

INDEX

	Page
Bill to Foreclose.....	1
Answer	7

TESTIMONY.

FOR PLAINTIFF:

D. EUGENE BLANKENHORN:

Direct	9
--------------	---

H. H. HORSTMAN:

Direct	13
Cross	14

J. KUTCHER:

Direct	15-29
Cross	16
Re-Direct	17
Re-Cross	17

FOR DEFENDANTS:

E. KOYEN:

Direct	18
Cross	20

A. LYON:

Direct	21
Cross	25

C. M. MACWILLIAMS:	
Direct	27
S. F. SOGOMYI:	
Direct	28
Cross	28
H. AFFLERBACH:	
Direct	30
Cross	30
Re-Direct	32
Re-Cross	32
Complainant's Exhibit C 2.....	33
Complainant's Exhibit C 1.....	34
Complainant's Exhibit C 3.....	38
Complainant's Exhibit C 4.....	45
Complainant's Exhibit C 5.....	45
Complainant's Exhibit C 6.....	43
Complainant's Exhibit C 7.....	44
Defendants' Exhibit D 1.....	45
Defendants' Exhibit D 2.....	49
Defendants' Exhibit D 3.....	52
Defendants' Exhibit D 4.....	55
Defendants' Exhibit D 5.....	61
Defendants' Exhibit D 5a.....	63
Defendants' Exhibit D 6.....	69
Defendants' Exhibit D 7.....	70
Defendants' Exhibit D 8.....	73
Defendants' Exhibit D 9.....	79
Defendants' Exhibits D 10 and 11.....	83
Opinion	85
Decree	92
Notice of Appeal.....	96
Petition of Appeal.....	97
Answer to Petition of Appeal.....	100

BILL TO FORECLOSE

(Filed September 6, 1917)

IN CHANCERY OF NEW JERSEY

To the Honorable EDWIN ROBERT WALKER, 10
Chancellor of the State of New Jersey.

The complainant, the Lembeck and Betz Eagle Brewing Company, a corporation of the State of New Jersey, respectfully shows that:

1. On March 11, 1908, the defendants, Mike Barbi and Lizzie Barbi, his wife, were the owners in fee simple of the following described lands:

ALL of Lot 8 in Block 324 N, on a map of 170 lots owned by Emil Koyan and Iver C. Ostergaard in the City of Perth Amboy, County of Middlesex and State of New Jersey, surveyed May, 1907, by Mason & Smith, and filed for record in the office of the Clerk of Middlesex County and State of New Jersey, 20

BEING ALL that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Perth Amboy, County of Middlesex and State of New Jersey, BEGINNING at a point in the Northwesterly corner formed by the intersection of Lawrence Street and Pine Street, thence running (1) West- 30
erly along the Northwesterly line of said Lawrence Street, twenty-five feet; thence (2) at right angles to Lawrence Street and parallel with Pine Street, eighty-five and seventy-five hundredths feet; thence (3) Easterly, parallel with Lawrence Street, twenty-five feet; thence (4) Southerly, parallel with Pine Street to the point or place of beginning.

Bounded on the South by Lawrence Street, East 40

Bill to Foreclose

by Pine Street, on the North by Lot No. 9 and on the West by Lot No. 7.

10 2. Said lands were conveyed to the defendants, Mike Barbi and Lizzie Barbi, his wife, by Emil Koyen and Marie, his wife, Iver C. Ostergaard and Elsie, his wife, by deed dated March 11, 1908, recorded in the Monmouth County Clerk's Office in Book 412 of Deeds, page 560. Said defendants were described in said deed of conveyance as Michael Borbely and Elizabeth Borbely, his wife; but said lands were in fact conveyed and intended to be conveyed to the defendants, Mike Barbi and Lizzie Barbi.

20 3. On June 15, 1908, said defendants, Mike Barbi and Lizzie Barbi, his wife, mortgaged said lands to the Citizens Building & Loan Association, a corporation of New Jersey, to secure the payment of \$800. Said mortgage is recorded in the Middlesex County Clerk's Office in Book 208 of Mortgages, page 532. The defendant, Mike Barbi, signed said mortgage with the name, "Mizk Borbely," and the defendant, Lizzie Barbi, signed said mortgage with the name, "Lizr Borbi." Said defendants were described in said Mortgage as Michael Bornely and Elizabeth Borbely.

30 4. On August 5, 1908, said defendants, Mike Barbi and Lizzie Barbi, his wife, mortgaged said lands to the said Citizens Building & Loan Association, a corporation of New Jersey, to secure the payment of \$300. Said mortgage is recorded in the Middlesex County Clerk's Office in Book 209 of Mortgages, page 510. The defendant, Mike Barbi, signed said mortgage with the name, "Mezk Borbily," and the defendant, Lizi Barbi, signed said mortgage with the name, "Lizi Borbi." Said defendants are described in said mortgage as
40 Michael Borbely and Elizabeth Borbely.

Bill to Foreclose

5. On May 11, 1910, said defendants, Mike Barbi and Lizzie Barbi, his wife, being indebted to complainant in the sum of \$800, executed to complainant a bond of that date to secure that sum, payable on demand with interest at the rate of 5 per cent per annum, payable semi-annually.

10

6. To secure payment of the bond, said defendants executed to complainant a mortgage of even date with the bond and thereby conveyed to complainant, in fee, the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond, which mortgage, having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon, was recorded in the office of the Clerk of Middlesex County in Book 228 of Mortgages, page 587.

20

7. The mortgaged premises are described as follows:

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

BEGINNING at the intersection of the Westerly line of Pine Street with the Northerly line of Lawrence Street; thence running Northerly along the Westerly line of Pine Street one hundred (100) feet; thence running Westerly and parallel with Lawrence Street, twenty-five feet; thence running Southerly, parallel with Pine Street, one hundred feet to the Northerly line of Lawrence street; thence running Easterly along the Northerly line of Lawrence Street, twenty-five feet to the point or place of beginning.

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8. The premises described in Paragraph 7 contain all of the premises described in Paragraph 1.

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Bill to Foreclose

10 9. The bond contained an agreement that if the mortgagors should pay the complainant on demand, \$800, together with interest thereon at 5 per cent per annum, payable semi-annually, without any fraud or other delay, then the obligation should be void, or else to be and remain in full force and effect; and the mortgage contained an agreement that if any installment of interest should remain unpaid for 30 days after the same should fall due, then the whole principal sum, or any unpaid residue thereof, with any unpaid interest, should, at the option of the mortgagee, its representatives or assigns, become immediately due.

20 10. On October 22, 1912, said defendants, Mike Barbi and Lizzie Barbi, his wife, mortgaged the lands described in Paragraph 1, together with other lands, to the said Citizens Building & Loan Association to secure the payment of \$1,800 with interest, which mortgage was recorded in the Middlesex County Clerk's Office in Book 258 of Mortgages, page 301. Any interest which the Citizens Building & Loan Association has in said lands is subject to the lien of complainant's mortgage. Said defendants, Mike Barbi and Lizzie
30 Barbi, are described in said mortgage, as Michael Borbely and Elizabeth Borbely, his wife.

11. At all of the times hereinbefore mentioned, the said defendants, or one of them, have always been in possession of the mortgaged premises and have been receiving the rents, issues and profits thereof.

40 12. At all of the times hereinbefore mentioned, the defendants, Mike Barbi and Lizzie Barbi, have been in possession of the mortgaged premises and have been known by the names of Mike Barbi and

Bill to Foreclose

Lizzie Barbi, respectively, and have transacted business upon said premises in said names.

13. The defendant, the Citizens Building & Loan Association, has notice that the said defendants, Mike Barbi and Lizzie Barbi, were known sometimes by said names and sometimes by the names of Michael Borbely and Elizabeth Borbely, respectively. 10

14. \$206.15 has been paid on account of the principal of complainant's mortgage, leaving a balance thereof, unpaid, amounting to \$593.85.

15. On November 11, 1916, six months interest became due and payable on complainant's mortgage, and the same has remained unpaid and in arrears for thirty days and more.

16. Complainant elects that the whole of the principal sum of said mortgage now remaining unpaid, together with the interest thereon from May 11, 1916, be immediately due and payable. 20

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

1. That Mike Barbi, also known as Michael Borbely, and Lizzie Barbi, his wife, also known as Elizabeth Borbely and the Citizens Building & Loan Association, a corporation of New Jersey, who are defendants to this suit, may answer this bill without oath, and each statement therein made: 30

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

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interest and costs, by a short day to be appointed by this Court; and that in default of such payment, they and each of them, be debarred and foreclosed of all equity of redemption in said lands; or 40

Bill to Foreclose

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on its mortgage with interest and costs;

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

D. EUGENE BLANKENHORN,

Solicitor for and of Counsel with Complainant

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ANSWER

(Filed1917)

IN CHANCERY OF NEW JERSEY

Between	}	On Bill, &c.	10
LEMBECK & BETZ EAGLE BREWING COMPANY, a Corporation, <i>Complainant,</i>			
and	}	Answer.	20
MIKE BARBI, also known as MICHAEL BORBELY, and LIZZIE BARBI, also known as ELIZA- BETH BORBELY, his wife, and the CITIZENS BUILDING & LOAN ASSOCIATION, a corporation of New Jersey,			
<i>Defendants.</i>			

The answer of Citizens Building & Loan Association, a corporation of New Jersey, whose office is at No. 100-A Smith Street, in the City of Perth Amboy, in the County of Middlesex, one of the defendants in the above entitled cause.

This defendant answering the bill of complaint says that:

1. It admits the ownership by the defendants of the lands described in paragraph one of said bill of complaint, and the conveyance to them thereof as alleged in the second paragraph thereof; but says that the names of the said defendants were Michael Borbely and Elizabeth Borbely and not Mike Barbi and Lizzie Barbi as therein alleged. 30

2. It admits the making of the mortgages to this defendant as alleged in paragraphs three and four of said bill of complaint; and says that the said defendants were properly described therein as Michael Borbely and Elizabeth Borbely. 40

Answer

3. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraphs five, six, seven, eight and nine of said bill.

10 4. This defendant admits the making of the mortgage to it as described in paragraph ten of said bill; and says that the said defendants were therein properly described as Michael Borbely and Elizabeth Borbely.

5. This defendant denies the statements contained in paragraphs twelve and thirteen of said bill.

20 6. This defendant has no knowledge or information sufficient to form a belief as to the statements contained in paragraphs fourteen and fifteen of said bill.

7. This defendant had no knowledge prior to the making of said mortgage to it of \$1800.00 as described in paragraph ten of said complaint that the said defendants were known by the name of Mike Barbi and Lizzie Barbi, but believed, and now believes, that the proper names of the said defendants were Michael Borbely and Elizabeth Borbely, and that the names of Mike Barbi and Lizzie Barbi were not the proper and correct names of said defendants.

30 8. That at the time of making of the said bond and mortgage to the said complainant set forth in paragraphs five and six of said bill the said complainant well knew that the title to the said premises was held by the said defendants in their names as Michael Borbely and Elizabeth Borbely, and that they were known, if not entirely, yet partly by the said names.

40 9. That the mortgage so given by the said defendants Michael Borbely and Elizabeth Borbely to this defendant as set forth in paragraph ten of

Answer

said bill of complaint was given to secure money advanced by this defendant to pay the amount due on said mortgages described in paragraphs three and four of said bill, which amounted at the time of payment to the sum of \$876.58, and also to pay for the erection of the building on said premises to the extent of about \$892.87. 10

ADRIAN LYON,

Solicitor of defendant, Citizens
Building & Loan Association.

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TESTIMONY

IN CHANCERY OF NEW JERSEY

Between

LEMBECK & BETZ EAGLE BREWING
COMPANY, a Corporation,
Complainant,

10

and

MIKE BARBI, also known as
MICHAEL BORBELY, and LIZZIE
BARBI, also known as ELIZA-
BETH BORBELY, his wife, and
THE CITIZEN'S BUILDING AND
LOAN ASSOCIATION, a corpora-
tion of New Jersey,
Defendants.

} On Bill, &c.
Testimony.

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Transcript of testimony taken in the above-en-
titled cause, at the Chancery Chambers, Jersey
City, New Jersey, on the sixth day of June, 1918,
before HON. VIVIAN M. LEWIS, Vice-Chancellor.

Appearances:

D. EUGENE BLANKENHORN, Esq., for the Com-
plainant;

ADRIAN LYON, Esq., for the defendant, The
Citizens' Building and Loan Association.

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MR. BLANKENHORN: No one appearing
for the other defendants, there is a decree
pro confesso against the other defendants.

MR. BLANKENHORN: The point to be de-
cided is, whether the mortgage given to
Lembeck and Betz Eagle Brewing Com-
pany, having been recorded prior to the
\$1800.00 mortgage given to the Citizens
Building and Loan Association—the mort-
gage to the Lembeck and Betz Eagle Brew-
ing Company having been indexed and re-
corded under the name of Mike Barbi and
Elizabeth Barbi, and the conveyance of the

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D. E. Blankenhorn—Direct

land mortgaged having been made to these parties as Michael Borbely and Elizabeth Borbely, his wife, the question is, whether that mortgage is prior to the mortgage of The Citizens' Building and Loan Association. There are four mortgages. This is a foreclosure case. It is a question of personal priority as between the two mortgages. 10

I offer in evidence a mortgage dated May 11, 1910, made by Mike Barbi and Lizzie Barbi, his wife, to the Lembeck and Betz Eagle Brewing Company to secure the sum of \$800.00, acknowledged May 11, 1910, before Hyman Freedman, a Commissioner of Deeds of New Jersey, recorded in the Clerk's Office of Middlesex County on May 13, 1910, in Book 228 of Mortgages, page 587. That is the mortgage under foreclosure. 20

Marked "Exhibit C 1."

I offer in evidence bond accompanying the mortgage just offered, made by Mike Barbi and Lizzie Barbi, his wife, to the Lembeck and Betz Eagle Brewing Company to secure the payment of \$800.00 on demand, with interest at 5 per cent payable semi-annually.

Marked "Exhibit C 2."

D. EUGENE BLANKENHORN, being duly sworn, testified as follows: 30

I searched the title of the premises covered by the mortgage which has just been offered in evidence, and I have made from my notes of that search an abstract which I have here and which I offer in evidence.

Marked "Exhibit C 3."

I caused the records of the Clerk of the New Jersey Supreme Court to be searched for judg- 40

D. E. Blankenhorn—Direct

ments and other liens against Mike Barbi and Lizzie Barbi, his wife, and I have received this certificate of the search.

Marked "Exhibit C 4."

- 10 I caused to be searched the records of the Clerk of the District Court of the United States for the District of New Jersey against Mike Barbi and Lizzie Barbi, his wife, and I have received the certificate of that clerk, which I offer in evidence.

Marked "Exhibit C 5."

- 20 All of the searches which I have mentioned were necessary for the proper foreclosure of the mortgage, and I have made a calculation of the number of books and the number of years for judgments and for liens searched in the office of the Middlesex County Clerk, and I find that the cost of making that search was \$28.76. The cost of making the New Jersey Supreme Court search was \$2.07, and of the United States District Court search \$1.40, making a total of \$32.23. I offer that calculation.

Marked "Exhibit C 6."

- 30 Before filing the bill in this cause I went to Perth Amboy for the purpose of finding out the correct address of the defendants, who were known to the complainant as Mike Barbi and Lizzie Barbi, and I went to the premises which are described in the complainants mortgage, and I found them to be occupied by a man whose name I did not get, but he directed me to go about two blocks away where I would find the daughter and son-in-law. I found the daughter and the son-in-law, who were
40 named William Ur. I did not get the daugh-

D. E. Blankenhorn—Direct

H. H. Horstman—Direct

ter's name, but she told me that Mike Barbi was her father.

MR. LYONS: I don't like to object to counsel's testimony on this.

THE COURT: It is objectionable. The objection will be sustained. 10

THE WITNESS: Then I guess that is all.

MR. HERMAN HORSTMAN, sworn in behalf of the complainant, testified as follows:

DIRECT EXAMINATION BY MR. BLANKENHORN:

Q. Are you an officer of the Lembeck and Betz Eagle Brewing Company? A. Yes, sir.

Q. What officer? A. Secretary.

Q. Do you know how much is due on this mortgage? A. Yes, sir. 20

Q. How much is due for principal? A. \$593.85.

Q. How much interest is due? A. From May 11th to date would be \$61.52; and \$5.00 was paid on that, so that would leave it \$62.52—net \$56.52; that would be the net amount.

Q. Has any of that been paid? A. No, sir.

Q. Was this man Barbi a customer of Lembeck and Betz? A. Yes, sir.

Q. By what name was he known to them?

MR. LYON: I object; that involves a personal communication—what somebody might have told him their names were is not competent, I submit. 30

THE COURT: It is not the best evidence. I will sustain the objection.

MR. BLANKENHORN: If he knows them by that name, and they are known to other people by that name, then it is admissible to show this man was known generally by that name.

MR. LYON: That is a conclusion of law whether he is known or not; what are the facts about it? 40

Q. How did the mortgage come to be made out

H. H. Horstman—Direct—Cross

as Barbi? A. That I could not say; I did not make it out.

Q. Have you got an account with Barbi on your books? A. Yes, sir, Michael Barbi—that is the account.

10 MR. BLANKENHORN: I offer that in evidence.

BY THE COURT:

Q. Who made out the mortgage? A. I don't know.

MR. BLANKENHORN: It was acknowledged before Hyman Friedman, who is associated with Mr. Joseph Stricker, in Perth Amboy. The mortgage, which is subsequent to ours, rests on more property than ours does, but it includes our property.

20 There is no controversy between us as to the identity of the persons making all of the mortgages mentioned in this case.

MR. LYON: I have stated in my answer that I don't know, that I have no information on which to base a belief.

THE COURT: I don't see how the defendants can admit anything.

