specific purpose must be applied exclusively to that purpose,* and any other disposition of it will be a fraudulent mis-appropriation, against which the mortgagor will be entitled to relief. Andrews v. Torry, 1 Mc C. 355." (Italics supplied).

In *Lambertville National Bank* v. *McCreedy Bag & Paper Co.,* 15 Atl. Rep. 388, (not officially reported), on a motion under the rule, in a foreclosure suit, the court ordered that so much of the bill as is framed with the view of imposing additional burdens on the mortgaged premises, not shown to be part of the mortgage contract, be stricken out.

In *Bowen* v. *Lincoln B & L. Ass'n.,* 51 N. J. E. 272, a foreclosure suit, it was held that a building and loan association mortgage given to secure the payment of the sum borrowed or of dues and interest, will not be held by construction to extend to secure the payment of fines levied by the association.

4. The courts of other jurisdictions maintain the same position; thus in *Carpenter* v. *Plagge,* 61 N. E. 530, the Illinois Supreme Court, at p. 533, said:

> "Debts created, or advances made to a

> mortgagor subsequent to the mortgage cannot be tacked to the mortgage debt to the prejudice of third persons who have acquired junior liens upon the mortgaged property. That the doctrine, however, is applicable as between the mortgagee and the mortgagor is established * * * ."

The court quotes from and approves *Upton* v. *Bank,* 120 Mass. 156.

In *Prudential Realty Co.* v. *Allen,* 135 N. E. 221, the Supreme Judicial Court of Massachusetts held that where a mortgage is given as security for a particular debt, general accounts between the parties are entirely outside the transaction and can neither increase nor diminish the amount of the secured debt in the absence of an agreement.

In *Fleming* v. *Georgia R. Bank,* 120 Ga. 1023; 48 S. E. 420, it was held that where a mortgage is given to secure a loan, no subsequent indebtedness of the mortgagor is secured unless there is a written agreement to such effect.

A mortgage is security only for the debt thereby expressly secured, held the Wisconsin court in *Beardsley* v. *Tuttle,* 11 Wis. 74, and the mortgage cannot be held for other debts due from the mortgagor, *and the mortgagee will be compelled to discharge the mortgage upon payment of that debt.*

A simple contract debt cannot be tacked to a mortgage, held the Pennsylvania court in the case of *Darrow* v. *Kelly,* 1 Dall. 142. In *Barthell* v. *Syverson,* 54 Io. 160, 6 N. W. 178, it was held that the cost of repairs which the mortgagee has made upon the premises cannot be added to the debt secured by the mortgage.

POINT II.

The Insurance Company's right of subrogation should be attached to the Association's judgment against the mortgagor Raimondi.

The learned Vice-Chancellor in his opinion asks rhetorically if the Association reasonably could have supposed that the indemnity paid to it by the insurance company was to benefit the fire bug? (State of Case, p. 20, ll. 20-22). The Association has not so misconceived the legal situation, and in the memorandum filed in its behalf in the Court of Chancery its contention was that the burden of the loss should be suffered neither by the Association, nor by the insurance company, but by the only wrong-doer involved, namely, the mortgaror, Raimondi.

The Association had a legal right of action against him for the $3050.16 and of the entirety of this right the insurance company became the equitable assignee. Since then the Association has recovered judgment against Raimondi in this sum, and interest. (*Aniello Raimondi and Elizabeth Raimondi*, v. *Grant B. & L.* decided in the Essex County Circuit Court on July 17, 1931; not reported). It is to this judgment that the insurance company by the assignment became subrogated; that alone could have been the reasonable intention, and equity must look beyond the mere form. The effect of the subrogation and assignment was to place the insurance company in the Association's position with reference to its legal rights against the mortgagor to receive the sum of $3050.16.

The Vice-Chancellor seems to have been im-

pressed with the fact that the Association had the mortgage cancelled without first having notified the insurance company, "and the suspicion will not down," he said, "that it [the Association] was not insensible of perpetrating a fraud." (State of Case, p. 20, ll. 25-35). It is respectfully submitted that this inference is altogether without foundation (Cf., e. g., State of Case, p. 28 ll. 30-33); [redacted] "The Court only acts under evidence," said the same learned Vice-Chancellor in advising counsel (State of Case, p. 29, l. 36). "Suspicions among thoughts," Lord Chancellor Bacon has said, "are like bats among birds—they ever fly to twilight; they are to be repressed, or at least well guarded." Of what consequence is the fact that the Association had the mortgage cancelled without notice to the insurance company, if there was no right to demand of the Golden Realty Co. more than the money due on the original loan? By having the mortgage cancelled the Association did not compromise its claim against the tort-feasor without the knowledge of the insurer; for cancellation of the mortgage was no compromise of the rights of the Association against the mortgagor to which the insurance company was subrogated. That the burden of loss should be borne by the tort-feasor exclusively is well established in this jurisdiction. *Monmouth City Fire Ins. Co.* v. *Hutchinson,* 21 N. J. E. 107; *Martin* v. *Ry, Co.,* 90 N. J. L., 258; *Camden Fire Ins. Co.* v. *Prezioso,* 93 N. J. E. 318; *Fire Association* v. *Schellinger,* 83 N. J. E. 144. It is important to note, also that the policy of insurance expressly provided that "*no subrogation shall impair the right of the mortgagee* (or trustee) *to recover the full amount of*

its claim." (State of Case, p. 2, ll. 10-12). Its claim against the assignee of the equity of redemption did not include the outlay for repairs.

In the case of *Eddy* v. *London Assurance Corp.*, 20 N. Y. Supp. 216, Aff'd. in 143 N. Y. 311, 38 N. E. 290, it was held that where by the terms of a mortgage clause attached to the policy the insurer is entitled to subrogation to the rights of the mortgagee under the mortgage and the insurer pays the mortgagee the amount of his loss, claiming that no liability exists as to the mortgagor, and it is provided that the right of the mortgagee to recover the full amount of his claim shall not thereby be impaired, if at the time of the loss the mortgagee had commenced foreclosure proceedings, he will be entitled to apply the proceeds of the sale upon the mortgage debt, and if there remains a deficiency on the debt after applying the proceeds of the sale in reduction thereof, which is greater than the amount of insurance, the insurer will not be entitled to subrogation.