MR. LYON: In the third paragraph of the answer we say: "This defendant has no knowledge or information sufficient to form a belief as to the statement in paragraphs 5, 6, 7, 8 and 9 of said bill" (reading).

30 Q. Did you ever see Michael Barbi? A. Not that I remember.

MR. BLANKENHORN: I think this is the ledger sheet. I offer this.

MR. LYON: I object to the offering of that sheet as far as it being evidence to show the correct name of this man.

Marked "Exhibit C 7."

CROSS-EXAMINATION BY MR. LYON:

40 Q. You don't know how the name Michael Barbi came to be put on your books—you had no account

H. H. Horstman—Cross
J. Kutcher—Direct

on your books previous to the taking of the mortgage? A. No, sir.

BY THE COURT:

Q. Did you enter the name on the books? A. No, sir. It was our bookkeeper. 10

BY MR. BLANKENHORN:

Q. Is the bookkeeper alive? A. Yes, sir.

FURTHER CROSS:

Q. This is part of a loose leaf ledger sheet? A. Yes, sir.

Q. This is spelled "Michael Babia?" A. Yes, sir.

Q. Then it is not Mike Barbi at all? A. I don't know how the other is spelled. 20

JOHN KUTCHER, sworn in behalf of the complainant, testified as follows:

DIRECT EXAMINATION BY MR. BLANKENHORN:

Q. What is your business? A. I am delivering for the Lembeck and Betz Eagle Brewing Company.

Q. Whereabouts? A. Perth Amboy, New Jersey.

Q. And how long have you been doing that? A. For 23 years. 30

Q. Did you know Mike Barbi? A. Yes, sir.

Q. Where did he have his place of business? A. At Perth Amboy.

Q. At what street? A. Lawrence Street.

Q. Do you know the number? A. No, sir.

Q. Do you know what other street? A. No, sir.

Q. Is he on the corner? A. Yes, sir.

Q. What business was he in? A. Beer bottling business.

Q. Do you know his wife? A. Yes, sir. 40

Q. What was her name? A. Lizzie Barbi.

J. Kutcher—Direct—Cross—Re-Direct

Q. How long did you know them? A. About eight or nine years.

Q. Do you know how they were known in the neighborhood—do you know by what name they were known in that neighborhood? A. No, sir.

10 Q. You knew them as Barbi? A. Yes, sir.

Q. Did you ever know them to be called Borbely? A. No, sir.

Q. You never heard that name at all? A. No, sir.

Q. Did you hear any other people call them by name? A. No, sir.

CROSS-EXAMINATION BY MR. LYON:

20 Q. Can you tell the year when you first became acquainted with this man whom you call Barbi?
A. I never knew him before he started to do business with Lembeck and Betz, which is eight or nine years ago.

Q. That would be about 1910? A. 1909 or 1910.

RE-DIRECT EXAMINATION BY MR. BLANKENHORN:

Q. What kind of a building did he occupy? A. Stucco.

30 Q. Did he build it? A. I don't know; at the time I commenced to do business with him the house was built.

Q. Who brought him to you? A. I guess he came himself.

Q. Did he tell you who he was? A. Yes, sir.

Q. And he told you he was Barbi? A. Yes, sir.

Q. Did he buy any other property, so far as you know, after he started doing business with you?
A. I guess he bought a lot alongside of his property; I am not sure.

40 Q. What did he do with that lot? A. I don't know.

J. Kutcher—Re-Direct—Re-Cross

Q. Did it stay vacant all the time? A. Some shanties were put on the back.

Q. Did he build on that lot? A. He talked about building there, and I believe he did build something on there, but there was some building in the back.

RE-CROSS EXAMINATION BY MR. LYON:

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Q. Do you know that he had a mortgage in the Building and Loan Association on his property?

A. I did not know anything about it.

MR. BLANKENHORN: I offer in evidence the records of the County of Middlesex; Judge Lyon and I agreed that we should not have to produce them. That is our case. Complainant rests.

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E. Koyen—Direct

DEFENCE

EMIL KOYEN, sworn in behalf of the defendants, testified as follows:

DIRECT EXAMINATION BY MR. LYON:

- 10 Q. What is your business? A. Real estate.
 Q. Where do you live? A. Woodbridge.
 Q. You formerly lived in Perth Amboy? A. Yes, sir.
 Q. For how many years? A. Thirty years, about.
- 20 Q. I show you a deed from Emil Koyen and Mary, his wife, and I. C. Ostergaard to Michael Borbely and Elizabeth Borbely, his wife, dated March 11, 1908, and recorded in Book 412, page 560, and I ask you if you ever saw that deed? A. Yes, sir.
 Q. Are you one of the grantors of that deed? A. Yes, sir.
 Q. And your partner the other? A. Yes, sir.
 Q. Your partner at that time? A. Yes, sir.
- 30 Q. I show you another deed from the same parties as the previous deed, and to the same parties as in the previous deed, spelled exactly the same way, dated the 21st of October, 1912, and recorded in Book 508, page 506; are you also one of the grantors in that deed? A. Yes, sir.
 Q. Were these deeds made out by you or under your direction? A. By me, yes, sir.
 Q. And tell us how you came to make them out in the name of the grantees, as they were made? A. Well, this party bought two lots on a contract there, and gave me instructions to make a deed out for the corner lot first, and in all these cases I get those parties to give me their names written down on a slip of paper.
- 40 MR. BLANKENHORN: I object to this as to what he does in all cases.

E. Koyen—Direct

A. This is the direction that I got relative to this deed to make it out like this.

MR. BLANKENHORN: I object to that and ask that it be stricken out, if this direction was given in writing.

A. It was given in writing. 10

THE COURT: Then you had better get the writing.

Q. Have you that writing? A. No, sir, I have not.

Q. Have you searched for it? A. Yes, sir, I have.

Q. Have you been able to find it? A. No, sir.

Q. Have you any idea what became of it? A. No, sir.

Q. Do you preserve such things as a rule? A. Sometimes I pin them together with my memorandum to the stenographer; I have some of them pinned on those; but in this case I have not got them pinned on; I have the directions for the stenographer, but the slip is not pinned on this. 20

Q. Well, Mr. Koyen, you would not have made out the deed in any other names than those that were given you? A. No, sir.

Q. Did you know this man by any other name than Borbely, as given in the deed? A. That is the only name that I knew him by. 30

Q. He certainly did not give you the name of Barbi, did he? A. No, sir.

Q. Do you remember how he spelled his name when he wrote it out for you? A. Just exactly like this.

Q. Michael Borbely? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Was his wife there? A. Yes, sir.

Q. She was there too? A. Yes, sir.

Q. Did she sign her name? A. Yes, sir. 40

Q. Are you sure of that? A. Yes, sir.

E. Koyen—Direct—Cross

Q. How did she spell her name? A. Lizzie.

Q. Do you remember the writing? A. Yes, sir; they were both there and gave me the slip.

Q. How did she start her name? A. Lizzie, I think.

10 Q. And how did she spell the last name? A. Exactly as he did.

Q. Well, spell it for us. A. B-o-r-b-e-l-y, I think.

Q. And you remember that is the way she wrote it? A. Oh, yes.

Q. What else did they write on that paper? A. Nothing but that; that is all I asked for.

Q. They came direct to you to buy the property, did they, at that time? A. Yes, sir.

Q. Who is Mr. Eggert? A. He is deputy collector of revenue.

20 Q. Are you a Commissioner of Deeds? A. No, sir.

Q. Is anyone in your office a Commissioner of Deeds. A. No, sir, at that time Mr. Eggert took the acknowledgments.

Q. Where was he? A. He was in the custom house.

Q. Did he have an office near you? A. Yes, sir, close to my residence at that time.

30 Q. What nationality were these people, if you know? A. I think they are Hungarians, I think so.

CROSS EXAMINATION BY MR. BLANKENHORN:

Q. You have no interest in this case? A. No, sir.

Q. And never had since these deeds were delivered? A. No, sir.

40 Q. How many times did you see these people in respect to all of the transactions with reference to buying the property conveyed by these deeds?

E. Koyen—Cross

A. Lyon—Direct

A. I would see these people quite frequently, because they made payments on the lots right along on the contract.

Q. Have you got the contract? A. I think likely I have it, but I have not got it here; I don't think I have, either, because I think these people have the contract. 10

Q. Don't you make them out in duplicate? A. No, sir, there are so many that we don't bother with them.

ADRIAN LYON, sworn in behalf of the defendants, testified as follows:

I am an attorney-at-law of the State of New Jersey, and have been such for upwards of 25 years, and attorney for the Citizens Building and Loan Association, and have been for about 25 years. The deed from Emil Koyen and Mary, his wife, and I. C. Ostergaard and Elise, his wife, to Michael Borbely and Elizabeth, his wife, dated March 11, 1908, and recorded in the Middlesex County Clerk's office on March 26, 1908, in Book 412 of Deeds, page 560, was brought to me—by whom I don't now remember, for the purpose of drawing the papers and making a loan on the property described in the deed. I had a search made out on the lot by the County Clerk of the County of Middlesex (which I now produce and offer in evidence, together with the deed I have just referred to. The County Clerk's search—if I may refer to this for the purpose of keeping the record straight—showed the deed that I have just referred to, and a mortgage which was made out by Michael Borbely and Lizzie, his wife, to The Citizens' Building and Loan Association, in the sum of \$800.00, dated June 15, 1908, and recorded June 23, 1908. The search also shows two mechan- 20 30 40

A. Lyon—Direct

ics' lien claims, one by Gabriel Rieger against Michael Borbely, builder and owner, and Elizabeth Borbely, owner, for \$320.00, dated May 15, 1908; and also another mechanics' lien by Nic Barei against Michael Borbely, builder and owner, and Elizabeth Borbely, owner, for \$120.00, dated
 10 May 15, 1908. This is under the hand and seal of the County Clerk.

Marked "Exhibit D 1" and "Exhibit D 2."

The \$800.00 that was loaned under the mortgage I referred to, was not sufficient to pay the bills because of these two mechanics' lien claims which came up, and, therefore, upon a further applica-
 20 tion, the details of the application of which I don't now remember, another loan was granted by the Citizens' Association of \$300.00 more. The County Clerk, upon request, continued to search, showing the \$300.00 mortgage made by Michael Borbely and Elizabeth Borbely, his wife, dated August 5, 1908, and recorded August 7, 1908, under the hand and seal of the County Clerk. The two mortgages that were executed to which I have just referred I have in my possession now.
 30 The first is a bond from Michael Borbely and Elizabeth Borbely, his wife, to the Citizens' Building and Loan Association, dated June 15, 1908, which purports to be signed by the two parties first named; the signatures appear to be as follows: "Meyk Barbely," and the wife, "Lizi Bourbi."

I offer that bond.

Marked "Exhibit D 3."

40 The mortgage accompanying it, given to secure it, was given by the parties in the same manner

A. Lyon—Direct

as spelled in the bond dated June 5, 1908, and purporting to be signed as follows: "Meyk Borbely." There is a dot over the "e," which indicates that it might be meant for "i." The wife's name is spelled "Lizi," or what appears to be "Lizi Bourbi." This mortgage is recorded on the 23rd of June, 1908, in Book 208 of Mortgages for said county, page 532. 10

I offer that.

Marked "Exhibit D 4."

The second mortgage referred to, namely, for \$300.00, bears date August 5, 1908, and was made out in the same names, spelled as indicated in the other papers, and appears to be signed as follows: "Meyk Barbely," and the wife, "Lizi Boubi." 20

Marked "Exhibit D 5."

The mortgage accompanying it, given to secure the last-mentioned bond, dated August 5th, by the parties, spelled as in the deed, and in the foregoing mentioned papers, purports to be signed "Meyk Babely," or "Barbily," and the wife "Lizi Barbie." This mortgage was recorded on the 7th of August, 1908, and recorded in Book 209 of Mortgages for Middlesex County, page 510. The proceeds of those two mortgages, aggregating \$1100.00, were disbursed by me as follows: 30

To Beekman and Spencer, attorneys at law, in payment of the two lien claims mentioned in the County Clerk's abstract to which I have referred, amounting to \$453.38—to William J. Donnell, a lumber dealer, for lumber used in the construction of the building on the premises, amounting to \$322.56; and a further bill to the same lumber dealer of \$291.92, and expenses to myself in connection with the loan of \$24.06 on the first mort- 40

A. Lyon—Direct

gage and \$8.08 on the second mortgage of \$300.00, making in all \$1100.00. That was all I had to do with the transaction until a third mortgage was passed on this lot together with another lot which, in the meantime, the parties had received a deed for. That deed is one of the deeds referred to by
10 Mr. Koyen and is a deed from Emil Koyen and Mary, his wife, and I. C. Ostergaard and Elise, his wife, to Michael Borbely and Elizabeth Borbely, his wife, dated October 21, 1912, and recorded on November 11, 1912, in Book 508 of Deeds for Middlesex County, page 506, and is for Lot No. 7—the lot in the other deed was for Lot No. 8. The other mortgage that was placed on the property is a mortgage bearing date the 22nd day of
20 October, 1912, made out by Michael Borbely and Elizabeth Borbely, his wife, to the Citizens' Building and Loan Association, and recorded on the 11th of November, 1912, in Book 258, page 201. This mortgage purports to be signed "Meyk Barbi" and "Lizi Bourbi"—that last name is very doubtful as I have spelled it. This was acknowledged before me; I don't remember the circumstances of the acknowledgment of these papers, but it bears my signature as taking the acknowledgment. The bond and the contract which the
30 mortgage was given to secure, are signed in the same way that the mortgage is signed, and bear corresponding dates.

I offer these three documents in evidence—first, the contract.

Marked "Exhibit D 6."

Second, the mortgage.

Marked "Exhibit D 7."

And then the mortgage.

Marked "Exhibit D 8."

40 At the time this third mortgage was taken, the

A. Lyon—Direct—Cross

search was made by Mr. McWilliams, my associate, who is here and will testify to it—at no time covered by the period in which these mortgages were taken—did I know that the parties' names were other than Borbely, or that they were known by any other persons in any other way than Borbely. I did not know that they were known as Barbi. My attention has been called to the signature to this last mortgage, "Barbi," at the time that the \$1800.00 mortgage was given; that does not change my testimony, familiar as I am with the illiterate manner in which a great many of these people who give mortgages to The Citizens' Association sign their names, and the tendency to abbreviation.

10

CROSS-EXAMINATION BY MR. BLANKENHORN:

20

Q. In making these mortgages, you were the attorney for the Association? A. Yes, sir.

Q. And when they signed the mortgage of which you took the acknowledgment, I presume that you examined their signatures? A. I don't know, I don't remember—I presume I did not carefully so as to spell it out.

Q. Did you see the former mortgages or bonds which have been offered in evidence, before you made out this mortgage? A. I must have seen them; they went through my office, although the first two mortgages, I believe, were acknowledged before a young man in my office—they appear to be so acknowledged before Charles W. Thickstun.

30

Q. Do you know whether you had the first and second mortgages held by the Building and Loan Association in your office at the time the third mortgage was made? A. I cannot tell you whether I did or not; ordinarily, the mortgages, after the

40

A. Lyon—Cross

10 transaction is closed, are sent by me to the Building and Loan Association office, which is not connected with my office at all. It may be, that when the third mortgage was to be executed, that they were sent to my office in preparation for the execution of the third mortgage, which was to cover the amount due, as well upon the first two mortgages as to cover the other disbursements made out of the \$1800.00 loan.

20 Q. How much of the first mortgages still remained unpaid at the time you made the third? A. The amount due on November 12, 1912, was \$876.58, which was included in the \$1800.00. These two mortgages, on which that amount was due, of course are not cancelled, although the 20 \$1800.00 mortgage was intended to cover all the indebtedness to the Association. That \$1800.00 was disbursed by me as follows: I find a slip among the papers which refreshes my memory as a memorandum made at the time; I cannot tell to whom the amounts were drawn, except the \$876.58 was representing the amount due on the first two mortgages; \$30.55 was for expenses of the loan; to Koyen and Ostergaard for the balance of the purchase price of this second lot, \$75.17, and three 30 other checks—one for \$685.70—to whose order I don't know. I have searched for the check and have had the clerk in the office of the Building and Loan Association search for the checks, and we cannot find them. There are checks of \$90.00 and \$42.00, respectively, which are for work, painting and other work on the property. Those amounts that I have mentioned aggregate \$1800.00.

40 Q. Do you know whether any of the \$1800.00 has been paid? A. Only by hearsay; I have the secretary here to testify to that.

C. M. MacWilliams—Direct

CHARLES M. MACWILLIAM, sworn in behalf of the defendants, testified as follows:

DIRECT EXAMINATION BY MR. LYON:

Q. You are an attorney at law of New Jersey?

A. Yes, sir.

10

Q. How long have you been at the Bar? A. Eight years.

Q. You are probation officer of Middlesex County? A. Yes, sir.

Q. An associate of mine? A. Yes, sir.

Q. I show you an abstract of title of Michael and Elizabeth Borbely to Lots 7 and 8 in Block 324-N of the Koyen and Ostergaard property, and I ask you if that is an abstract made by you? A. It is, yes, sir.

20

Q. Did you search the title in the Middlesex County Clerks office to this property? A. Yes, sir.

Q. And is that abstract you have just referred to, to show the record of your search? A. Yes, sir.

Q. Did you find in your search a mortgage purporting to have been given by these parties under the name of Mike Barbi to the Lembeck and Betz Eagle Brewing Company? A. I did not.

Q. Did you know at the time you made that search that these parties went under any other name than that of Borbely, as given in the papers?

30

A. I did not.

THE COURT: I assume that the whole thing is correct as far as both sides are concerned.

BY THE COURT:

Q. You went through the index? A. Yes, sir; I was not looking for the name of Barbi; I was looking for Borbely and not Barbi.

Q. You did not look through all the "B's" then?

A. In Middlesex County the "B's" are all to-

40

C. M. MacWilliams—Direct
S. F. Somogyi—Direct—Cross

gether it is the old-fashioned index; it is not the same as it is in some of the other counties; all the "B's" are all together.

Q. Did you search against the name Bourbi or Barbi? A. I did not search under that name at all.

10

MR. LYON: I offer the search in evidence.

Marked "Exhibit D 9."

STEPHEN F. SOMOGYI, sworn in behalf of the defendants, testified as follows:

DIRECT EXAMINATION BY MR. LYON:

Q. You are a member of the Bar of this State?

A. Yes, sir.

Q. How long have you been at the Bar? A. For fifteen years.

20

Q. And are you now interpreter of the County courts of Middlesex County? A. For the last sixteen years or so.

Q. What is your nationality? A. Magyar.

Q. Is that also Hungarian, as we usually say?

A. Yes, sir.

Q. Mr. Somogyi, do you know what nationality the parties mentioned in these papers are, whose names are given in one case as Borbely, and in another pretend to have been given as Barbi? A. They are Magyars; I know that by the name Borbely.

30

Q. What significance has the name Borbely in Magyar? A. Translated into English it means "Barber."

Q. What significance, if any, has the word Barbi? A. None whatsoever.

CROSS-EXAMINATION BY MR. BLANKENHORN:

Q. Your name ends in an "i," doesn't it? A. Yes, sir.

40

Q. Well, is it essential that all persons of that

S. F. Somogyi—Cross
J. Kutcher—Direct

nationality should have a name which means something? A. Not necessarily.

Q. Then this mans name might have been Barbi or Borbi or Bourbi, might it not? A. I say no.

Q. Why not? A. Because in 39 years of my life I never heard it. 10

Q. Did you know these parties? A. I believe I did, although I am not positive.

BY THE COURT:

Q. The chances are that you know them? A. Yes, sir.

Q. Then your testimony with reference to these people is based on your supposition that the spelling of the name is Borbely? A. No, sir, no such supposition. 20

Q. It is pronounced as we would spell it; the pronunciation in Hungarian is what? A. The "l" is practically silent; "l" and "y" have one sound.

Q. What name then would be spelled "Meyk?" A. That might be spelled by an ignorant Hungarian to spell Mike that way; I have seen them spell Mike "Meyk" for "Myk."

Q. You don't know that those people who executed these papers were Magyars? A. I am absolutely certain from the name that they are. 30

JOHN KUTCHER, recalled in behalf of the defendants, testified as follows:

DIRECT EXAMINATION BY MR. LYON:

Q. You say you knew this man; what was his nationality? A. As far as I know, he was a Hungarian.

Q. Or Magyar? A. Yes, sir; it is just the same.

HARRY AFFLERBACH, sworn in behalf of the defendants, testified as follows: 40

H. Afflerbach—Direct—Cross

DIRECT EXAMINATION BY MR. LYON:

Q. What is your position with the Citizens' Building and Loan Association? A. Assistant Treasurer.

10 Q. Have you taken from the books the account of Michael Borbely? A. An identical copy.

Q. Will you tell me, please, how much the books show was due on the mortgages of \$800 and \$1100 on November 12, 1912? A. The amount due on the mortgage that was dated 1908 there was still a balance due in November, 1912, of \$876.58; that is the balance due.

Q. You have the two mortgages of \$800 and \$300 down there as one mortgage? A. Yes, sir.

20 Q. Now, how much is due on the \$1800 mortgage as of this date? A. \$1,974.09 as of May 25, 1918.

CROSS-EXAMINATION BY MR. BLANKENHORN:

Q. You say when you made this \$1800 mortgage the \$800 mortgage and the \$300 mortgage were included in that \$1800 mortgage? A. They made a loan of \$1800 to take care of the \$1100 mortgage on account of \$1100 not being enough to cover, they made another application for \$1800.

30 Q. They wanted to get some more money to build a new building? A. Yes, sir.

Q. On a new piece of land which adjoined the first piece of land? A. I cannot vouch for that.

Q. How did you indicate on this sheet here—

MR. BLANKENHORN: I will accept these sheets as copies, if all of the markings on the original sheets are made on these sheets.

40 Q. Now, have you indicated on this sheet this account of Michael Borbely for \$1100, that that mortgage has been taken care of by the \$1800 mortgage? A. Well, in this one way: he owed us

H. Afflerbach—Cross

at this time \$876.58; we issued a new mortgage of \$1800; the balance between that amount and \$1800 is paid for different incumbrances that are created on that building, giving us a mortgage for \$1800 in the place of the \$1100.

Q. Then when you made the \$1800 loan, you credited his loan account for the \$1100 loan with \$876.58? A. No, we cancelled that mortgage entirely, the \$1100 mortgage. 10

BY THE COURT:

Q. But he does not actually give you any cash? A. No, sir; if the Holding Company bought that property in for taxes, we received notice of that; and we paid the Holding Company off in order to protect our claims. 20

Q. You don't mean that the mortgage has actually been satisfied on the books at the County Clerk's office? A. No, sir; they owe us \$1,974.09 on that mortgage, on that piece of property. 20

Q. But you don't mean that the mortgages for \$800 and \$300, aggregating \$1,100, have actually been cancelled of record in the Clerk's office? A. No, sir.

Q. Did you have occasion to see Borbely? A. No, sir.

Q. Have you any book that indicates a record of the payments? A. This is our individual ledger showing the daily receipts as it is entered from our sheets; for example, Borbely paid us on October 12th \$18.00; there is the credit; they make a payment November 27th; there is the credit. 30

Q. Are any of your pass-books called in? A. No, sir.

FURTHER CROSS:

Q. All credits of moneys that you received were 40

H. Afflerbach—Cross—Re-Direct—Re-Cross

placed on this loan account for \$1,800? A. Exactly.

Q. When was the last payment? A. August 20th in the year 1917, which was \$9.00.

10 Q. What does this indicate? A. That means the grand total of the amount of money that they had paid into our association.

Q. And the amount of \$1,974.09 is made up of interest, dues, fines, premiums and assessments, and all of that? A. Everything but fines; we had no fines.

RE-DIRECT EXAMINATION BY MR. LYON:

20 Q. When you said a few moments ago that the old mortgage of \$1,100 was cancelled, did you mean the mortgage had been cancelled, or the amount cancelled or transferred? A. Simply transferred.

Q. The mortgages have not been cancelled? A. No, sir; by no means.

RE-CROSS EXAMINATION BY MR. BLANKENHORN:

Q. You were not with the association when the \$1,800 mortgage was made? A. No, sir.

30 MR. LYON: I offer two sheets showing the account of Citizens' Building and Loan Association of Perth Amboy with Michael Borbely—books Nos. 1567, 1571, 1740.

Marked "Exhibits D 10" and "D 11."

MR. LYON: We rest.

BOTH SIDES REST

Complainants Exhibit C 2

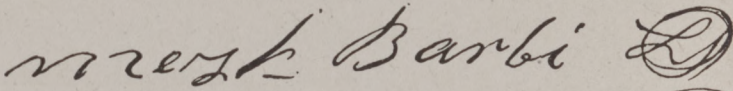
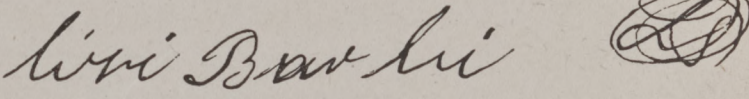
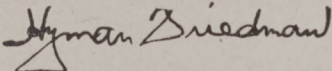
40 KNOW ALL MEN BY THESE PRESENTS,
That we, Mike Barbi and Lizzie Barbi, of the City
of Perth Amboy, in the County of Middlesex and

Exhibit C 2

the State of New Jersey, are held and firmly bound unto Lembeck & Betz Eagle Brewing Company, of the City of Jersey City, in the County of Hudson and the State of New Jersey, in the sum of Sixteen Hundred Dollars, lawful money of the United States of America to be paid to the said Lembeck & Betz Eagle Brewing Company, or to its certain Attorney, Successors or Assigns; for which payment well and truly to be made we bind ourselves, our Heirs, Executors and Administrators, firmly by these presents. Sealed with our seals and Dated the eleventh day of May, in the year of Our Lord One Thousand Nine Hundred and Ten. 10

The Condition of this Obligation is such, That if the above bounden Mike Barbi, and Lizzie Barbi, his wife, their Heirs, Executors, Administrators, or any of them, shall and do well and truly pay or cause to be paid, unto the above mentioned Lembeck & Betz Eagle Brewing Company, or to its certain Attorney, Successors or Assigns, the just and full sum of Eight Hundred Dollars, lawful money aforesaid, on demand, with lawful interest for the same at the rate of five per centum per annum, payable semi-annually: without any fraud or other delay, then this obligation to be void or else to be and remain in full force and virtue. 20 30

Signed, Sealed and Delivered in the presence of

*Exhibit C 1***Complainants Exhibit C 1.**

THIS INDENTURE, made the Eleventh day of May, in the year of our Lord One Thousand Nine Hundred and Ten, between Mike Barbi and wife Lizzi Barbi, sometimes known as Barboe, of the City of Perth Amboy, in the County of Middlesex and State of New Jersey, party of the first part; and Lembeck & Betz Eagle Brewing Company, a corporation of the State of New Jersey, party of the second part; Whereas, the said Mike Barbi and Lizzie Barbi are justly indebted to Lembeck & Betz Eagle Brewing Company, the said party of the second part, in the sum of Eight Hundred Dollars, lawful money of the United States of America, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of Sixteen Hundred Dollars, lawful money as aforesaid conditioned for the payment of the said first mentioned sum of Eight Hundred Dollars, lawful mone yas aforesaid, to the said party of the second part, its successors or assigns, on demand, after the rate of five 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, and 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 remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days, then

Exhibit C 1

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 Eight Hundred Dollars, with all arrearage of interest thereon, 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 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. 10

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 and conveyed, and by these presents does grant, bargain, sell and convey 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 Perth Amboy, in the County of Middlesex, and State of New Jersey, beginning at the intersection of the Westerly line of Pine Street with the Northerly line of Lawrence Street; thence running Northerly along the Westerly line of Pine Street, one hundred (100) feet; thence running Westerly and parallel with Lawrence Street, 20 30 40

Exhibit C 1

twenty-five (25) feet; thence running Southerly and parallel with Pine Street, one hundred (100) feet to the Northerly line of Lawrence Street; thence running Easterly along the Northerly line of Lawrence Street, twenty-five (25) feet to the
10 point or place of beginning.

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
20 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 forever.

Provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors or administrators, shall well and truly pay unto the said party of the second part, its successors or assigns, the
30 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 Mike Barbi, and Lizzie Barbi, for themselves, their heirs, executors and administrators, does covenant and agree to pay unto the said
40 party of the second part, its successors and assigns, the said sum of money and interest, as men-

Exhibit C 1

tioned above and expressed in the condition of the said bond.

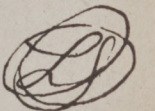
And it is also agreed, by and between the parties to these presents, that the said party of the first part, shall and will keep the buildings, erected and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, its successors or assigns, and assign the policies and certificates 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 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 lawful interest, from the time of payment of such premium.

And it is agreed that neither the mortgagor, nor the heirs and assigns of the mortgagor shall be entitled to any credit on the interest payable on this mortgage for the taxes which may be levied on the mortgaged premises, or for any part of such taxes.

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

Signed, Sealed and Delivered in the preseice of

Hyman Friedman
Wenzl Barbi
Wisi Bowli

*Exhibit C 3***Complainants' Exhibit C 3**

ABSTRACT OF TITLE

of

MIKE BARBI and LIZI BARBI, his wife

to

10 All that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Perth Amboy, County of Middlesex and State of New Jersey, beginning at the intersection of the Westerly line of Pine Street with the Northerly line of Lawrence Street; thence running Northerly along the Westerly line of Pine Street, one hundred feet; thence running Westerly and parallel with Lawrence Street, twenty-five feet; thence running Southerly and parallel with Pine Street one hundred feet to
20 the Northerly line of Lawrence Street; thence running Easterly along the Northerly line of Lawrence Street, twenty-five feet to the point or place of beginning.

EMIL KOYEN,

MARIE KOYEN, his wife,

IVER C. OSTERGAARD and

ELSIIE OSTERGAARD, his wife,

to

30 MICHAEL BORBELY and

ELIZABETH BORBELY,

his wife,

DEED

Dated Mar. 11, 1908

Ack. Mar. 11, 1908

GEO. W. EGGERT,

C. of D.

Rec. Mar. 20, 1908

Lib. 412, p. 560

Cons. \$225

Conveys in fee to party of the second their heirs and assigns forever,

40 ALL of Lot 8 in Block 324 N, on a map of 170 lots owned by Emil Koyan and Iver C. Ostergaard in the City of Perth Amboy, County of Middlesex and State of New Jersey, surveyed May, 1907 by Mason & Smith and filed for record in the office of the County Clerk of Middlesex County, State of New Jersey, being

Exhibit C 3

All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Perth Amboy in the County of Middlesex and State of New Jersey, Beginning at a point in the Northwesterly corner formed by the intersection of Lawrence Street and Pine Street, thence (1) running Westerly along the Northerly line of said Lawrence Street, twenty-five feet; thence (2) at right angles to Lawrence Street and parallel with Pine Street, 85.75 feet; thence (3) Easterly, parallel with Lawrence Street 25 feet; thence (4) Southerly parallel with Pine Street to the point of beginning, bounded on the South by Lawrence Street, on the East by Pine Street, on the North by Lot 9 and on the West by Lot 7.

10

20

MICHAEL BORBELY, ELIZABETH BORBELY, his wife, to CITIZENS BUILDING & LOAN ASSOCIATION, a body corpor- ate of the State of New Jersey,	}	MORTGAGE \$800 Dated June 15, 1908 Ack. June 17, 1908
CITIZENS BUILDING & LOAN ASSOCIATION, a body corpor- ate of the State of New Jersey,	}	CHAS. W. THICK- STUN, C. of D. Rec. June 23, 1908 Lib. 208, p. 532

Mortgages All, etc., of Lot 8, Block 324 N on Map of 170 Lots, etc.

30

Same premises conveyed to Michael Borbely and Elizabeth Borbely, his wife, by deed recorded in Liber 414, p. 560.

Signatures: MIZK BORBELY, (L.S.)
 LIZR BORBI, (L.S.)

Note: Certificate of acknowledgement states: "Before me personally appeared Michael Borbely and Elizabeth Borbely," etc.

40

Exhibit C 3

10	MICHAEL BORBILY and LIZI BORBI, <i>to</i> CITIZENS BUILDING & LOAN ASSOCIATION,	}	MORTGAGE \$300 Dated Aug. 5, 1908 Ack. Aug. 6, 1908 CHAS. W. THICK- STUN, C. of D. Rec. Aug. 7, 1908 Lib. 209, p. 510
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Mortgages:

Same premises by same description as Deed recorded in Liber 412, p. 560.

20 "Being the same premises conveyed to Michael Borbely and Elizabeth, his wife, by deed from Emil Koyen and others, dated March 11, 1908, recorded in the office of the Clerk of Middlesex County, in Book 412 of Deeds, page 560.

(Signatures): MESK BORBILY, (L.S.)
 LIZI BORBI, (L.S.)

Certificate of acknowledgement says: "Before me personally appeared Michael Borbely and Elizabeth Borbily, his wife."

30	MIKE BARBI and LIZI BARBI, his wife, <i>to</i> LEMBECK & BETZ EAGLE BREWING COMPANY, a corporation,	}	MORTGAGE \$800 Dated May 11, 1910 Ack. May 11, 1910 HYMAN FRIEDMAN, C. of D. Rec. May 15, 1910 Lib. 228, p. 587
----	--	---	---

40 Mortgages the premises described on first page of this abstract.

Exhibit C 3

MICHAEL BORBELY and ELIZABETH, his wife, <i>to</i> CITIZENS BUILDING & LOAN ASSOCIATION,	}	MORTGAGE \$1800 Dated Oct. 22, 1912 Ack. Oct. 23, 1912 ADRIAN LYON, M. C. C. Rec. Lib. 258, p. 301	10
--	---	---	----

Mortgages:

All those two lots, tracts or parcels of land and premises * * * in Perth Amboy known as Lots 7 and 8, Block 324 N on Map of 170 Lots owned by Emil Koyan and Iver C. Ostergaard, in the City of Perth Amboy, etc.

Beginning at a point in the Northwesterly corner formed by the intersection of Lawrence Street and Pine Street; thence (1) running Westerly along the Northerly line of said Lawrence Street 50 feet; thence (2) at right angles to Lawrence Street and parallel with Pine Street, 85.75 feet; thence (3) Easterly, parallel with Lawrence Street 50 feet; thence (4) Southerly, parallel with Pine Street to the point or place of beginning. Bounded on the South by Lawrence Street, on the East by Pine Street, on the North by Lot 9, and on the West by Lot No. 6. (Being same premises conveyed to party of the first part by deed, recorded Liber 412, p. 560, for Lot No. 8, and by deed for Lot No. 7 from Emil Koyan bearing date October 21, 1912, and to be recorded.

(Signatures): MICHAEL BORBELY, (L.S.)

ELIZABETH BORBELY, (L.S.)

Certificate of acknowledgement says: "Before me personally appeared Michael Borbely and Elizabeth Borbely, his wife," etc.

40

*Exhibits C 4 and C 5***Complainants Exhibit C 4.**

NEW JERSEY SUPREME COURT

10 I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, hereby certify, that I have searched the records of said Court, and do not find made up of record or docketed therein, any Judgment, Attachment, Decree from Chancery, or other lien against Mike Barbi from May 11, 1910, to date; Lizzie Barbi from May 11, 1910, to date; Michael Borbely from May 11, 1910, to date; Elizabeth Borbely from May 11, 1910, to date.