That the insurer's right of subrogation is not an unqualified or inviolate one was made clear by Mr. Justice Gray in the case of *Phoenix Ins. Co.* v. *Erie & Western Trans. Co.*, 117 U. S. 312, 29 L. Ed. 873. He said:

> "The right of action against another person [the tort-feasor], the equitable interest in which passes to the insurer, being only that which the assured has, it follows that if the assured has no such right of action, none passes to the insurer; and that if the assured's right of action is limited or restricted by lawful contract between him and the person sought to be made responsible for the loss, a suit by the insurer, in the right of the assured, is subject to like limitations or restrictions.

> For instance, if two ships owned by the same person came into collision by the fault of the master and crew of the one ship and to the injury of the other, an underwriter who has insured the injured ship and received an abandonment from the owner and paid him the amount of the insurance as and for a total loss, acquires thereby no right to recover against the other ship, because the assured, the owner of both ships, could not sue himself. Simpson v. Thompson,[3 App. Cas. 279], * * * Globe Ins. Co. v. Sherlock, 25 Oh. 50, 68.
>
> Upon the same principle, any lawful stipulation between the owner and the carrier of the goods limiting the risks for which the carrier shall be answerable, at the time of making the claim, or the value to be recovered, applies to any suit brought in the right of the owner, for the benefit of his insurer, against the carrier; as, for instance, if the contract of carriage expressly exempts the carrier from liability for losses by fire, etc."

A line of cases decided by courts worthy of high regard has established the proposition that where the compensation received by the assured is less than his loss, *or not more,* after payment by the insurer and settlement between himself and the third person responsible for the loss, the insurer has no right of action against the assured. *Shawnee Fire Ins. Co.* v. *Cosgrove,* 85 Kan. 296, 116 Pac. 819. The insurer can recover from the assured with whom a settlement has been made *only the excess* which the insured has received from the third person who was responsible for the loss, after he has been fully compensated for his loss, and the costs and expenses incident to the recovery of such compensation. The case of *Monmouth County Mut. Fire Ins. Co.* v. *Hutchinson,* 21 N. J. E. 107, and *dicta* in *Weber* v. *Morris & Erie R. Co.,* 35 N.

J. L., are distinguishable from the cases referred to.

In *Fire Asso. of Phila.* v. *Wells,* 84 N. J. E., 484, the court held the insurer could not maintain an action against the insured for the recovery back of insurance money, paid on buildings, for the reason, *inter alia,* that it appeared that the total amount which the insured received from the insurer and from the tort-feasor did not exceed the loss.

In *National Fire Ins. Co.* v. *McLaren,* 12 Ont. Rep. 682, when the insurance was partial and the assured, after receiving $50,000 from the insurer, recovered a verdict of $100,000 against the railroad company which caused the fire, it was held in an action by the insurer against the assured, in which the former claimed that the latter was the trustee for them for so much of the amount recovered from the wrongdoer as represented the excess of the total money received by him over the amount of his loss, and that he was estopped by the verdict from asserting his loss to be greater than $100,000—that the assured was not concluded by such finding as to his loss, but that the amounts received from the wrongdoer and the insurer should be added together to ascertain whether the assured had been more than fully compensated for his total loss by fire and other loss and outlay connected with the suit. *Vide* also *Aetna Ins. Co.* v. *Confer,* 158 Pa. 598, 28 Atl. Rep. 153.

The case comes within the purport of *Fire Asso. of Philadelphia* v. *Wells,* cited *supra,* and *Camden Fire Ins. Asso.* v. *Prezioso,* 93 N. J. E. 318, which held that a release of the wrongdoer from claims not covered by the insurance policy is not sufficient to give the insurer a right to recover insurance money paid, if the latter may still proceed against

the wrongdoer. The Association has not released Raimondi from claims covered by the insurance, and the insurer is subrogated to the right of the Association against him under the judgment entered in the case of *Raimondi* v. *Grant B. & L. Assn.*

The object and purpose of insurance is that of indemnity to the assured in case of loss or payment on the happening of a contingency, and this object should be effectuated rather than defeated, and the law should make every rational intendment so as to give the fullest protection possible to the interests of the assured. *Snyder* v. *Ins. Co.*, 59 N. J. L. 544, at p. 549; *Brooks* v. *Metropolitan Life Ins. Co.*, 70 N. J. L. 36 at p. 40.

It is, therefore, respectfully submitted that the final decree of the Court of Chancery should be reversed and there should be a decree in accordance with the contentions in this brief.

Respectfully submitted,

KALISCH & KALISCH,
Solicitors for and of Counsel
with Defendant-Appellant.

HARRY KALISCH,
Of Counsel.

ADDENDUM TO BRIEF.

That on July 2, 1928, when the mortgage was canceled, the property was not owned by the original mortgager Raimondi, is alleged in Par. 9 of the Amended Answer (S. C., p. 12, l. 20), and was stated at the hearing as facts in the case in response to a question of the Vice-Chancellor's, and was found to be a fact by the Vice-Chancellor (Opinion in S. C., p. 19, l. 14).

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

AMERICAN EAGLE FIRE INS. CO., a corporation, *Complainant-Appellee,* *vs.* GRANT BUILDING & LOAN ASSOCIATION, a corporation, *Defendant-Appellant.*	*On Bill, etc.* *On Appeal from the Court of Chancery.*

REPLY BRIEF OF DEFENDANT-APPELLANT.

1. With regard to the papers in the addendum to the State of Case, which are proof of the fact that at the time the mortgage was cancelled of record by the Association, the property was not then owned by the original mortgagor, Raimondi, they are offered not to controvert or qualify a finding of the trial court, but, rather, on the contrary, to furnish record proof of a fact known to both parties on trial, uncontradicted by the complainant-appellee, and stated by the Vice-Chancellor in his opinion. The fact is alleged in paragraph 9 of the Amended Answer (S. C., p. 12, l. 20), was discussed during the hearing (p. 44, l. 8), and stated by the Vice-Chancellor (p. 19, l. 14). "At that time," he said, "$15,020 was due on the mortgage, *which was reduced by subsequent owners,* to $12,659.20" (italics supplied).

The subsequent assignments of the mortgage or conveyances of the property in question were not established by record proof at trial, for the reason that the theory of the trial as understood by the parties did not involve a consideration

of this phase of the case; while the decree of the Court of Chancery, as evidenced by the opinion of the Vice-Chancellor is founded primarily on the proposition that the doctrine of tacking is applicable to a situation such as subsists in the case *sub judice*. The contention of the appellant is that the principle of tacking has no application or relevance *where the property was not owned by the original mortgagor at the time of the cancellation of the mortgage,* and for this reason offers the recorded deeds or assignments in evidence, to be incorporated as part of, or addendum to, the State of Case.

That it is within the province of this venerable Court to take cognizance of these documents appears indubitably from a consideration of the Rules of the Court of Errors and Appeals and reported cases.

Rule 19 of this court states that "The appellant or plaintiff-in-error shall provide a State of Case, which shall contain, in appeals, the pleadings, proofs and order or decree in Chancery, with the petition of appeal and answer thereto, or, in error, the record and bills of exceptions, with the assignments of errors and joinder in error, the reasons given in the court below for the decree, order or judgment complained of, *and any other documents proper to be considered in this court.*" It is submitted that the blanket class—"any other documents"—is such as should and does include the documents offered.

In *Hess* v. *Conway,* 144 Pac. 205; affirmed, *Holmes* v. *Conway,* 241 U. S. 624, it was held that, independently of statute, the appellate tribunal may avail itself of authentic evidence outside the record.

In *Brown* v. *Warden,* 44 N. J. Law 177, this Court held that it will, in a proper case, allow proceedings to be taken after argument to supplement the record sent up from the inferior court. *Vide,* also *Matthews* v. *Booye,* 58 N. J. Law 593; *State* v. *Levin,* 92 N. J. Law 552, 564. In the former case the Court said that the proper course is for the party desiring to amend the record, "if there be any necessity for further action in the court below," to allege diminution of the record and sue out a *certiorari.* In the case *sub judice,* this procedure is unnecessary for the reason that there is no necessity for further action in the court below—the documents offered are record evidence and incontrovertible. The Court further said: "Whether this course shall be pursued is within the discretion of the Court, in error, upon the circumstances of the particular case." The matter, therefore, is not governed by a procedural statute, the Court having latitude to dispose of it as it may deem reasonable or appropriate in the exercise of its discretion.

The validity of this view is borne out also by the case of *Delaware, Lackawanna & Western R. R. Co.* v. *Toffey,* 38 N. J. L. 526, in which this Court in its opinion said: "That in the case last cited, the amendment was considered within the power of the court, independently of the common law procedural act of 1852, is apparent from the opinion of the judges."

2. Counsel for complainant-appellee contend that this Court cannot take cognizance of the judgment entered in the case of *Raimondi* v. *Grant B. & L. Ass'n,* decided in the Essex Circuit Court on July 17, 1931, for the reason that "there is nothing before this court to show upon

what cause of action that *judgment* was recovered, or what relation the judgment has to this mortgage" (their Brief, p. 16). They seem to have misconceived our point; which is this: that the burden of loss should be borne exclusively by the tort feasor Raimondi; that the mortgagee had a *claim* against him for the damage done to the property by his arson, and that to this *claim or chose* the insurer was subrogated. *Monmouth City Fire Ins. Co.* v. *Hutchinson,* 21 N. J. Eq. 107, and other cases cited in our Brief (p. 13). The fact that this claim has been reduced to final judgment is hardly a detriment to the insurer; so the argument of counsel for complainant-appellee on this point seems altogether tangential or irrelevant, a turning from what is fundamental to what is distant and relative.

3. On page 8 of their Brief, counsel for complainant-appellee cite the cases of *Clark* v. *Smith,* 1 N. J. Eq. 121, and *Seacoast Real Estate Co.* v. *American Timber Co.,* 89 N. J. Eq. 293, as authorities for the proposition that the mortgagee may add the cost of necessary repairs to the mortgage debt. It need only be said that these cases involved repairs made by a mortgagee in possession, and the question whether or not their cost is chargeable to the mortgage debt arose in foreclosure suits wherein one of the parties in each case was *the original mortgagor.* The numerous authorities cited in our moving brief make it clear that such a situation is governed by rules other than those that must control the facts of the case *sub judice.*

4. Counsel for complainant-appellee seem to raise the question of whether or not the Association had the right to make the repairs. That it

had such a right will appear by advertence to the following cases: *Coggill* v. *Millburn Land Co.*, 25 N. J. Eq. 87; *Jackson* v. *Turrell*, 39 N. J. L. 329; *Tate* v. *Field*, 56 N. J. Eq. 35; *Peiffer* v. *Bates*, 45 N. J. Eq. 325; *Gordon* v. *Ware Savings Bank*, 115 Mass. 591; *Naquin* v. *Texas Savings, etc. Co.*, 95 Texas 213; 58 L. R. A. (N. S.) 711.

5. Counsel for complainant-appellee refer repeatedly to the assignment. With reference thereto we shall quote from the Vice-Chancellor's opinion (S. C., p. 19, ll. 7-13). He said:

"The assignment was not recorded. The instrument is, in effect, a declaration in writing of the insurance company's rights by operation of law; the apparent outright assignment of an undivided interest being modified by the recitals *which limited it to the right of subrogation;* and that is admitted by the pleadings."

Furthermore, the policy calls for *subrogation* and not *assignment* except only when the carrier choose to pay off the entire debt secured by the mortgage (S. C., p. 10, ll. 10-32). If by the assignment the carrier intended to get a greater right than the policy reserved to it, there was no consideration given for such a benefit. Counsel's argument on page 11 of their Brief, that "there is no reason why the express terms of the assignment should be disregarded," does not, therefore, stand unchallenged. The citation of *Fire Association* v. *Schellinger*, 84 N. J. Eq. 464, is not in point, for the reason that the case stands for the proposition that the *insurer* by its acts may waive the right of subrogation. It does not stand for the proposition that after the occurrence of the loss the insurer may withhold indemnity unless and until the insured in-

crease the insurer's rights beyond those contemplated and bargained for originally.

Respectfully submitted,

KALISCH & KALISCH.

HARRY KALISCH,
Of Counsel.