20 In Testimony Whereof I have hereto set my hand and the seal of said Court, this twenty-fourth day of August, nineteen hundred and seventeen, 9 A. M.

WM. C. GEBHARDT,
Clerk.

Fees \$2.06.
Countersigned WOODRUFF.

Complainants Exhibit C 5.

30 DISTRICT COURT OF THE UNITED STATES
DISTRICT OF NEW JERSEY

I, George T. Cranmer, Clerk of the District Court of the United States, for the District of New Jersey, do hereby certify that I have searched the records of said Court, and I do not there find any Proceedings in Bankruptcy under the Act of July 1st, 1898, nor do I there find remaining or unsatisfied of record any Judgment, Decree or other Lien, except as below set forth, against Mike Barbi, Lizzie Barbi, Michael Borbelly, Elizabeth Bor-

40

Exhibits C 5 and C 6

belly, Stephen Miklos and Julia Miklos, for twenty years last past.

In Testimony Whereof, I have hereto set my hand and affixed the seal of said Court, at Trenton, in said District, this twenty-fourth day of August, A. D. nineteen hundred and seventeen, at 9 A. M. 10

GEORGE T. CRANMER, *Clerk.*
Per R. S. CHEVRIER, *Deputy.*

Fees, \$2.30, Paid.

Complainants Exhibit C 6.

CALCULATION

Search in County Clerk's Office for:

	<i>No. of Books</i>	
Deeds from Michael Borbely or Mike Barbi from May 11, 1910, to November, 1917:		20
Deeds, 447 to 609.....	163	
Mortgages, 228 to 290.....	63	
Elizabeth Borbely or Lizi Barbi, from May 11, 1910, to November, 1917:		
Deeds, 447 to 609.....	163	
Mortgages, 228 to 290.....	63	
Assignments of mortgages from Citizens Building & Loan Association.....	11	
Releases from Citizens Building & Loan As- sociation	4	30
	<hr/> 467	
Search for judgments against Mike Barbi and Lizi Barbi, for twenty years:		
Common Pleas (40), Circuit (40), Docketed (40), Attachments (40), Mechanics' Liens (40), Bonds to Sheriff (40), Recognizances (12), a total of years.....	252	
Total numbers of Books and years.....	<hr/> 719	40

Exhibits C 6 and C 7

719 x .04 equals.....	\$28.76
N. J. Supreme Court.....	2.07
U. S. Dist. Court.....	1.40
	<hr/>
Total search fees.....	\$32.23

10

Complainants Exhibit C 7.

Account of Michael Babia'' with Lembeck & Betz Brewing Co. Stipulated that same need not be printed.

20

30

40

*Exhibit D 1***Defendants Exhibit D 1**

THIS INDENTURE, made the eleventh day of March, in the year of our Lord One Thousand Nine Hundred and Eight, between Emil Koyen and Marie, his wife, and Iver C. Ostergaard and Elise, his wife, of the City of Perth Amboy, in the County of Middlesex and State of New Jersey, party of the first part, and Michael Borbely and Elizabeth, his wife, of the Township of Woodbridge, in the County of Middlesex and State of New Jersey, party of the second part:

10

WITNESSETH, That the said party of the first part, for and in consideration of Two Hundred and Twenty-five (225) Dollars, 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 has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, released, enfeoff, convey and confirm unto the said party of the second part, and to their heirs and assigns, forever,

20

30

ALL of Lot 8 in Block 324-N, on a map of 170 lots owned by Emil Koyen and Iver C. Ostergaard, located in the City of Perth Amboy, County of Middlesex, State of New Jersey, surveyed May, 1907, by Mason & Smith, and filed for record in the Office of the County Clerk of Middlesex County and State of New Jersey, all that tract or parcel

40

Exhibit D 1

of land and premises, hereinafter particularly described, situate, lying and being in the City of Perth Amboy in the County of Middlesex and State of New Jersey.

10 Beginning at a point in the Northwesterly corner, formed by the intersection of Lawrence Street and Pine Street; thence (1) running westerly along the Northerly line of said Lawrence Street twenty-five (25) feet; thence (2) at right angles to Lawrence Street and parallel with Pine Street Eighty-five and seventy-five one-hundredths (85.75) feet; thence (3) Easterly parallel with Lawrence Street twenty-five (25) feet; thence (4) Southerly and parallel with Pine Street to point and place of beginning.

20 Bounded on the South by Lawrence Street, the East by Pine Street, and on the North by Lot No. 9, and on the West by Lot No. 7.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in any wise appertaining:

30 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, their heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, their heirs and assigns, forever:

40 AND the said Emil Koyen and Iver Ostergaard, do for themselves, their heirs, executors and administrators, covenant and agree with the said party of the second part, their heirs and assigns, that the said Emil Koyen and Iver C. Ostergaard,

Exhibit D 1

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 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: 10

AND ALSO, that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid. 20

AND ALSO, that the said Emil Koyen and Iver C. Ostergaard will

WARRANT, secure, and forever defend the said land and premises unto the said party of the second part, Michael Borbely, and Elizabeth, his wife, heirs 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 parties of the first part have hereunto set their hands and seals the day and year first above written. 30

Signed, sealed and delivered in the presence of
G. W. EGGELL.

EMIL KOYEN, (L.S.)
MARIE KOYEN, (L.S.)
IVER C. OSTERGAARD, (L.S.)
ELISE J. OSTERGAARD. (L.S.)

Exhibit D 1

STATE OF NEW JERSEY, }
 COUNTY OF MIDDLESEX, } ss:

Be it Remembered, that on this Eleventh day of
 March, Nineteen Hundred and Eight, before me,
 the subscriber, a Commissioner of Deeds of New
 10 Jersey, personally appeared Emil Koyen and
 Marie, his wife, and Iver C. Ostergaard and Elise,
 his wife, who I am satisfied are the persons named
 in and who executed the within instrument, and
 I having first made known to them the contents
 thereof, they acknowledged that they signed,
 sealed and delivered the same as their voluntary
 act and deed for the uses and purposes therein
 expressed and the said Marie Koyen and Elise
 20 Ostergaard, being by me privately examined, sep-
 arate and apart from their said husbands, they
 acknowledged that they signed, sealed and deliv-
 ered the same as their voluntary acts and deeds,
 freely, without any fear, threats or compulsion
 of or from their said husbands.

GEO. W. EGGERT,
Commissioner of Deeds.

Block 324 N, Lot 8, Assessment Maps, the City
 of Perth Amboy.

Examined:

R. F. WHITE,
Collector of Revenue.

30

WARRANTY DEED

EMIL KOYEN and MARIE, his
 wife, and IVER C. OSTER-
 GAARD and ELISE, his wife
 to
 MICHAEL BOBELY and
 ELIZABETH, his wife.

WARRANTY
 DEED.

40

Exhibits D 1 and D 2

Dated March 11th, 1918.

RECEIVED in the County Clerk's Office of the County of Middlesex, State of New Jersey, on the 20th day of March A. D., 1908, at 1.50 o'clock in the afternoon and recorded in Book 412 of Deeds for said County, on page 560.

10

JOHN H. CONGER,
Clerk.

Defendants Exhibit D 2

SEARCH

vs

Michael Borbely

CHAS. C. COWENHOVEN, <i>Special Master,</i>	} DEED	20
CHRISTIANA A. JORDAN, <i>et als.,</i>		
<i>Defendants,</i>		
<i>to</i>		
EMIL KOYEN and IVER C. OSTERGAARD.	Date, Oct. 11, 1906	
	Ack., Oct. 12, 1906	
	Rec., Oct. 12, 1906	
	Book 389, page 51	

Conveys land in Perth Amboy, New Jersey. Containing 18 72/100 Acres more or less.

30

EMIL KOYEN, <i>et ux.</i>	} DEED	30
IVER C. OSTERGAARD, <i>et ux.</i>		
<i>to</i>		
MICHAEL BORBELY and ELIZABETH, his wife.		
	Date, Mar. 11, 1908	
	Ack., Mar. 11, 1908	
	Rec. Mar. 20, 1908	
	Book 412, page 560	

Conveys Lot No. 8, Block 324 N, on a map of 170 lots owned by Emil Koyen and Iver C. Oster- 40

Exhibit D 2

gaard in the City of Perth Amboy, New Jersey,
surveyed May, 1907.

10	MICHAEL BORBELY and ELIZABETH, his wife, <i>to</i> CITIZENS BUILDING AND LOAN ASSOCIATION	} MORTGAGE For \$800.00 Date, June 15, 1908 Rec., June 23, 1908, at 8.00 A. M.
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Lien on land in question.

20	GABRIEL KESZEI, <i>vs.</i> MICHAEL BARBELY, <i>Builder and Owner,</i> ELIZABETH BARBELY, <i>Owner.</i>	} MECHANICS' LIEN. Book D, page 172 Amount, \$320.00 May 15, 1908
----	---	--

30	NIC BEREI, <i>vs.</i> MICHAEL BARBELY, <i>Builder and Owner,</i> ELIZABETH BARBELY, <i>Owner.</i>	} MECHANICS' LIEN. Book D, page 173 Amount, \$120.00 May 15, 1908
----	--	--

STATE OF NEW JERSEY,
COUNTY OF MIDDLESEX, ss:

I, John H. Conger, Clerk of said County, do
hereby certify, that I do not find any Deeds or
Mortgages indexed in my office in the names of
Emil Koyen, Iver C. Ostergaard, from October
10, 1906, to March 21, 1908; Michael Borbely, Eliz-
abeth Borbely, from March 10, 1908, to date, af-
fecting the lands described in deed from Emil

Exhibit D 2

Koyen et als to Michael Borbely, Book 412, page 560, except as stated.

And I do further certify, that I do not find any Judgments, Attachments, Mechanics' Liens, Chancery Notices, Recognizances or Bonds taken by Sheriffs remaining unsatisfied of record and indexed in my office in the names of Emil Koyen, Iver C. Ostergaard, from June 1, 1888, to March 21, 1908; Michael Borbely, Elizabeth Borbely, from June 1, 1888, to date, except as stated.

Witness my hand and seal of said County this 23rd day of June, A. D. 1908, at 1.00 P. M.

JOHN H. CONGER,
Clerk.

(SEAL.)

MICHAEL BORBELY and
ELIZABETH BORBELY,
his wife,
to
CITIZENS BUILDING AND
LOAN ASSOCIATION

MORTGAGE for
\$300.00
Date, Aug. 5, 1908
Ack., Aug. 6, 1908
Rec., Aug. 7, 1908
at 11 A. M.

20

Lien on land secondly above described.

STATE OF NEW JERSEY,
COUNTY OF MIDDLESEX, ss:

30

I, John H. Conger, Clerk of the County of Middlesex, do hereby certify, That I do not find any Deeds, Mortgages, Judgments, Attachments, Mechanics' Liens, Chancery Notices, Recognizances, or Bonds taken by Sheriffs, indexed in my office, in the names of Michael Borberly, Elizabeth Borbely, from June 23, 1908, to August 7, 1908, affecting the land secondly above described, except as stated.

In Testimony Whereof, I have hereunto set my

40

Exhibits D 2 and D 3

hand, and affixed the seal of said County this seventh day of August, A. D. 1908, at 11 A. M.

JOHN H. CONGER,
Clerk.

(SEAL.)

10

Defendants Exhibit D 3

BOND

MICHAEL BORBELY

and

ELIZABETH BORBELY

to

CITIZENS BUILDING AND LOAN ASSOCIATION

Dated June 15th, 1908

No. 1567

\$800

20

Exhibit D 3.

KNOW ALL MEN BY THESE PRESENTS,
That we, Michael Borbely and Elizabeth Borbely,
his wife, of the City of Perth Amboy in the County
of Middlesex and State of New Jersey are held
and firmly bound unto the Citizens Building and
Loan Association, a body corporate of the State
of New Jersey, having its principal office and do-
ing business in the City of Perth Amboy, in the
County of Middlesex and State of New Jersey, in
30 the sum of Sixteen Hundred Dollars, lawful money
of the United States of America, to be paid to the
said Citizens Building and Loan Association, or
to its successors or assigns; to which payment, well
and truly to be made, we bind ourselves, our heirs,
executors and administrators, jointly and sever-
ally, firmly by these presents.

Sealed with our seals and dated the fifteenth day
of June in the year of our Lord One thousand nine
hundred and eight.

40

The Condition of the Above Obligation is such,

Exhibit D 3

that whereas the above bounden Michael Borbely and Elizabeth Borbely have entered into a contract in writing with said Association of which the following is a copy:

\$800. Perth Amboy, N. J., June 15, 1908.

Received of Citizens Building and Loan Association, of Perth Amboy, N. J., Eight Hundred Dollars, as a loan on 8 shares of stock, No. 1567, owned by Michael Borbely and Elizabeth Borbely, in said Association. The said Michael Borbely and Elizabeth Borbely agree to pay to said Association, weekly, not less than Two Dollars, which shall be applied as follows:

First: To the payment of any fines, insurance, taxes, or other assessments made against us in accordance with the By-Laws of said Association. 20

Second: To the payment of the premium for precedence due on said loan amounting to 40/100 Dollars per week.

Third: To the payment of the interest due on said loan, amounting to 80/100 Dollars per week.

Fourth: The balance of said payments shall be credited as dues on said stock. Said payments shall be continued until the dues so credited on said stock together with the dividends declared thereon shall equal the amount loaned. 30

We also hereby assign the stock aforesaid to said association as collateral security for said loan, and we authorize it, when said stock is fully paid up, or should we fail for thirteen weeks to make the payments above stated, at its option to withdraw said stock in accordance with the By-Laws of said Association, or any or all of the money paid thereon, and apply the amount withdrawn to the payment of said loan, or the interest thereon, or any of the assessments above stated. 40


Should any part of said loan or the interest

Exhibit D 3


thereon or any part of said assessments remain unpaid after the withdrawal value of said stock is so applied, they shall become due and payable at the option of said Association.

10 Now if the said Michael Borbely and Elizabeth Borbely, their heirs, executors, administrators or assigns shall well and truly pay or cause to be paid the aforesaid obligation according to the tenor thereof to the said Citizens Building and Loan Association, its successors and assigns, then the above obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Signed, sealed and delivered in the presence of

Michael Borbely 

Charles W. Thickstun

Livi Borbely 

*Exhibit D 4***Defendants Exhibit D 4****MORTGAGE****MICHAEL BORBELY**

and

ELIZABETH BORBELY

to

10

CITIZENS BUILDING AND LOAN ASSOCIATION

Dated June 15th, 1908

Received in the Clerk's Office of the County of Middlesex on the 23rd day of June, A. D. 1908, 8 o'clock in the forenoon, and recorded in Book 208 of Mortgages for said County, on pages 532, etc., at 8.00 A. M.

JOHN H. CONGER,*Clerk.*

20

June 23, 1908,
8 o'clock A. M.

THIS INDENTURE, made the fifteenth day of June, in the year of our Lord One Thousand Nine Hundred and Eight between Michael Borbely and Elizabeth Borbely, his wife, of the City of Perth Amboy in the County of Middlesex and State of New Jersey of the first part; and Citizens Building and Loan Association a body corporate of the State of New Jersey, having its principal office and doing business in the City of Perth Amboy, in the County of Middlesex in the State of New Jersey, of the second part;

30

WITNESSETH, that the said party of the first part, for and in consideration of the sum of Eight Hundred Dollars, 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 be-

40

Exhibit D 4

fore the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed
10 and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to its successors and assigns forever,

All that tract or parcel of land and premises; hereinafter particularly described, situate, lying and being in the City of Perth Amboy in the County of Middlesex and State of New Jersey, being known as Lot No. Eight (8) in Block 324 N on
20 a map of 170 lots owned by Emil Koyen and Iver C. Ostergaard in the City of Perth Amboy, County of Middlesex, State of New Jersey, surveyed May, 1907, by Mason and Smith and filed for record in the office of the County Clerk of Middlesex County and State of New Jersey, which lot is more particularly described as follows:

Beginning at a point in the Northwesterly corner, formed by the intersection of Lawrence Street and Pine Street; thence (1) running westerly along the Northerly line of said Lawrence Street twenty-five (25) feet; thence (2) at right angles to Lawrence Street and parallel with Pine Street eighty-five and seventy-five one hundredths (85.75) feet,
30 thence (3) Easterly parallel with Lawrence Street twenty-five (25) feet; thence (4) Southerly and parallel with Pine Street to point and place of beginning. Bounded on the south by Lawrence Street, East by Pine Street, and on the North by Lot No. 9, and on the West by Lot No. 7.

Being the same premises conveyed to Michael Borbely and Elizabeth, his wife, by Deed from
40 Emil Koyen and others dated March 11, 1908, and

Exhibit D 4

recorded in the office of the Clerk of Middlesex County, in Book 412 of Deeds, page 560.

This mortgage is given to secure money advanced by said association to pay in part for the erection of the building on said premises.

Together with all and singular the profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining. Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same and of, in and to every part and parcel thereof: 10

To Have and to Hold, all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever. PROVIDED, NEVERTHELESS, and these presents are upon this condition: That, whereas, the said Michael Borbely and Elizabeth Borbely have entered into a contract in writing with said association, of which the following is a copy: 20

\$800.00 Perth Amboy, N. J., June 25, 1908.

Received of Citizens Building and Loan Association, of Perth Amboy, N. J., Eight Hundred Dollars as a loan on eight shares of stock, No. 1567 owned by Michael Borbely and Elizabeth Borbely in said association. The said Michael Borbely and Elizabeth Borbely agree to pay to said association, weekly, not less than Two Dollars, which shall be applied as follows: 30

First: To the payment of any fines, insurance, taxes or other assessments made against us in accordance with the by-laws of said association; 40

Second: To the payment of the premium for

Exhibit D 4

precedence due on said loan amounting to Forty Dollars per week;

Third: To the payment of the interest due on said loan amounting to Eighty Dollars per week;

10 Fourth: The balance of said payments shall be credited as dues on said stock. Said payments shall be continued until the dues so credited on said stock, together with the dividends declared thereon shall equal the amount loaned.