New Jersey Court of Errors and Appeals

American Eagle Fire Insurance Co., a corporation, Complainant-Respondent, *vs.* Grant Building and Loan Association, a corporation, Defendant-Appellant.	On Bill, etc. On Appeal from the Court of Chancery.

BRIEF OF COMPLAINANT-RESPONDENT.

Note.

Defendant applied to this Court for leave to incorporate in the State of Case evidence not produced at the hearing below. The Court advised defendant that it might at its peril print an addendum to the State of Case, which this Court would ignore if the added evidence were not such as may be considered by an Appellate Court.

Complainant begs leave to point out that the evidence contained in the "Addendum" printed by defendant should not be considered by this Court.

This Court held, in *Black* v. *Delaware and Raritan Canal Co.*, 24 N. J. Eq. 455, 477:

> "In this Court of purely appellate jurisdiction, the struggle must be decided upon the case that was made before the Chancellor; no new facts can be introduced here by testimony."

This rule was followed in *Miller* v. *Miller*, 81 N. J. Eq. 218, in which the appellant asked this

Court to take into consideration a judgment recovered after the decree appealed from:

> "But this court, in *Black* v. *Delaware and Raritan Canal Co.*, 24 N. J. Eq. 455, held that in the court of last resort no new facts can be introduced by testimony, that such court will not presume that the circumstances of the case have changed in any respect since the decision in the court below and that the contest must be decided in the court above upon the case made in the court below."

Assuming that the Practice Act of 1912 applies to appeals from Chancery, it does not help appellant.

The Practice Act of 1912 (P. L. 1912, C. 231, p. 382) provides:

> "Upon appeal, or on application for a new trial, the court in which the appeal or application shall be pending may, in its discretion, take additional evidence by affidavit or deposition, or by reference; provided, that the error complained of is lack of proof of some matter capable of proof by record or other incontrovertible evidence, defective certification, or failure to lay the proper foundation for evidence which can, in fact, without involving some question for a jury, be shown to be competent."

The error complained of here is neither "lack of proof of some matter capable of proof by record or other incontrovertible evidence" nor "defective certification", nor "failure to lay the proper foundation for evidence" (Pet. of App., pp. 22-24).

Further, the additional evidence is not for the purpose of procuring an affirmance, but to obtain a reversal. This Court will not add to the record for the purpose of reversing a judgment, *Marinette Knitting Mills* v. *Rosenthal,* 102 N. J. L. 128, 130.

Again, the evidence is not new evidence, but evidence which defendant failed to produce at the trial.

It is therefore respectfully submitted that this attempt to reverse a decree by the introduction of evidence in this court should not be sanctioned, and that the "Addendum" should be stricken from the files.

The Facts.

There is no dispute as to the following facts:

One Allen Raimondi mortgaged premises known as #124-126 South Jefferson Street, Orange, New Jersey, to defendant Grant Building and Loan Association, for $16,000 (Ex. C-1, S. C. 69). Complainant American Eagle Fire Insurance Company then issued its policies of fire insurance insuring said Raimondi as owner, and said defendant as mortgagee under a standard mortgagee clause attached to each policy. Said mortgagee clause provided, *inter alia*:

> "Whenever this Company shall pay the mortgagee (or Trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt * * *."

On or about June 10, 1925, Raimondi set fire to the building, for which act he was indicted, convicted and sentenced to prison. Complainant then, pursuant to the terms of the mortgagee clause, denied liability to Raimondi, but paid defendant the agreed amount of the loss ($3,050.16),

and received therefor an assignment of a $3,050.16 interest in said mortgage (Ex. C-2, S. C. 69). Said assignment provided:

"State of New Jersey }
County of Essex } ss.:

Whereas, the American Eagle Fire Insurance Company was insurer under its policies Nos. 15702 and 15560 of the premises located at and known as 124-126 South Jefferson Street, Orange, New Jersey, under which policies Allen Raimondi was the assured, and to which were attached mortgagee clauses creating liability on the part of the insurer to the Grant Building & Loan Association, as mortgagee, and

Whereas, on the 10th day of June, 1925 said premises were damaged by fire, for which damage the said American Eagle Fire Insurance Company has denied liability to the assured, but for which it is liable to the said mortgagee under the said mortgagee clauses, and

Whereas, said mortgagee clauses provide that under these facts it is entitled to be subrogated to the rights and benefits of the mortgagee to the extent of its payment.

Now, Therefore,

Know All Men By These Presents, that the Grant Building & Loan Association, in consideration of the payment to it by the American Eagle Fire Insurance Company of the sum of Three Thousand and Fifty Dollars and Sixteen Cents ($3,050.16), hereby assigns unto the said American Eagle Fire Insurance Company an undivided interest to the extent of Three Thousand and Fifty Dollars and Sixteen Cents ($3,050.16) in a certain mortgage made by Allen Raimondi, given to secure the payment of Sixteen Thousand Dollars ($16,000), and interest, dated the 25th day of March, 1925, and recorded on the 31st day of

March, 1925, in the office of Register of Essex County, in Liber Y 53 of Mortgages, at pages 159-160, covering premises at 124-126 South Jefferson Street, Orange, New Jersey, together with the bond or obligation described in said mortgage and the moneys due and to grow due thereon, and said undivided interest in said mortgage hereby assigned shall bear interest at the same rate as the principal of said mortgage and shall be paid by the mortgagee to the assignee named herein proportionately, if, as and when collected.

In the event it is necessary for the mortgagee to foreclose the mortgage herein referred to, the mortgagee and the assignee hereunder shall share in the proceeds of such foreclosure in proportion to their respective interests.

To Have and to Hold the interest hereby assigned unto the assignee and to its successors and assigns forever; and the assignee covenants that there is now owing upon said mortgage, without offset or defense of any kind, the principal sum of Fifteen Thousaid Twenty Dollars ($15,020), with interest thereon at six per cent (%) per annum from the 11th day of January, 1926.

In Witness Whereof the Assignor has caused these presents to be signed by its proper officers thereunto duly authorized and its seal to be affixed, this 10th day of May, 1926.

GRANT BUILDING & LOAN ASSOCIATION

By SAMUEL GOLDMAN,
President."

A year passed and complainant received nothing upon its assignment. Its attorney then wrote to defendant's attorney, requesting information as to the status of the mortgage and asking for payment. These letters (Ex. C-3, S. C., pp. 78-82) were written on June 23, 1927, August 23, 1927, October 6, 1927, and on various dates thereafter, but complainant received neither money nor in-

formation and finally filed its bill in this case for an accounting.

By defendant's answer, complainant learned that on July 2, 1928, *in spite of the fact that at the time complainant was clamoring for payment* (Ex. C-3, S. C., pp. 78-82), defendant cancelled the mortgage of record without the knowledge of complainant. For this cancellation it demanded and received only $12,659.20. "This amount was the balance demanded by the defendant, taking the principal of the bond and mortgage as $16,000 and excluding the sum of $3,050.16 paid to said defendant by complainant herein" (Amended Answer, par. 9, S. C., p. 12).

Defendant's excuse for ignoring complainant's rights is that after the assignment it spent $2,800 for repairs to the building, without the knowledge or consent of complainant. At the hearing the Vice-Chancellor indicated that that was no excuse, since if defendant was justified in making the repairs the cost thereof should have been added to the mortgage debt (S. C., p. 28, l. 25, to p. 29, l. 40). Defendant thereupon obtained leave to amend its answer to allege that at the time the mortgage was cancelled the property was not worth more than the sum due to it, and offered testimony to support this allegation.

At the conclusion of the hearing the Vice Chancellor decided that "defendant wrongfully surrendered and cancelled said mortgage without complainant's permission and without paying to complainant its interest therein" and that "said mortgage security at the time of such surrender and cancellation was worth more than sufficient to pay and satisfy said complainant's and said defendant's respective interests therein" (Final Decree, S. C., p. 16, l. 35, to S. C., p. 17, l. 10).

From this decree defendant now appeals.

POINT I.

Defendant's expenditure of $2,800 for repairs could have been added to the mortgage, if the repairs were properly made. If they were not properly made, defendant must bear the cost of its own error.

Under Point I of its brief, defendant begins with the unjustified premise that the repairs were made before May 10, 1926, on which date complainant paid the amount of the loss to defendant and received the assignment. The repairs were in fact made after the assignment (Answer, par. 7, S. C., p. 11; S. C., p. 27, l. 15; S. C., p. 41, ll. 1-10). From this factually incorrect premise defendant makes the curious argument that defendant had no right to add the amount of the repairs to its mortgage because "a mortgage executed as security for a particular debt, present or prospective, will not be enforced as security for another and different debt", and money expended by the mortgagee for repairs creates "another and different debt". Hence, argues defendant, the amount it expended for repairs to the mortgaged premises was a sort of free debt of some unnamed nature, not attached to the mortgage, and when complainant paid $3,050.16 to defendant and defendant gave complainant the assignment, it was an assignment only of this "free debt", although it purported to be an assignment of a $3,050.16 interest in a $15,020 mortgage. Consequently, argues defendant, it keeps the mortgage and complainant gets the "free debt".

First, it is not true that money expended by a mortgagee for repairs creates a debt which may not be added to the mortgage debt. If the repairs

are made under proper circumstances, the mortgagee may add the cost thereof to the mortgage debt; *Clark* v. *Smith,* 1 N. J. Eq. 121; *Seacoast Real Estate Co.* v. *American Timber Co.,* 89 N. J. Eq. 293, 304. Therefore, if the repairs were properly made, the cost thereof could have and should have been added to the mortgage debt, and if the mortgagee failed to do so, it is its own error for which it alone must suffer.

On the other hand, if the circumstances were such that defendant had no right to make the repairs, then it may not charge the cost to complainant.

Defendant has not explained under what conditions the cost of repairs properly made could not be a part of the mortgage debt, and yet be a debt collectible from the mortgagor. Certainly there is nothing in the evidence that shows such a situation. If we assume such a situation to exist, the answer is that complainant insured defendant only with relation to its mortgage debt. Complainant is not concerned with any other debt.

Secondly (as will be more fully developed under Point II, *infra*), the assignment gives complainant an interest in the mortgage. If the repairs were made before the assignment, then defendant, for a consideration of $3,050.16, gave complainant an interest to that amount in the mortgage, covenanting that there was due on the mortgage $15,020 with interest, knowing that it had a free debt of $2,800 against Raimondi, which was not part of the mortgage. It is not claimed that the assignment was executed by fraud, mistake or duress. Then why should defendant be permitted to destroy complainant's rights under the contract embodied in the assignment?

On the other hand, if, as the record shows, the repairs were made after the assignment (Ans., par. 7, S. C., p. 11; S. C., p. 27, l. 15; S. C., p. 41,

ll. 1-10), defendant and complainant were then co-owners of the mortgage. The repairs were made without complainant's knowledge or consent. Assuming that one co-owner may make repairs without his co-owner's knowledge or consent, he may only do so under stress of unavoidable necessity. When complainant received the assignment, the mortgage was then in default (S. C., p. 64, ll. 20-30; S. C., p. 71, l. 10; S. C., p. 61, ll. 1-12). Defendant might have foreclosed. Instead, it repaired the premises. If the repairs were not such as were unavoidably necessary, such as could be added to the mortgage debt, defendant had no right to charge them against complainant, its co-mortgagee—much less to appropriate complainant's interest in the mortgage to pay for the repairs. What is necessary depends on the nature of the property. In the case of a mortgage, a co-mortgagee could not be justified in repairing the security at his co-owner's expense and without his permission unless the situation were one in which the cost could be added to the debt. Therefore, if the cost of the repairs was not a part of the mortgage debt, defendant had no right to make them, and it certainly has no right to reimburse itself by appropriating complainant's interest. If, on the other hand, the repairs were properly made, their cost was properly a part of the mortgage debt, and should have been paid before the mortgage was cancelled.

Defendant brought in the defense of repairs by way of mitigation. It failed to show under what circumstances the repairs were made. The Court below gave it the benefit of the doubt and assumed the repairs were properly made. If, as defendant now seems to urge, they were not properly made, then it is no mitigation that they were made at all, and we are not concerned with them here.

POINT II.

By the assignment and under the policy, complainant had an interest in the mortgage for the destruction of which defendant is liable to complainant.