We also hereby assign the stock aforesaid to said Association as collateral security for said loan, and we authorize it when said stock is fully paid up, or should we fail for thirteen weeks to make the payments above stated, at its option to withdraw said stock in accordance with the By-
20 Laws of said Association, or any or all of the money paid thereon, and apply the amount withdrawn to the payment of said loan, or the interest thereon, or any of the assessments above stated.

Should any part of said loan, or the interest thereon, or any part of said assessments remain unpaid after the withdrawal value of said stock is so applied, they shall become due and payable at the option of said association.

30 Now, Therefore, if the said Michael Borbely and Elizabeth Borbely, their heirs, executors, administrators, or assigns, shall well and truly pay the aforesaid sums of money when due as set forth in said contract, then these presents shall be void, otherwise to be and remain in full force and virtue.

And it is expressly agreed by and between the parties to these presents, that said parties of the first part, their heirs, executors, administrators or assigns will pay and discharge all taxes and assessments that now are or hereafter shall be
40 levied or assessed upon the above described prem-

Exhibit D 4

ises, or any part thereof, when the same become due and payable, and in default thereof, the said party of the second part, its successors or assigns, may pay such taxes and assessments, and the expenses of the same, and the amount so paid and the interest thereon from the time of such payments, shall forthwith be due and payable from the said parties of the first part, their heirs, executors, administrators or assigns, to the said party of the second part, its successors or assigns, by virtue hereof and the same shall be deemed a part of, and secured by these presents, and shall be collectible in the same manner, at the same time and upon the same conditions as mentioned in the above contract. 10

AND IT IS ALSO FURTHER AGREED by and between the parties to these presents, that the said parties of the first part shall and will keep the buildings erected, and to be erected, upon the lands herein conveyed, insured against loss or damage by fire in some safe and responsible insurance company or companies, in an amount not less than Eight Hundred Dollars, and assign the policy or policies and certificate or certificates thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for said party of the second part to effect such insurance and the premium or premiums paid for effecting and continuing such insurance shall be a lien on said mortgaged premises, added to the amount secured by these presents, and shall be collectible in the same manner, at the time and upon the same conditions as mentioned in the above contract. 20 30

In witness whereof the parties of the first part 40

Exhibit D 4

have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

Michael Borbely



Charles W. Thickstun.

Elizabeth Borbely



20 STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss:

30 Be it remembered that on this seventeenth day of June in the year of our Lord One Thousand Nine Hundred and Eight, before me a Commissioner of Deeds of New Jersey, personally appeared Michael Borbely and Elizabeth Borbely, his wife, who, I am satisfied, are the grantors mentioned in the within indenture, and 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 Borbely, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed freely and without any fear, threats or compulsion of her said husband.

40 CHARLES W. THICKSTUN,
Commissioner of Deeds for the State of
New Jersey.

*Exhibit D 5***Defendants Exhibit D 5****BOND**

MICHAEL BORBELY and
ELIZABETH BORBELY, his wife,

to

CITIZENS BUILDING AND LOAN ASSOCIATION
Dated August 5th, 1908

10

No. 1571

\$300.00

KNOW ALL MEN BY THESE PRESENTS,
That we, Michael Borbely and Elizabeth Borbely,
his wife, of the City of Perth Amboy in the County
of Middlesex and State of New Jersey are held
and firmly bound unto the Citizens Building and
Loan Association a body corporate of the State
of New Jersey, having its principal office and do-
ing business in the City of Perth Amboy, in the
County of Middlesex and State of New Jersey,
in the sum of Six Hundred Dollars, lawful money
of the United States of America, to be paid to the
said Citizens Building and Loan Association, or
to its successors or assigns; to which payment,
well and truly to be made, we bind ourselves, our
heirs, executors and administrators, jointly and
severally, firmly by these presents.

20

Sealed with our seals and dated the fifth day of
August in the year of our Lord, One Thousand
Nine Hundred and Eight.

30

THE CONDITION OF THE ABOVE OBLI-
GATION is such, that whereas the above bounden
Michael Borbely and Elizabeth Borbely have en-
tered into a contract in writing with said Associa-
tion of which the following is a copy:

\$300.00 Perth Amboy, N. J., August 5, 1908

Received of Citizens Building and Loan Asso-
ciation of Perth Amboy, N. J., Three Hundred
Dollars, as a loan on three shares of stock, No.

40

Exhibit D 5

1571 owned by Michael Borbely and Elizabeth Borbely; his wife, in said Association. The said Michael Borbely and Elizabeth Borbely agree to pay to said Association, weekly, not less than 75/100 Dollars, which shall be applied as follows:

10 First: To the payment of any fines, insurance, taxes, or other assessments made against us in accordance with the By-Laws of said Association.

Second: To the payment of the premium for precedence due on said loan amounting to 15/100 Dollars per week.

Third: To the payment of the interest due on said loan, amounting to 30/100 Dollars per week.

20 Fourth: The balance of said payments shall be credited as dues on said stock. Said payments shall be continued until the dues so credited on said stock together with the dividends declared thereon shall equal the amount loaned.

We also hereby assign the stock aforesaid to said association as collateral security for said loan, and we authorize it, when said stock is fully paid up, or should we fail for thirteen weeks to make the payments above stated, at its option to withdraw said stock in accordance with the By-Laws of said Association, or any or all of the money paid thereon, and apply the amount withdrawn to the payment of said loan, or the interest thereon, or any of the assessments above stated.

30 Should any part of said loan or the interest thereon or any part of said assessments remain unpaid after the withdrawal value of said stock is so applied, they shall become due and payable at the option of said Association.

40 Now if the said Michael Borbely and Elizabeth Borbely, their heirs, executors, administrators or assigns, shall well and truly pay or cause to be

Exhibits D 5 and D 5a

paid the aforesaid obligation according to the tenor thereof to the said Citizens Building and Loan Association, its successors and assigns, then the above obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Signed, sealed and delivered in the presence of 10

Charles W. Thickston

Wm. B. Barbish

Levi B. Barbish



Defendants Exhibit D 5a

MORTGAGE

20

MICHAEL BOBRELY and
ELIZABETH BORBELY, his wife,
to

CITIZENS BUILDING AND LOAN ASSOCIATION

Dated August 5th, 1908

Received in the Clerk's Office of the County of Middlesex on the 7th day of August A. D. 1908, at 11.00 o'clock in the forenoon and recorded in Book 209 of Mortgages for said County, on pages 510, etc.

30

JOHN H. CONGER,
Clerk.

August 7, 1918,

11 o'clock A. M.

THIS INDENTURE, made the fifth day of August, in the year of our Lord, One Thousand Nine Hundred and Eight between Michael Borbely and Elizabeth Borbely, his wife, of the City of Perth Amboy in the County of Middlesex and State of New Jersey of the first part; and Citizens Build-

40

Exhibit D 5a

ing and Loan Association, a body corporate, of the State of New Jersey, having its principal office and doing business in the City of Perth Amboy, in the County of Middlesex in the State of New Jersey, of the second part;

10 WITNESSETH, that the said party of the first part, for and in consideration of the sum of Three Hundred Dollars, 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 therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed and by these presents do give,
20 grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part and to its successors and assigns forever,

All that tract or parcel of land and premises; hereinafter particularly described situate, lying and being in the City of Perth Amboy, in the County of Middlesex and State of New Jersey, being known as Lot No. Eight (8) in Block 324 N on a map of 170 lots owned by Emil Koyen and
30 Iver C. Ostergaard in the City of Perth Amboy, County of Middlesex, State of New Jersey, surveyed May, 1907, by Mason and Smith and filed for record in the office of the County Clerk of Middlesex County and State of New Jersey, which lot is more particularly described as follows:

Beginning at a point in the North westerly corner, formed by the intersection of Lawrence Street and Pine Street; thence (1) running westerly along the Northerly line of said Lawrence Street twenty-five (25) feet; thence (2) at right angles
40 to Lawrence Street and parallel with Pine Street

Exhibit D 5a

eighty-five and seventy-five one hundredths (85.75) feet, thence (3) Easterly parallel with Lawrence Street twenty-five (25) feet; thence (4) Southerly and parallel with Pine Street to point and place of beginning. Bounded on the south by Lawrence Street, East by Pine Street, and on the North by Lot No. 9, and on the West by Lot No. 7, 10

Being the same premises conveyed to Michael Borbely and Elizabeth, his wife, by Deed from Emil Koyen and others dated March 11, 1908, and recorded in the office of the Clerk of Middlesex County, in Book 412 of Deeds, page 560.

This mortgage is given to secure money advanced by said association to pay in part for the erection of the building on said premises.

Together with all and singular, the profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining. Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same and of, in and to every part and parcel thereof; 20

To Have and To Hold, all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever. PROVIDED, NEVERTHELESS, and these presents are upon this condition: That, whereas, the said Michael Borbely and Elizabeth Borbely have entered into a contract in writing with said association, of which the following is a copy: 30

\$300.00 Perth Amboy, N. J., August 5th, 1908

Received of Citizens Building and Loan Association, of Perth Amboy, N. J., Three Hundred Dollars as a loan on three shares of stock, No. 40

Exhibit D 5a

1571 owned by Michael Borbely and Elizabeth Borbely, his wife, in said association. The said Michael Borbely and Elizabeth Borbely agree to pay to said Association, weekly not less than 75/100 Dollars, which shall be applied as follows:

10 First: To the payment of any fines, insurance, taxes, or other assessments made against us in accordance with the by-laws of said association:

Second: To the payment of the premium for precedence due on said loan amounting to 15/100 Dollars per week.

Third: To the payment of the interest due on said loan amounting to 30/100 Dollars per week.

20 Fourth: The balance of said payments shall be credited as dues on said stock. Said payments shall be continued until the dues so credited on said stock, together with the dividends declared thereon shall equal the amount loaned.

We also hereby assign the stock aforesaid to said Association as collateral security for said loan, and we authorize it when said stock is fully paid up, or should we fail for thirteen weeks to make the payments above stated, at its option to withdraw said stock in accordance with the By-Laws of said Association, or any or all of the money paid thereon, and apply the amount withdrawn to the payment of said loan, or the interest thereon, or any of the assessments above stated.

30 Should any part of said loan or the interest thereon or any part of said assessments remain unpaid after the withdrawal value of said stock is so applied, they shall become due and payable at the option of said association.

40 Now, Therefore, if the said Michael Borbely and Elizabeth Borbely, their heirs, executors, administrators or assigns shall well and truly pay the aforesaid sums of money when due as set forth in

Exhibit D 5a

said contract, then these presents shall be void, otherwise to be and remain in full force and virtue.

And it is expressly agreed by and between the parties to these presents, that said parties of the first part their heirs, executors, administrators or assigns will pay and discharge all taxes and assessments that now are or hereafter shall be levied or assessed upon the above described premises, or any part thereof, when the same become due and payable, and in default thereof, the said party of the second part, its successors or assigns, may pay such taxes and assessments, and the expenses of the same, and the amount so paid and the interest thereon from the time of such payments, shall forthwith be due and payable from the said parties of the first part, their heirs, executors, administrators or assigns, to the said party of the second part, its successors or assigns, by virtue hereof and the same shall be deemed a part of, and secured by these presents, and shall be collectible in the same manner, at the same time and upon the same conditions as mentioned in the above contract.

AND IT IS ALSO FURTHER AGREED by and between the parties to these presents, that the said parties of the first part shall and will keep the buildings erected, and to be erected, upon the lands herein conveyed insured against loss or damage by fire in some safe and responsible insurance company or companies, in an amount not less than Three Hundred Dollars and assign the policy or policies and certificate or certificates thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for said party of the second part to effect such insurance, and the premium or prem-

Exhibit D 5a

iums paid for effecting and continuing such insurance shall be a lien on said mortgaged premises, added to the amount secured by these presents, and shall be collectible in the same manner, at the time and upon the same conditions as mentioned in the above contract.

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

Signed, sealed and delivered in the presence of

Charles W. Thickstun

Michael Borbely
Elizabeth Borbely



STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss:

30 Be it remembered that on this sixth day of August in the year of our Lord One Thousand Nine Hundred and Eight, before me, a Commissioner of Deeds of New Jersey, personally appeared Michael Borbely and Elizabeth Borbely, his wife, who, I am satisfied, are the grantors mentioned in the within indenture, and 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 Borbely, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed freely and without any fear, threats or compulsion of her said husband.

40

CHARLES W. THICKSTUN,
*Commissioner of Deeds for the State of
New Jersey.*

*Exhibit D 6***Defendants Exhibit D 6****CONTRACT**

MICHAEL BORBELY and ELIZABETH BORBELY

with

CITIZENS BUILDING AND LOAN ASSOCIATION

Dated October 22nd, 1912

10

No. 1740

\$1,800.00

\$1,800

No. 1740

Perth Amboy, N. J., October 22, 1912

RECEIVED of the Citizens Building and Loan Association, of Perth Amboy, N. J., Eighteen Hundred Dollars as a loan on eighteen shares of stock, No. 1740 owned by Michael and Elizabeth Borbely, in said Association.

The said Michael and Elizabeth Borbely agree to pay to said Association, weekly, not less than Four and 50/100 Dollars, which shall be applied as follows:

20

First: To the payment of any fines, insurance, taxes, or other assessments made against us in accordance with the By-Laws of said Association.

Second: To the payment of the premium for precedence due on said loan amounting to 90/100 Dollars per week.

Third: To the payment of the interest due on said loan, amounting to 80/100 Dollars per week.

30

Fourth: The balance of said payments shall be credited as dues on said stock. Said payments shall be continued until the dues so credited on said stock together with the dividends declared thereon shall equal the amount loaned.

We also hereby assign the stock aforesaid to said Association as collateral security for said

40

Exhibits D 6 and D 7

loan, and we authorize it when said stock is fully paid up, or should we fail for thirteen weeks to make the payments above stated, at its option to withdraw said stock in accordance with the By-Laws of said Association, or any or all of the
 10 money paid thereon and apply the amount withdrawn to the payment of said loan, or the interest thereon, or any of the assessments above stated.

Should any part of said loan or the interest thereon or any part of said assessments remain unpaid after the withdrawal value of said stock is so applied, they shall become due and payable at the option of said Association.

Witness:

D6

Michael Borbely

Elizabeth Borbely

Michael Borbely

30

Defendants Exhibit D 7

BOND

MICHAEL BORBELY and ELIZABETH BORBELY

to

CITIZENS BUILDING AND LOAN ASSOCIATION

Dated October 22nd, 1912

No. 1740

\$1,800

40

KNOW ALL MEN BY THESE PRESENTS,
 That we, Michael Borbely and Elizabeth Borbely,
 his wife, of the City of Perth Amboy in the County
 of Middlesex and State of New Jersey, are held
 and firmly bound unto the Citizens Building and

Exhibit D 7

Loan Association a body corporate of the State of New Jersey, having its principal office and doing business in the City of Perth Amboy, in the County of Middlesex and State of New Jersey, in the sum of Thirty-six Hundred Dollars, lawful money of the United States of America, to be paid to the said Citizens Building and Loan Association, or to its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents. 10

Sealed with our seals and dated the twenty-second day of October, in the year of our Lord, One thousand nine hundred and twelve.

THE CONDITION OF THE ABOVE OBLIGATION is such, that whereas the above bounden Michael Borbely and Elizabeth Borbely have entered into a contract in writing with said Association of which the following is a copy: 20

\$1,800. Perth Amboy, N. J., October 22, 1912.

Received of Citizens Building and Loan Association, of Perth Amboy, N. J., Eighteen Hundred Dollars, as a loan on eighteen shares of stock, No. 1740 owned by Michael Borbely and Elizabeth Borbely, in said Association. The said Michael Borbely and Elizabeth Borbely agree to pay to said Association, weekly, not less than Four 50/100 Dollars, which shall be applied as follows: 30

First: To the payment of any fines, insurance, taxes, or other assessments made against us in accordance with the By-Laws of said Association.

Second: To the payment of the premium for precedence due on said loan amounting to 90/100 Dollars per week.

Third: To the payment of the interest due on said loan, amounting to One 80/000 Dollars per week. 40

Exhibit D 7

Fourth: The balance of said payments shall be credited as due on said stock. Said payments shall be continued until the dues so credited on said stock together with the dividends declared thereon shall equal the amount loaned.

10 We also hereby assign the stock aforesaid to said association as collateral security for said loan, and we authorize it, when said stock is fully paid up, or should we fail for thirteen weeks to make the payments above stated, at its option to withdraw said stock in accordance with the By-Laws of said Association, or any or all of the money paid thereon, and apply the amount withdrawn to the payment of said loan, or the interest thereon, or any of the assessments above stated.

20 Should any part of said loan or the interest thereon or any part of said assessments remain unpaid after the withdrawal value of said stock is so applied, they shall become due and payable at the option of said Association.

Now if the said Michael Borbely and Elizabeth Borbely, their heirs, executors, administrators or assigns, shall well and truly pay or cause to be paid the aforesaid obligation according to the tenor thereof to the said Citizens Building and Loan Association, its successors and assigns, then
30 the above obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Signed, sealed and delivered in the presence of

Michael Borbely



Adrian G. ...

Wm. Bowler



*Exhibit D 8***Defendants Exhibit D 8****MORTGAGE**

MICHAEL BORBELY and ELIZABETH BORBELY
to

CITIZENS BUILDING AND LOAN ASSOCIATION 10
Dated October 22nd, 1912

Received in the Clerk's office of the County of Middlesex, N. J., on the 11th day of November, A. D. 1912, at 11.20 o'clock in the forenoon and recorded in Book 258 of Mortgages for said County, on page 301, etc.