Under Point II of its brief defendant contends that complainant's rights should be confined to a judgment that was recovered by defendant against Raimondi three months after the entry of the final decree in this cause. The existence of a claim of the defendant against Raimondi was not presented to the Court below, nor is there anything in the "Addendum" to the State of Case printed by defendant which deals with this judgment or with the proceedings in which it was obtained. Complainant knows nothing of it other than what is stated in defendant's brief. There is nothing to show what issues were involved in that case or what relation the judgment has to the mortgage involved in this case. This is therefore an effort to obtain a reversal of the decree upon a ground and upon evidence which was not presented to the Court below and which is not disclosed even here.

In the event that this Court should, however, decide to consider the matters now mentioned for the first time, complainant wishes to present its argument on the merits of Point II of defendant's brief.

Defendant on May 10, 1926, executed to complainant an assignment of a $3,050.16 interest "in a certain mortgage made by Allen Raimondi, given to secure the payment of Sixteen Thousand Dollars ($16,000) and interest, dated the 25th day of March, 1925, and recorded on the 31st day of March, 1925, in the office of the Register" etc., by which assignment defendant expressly agreed to

pay complainant its share of the mortgage if, as and when collected. It was further agreed by the assignment that if foreclosure became necessary, complainant and defendant were to share proportionately in the proceeds (Ex. C-2, S. C., p. 69).

Defendant now urges upon this Court that this assignment should not be considered as an assignment of an interest in the mortgage, but as an assignment of the judgment which defendant recovered against Raimondi five years later, and about which complainant even today knows nothing. Defendant argues (Brief, p. 12): "It is to this judgment that the insurance company by the assignment became subrogated; that alone could have been reasonable intention and equity must look beyond the mere form." No authorities are cited for this novel proposition, and it is respectfully submitted that it is untenable.

First, no reason is given why the express terms of the assignment should be disregarded. Neither below nor here does defendant argue that the assignment does not correctly set forth the contract between the parties, or that it was procured by fraud or duress. The assignment is an unambiguous contract for which complainant paid $3,050.16. Is there any reason why its plain, unambiguous terms should not be enforced? Certainly no rule of public policy prevented the parties from entering into this contract. As the Court of Errors and Appeals said in *Fire Association* v. *Schellenger,* 84 N. J. Eq. 464, 465, in an analagous situation:

> "Whatever may be the extent of the right of subrogation residing in an indemnitor, under such a state of facts as the present case exhibits, in the absence of any agreement upon the subject between the indemnitor and the indemnitee, we see no reason for denying the power of the parties to curtail, or even to destroy it, by mutual consent, if they see fit to do so. An agreement to that end

> runs counter to no provision of the written law, and is not opposed to any public policy of the state. The right of subrogation is a mere personal one, conferred solely for the benefit of individuals; and a right of this character may always be waived by the party in whom it resides."

Secondly, even if we do look behind this assignment, as defendant requests this Court to do, we find that by the express terms of the policy complainant's right of subrogation was not limited to whatever defendant chose to give it, but extended to all the rights of the defendant. The policy provided (S. C., p. 10, ll. 15-32):

> "Whenever this Company shall pay the mortgagee (or Trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt * * *".

The express terms of the policy, as well as the express terms of the assignment, therefore disprove defendant's contention that complainant's rights are confined to the judgment against Raimondi.

It has been repeatedly held in New Jersey that the insurer who insures a mortgagee interest is entitled to the mortgage by way of subrogation; *Hare* v. *Headley,* 54 N. J. Eq. 545; *Ordway* v. *Chace,* 57 N. J. Eq. 478; *Palmer* v. *Niagara Fire Insurance Co.,* 87 N. J. Eq. 347; *Niagara Fire Insurance Co.* v. *Fitzimmons,* 101 N. J. Eq. 437, 439; *Security Building and Loan Association* v. *Grande,* 102 N. J. Eq. 320. In *Security Building and Loan Association* v. *Grande,* the Court held:

"The insurance company's contract of immunity to the mortgagee from meritorious defenses it may have against the owner is purely personal to the mortgagee, and conditional that the mortgage debt be assigned upon payment of the policy. 'The standard mortgagee clause creates an independent contract of insurance for the separate benefit of the mortgagee and grafted on the main contract of insurance contained in the policy itself and to be rendered certain and to be understood by reference to the policy.' *Reed* v. *Firemen's Insurance Co.*, 81 N. J. Law 523. * * * The contract of the insurance company is not that the payment of the loss shall be in discharge of the mortgage, but that the payment shall be the consideration for an assignment of the debt.

The contract with the mortgagee does not, and never can, inure to the benefit of the owner. If and when the insurance company discharges its obligation to the mortgagee, claiming that it owes no duty to the owner, then it will step into the shoes of the mortgagee by way of subrogation or assignment."

The Court of Errors and Appeals has gone further, and has held that even without an express stipulation, the insurer is entitled to be subrogated to all of the creditor's rights. In *The Sussex County Mutual Insurance Co.* v. *Woodruff*, 26 N. J. L. 541, a situation almost identical with the case at bar was before the Court. As the Court said (p. 554):

"The counsel for the plaintiffs in error contended that the assured had a lien upon the 'Forge property' for the purchase money, which was $3500; that the insurance was to protect the assured from loss in a debt which Ryerson owed the assured; that the purchase money of the 'Forge property' was owing from Ryerson to the assured, and constituted part of the debt which was protected by the insurance; or, in other words, if this insur-

> ance had not been effected, the lien which the defendant in error had upon the 'Forge property' for the purchase money, he would have had a right to use as an indemnity against this loss by fire. Assuming this to be so, counsel contend that as the assured conveyed the 'Forge property' to Space, the company are entitled to have credited on the amount of the loss by the fire the value of the 'Forge property'."

The Court approved this contention and set down the principles governing subrogation in detail and at length, despite the fact that it could not apply those principles in the case then before it. The opinion of the Court on this point (pp. 555-559) is too long to quote here in its entirety. In part it said:

> "The principle is certainly well established, that the insurer is entitled to be subrogated to all the rights and remedies of the assured to obtain compensation for his loss from other persons. It is thus stated by the Chancellor, who delivered the opinion of the court in the case of the Etna Fire Ins. Co. *v.* Tyler, 16 Wend. 385, 397. 'The principle of equitable subrogation or substitution of the underwriters in the place of the assured, is recognized by every writer on the subject of insurance, and is constantly acted upon in courts of law, as well as in equity; so that when the assured has any claim to indemnity for his loss against a third person, who is primarily liable for the same, if the assured discharges such third person from his liability before the payment of the loss by the underwriters, he discharges his claim against them for such loss *pro tanto*. Or, if he obtains payment from such third person afterwards, it is in the nature of salvage, which he holds as trustee for the underwriters, who had paid his loss.' It is certainly true, upon these principles, that if the defendant in error had a lien upon the 'Forge property' for the

purchase money, whatever he could have realized out of that lien would have reduced the debt *pro tanto* which Ryerson owed him. It was that debt which was insured, and not the assured's estate in any particular property. Angell on Life and Fire Ins., Sec. 59. That lien, therefore, was on a claim which he could enforce to indemnify himself for the loss which he had sustained by the fire. Upon the principle that the insurer is entitled to every claim to indemnity, for the loss, which the assured has against a third person who is primarily liable for the same, if the defendant in error had a lien for the purchase money upon the 'Forge property', the plaintiffs in error are entitled to the benefit of that lien as it existed in the hands of the assured at the time the loss occurred. When this suit was commenced, the first of June, 1854, the accounts between Dr. Woodruff and Ryerson, according to the statement furnished by the former on the trial, show the balance of the debt due from Ryerson was $4,457.24. He had not then given a deed for the 'Forge property', the title still remained in him. If he retained a lien on the property for the purchase money, and could have realized out of it $3500, the full amount, deducting that from the debt due him as stated above, it would have left a balance of $957.24 due from Ryerson to Dr. Woodruff. It was this debt that was insured. If Woodruff had a right to enforce his lien for the purchase money, and thus reduce the debt which was insured, to that right the company, upon payment of the loss, was entitled to be subrogated. Whatever other securities Woodruff had in his hands, which in law or equity he could appropriate as an indemnity for his loss, the benefit of such securities, upon the company's paying the loss, enured to them."

It is therefore triply certain that complainant's rights extend to the mortgage, for the assignment so provides, the policy so provides, and the cases so hold.

If it be argued by defendant that admitting complainant's rights in the mortgage, complainant was not injured by the surrender of the security since defendant will now give it the benefit of this judgment against Raimondi, the answers are as numerous as they are sufficient. First, by the assignment and the policy complainant was given an interest in the mortgage, and cannot be called upon now to take something else. Secondly, the alleged claim against Raimondi was not presented to the Court below where its validity and its relation to this suit could be examined. Thirdly, there is nothing before this Court to show upon what cause of action that judgment was recovered, or what relation the judgment has to this mortgage. Fourthly, it is not disputed that the mortgage was worth enough to satisfy defendant's and complainant's claim, but there is nothing to show the value of the judgment. Fifthly, complainant had a property right in the mortgage and the right to have it enforced for its reimbursement, which right defendant destroyed.

It is admitted that when defendant cancelled the mortgage, complainant's rights in the mortgaged premises were completely destroyed (Brief, p. 8, ll. 11-23). Under these circumstances, the cases (including those cited by defendant) uniformly hold that defendant is liable to complainant for the value of the interest destroyed. *Sussex County Mutual Insurance Co.* v. *Woodruff,* 26 N. J. L. 541; *Monmouth City Fire Insurance Co.* v. *Hutchinson,* 21 N. J. Eq. 106; *Fire Association* v. *Schellinger,* 83 N. J. Eq. 144 (reversed on other grounds, 84 N. J. Eq. 464).

Defendant relies on *Fire Association* v. *Wells,* 84 N. J. Eq. 484, and *Camden Fire Insurance Company* v. *Prezioso,* 93 N. J. Eq. 318. Those cases hold that where an insured gives a tort feasor a release under circumstances which per-

mit the insurer to proceed against the tort feasor notwithstanding the release, then the insurer has not been prejudiced and may not sue the insured. These cases are not in point here, since in the case at bar defendant admits that complainant's rights in the land are completely barred (Brief, p. 8, ll. 11-23). But, defendant argues, we may have the judgment against Raimondi. That argument has already been answered.

The last point in defendant's brief is that the insured is not liable to the insurer unless the total received from the insurer, the tort feasor and from the securities in his hands, exceeds his loss. That rule does not touch cases of this class. This case is governed by another principle, which is that the insurer is entitled to be subrogated to all the securities held by the insured, and if he bars the insurer's recourse to any of them, the insurer is *pro tanto* discharged. *Sussex County Mutual Insurance Company* vs. *Woodruff*, 26 N. J. L. 541; *Monmouth City Fire Insurance Co.* v. *Hutchinson*, 21 N. J. Eq. 107; *Fire Association* v. *Schellinger*, 83 N. J. Eq. 144. A further answer is that here defendant received its mortgage debt of $16,000 and the insurance also. That it thereafter spent $2,800, which it failed to get back, cannot affect the rights of complainant.

It is therefore respectfully submitted that the final decree of the Court of Chancery should be affirmed.

Respectfully submitted,

ARTHUR T. VANDERBILT,
Solicitor and Counsel
for Complainant-Respondent.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

American Eagle Fire Ins. Co., a corporation, *Complainant-Appellee,* *vs.* Grant Building & Loan Association, a corporation, *Defendant-Appellant.*	*On Bill, etc.* *On Appeal from the Court of Chancery.*

REPLY BRIEF OF DEFENDANT-APPELLANT.

1. With regard to the papers in the addendum to the State of Case, which are proof of the fact that at the time the mortgage was cancelled of record by the Association, the property was not then owned by the original mortgagor, Raimondi, they are offered not to controvert or qualify a finding of the trial court, but, rather, on the contrary, to furnish record proof of a fact known to both parties on trial, uncontradicted by the complainant-appellee, and stated by the Vice-Chancellor in his opinion. The fact is alleged in paragraph 9 of the Amended Answer (S. C., p. 12, l. 20), was discussed during the hearing (p. 44, l. 8), and stated by the Vice-Chancellor (p. 19, l. 14). "At that time," he said, "$15,020 was due on the mortgage, *which was reduced by subsequent owners,* to $12,-659.20" (italics supplied).