BERNARD M. GANNON,
Clerk.

Nov. 11, 1912,

11.20 o'clock A. M. 20

THIS INDENTURE, made the twenty-second day of October, in the year of our Lord, One Thousand Nine Hundred and Twelve, between Michael Borbely and Elizabeth Borbely, his wife, of the City of Perth Amboy in the County of Middlesex and State of New Jersey of the first part; and Citizens Building and Loan Association, a body corporate, of the State of New Jersey, having its principal office and doing business in the City of Perth Amboy, in the County of Middlesex in the State of New Jersey, of the second part: 30

WITNESSETH, that the said party of the first part, for and in consideration of the sum of Eighteen Hundred Dollars, 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 therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, con- 40

Exhibit D 8

veyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, to the said party of the second part, and to its successors and assigns forever,

10 ALL those two lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Perth Amboy, in the County of Middlesex and State of New Jersey.

Being known as lots Seven (7) and Eight (8) in Block 324 N on the Map of 170 Lots owned by Emil Koyen and Iver C. Ostergaard, in the City of Perth Amboy, County of Middlesex and State of New Jersey, surveyed May, 1907, by Mason & Smith and filed for record in the office of the
20 County Clerk of Middlesex County, New Jersey.

Beginning at a point in the northwesterly corner formed by the intersection of Lawrence Street and Pine Street; thence One (1) running westerly along the Northerly line of said Lawrence Street fifty (50) feet; thence (2) at right angles to Lawrence Street and parallel with Pine Street Eighty-five and seventy-five one hundredths (85.75) feet; thence (3) easterly parallel with Lawrence fifty
30 (50) feet; thence (4) southerly and parallel with Pine Street to the point or place of beginning. Bounded on the South by Lawrence Street; on the east by Pine Street; on the north by Lot No. 9 and on the West No. 6.

Being the same premises conveyed to said party of the first part by deed from Emil Koyen and wife and Ivar C. Ostergaard and wife, bearing date March 11th, 1908, and recorded in Book 412 of Deeds, page 560, for Lot No. Eight (8), and by Deed for Lot No. 7, from Emil Koyen and wife
40 and Ivar C. Ostergaard and wife, to said party

Exhibit D 8

of the first part, bearing date October 21st, 1912, and to be recorded.

This mortgage is given to secure money advanced by said Association to pay off a mortgage now on said premises and to pay in part for the purchase of Lot No. Seven (7). 10

Together with all and singular the profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining. Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same and of, in and to every part and parcel thereof:

To Have and To Hold, all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns, forever. PROVIDED, NEVERTHELESS, and these presents are upon this condition: That, whereas, the said Michael Borbely and Elizabeth Borbely, have entered into a contract in writing with said association, of which the following is a copy: 20

\$1,800 Perth Amboy, N. J., October 22, 1912. 30

Received of Citizens Building and Loan Association, of Perth Amboy, N. J., Eighteen Hundred Dollars as a loan on Eighteen shares of stock, No. 1740, owned by Michael and Elizabeth Borbely, in said association. The said Michael and Elizabeth Borbely agree to pay to said association, weekly, not less than Four 50/100 Dollars, which shall be applied as follows:

First: To the payment of any fines, insurance, taxes, or other assessments made against us in accordance with the by-laws of said association. 40

Exhibit D 8

Second: To the payment of the premium for precedence due on said loan amounting to 90/100 Dollars per week.

10 Third: To the payment of the interest due on said loan amounting to One 80/100 Dollars per week.

Fourth: The balance of said payments shall be credited as dues on said stock. Said payments shall be continued until the dues so credited on said stock, together with the dividends declared thereon shall equal the amount loaned.

20 We also hereby assign the stock aforesaid to said Association as collateral security for said loan, and we authorize it when said stock is fully paid up, or should we fail for thirteen weeks to make the payments above stated, at its option to withdraw said stock in accordance with the By-Laws of said Association, or any or all of the money paid thereon, and apply the amount withdrawn to the payment of said loan, or the interest thereon, or any of the assessments above stated.

Should any part of said loan, or the interest thereon, or any part of said assessments remain unpaid after the withdrawal value of said stock is so applied, they shall become due and payable at the option of said association.

30 Now, Therefore, if the said Michael Borbely and Elizabeth Borbely, their heirs, executors, administrators or assigns shall well and truly pay the aforesaid sums of money, when due as set forth in said contract, then these presents shall be void, otherwise to be and remain in full force and virtue.

40 And it is expressly agreed by and between the parties to these presents, that said parties of the first part, their heirs, executors, administrators or assigns will pay and discharge all taxes and assessments that now are or hereafter shall

Exhibit D 8

be levied or assessed upon the above described premises, or any part thereof, when the same become due and payable, and in default thereof, the said party of the second part, its successors or assigns, may pay such taxes and assessments, and the expenses of the same, and the amount so paid and the interest thereon from the time of such payments, shall forthwith be due and payable from the said parties of the first part, their heirs, executors, administrators or assigns, to the said party of the second part, its successors or assigns, by virtue hereof and the same shall be deemed a part of, and secured by these presents, and shall be collectible in the same manner, at the same time and upon the same conditions as mentioned in the above contract.

10

20

AND IT IS ALSO FURTHER AGREED by and between the parties to these presents, that the said parties of the first part shall and will keep the buildings erected, and to be erected, upon the lands herein conveyed insured against loss or damage by fire in some safe and responsible insurance company or companies, in an amount not less than Eighteen Hundred Dollars, and assign the policy or policies and certificate or certificates thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for said party of the second part to effect such insurance, and the premium or premiums paid for effecting and continuing such insurance shall be a lien on said mortgaged premises, added to the amount secured by these presents, and shall be collectible in the same manner, at the time and upon the same conditions as mentioned in the above contract.



30

40

Exhibit D 8

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

Signed, sealed and delivered in the presence of

Michael Borbely 
Elizabeth Borbely 
David Lyon
L. C. C.
 D8

20 STATE OF NEW JERSEY,
 COUNTY OF MIDDLESEX, ss:

30 Be it remembered that on this twenty-third day of October in the year of our Lord One Thousand Nine Hundred and Twelve, before me, a Master in Chancery of New Jersey, personally appeared Michael Borbely and Elizabeth Borbely, his wife, who, I am satisfied, are the grantors mentioned in the within indenture, and 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 Borbely, being by me privately examined, separate and apart from her husband, she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed freely and without any fear, threats or compulsion of her said husband.

40

ADRIAN LYON,
 M. C. C. of N. J.

*Exhibit D 9***Defendants Exhibit D 9****ABSTRACT OF TITLE**

To property on the Northerly side of Lawrence Street, known as Lots No. 7 and 8 in Block No. 324-N, Koyen and Ostergaard property.

MICHAEL and ELIZABETH BOBBELY

10

Dated, Nov. 11th, 1912

ABSTRACT OF TITLE

To all that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Perth Amboy in the County of Middlesex and State of New Jersey, being known as Lot Nos. 7 and 8 in Block No. 324-N, on Map of 170 lots owned by Emil Koyen and Iver C. Ostergaard, etc.

20

BEGINNING at a point in the Northwesterly corner formed by the intersection of Lawrence Street and Pine Street; thence (1) running West-erly along the Northerly line of said Lawrence Street fifty feet; thence (2) at right angles to Lawrence Street and parallel with Pine Street 85.75 feet; thence (3) Easterly parallel with Lawrence Street fifty feet; thence (4) Southerly and parallel with Pine Street to the point or place of beginning.

30

No. 1

RICHARD WAYNE PARKER,
et als.,

to

EMIL KOYEN and
IVER C. OSTERGAARD

DEED

Dated, Oct. 2, 1907

Ack., Oct. 2, 1907

Rec., Oct. 7, 1907

Book 403, page 406

Conveys in fee a large tract of land in the City

40

Exhibit D 9

of Perth Amboy, etc., including the two lots described in the caption hereof.

Warranty Deed.

10 Signed. Sealed. Witnessed. Acknowledgment
O. K.

No. 2

EMIL KOYEN and MARIE,
his wife, and
IVER C. OSTERGAARD and
ELISE, his wife,
to
MICHAEL BORBELY and
ELIZABETH, his wife

DEED
Dated, Mar. 11, 1908
Ack., Mar. 11, 1908
Rec., Mar. 20, 1908
Book 412, page 560
Con., \$225.00

20

Conveys in fee Lot No. 8 in Block No. 324-N, being one of the lots described in the caption hereof.
Warranty Deed.

Signed. Sealed. Witnessed. Acknowledgment
O. K.

No. 3

EMIL KOYEN and MARIE,
his wife, and
IVER C. OSTERGAARD and
ELISE, his wife
to
MICHAEL BORBELY and
ELIZABETH BORBELY,
his wife

DEED
Dated, Oct. 21, 1912
Ack., Oct. 21, 1912
Rec., Nov. 11, 1912
Book —, page —
Con., \$170.00

30

Conveys in fee Lot No. 7 in Block No. 324-N, being one of the lots described in the caption hereof.
Warranty Deed.

40 Signed. Sealed. Witnessed. Acknowledgment
O. K.

Exhibit D 9

No. 4

MICHAEL BORBELY and
ELIZABETH, his wife

to

CITIZENS BUILDING AND
LOAN ASSOCIATION

MORTGAGE

Dated June 15, 1908

Ack. June 17, 1908

Rec. June 23, 1908

Book 208, page 532

Amt., \$800.00

10

Lien on Lot No. 8 in Block No. 324-N, being one of the lots described in the caption.

No. 5

MICHAEL BORBELY and
ELIZABETH, his wife

to

CITIZENS BUILDING AND
LOAN ASSOCIATION

MORTGAGE

Dated, Aug. 5, 1908

Ack., Aug. 6, 1908

Rec., Aug. 7, 1908

Book 209, page 510

Amt., \$300.00

20

Lien on Lot No. 8 in Block No. 324-N, being one of the lots described in the caption hereof.

30

No. 6

MICHAEL BORBELY and
ELIZABETH, his wife

to

CITIZENS BUILDING AND
LOAN ASSOCIATION

MORTGAGE

Dated, Oct. 22, 1912

Ack., Oct. 23, 1912

Rec., Nov. 11, 1912

Book —, page —

Amt., \$1,800.00

40

Lien on the property described in the caption.

Exhibits D 9, D 10 and D 11

affecting the property described in the caption hereof, except as stated.

And I do further certify that I do not find indexed in said office any JUDGMENTS, LIS PENDENS, MECHANIC LIENS, ATTACHMENTS, BONDS TO SHERIFF or RECOGNIZANCES 10
in the name of:

Emil Koyen, Iver C. Ostergaard, Michael Borbely, Elizabeth Borbely, for twenty years last past,

being liens on said property, except as stated.

IN TESTIMONY WHEREOF I have hereto set my hand this eleventh day of November A. D. 1912.

ADRIAN LYON.

I have examined the title to the lands described 20
in the mortgage executed by Michael and Elizabeth Borbely to the Citizens Building and Loan Association of Perth Amboy, N. J., dated October 22, 1912, and recorded in the office of the Clerk of Middlesex County, N. J., in Book of Mortgages for said County on page — and find that at the time of said mortgage said Michael and Elizabeth Borbely were seized of an estate in fee simple to said lands, and that said mortgage is a first lien on said premises. 30

Dated, November 11, 1912.

ADRIAN LYON.
Solicitor.

Defendants Exhibit D 10 D 11

Accounts of Michael Borbely and Elizabeth Borbely, his wife, with Citizens Building & Loan Association.

Stipulated that same need not be printed. 40

Stipulation

STIPULATION.

NEW JERSEY COURT OF ERRORS AND
APPEALS

	Between	}	On Appeal. STIPULATION.
10	LEMBECK & BETZ EAGLE BREWING COMPANY, a Cor- poration, <i>Complainant-Appellant,</i>		
	<i>and</i>		
	MIKE BARBI, also known as MICHAEL BORBELY, and LIZZIE BARBI, also known as ELIZABETH BORBELY, his wife, and the CITIZENS BUILDING & LOAN ASSOCIA- TION, a Corporation of New Jersey,		
20	<i>Defendants-Respondents.</i>		
30			

It is hereby stipulated and agreed by and between the parties to this cause that complainant's exhibit C-7 and defendant's exhibits D-10 and D-11 need not be printed in full in the state of the case, but only so far as to show that part of the said exhibits which gives the title or name with the full spelling thereof in which the said accounts were kept.

Dated, May 19, 1919.

D. EUGENE BLANKENHORN,
Solicitor for Complainant-Appellant.

ADRIAN LYON,
Solicitor for Defendant-Respondent,
Citizens Building & Loan Association.

40

Opinion

OPINION

(Filed March 21, 1919)

Between	} Memorandum.	10
LEMBECK & BETZ EAGLE		
BREWING COMPANY, a		
Corporation,		
<i>Complainant.</i>		
<i>and</i>		
MIKE BARBI, <i>et als.</i> ,		
<i>Defendants.</i>		
On pleadings and proofs.		

MR. D. EUGENE BLANKENHORN for the complainant.
 MR. ADRIAN LYON, for the Citizens' Building and
 Loan Association, defendant. 20

LEWIS, V. C.

In June of 1908, Michael Borbely applied to the Citizens' Building and Loan Association, of Perth Amboy, New Jersey, for a loan of \$800.00 on Lot 8 on the Northwest corner of Lawrence and Pine Streets, in that city, being 25 feet wide by 85 feet deep, producing his deed from Koyen and Ostergaard, bearing date March 11, 1908, recorded March 20, 1908, which deed was made out to him and his wife under the name and spelling as follows: "Michael Borbely and Elizabeth, his wife." 30

He was not known by any other name to the solicitor who drew up the bond and mortgage. The bond and mortgage were drawn in the names as they appeared in the deed, but when signed by Borbely and his wife, the signatures looked like "Mezk Barbily," and "lizi Bourbi," or as nearly in that way as can be made out from the signatures.

The solicitor procured a search of the title to 40

Opinion

the lot, made by the County Clerk of Middlesex County, which showed the deed and mortgage and two lien claims, both of which were against Michael Borbely and Elizabeth Borbely.

10 The mortgagors applied for a further loan of \$300.00, which was granted, which bond and mortgage are dated August 5, 1908. In this second bond and mortgage the names were used as in the prior mortgage and were signed in exactly the same way, with the exception that on the mortgage the wife seems to have spelled her last name "Barbie" or "Barbei."

20 The mortgagors had a pass-book made out in the names as given on the deed and in the mortgages, and continued to make payments on account of the mortgages until October of 1912, when they had reduced the amount to the sum of \$876.58. At that time they applied for a further loan of \$1,800.00, which was to include the amount due on the two former mortgages, and the balance due on an additional lot known as Lot No. 7, adjoining. This loan was granted, and another deed for Lot No. 7 was brought to the Building Association's solicitor, made out in exactly the same manner as the other deed, namely, "Michael Borbely and Elizabeth Borbely, his wife," which 30 was dated October 21, 1912, and recorded November 11, 1912.

A new mortgage was made out to the Association for the sum of \$1,800.00, covering both lots, using the names as they had been given. A search was made on the two lots, which showed the two deeds, the two prior mortgages and the two lien claims already referred to. The search was made against Michael Borbely and Elizabeth Borbely, the names appearing in the deeds, neither the 40 searcher nor the solicitor of the Building and Loan

Opinion

Association knowing that the parties went under any other name than that given in the deed and prior mortgages. The new mortgage was executed and acknowledged and recorded.

Borbely was a liquor dealer, and on May 11, 1910, over two years before the execution and recording of the \$1,800.00 mortgage, he gave a mortgage to the complainant, for \$800.00, which mortgage was recorded on May 15, 1910. This mortgage was made out in the name of "Mike Barbi and Lizzie Barbi, sometimes known as Barboe," and purported to cover property on the corner of the two streets, 25 feet wide by 100 feet deep, which, as a matter of fact, was a greater depth by 15 feet than the parties owned. The name on the book of the Brewing Company produced in evidence was "Babey."

It is admitted that the mortgagors in the mortgages to the Building and Loan Association are the same who executed the mortgage to the complainant.

The question in issue is, whether the mortgage of complainant is prior to that for \$1,800.00 held by the Association.

The first and second mortgage, never having been cancelled of record, will undoubtedly take precedence of the mortgage given to the Brewery Company, notwithstanding that the Building and Loan Association included them in the mortgage for \$1,800.00. That appears to be quite plain and needs no discussion.

The question is narrowed down, therefore, to whether the Brewery mortgage will take precedence of the last mortgage given by the Building Association, less the amount due on the first and second mortgage.

The complainant contends that the mortgagors

Opinion

held themselves out as "Barbi" or "Borbi" to the knowledge of the Building and Loan Association, because the Association had in its possession at the time of the making of the \$1,800.00 mortgage two bonds and two mortgages which were so signed by these parties.

10 Of course, every grantee is bound by everything that appears in his deed, and a nice question arises whether the Building and Loan Association was put on inquiry from the fact that the names as signed by Borbely and his wife, differed from the names in the body of the instruments and the acknowledgments. The solicitor for the Building Association testified that if his attention had been carefully directed to the signatures at the time the mortgages were signed, he would merely have supposed that it was an illiterate way that the parties had in writing their names. If Borbely and his wife had signed each of the mortgages and bonds alike, namely, "Mike Barbi" and "Lizzie Barbi," it would seem that this would have been sufficient to put the Building and Loan Association on inquiry, and if they had followed it up, they would have found the mortgage for \$800.00 to the Brewery Company.

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30 However, such is not the case. The Building and Loan Association would not have been able, in my opinion, to have found the record of the mortgage given to the Brewery Association.

Besides this "A grantee is chargeable with knowledge of the title of his grantor as it exists in unbroken sequence on the records of the Clerk's Office."—Wallace v. John Silsby and Henry Martin, 42 N. J. L., 1.