The subsequent assignments of the mortgage or conveyances of the property in question were not established by record proof at trial, for the reason that the theory of the trial as understood by the parties did not involve a consideration

of this phase of the case; while the decree of the Court of Chancery, as evidenced by the opinion of the Vice-Chancellor is founded primarily on the proposition that the doctrine of tacking is applicable to a situation such as subsists in the case *sub judice.* The contention of the appellant is that the principle of tacking has no application or relevance *where the property was not owned by the original mortgagor at the time of the cancellation of the mortgage,* and for this reason offers the recorded deeds or assignments in evidence, to be incorporated as part of, or addendum to, the State of Case.

That it is within the province of this venerable Court to take cognizance of these documents appears indubitably from a consideration of the Rules of the Court of Errors and Appeals and reported cases.

Rule 19 of this court states that "The appellant or plaintiff-in-error shall provide a State of Case, which shall contain, in appeals, the pleadings, proofs and order or decree in Chancery, with the petition of appeal and answer thereto, or, in error, the record and bills of exceptions, with the assignments of errors and joinder in error, the reasons given in the court below for the decree, order or judgment complained of, *and any other documents proper to be considered in this court.*" It is submitted that the blanket class—"any other documents"—is such as should and does include the documents offered.

In *Hess* v. *Conway,* 144 Pac. 205; affirmed, *Holmes* v. *Conway,* 241 U. S. 624, it was held that, independently of statute, the appellate tribunal may avail itself of authentic evidence outside the record.

In *Brown* v. *Warden,* 44 N. J. Law 177, this Court held that it will, in a proper case, allow proceedings to be taken after argument to supplement the record sent up from the inferior court. *Vide,* also *Matthews* v. *Booye,* 58 N. J. Law 593; *State* v. *Levin,* 92 N. J. Law 552, 564. In the former case the Court said that the proper course is for the party desiring to amend the record, "if there be any necessity for further action in the court below," to allege diminution of the record and sue out a *certiorari.* In the case *sub judice,* this procedure is unnecessary for the reason that there is no necessity for further action in the court below—the documents offered are record evidence and incontrovertible. The Court further said: "Whether this course shall be pursued is within the discretion of the Court, in error, upon the circumstances of the particular case." The matter, therefore, is not governed by a procedural statute, the Court having latitude to dispose of it as it may deem reasonable or appropriate in the exercise of its discretion.

The validity of this view is borne out also by the case of *Delaware, Lackawanna & Western R. R. Co.* v. *Toffey,* 38 N. J. L. 526, in which this Court in its opinion said: "That in the case last cited, the amendment was considered within the power of the court, independently of the common law procedural act of 1852, is apparent from the opinion of the judges."

2. Counsel for complainant-appellee contend that this Court cannot take cognizance of the judgment entered in the case of *Raimondi* v. *Grant B. & L. Ass'n,* decided in the Essex Circuit Court on July 17, 1931, for the reason that "there is nothing before this court to show upon

what cause of action that *judgment* was recovered, or what relation the judgment has to this mortgage" (their Brief, p. 16). They seem to have misconceived our point; which is this: that the burden of loss should be borne exclusively by the tort feasor Raimondi; that the mortgagee had a *claim* against him for the damage done to the property by his arson, and that to this *claim or chose* the insurer was subrogated. *Monmouth City Fire Ins. Co.* v. *Hutchinson,* 21 N. J. Eq. 107, and other cases cited in our Brief (p. 13). The fact that this claim has been reduced to final judgment is hardly a detriment to the insurer; so the argument of counsel for complainant-appellee on this point seems altogether tangential or irrelevant, a turning from what is fundamental to what is distant and relative.

3. On page 8 of their Brief, counsel for complainant-appellee cite the cases of *Clark* v. *Smith,* 1 N. J. Eq. 121, and *Seacoast Real Estate Co.* v. *American Timber Co.,* 89 N. J. Eq. 293, as authorities for the proposition that the mortgagee may add the cost of necessary repairs to the mortgage debt. It need only be said that these cases involved repairs made by a mortgagee in possession, and the question whether or not their cost is chargeable to the mortgage debt arose in foreclosure suits wherein one of the parties in each case was *the original mortgagor.* The numerous authorities cited in our moving brief make it clear that such a situation is governed by rules other than those that must control the facts of the case *sub judice.*

4. Counsel for complainant-appellee seem to raise the question of whether or not the Association had the right to make the repairs. That it

had such a right will appear by advertence to the following cases: *Coggill* v. *Millburn Land Co.,* 25 N. J. Eq. 87; *Jackson* v. *Turrell,* 39 N. J. L. 329; *Tate* v. *Field,* 56 N. J. Eq. 35; *Peiffer* v. *Bates,* 45 N. J. Eq. 325; *Gordon* v. *Ware Savings Bank,* 115 Mass. 591; *Naquin* v. *Texas Savings, etc. Co.,* 95 Texas 213; 58 L. R. A. (N. S.) 711.

5. Counsel for complainant-appellee refer repeatedly to the assignment. With reference thereto we shall quote from the Vice-Chancellor's opinion (S. C., p. 19, ll. 7-13). He said:

"The assignment was not recorded. The instrument is, in effect, a declaration in writing of the insurance company's rights by operation of law; the apparent outright assignment of an undivided interest being modified by the recitals *which limited it to the right of subrogation;* and that is admitted by the pleadings."

Furthermore, the policy calls for *subrogation* and not *assignment* except only when the carrier choose to pay off the entire debt secured by the mortgage (S. C., p. 10, ll. 10-32). If by the assignment the carrier intended to get a greater right than the policy reserved to it, there was no consideration given for such a benefit. Counsel's argument on page 11 of their Brief, that "there is no reason why the express terms of the assignment should be disregarded," does not, therefore, stand unchallenged. The citation of *Fire Association* v. *Schellinger,* 84 N. J. Eq. 464, is not in point, for the reason that the case stands for the proposition that the *insurer* by its acts may waive the right of subrogation. It does not stand for the proposition that after the occurrence of the loss the insurer may withhold indemnity unless and until the insured in-

crease the insurer's rights beyond those contemplated and bargained for originally.

Respectfully submitted,

KALISCH & KALISCH.

HARRY KALISCH,
Of Counsel.

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