In that case Chief Justice Beasley held:

40 "That the title of the grantor, as it appears in regular sequence and unbroken

Opinion

continuity on the record, is a fact within the consciousness of the grantee at the time that he accepts his conveyance, is a conclusion *juris et de jure*. This is a doctrine which I do not think has ever been brought into doubt in this State.”

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See also *Losey v. Simpson*, 11 N. J. Equity, page 249.

This would seem to indicate that the Brewing Company must be held to have known that the property stood in the name of Michael Borbely and Elizabeth, his wife, and for its mortgage to have taken precedence of the Building and Loan Association mortgage of 1912, it was absolutely necessary that it should have been made up in the name of Michael Borbely and Elizabeth, his wife.

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Of course, a deed or mortgage made by a grantor in a fictitious name is perfectly good as between the parties themselves, but, in my opinion, not as against a purchaser for a valuable consideration, who had neither actual nor constructive notice.

Complainant contends that even though the proper name of the mortgagors is Borbely, and that the name by which they mortgaged the land was fictitious, yet, he being the real owner of the property, and the mortgage having been recorded, it is notice to all subsequent purchasers and mortgagees, citing the following cases in support of his contention:

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Wiehl, Probasco & Co. vs. C. P. Robertson, et al., 97 Tenn. 458; (39 L. R. A., 433);
Fallon vs. Kehoe, 38 Cal., 44;

David vs. Williamsburgh City Fire Insurance Co., 83 N. Y., 255.

The case of *Mackey vs. Cole*, 79 Wis., 426, takes

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Opinion

the opposite view. In this State the question does not seem to have arisen except indirectly.

10 I am, therefore, of the opinion, that the mortgage of the Building and Loan Association for \$1,800.00 is entitled to priority of payment over the mortgage of the Lembeck & Betz Eagle Brewing Company, because, at the time the Building and Loan Association mortgage was given, the mortgage of the Brewing Company was not constructive notice, inasmuch as it was recorded in the names of the mortgagors in such form that a search in the real names of the owners would fail to disclose it. If the searcher is charged with the duty of searching for fictitious names, either in the chain of title, or for encumbrances in order to locate instruments of record affecting the premises involved, the recording system would be a nullity, and the searcher would be helpless, because he has no means of determining what fictitious name may have been employed by a grantor or a mortgagor in a previous deed or encumbrance.

20 An otherwise perfect chain of title search, based upon a search in the real names of the parties as they appear of record, would not be worth the paper it was written on, because you could never tell what outstanding deeds or encumbrances might exist of record affecting the premises in fictitious names.

30 To sustain the Brewing Company's mortgage as the prior lien would be to sustain the illogical and intolerable situation thus outlined, and would make ducks and drakes of the recording system in New Jersey. A search would be useless and the result would be confusion and confusion worse confounded.

40 Furthermore, on the pure equities of the situation, the Brewing Company was in an undoubted

Opinion

position of ability to protect itself, as well as the Building Association, against a situation such as has now arisen, by having a chain of title search made which would have disclosed the correct name in which ownership of the premises then stood, and then insisted upon the mortgage being executed accordingly. If that had been done—and in these days no reasonably prudent person takes title or makes a mortgage loan without a search—the Brewing Company's mortgage would have been indexed in the same names as the owners, "Borbely," and the Building Association's search made by Mr. McWilliams in that name would have disclosed the Brewing Company's mortgage, and the Building Association could then have taken appropriate action to protect itself. The recording of the Borbely deed was unquestionably constructive notice to the Brewing Company of the real names of the owners.

I will advise a decree in accordance with these views.

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Decree

DECREE

(Filed April 3, 1919)

10	Between LEMBECK & BETZ EAGLE BREWING COMPANY, a Corporation, <i>Complainant,</i>	}	On Bill to Foreclose DECREE
	<i>and</i>		
	MIKE BARBI, <i>et als.</i> , <i>Defendants.</i>		

20 This cause being opened to the Court by D. Eugene Blankenhorn, of counsel with the complainant, and in the presence of Adrian Lyon, of counsel with the defendant, Citizens Building and Loan Association (no one appearing for the other defendants, Mike Barbi, also known as Michael Borbely, and Lizzie, his wife; and the bill herein having been taken as confessed against them), and coming on to be heard, and the pleadings having been read and the evidence taken, and the

30 arguments of counsel heard and considered, and the Chancellor being of the opinion that the mortgage of the defendant, Citizens Building & Loan Association, for \$1,800.00, is entitled to priority of payment over the mortgage of the complainant, Lembeck & Betz Eagle Brewing Company;

It is ORDERED, ADJUDGED AND DECREED that the said bill of complaint be taken as confessed against the said Michael Barbi, also known as Michael Borbely, and Lizzie Barbi, his

40 wife, also known as Elizabeth Borbely;

Decree

That the debt secured by the mortgage made June 15, 1908, by the said defendants, Michael Borbely and Elizabeth Borbely, his wife, to the Citizens Building & Loan Association to secure the payment of \$800, recorded in the Middlesex County Clerk's Office in Book 208, page 532, and the debt secured by the mortgage made August 5, 1908, by said defendants to said Citizens Building & Loan Association to secure the payment of \$300, recorded in the Middlesex County Clerk's Office in Book 209, page 510, are both included in and secured by the mortgage made October 22, 1912, by said defendants to said Citizens Building & Loan Association to secure the payment of \$1,800, which mortgage is recorded in the Middlesex County Clerk's Office in Book 258 of Mortgages, page 301; 10

That the said mortgage given October 22, 1912, by the said defendants to Citizens Building & Loan Association to secure the payment of \$1,800 and interest, recorded in Middlesex County Clerk's Office in Book 258 of Mortgages at page 301, is entitled to priority in payment over the mortgage given May 11, 1910, to the complainant, the Lembeck & Betz Eagle Brewing Company to secure the payment of \$800 recorded in Middlesex County Clerk's Office in Book 228 of Mortgages, at page 587; that the amount due on said mortgages of the defendant, the Citizens Building and Loan Association on May 25, 1918, for principal, interest, dues and fines is \$1,974.09, and that the the sale herein ordered to be made shall be made subject to the lien of said mortgages of defendant; 30

That there was due to complainant for principal and interest on its said mortgage on June 6, 1918, the sum of \$650.37 and that the said complainant is entitled to have said sum of \$650.37, with lawful 40

Decree

interest thereon to be computed from said June 6, 1918, together with the costs of this suit, raised and paid out of the said mortgaged premises;

10 That it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid;

That the solicitor of the defendant, the Citizens Building and Loan Association be allowed and paid the sum of \$50.00 as counsel fee in said cause;

20 That there shall be included in the taxed bill of costs the sum of \$32.23, being moneys necessarily expended by the solicitor of the complainant in making a search of the title of the mortgaged premises for the purpose of the foreclosure of complainant's said mortgage, said sum to be collected with the other items of said bill;

20 That the solicitor of complainant be allowed and paid the sum of \$50.00 instead of the retaining fee now allowed to counsel by the statute, and that the said sum be included in the taxed bill of costs and collected with the other items of said bill;

30 That so much of the said mortgaged premises as will be sufficient to raise and satisfy said debt, interest, costs and allowances, be sold; and that a writ of fieri facias do issue for that purpose out of this court directed to the Sheriff of the County of Middlesex, commanding him to make sale according to law of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interests, costs and allowances, and that he pay in the first place to the solicitor of the defendant, the Citizens Building and Loan Association, the sum of \$50.00 allowed as aforesaid, besides the costs of the said defendant, Citizens Building and Loan Association, to be taxed; and in the second place, to the complainant, or its
40 solicitor, the said sum of \$650.37, with interest

Decree

thereon to be computed from said June 6, 1918, together with the costs of said complainant to be taxed;

That in case more money should be raised by said sale than shall be sufficient to answer such several payments, such surplus to be brought into this court to abide the further order of the court, unless otherwise previously disposed of by the order of this court; and 10

That the said sheriff make return without delay of his proceeding by virtue of the said writ; and

That the defendants, Mike Barbi, also known as Michael Borbely, and Lizzie Barbi, his wife, also known as Elizabeth Borbely, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises sold as aforesaid by virtue of this decree. 20
Respectfully advised,

VIVIAN M. LEWIS, V.C.

E. R. WALKER, C.

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Notice of Appeal

NOTICE OF APPEAL

(Filed April 8, 1919)

IN CHANCERY OF NEW JERSEY

Between

10 LEMBECK & BETZ EAGLE
 BREWING COMPANY, a
 Corporation,
Complainant,
 and

MIKE BARBI, also known as
 MICHAEL BORBELY, and LIZI
 BARBI, his wife, also known
 as ELIZABETH BORBELY, and
 the CITIZENS BUILDING AND
 LOAN ASSOCIATION,
 20 *Defendants.*

On Bill, etc.
 NOTICE OF
 APPEAL.

The Lembeck & Betz Eagle Brewing Company, the complainant in the above entitled cause, hereby appeals from the final decree made and filed in said cause on April 3, 1919, and from every part thereof, to the Court of Errors and Appeals, in the last resort in all cases.

Dated April 7, 1919.

D. EUGENE BLANKENHORN,
Solicitor of Appellant.

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

Of Counsel with Appellant.
 D. EUGENE BLANKENHORN,

Notice of Appeal

PETITION OF APPEAL

(Filed April 25, 1919)

NEW JERSEY COURT OF ERRORS AND
APPEALS

Between

LEMBECK & BETZ EAGLE
BREWING COMPANY,
*Complainant-Appellant,**and*MIKE BARBI and LIZZIE
BARBI, his wife, and
CITIZENS BUILDING AND
LOAN ASSOCIATION,
Defendants-Respondents.

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On Appeal
PETITION OF
APPEAL.

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To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of the Lembeck & Betz Eagle Brewing Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor, bearing date April 3, 1919, in a cause wherein said Lembeck & Betz Eagle Brewing Company was complainant and Mike Barbi and Lizzi Barbi, his wife, and the Citizens Building and Loan Association were defendants, in this respect, viz:

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That said final decree orders, adjudges and decrees as follows:

“That the said mortgage given October 22, 1912, by the said defendants to Citizens Building and Loan Association to secure the payment of \$1,800 and interest, recorded in Middlesex County Clerk’s

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Petition of Appeal

Office in Book 258 of Mortgages at page 301, is entitled to priority in payment over the mortgage given May 11, 1910, to the complainant, the Lembeck & Betz Eagle Brewing Company, to secure the payment of \$800 recorded in Middlesex County Clerk's Office in Book 228 of Mortgages, at page 587; that the amount due on said mortgages of the defendant, the Citizens Building and Loan Association on May 25, 1918, for principal, interest, dues and fines is \$1,970.09 and that the sale herein ordered to be made shall be made subject to the lien of said mortgages of defendant;

“That so much of the said mortgaged premises as will be sufficient to raise and satisfy said debt, interest, costs and allowances, be sold; and that a writ of fieri facias do issue for that purpose out of this court directed to the Sheriff of the County of Middlesex, commanding him to make sale according to law of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest, costs and allowances, and that he pay in the first place to the solicitor of the defendant, the Citizens Building and Loan Association, the sum of \$50.00 allowed as aforesaid, besides the costs of the said defendant, Citizens Building and Loan Association, to be taxed; and in the second place, to the complainant, or its solicitor, the said sum of \$650.37, with interest thereon to be computed from said June 6, 1918, together with the costs of said complainant to be taxed.”

And petitioner appeals from so much of said final decree as orders, adjudges and decrees as hereinabove set forth upon the ground that the same is erroneous for that:

1. The decree is against the evidence.

Petition of Appeal

2. The decree is against the weight of the evidence.

3. The decree is contrary to law.

4. The decree is contrary to equity and good conscience.

5. The mortgage given May 11, 1910, by the defendants, Mike Barbi, and Lizi Barbi, his wife, to the complainant, Lembeck & Betz Eagle Brewing Company, is entitled to priority in payment over the mortgage given October 22, 1912, by said defendants to the defendant, Citizens Building and Loan Association. 10

6. The complainant, the Lembeck & Betz Eagle Brewing Company is entitled to have the said sum of \$650.37 decreed to be due on its said mortgage, together with interest thereon from June 6, 1918, and the costs of said complainant to be taxed, first paid out of the proceeds of the sale of said mortgaged premises. 20

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

D. EUGENE BLANKENHORN, 30
Solicitor for and of Counsel with Appellant.

*Answer to Petition of Appeal*ANSWER TO PETITION OF APPEAL
(Filed May 7, 1919)*New Jersey Court of Errors and Appeals.*

10 Between
 LEMBECK & BETZ EAGLE
 BREWING COMPANY,
Complainant-Appellant,

and

MIKE BARBI and LIZZIE
 BARBI, his wife, and
 CITIZENS BUILDING AND
 20 LOAN ASSOCIATION,
Defendants-Respondents.

On Appeal.
 ANSWER TO
 PETITION OF
 APPEAL.

The answer of Citizens Building and Loan Association, the above named respondent, to the petition of appeal of the above named appellant.

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

40 ADRIAN LYON,
Solicitor and of Counsel with Respondent.

New Jersey Court of Errors and Appeals

Between
LEMBECK & BETZ EAGLE BREW-
ING COMPANY, a corporation,
Complainant-Appellant,
and
MIKE BARBI, also known as
MICHAEL BORBELY, and LIZZIE
BARBI, also known as ELIZA-
BETH BORBELY, his wife, and
the CITIZENS BUILDING AND
LOAN ASSOCIATION, a corpora-
tion of New Jersey,
Defendants-Respondents.

Brief of
Complainant-
Appellant.

Complainant filed its bill to foreclose a mortgage made to it by "Mike Barbi" and "Lizi Barbi," his wife. Defendant, the Citizens Building and Loan Association, answered, alleging that a mortgage for \$1800 to it by the same parties, made and recorded subsequent to complainant's mortgage, was in fact a prior lien to complainant's mortgage and a decree to that effect has been made.

The difficulty arises out of the fact that the mortgagors were described in and signed the several instruments making up the chain of title to the mortgaged premises by different names, with the result that the record of the mortgage of complainant was indexed under the name of "Barbi," whereas that of the Citizens Building and Loan Association was indexed under the name "Borbely."

The records in the Middlesex County Clerk's Office show the following instruments recorded in the order named (case, p. 38):

(1) Deed for Lot 8, Block 324 N, to "Michael Borbely" and "Elizazbeth Borbely," his wife (p. 38; Exhibit D 1, p. 45).

(2) Mortgage to Citizens Building and Loan Association for \$800 on Lot 8, the mortgagors described therein as "Michael Borbely and Elizabeth Borbely, his wife," but signed "Mizk Borbely" and "Lizi Barbi" (p. 39; Exhibit D 3 pp. 52-54).

(3) Mortgage to Citizens Building and Loan Association for \$300 on Lot 8, the mortgagors described therein as "Michael Borbely" and Elizabeth Borbely, his wife," but signed "Mesk Borbily" and "Lizi Borbi" (p. 40; Exhibit D 5 A, pp. 63-68).

(4) Mortgage to Lembeck & Betz Eagle Brewing Company for \$800 on premises including Lot 8; the mortgagors described therein as "Mike Barbi and wife, Lizzie Barbi, sometimes known as Barboe," but signed "Mezk Barbi" and "Lizi Barbi" (p. 40; Exhibit C 1, pp. 34-37).

(5) Mortgage to Citizens Building and Loan Association for \$1800 on Lots 7 and 8, Block 324 N; the mortgagors described therein as "Michael Borbely and Elizabeth Borbely, his wife," but signed "Mezk Barbi" and "Lizi Barbi" (p. 41; Exhibit D 8, pp. 73-78).

(NOTE: From the County Clerk's records it would appear that the mortgagors had signed this mortgage with the names by which they were described in the instrument (p. 41), but an inspection of the instrument itself (Exhibit D 8, pp. 73-

78) shows that the County Clerk has not correctly recorded the signatures to this mortgage.)

In indexing these instruments, the County Clerk used only the names which were inserted in the body of the instrument and did not index the names as signed. Hence the mortgagors in the mortgages held by the Citizens Building and Loan Association are described in the indexes as "Michael Borbely" and "Elizabeth Borbely," whereas the same persons, mortgagors in complainant's mortgage, are indexed as "Mike Barbi" and "Lizi Barbi."

The indexes therefore show the following:

First: Deed, Emil Koyen, et als., to Michael Borbely and Elizabeth Borbely, his wife," Lib. 412, p. 560; (p. 38, p. 80);

Second: Mortgage, \$800. "Michael Borbely and Elizabeth Borbely, his wife," to Citizens Building and Loan Association, Liber 208, p. 532, (p. 39; p. 81);

Third: Mortgage, \$300, "Michael Borbely and Elizabeth Borbely, his wife," to Citizens Building & Loan Association, Liber 209, p. 510, (p. 40; p. 81);

Fourth: Mortgage, \$800, "Mike Barbi and Lizi Barbi, his wife," to Lembeck & Betz Eagle Brewing Company, Liber 228, p. 587, (p. 40);

Fifth: Mortgage, \$1800, "Michael Borbely and Elizabeth Borbely, his wife," to Citizens Building and Loan Association, Liber 258, p. 301, (p. 41; p. 81).

These instruments and the bonds accompanying the mortgages were all introduced in evidence.

Photographic reproductions of all the signatures of the defendants, Barbi, to the bonds and

mortgages and other papers in possession of the defendant, Citizens Building and Loan Association, at the time of the signing of the last mortgage in question, are printed in the state of the case. A comparison of all of these signatures will show how little they varied each time the defendants, Barbi, signed the mortgages or other instruments. Particular attention is called to the signatures on defendant's Exhibit D 6, the contract for the last mortgage of the Citizens Building and Loan Association (p. 70); those on defendant's exhibits D 7 and D 8 (p. 72 and p. 78), and those on plaintiff's mortgage, Exhibit C 2 (p. 33).

On all of the Building and Loan Association's other bonds and mortgages, Michael Barbi signed as "Mezk Borbily," but his wife signed as "Lizi Barbi" or "Lizi Borbi."

B-o-r-b-e-l-y is a Magyar, or Hungarian, name (Somogyi, p. 28, ll. 30-33). In the pronunciation of the name, the "l" is silent and the "l" and "y" have one sound. (Somogyi, p. 29, ll. 21-23). "Meyk" or "Myk" is often used by ignorant Hungarians as the spelling for "Mike." (Somogyi, p. 29, ll. 24-27). Therefore, Borbi or Borbey represents the correct pronunciation of the name.

Defendant, Citizens Building and Loan Association, did not search the records at all against the name "Bourbi" or "Barbi," but searched only against "Borbely." (MacWilliams, p. 27, ll. 36-40; p. 28, ll. 1-10).

The loans made by the Citizens Building and Loan Association to Barbi were all made through the office of Adrian Lyon, the counsel for the Association. (A. Lyon, p. 25, ll. 30-35.) Several searches of title were made at his direction. (A.

Lyon, p. 21, l. 30; p. 22, l. 22; p. 24, l. 40; p. 25, ll. 1-2.)

At the time of making the last bond and mortgage to the Building and Loan Association for \$1800, (Defendant's Exhibits D 7 and D 8, pp. 70-78), the Association had in its possession a contract (Defendant's Exhibit D 6, pp. 69 and 70), signed before Adrian Lyon as a witness by "Meyk Barbi" and "Lizi Barbi," as shown on page 70 of the case, and the acknowledgment to the mortgage was taken by Mr. Lyon with the contract, so signed, before him (A. Lyon, p. 24, ll. 24-30). Notwithstanding this fact and notwithstanding the fact that the signatures to the prior mortgages held by the Building and Loan Association showed that the wife, at least, used the name "Barbi," Mr. Lyon testified that at no time did he know that the parties were known as "Barbi," and that had his attention been called to the signature of the last mortgage, "Barbi," at the time the \$1800 mortgage was given, his testimony as to want of knowledge that these persons were known by the name Barbi would not be changed in any respect. (A. Lyon, p. 24, l. 40; p. 25, ll. 1-20.)

At the time the \$1800 mortgage was given, the Building and Loan Association also had in its possession the two prior mortgages showing the signatures, "Barbi," above referred to (A. Lyon, p. 25, ll. 29-35), and these papers passed through the office of Mr. Lyon.

It may be noted that the County Clerk's search, referred to by Mr. Lyon in his testimony at page 21, ll. 30-33, being Defendant's Exhibit, D 2, pages 49-52, is merely a search of the indexes, as indicated by the certificate of the County Clerk on page 50, ll. 32-35, p. 51, ll. 30-36, and that the

search furnished by the County Clerk does not indicate the manner in which the several instruments reported by him were signed. Had this been done, it would have shown the discrepancy between the signatures of the mortgagors and the names by which the mortgagors were described in the body of the mortgages, as was indicated by complainant's search of title (Exhibit C 3, p. 38-41).

Mr. Lyon's certificate to the abstract of title, Defendant's exhibit D 9, pp. 79-83, at page 82, ll. 33-36, indicates that his search was a search of the indexes of the records.

It is not disputed that complainant's mortgage was recorded and indexed under the name of Barbi as shown by Complainant's exhibit C 3, pages 38-41, in the order set out at the commencement of this memorandum.

It is not disputed that Mike Barbi and Lizzie Barbi, who executed Complainant's bond and mortgage are the same persons who executed the mortgages to the Building & Loan Association (p. 87, ll. 22-25).

Citizens Building and Loan Association received payments reducing the total indebtedness of the defendants, Barbi, to it to \$876.58 prior to taking the \$1800 mortgage, and this sum was included in the debt for which the \$1800 mortgags was given, all payments subsequent to the making of the \$1800 mortgage being applied in reduction of the latter mortgage. (Afflerbach, p. 30, ll. 25-40; p. 31, ll. 1-28; p. 31, l. 40; p. 32, ll. 1-18.)

Complainant-Appellant contends that its mortgage is entitled to priority over the lien of the \$1800 Building and Loan mortgage, with the ex-

ception that the Building and Loan Association is entitled to a prior lien of \$876.58, the balance due on its \$800 and \$300 mortgages at the time of making the \$1800 mortgage, less the proportionate amounts of payments made by the defendants, Barbi, subsequent to the date of the \$1800 mortgage, which proportionate sums should have been credited to the \$800 and \$300 mortgages, together with interest on the balance remaining due on the \$800 and \$300 mortgages from the date of the default.

The points of fact and law relied on by complainant in support of this contention are:

I. Defendant, Citizens Building and Loan Association, had actual notice that the holders of the title to the mortgaged premises were known as "Barbi" or "Borbi."

II. Defendant, Citizens Building and Loan Association, had constructive notice of Complainant's mortgage at the time of the making and recording of its \$1800 mortgage and the \$1800 mortgage is subsequent to the lien of Complainant's mortgage for the following reasons:

(a) Complainant's mortgage, having been executed by the real owners of the property, although executed in a name different from that by which they acquired title, and having been recorded, operates as constructive notice to subsequent mortgagees and is entitled to precedence over the \$1800 mortgage executed to the Building and Loan Association, subsequently recorded.

(b) The mortgagors having used the name "Barbi" pro hac vice, it is their name.

(c) The records in the County Clerk's Office were constructive notice to defendant, the Citizens Building and Loan Association, of the fact that defendants, Barbi, had mortgaged the premises in question to the Brewing Company under the name "Barbi."

POINT I.

Defendant, Citizens Building and Loan Association, had actual notice that the holders of the Title to the Mortgaged Premises were known as "Barbi" or "Borbi".

The writer has pointed out in the foregoing summary of facts that the Building and Loan Association had in its possession the signatures of the owners of the mortgaged premises, a comparison of which, by means of the photographic reproductions printed in the case, will show more conclusively than any argument of counsel, that they must have had knowledge that these persons used the name, "Barbi." The County Clerk's records also show this and a search of those records fully discloses this fact. (A full discussion of this point is made in subdivision "c" of Point II.)

The Vice Chancellor was mistaken, therefore, in his conclusion that the defendant was not known by any other name to the solicitor who drew up the bond and mortgage (p. 85, ll. 32-34); that neither the searcher nor the solicitor knew that the parties went under any other name than that given in the deed and prior mortgages (p. 86, ll. 39-40; p. 87, ll. 1-3), and that the Building and Loan Association would not have been able to have found the record of the mortgage given to the Brewing Company, (p. 88, ll. 29-35).

Can an attorney and counsellor at law who has signed an instrument as a witness, as Mr. Lyon did to Defendant's exhibits D 6 (p. 70), D 7 (p. 72), D 8 (p. 78), come into this court and testify that he did not know that these parties were known by any other name than "Borbely" and expect

not to be charged with knowledge that they were known by the name "Barbi"?

The Building and Loan Association is charged with knowledge of the contents of the papers which they had in their possession.

POINT II.

Defendent, Citizens Building and Loan Association, had constructive notice of Complainant's Mortgage at the time of its \$1800 Mortgage, and the \$1800 Mortgage is subsequent to the lien of Complainant's Mortgage.

(a) Complainant's mortgage having been executed by the real owners of the property, although executed in a name different from that by which they acquired title, and having been recorded, operates as constructive notice to subsequent mortgagees and is entitled to precedence over the \$1800 mortgage executed to the Building and Loan Association, subsequently recorded.

Conceding, for the moment, that the proper name of the mortgagors is "Borbely," and that the name by which they mortgaged the land was fictitious, complainant contends that the mortgage, if executed in a fictitious name by the real owner of the property, and recorded, is notice to all subsequent purchasers and mortgagors, of the execution of the mortgage. Complainant relies upon the rule laid down in the case of *Wiehl, Probasco & Co. vs. C. P. Robertson, et al.*, 97 Tenn. 458, which will be found reported in 39 L. R. A., at page 423.

In that case, Robertson, the owner of certain land, executed a deed to a fictitious person and then, using the name of that person, he executed

another deed to a trustee. Both deeds were recorded. Subsequently, the property was sold by the trustee to pay certain bonds which had been executed by the fictitious person, to the trustee. The property was purchased by F. F. Wiehl as trustee for certain creditors of Robertson, who, on discovering the nature of the whole transaction, repudiated it. That part of the opinion pertinent to the present case is as follows:

“The theory of the bill of Wiehl, Probasco & Co., as has been stated, is that the grant from Robertson and wife to C. Phillips, there being no such grantee, was waste paper, leaving the title in the grantor, and that the trust deed from C. Phillips to Grayson, trustee, being a forgery, communicated no title. There can be no doubt but that this contention is sound, so far as the effect of the deed from Robertson and wife to the fictitious grantee, Phillips, is concerned. . . . But we do not agree with appellant’s counsel in their insistence that the deed of trust which Robertson executed in the name of C. Phillips was a nullity. On the contrary, we are satisfied, on reason and authority, that it as effectually conveyed the title to this property to Grayson, trustee, as if Robertson had used his own name in the conveyance. We think there can be no doubt but that if the grantor had used in the execution of this deed his surname simply, his identity being established, it would have been operative to carry title; and we think it equally free from doubt that, using his Christian name, as the grantor did, and intending it to take effect as a perfect deed, and delivering it as such, it will be taken as conclusively binding upon him. The question in a case like this is, Did the grantor intend to bind himself by the instrument and is his identity free from uncertainty? 1 Devlin, Deeds, Par. 154, 185. Mr. Devlin in his work on deeds (Vol. 1, Par. 191) states the law to be that “a patent issued to a person under an assumed name is not void, and a conveyance by such person under his assumed name will transfer title.” And again in Par. 188, the same author

says: "Between the parties, a conveyance of property by the owner by any name will transfer the title. And when executed in a different name from that in which he acquired title, it will, when recorded, operate as constructive notice of the transfer of title, and will be entitled to precedence over a deed to the same land executed in the name by which title to it was acquired, but subsequently recorded," citing to this proposition, *Fallon v. Kehoe*, 38 Cal. 44. This exact question has been carefully and on authority considered by the Supreme Court of New York in *David v. Williamsburg City F. Inc. Co.* 83 N. Y. 265, 38 Am. Rep. 418, and the same conclusion was reached there as announced by Mr. Devlin."

In *Fallon v. Kehoe*, 38 Cal., page 44, cited in *Wiehl, Probasco & Co. vs. Robertson*, a conveyance was made to "Darby O'Fallon" a "nick-name." A subsequent conveyance was made by Jeremiah O. Fallon to Eleanor Fallon. The second conveyance was recorded. Then a conveyance was made by "Darby O'Fallon" to Oliver Teal, and by Oliver Teal to Davis Devine. Devine knew Jeremiah O'Fallon, and that he signed at the request of Devine, as "Darby" O'Fallon and knew that "Darby" and "Jeremiah" were the same. The court held as follows:

"If the true owner conveys property by any name, the conveyance, as between grantor and grantee will transfer the title.

"The execution of a conveyance of land by the owner in his rightful name, though different from that in which he acquired it, when duly recorded, will operate as constructive notice of the sale and transfer of the title and will take precedence of a subsequently recorded deed to the same land executed in the name by which it was acquired."

Fallon v. Kehoe, 38 Cal. 44, 99 Am. Dec. 347.

So, a deed made by a persons under a fictitious name intending that it should be effectual to vest

title in the grantee, will do so though he had previously in his right name made a conveyance of the property, inserting therein as grantee, the fictitious name, which he subsequently used in conveying it.

David v. Williamsburgh City F. Ins. Co. 83 N. Y. 265; 38 Am. Rep. 418.

The following excerpt is taken from David v. Williamsburgh City Fire Ins. Co.

It must be assumed that * * * the deed of the real estate were delivered to the plaintiff and that she took and had possession of the property, claiming to be the owner thereof. * * * It must also be assumed * * * as nothing to the contrary appears, that Henry J. David executed the conveyance with the intention to vest the title of the property in the plaintiff. The holding of the trial judge was that the mere fact that Marx David was not a real person defeated the passage of any title to the property to the plaintiff. In this I cannot doubt there was error. P. 268.

In Wakefield v. Brown 38 Minn. 361, parol testimony offered to show that "J. O. Brunius," described in deed as "James O. Brunuis," was really John O. Brunius. The Court said:

"—there can be no question either upon reason or authority, that, if he in fact executed and delivered this instrument as his deed, it was effectual, as between grantor and grantee, to convey title. If the true owner conveys by any name, the conveyance as between grantor and grantee will transfer title and in all cases evidence aliunde the instrument is admissible to identify the actual grantor. * * * " Wash. Real Prop. 281 (Marg. p. 256.)

See Note 39 L. R. A., p. 423.

However, it cannot be said that the mortgagors used a fictitious name. They used the name by

which they held themselves out. Lizzie Barbi was an equal owner in the land and she never signed her name in any other way. This fact was spread openly upon the records and formed a part of the chain of title.

(b) The mortgagors having used the name Barbi, pro hac vice, it is their name.

Notwithstanding the fact that the mortgagors took title to the lands in question in the name of Borbely, if for the purpose of mortgaging it they assumed the name Borbi, a contraction of the former name, and put that name in the mortgage with a view to bind themselves, the name thus assumed is their name, pro hac vice.

Grafton Bank v. Flanders 4 H. N. 239.

David v. Williamsburg City Fire Ins. Co. supra.

It is well settled that a person may change his name without resort to legal proceedings and the name assumed will constitute his legal name just as much as if he had borne it from birth.

See footnote L. R. A. 1915 D, p. 982.

Hence had the complainant learned of the difference in the name by which title was acquired from that by which the mortgage was made, it would be justified, in law, to take its security in the name then used by the parties, and, by recording the instrument, giving constructive notice to subsequent mortgagors. It would make no difference, therefore, whether or not it searched the title to the premises on which it took its mortgage.

Bishop v. Schneider, 46 Mo. 472.

(c) The records in the County Clerk's office were constructive notice to defendant, Citizens' Building & Loan Association, of the fact that de-

pendants, Barbi, had mortgaged the premises in question to the Brewing Company under the name "Barbi."

It is respectfully submitted that the Vice Chancellor is in error when he says that the Building & Loan Association would not have been able to have found the record of the mortgage to the Brewing Company (p. 88, ll. 29-35), but that on the contrary the procedure outlined below would have disclosed to them complainant's mortgage.

Given the name "Borbely," a searcher in the Clerk's Office in Middlesex County would find the following:

First, deed to "Borbely." He would then examine the indexes and find reference to the first two Building and Loan mortgages. He would then examine the mortgages in the record books and find that the records showed that the respective mortgages were signed (as indicated in complainant's Exhibit C 3, pp. 39-40), "Mizk Borbely," "Lizr Barbi," "Mesk Borbily" and "Lizi Borbi." He would then examine the indexes against the name "Lizzie Barbi" and against the name "Mike Barbi" (he having knowledge from his examination of the records of the mortgages that these persons were husband and wife), and would discover the index reference to complainant's mortgage made by "Mike Barbi and Lizzi Barbi, his wife." Examining further he would find the \$1800 Building and Loan mortgage. Any searcher of title who neglected to do this work would not have examined the records and his work as a searcher of the records would be worthless.

It might be true, that given the signatures to complainant's mortgage, a searcher would not have found the \$1800 and \$300 Building and Loan

mortgages, but the contrary conclusion cannot be maintained.

It is further respectfully submitted that the solicitor of the Building and Loan Association would not be justified, "had his attention been called to the signatures," in failing to search against the names indicated by those signatures. The B. & L. Association is charged with notice of the contents of the record books as well as of the indexes.

The index is merely one of the facilities to be used in making a search for a record, its object being to point out the book and page in which a particular record may be found. Indexing the records is obviously a matter of prime importance, but it is not necessary to the validity of an instrument and the omission of the recorder to index exactly as provided by statute will not render it invalid. (23 R. C. L. Section 47.)

The statutes of this state do not designate the particular steps required to make a record of an instrument complete.

Sec. 21 of the Act Respecting Conveyances. (Rev. 1898), provides that mortgages on land may be recorded. (C. S. p. 1541, as amended by P. L. 1917, p. 296.) Section 41 of the act provides for the recording of mortgages in books to be kept for that purpose. (C. S. p. 1549.) Section 42 provides that it shall be the duty of the Clerk to record the instrument "*word for word.*" (C. S. p. 1550). Sec. 44 prescribes a penalty on the neglect of the clerk to record the instrument. (C. S. p. 1550). Sec. 46 provides that it shall be the duty of the clerk to index the mortgages. (C. S. 1550). Section 47 provides that the indexes shall be in alphabetical order and shall contain the names of the mortgagors. (C. S. 1550). Sec. 50 provides for an al-

phabetical index of mortgages. (C. S. p. 1551). Sec. 51 provides for a classified, analytical or combination index. (C. S. 1552.)

Section 53 provides that whenever a deed or other instrument (mortgage) which shall have been executed, acknowledged or proved and certified as aforesaid, shall have been or shall be duly recorded *or lodged for that purpose*, with the clerk of the Court of Common Pleas, &c., such record shall have been or shall be thereafter *notice to all subsequent mortgagees of the execution of the instrument*.

Whether the index is necessary to complete the records of an instrument so as to make it constructive notice of the existence of the instrument is a question upon which the courts of the several states are divided. In some jurisdictions it has been held that the index forms no part of the record, while in other jurisdictions the record has been held to be incomplete without the index. (23 R. C. L. Sections 48 and 49.) The latter rule appears to have been adopted in those jurisdictions where the statutes designate the particular steps in the act of making a record.

It would, therefore, appear that the rule laid down in *Bishop vs. Schneider*, 46 Mo. 472, 1 Am. Rep. 533, would be controlling in this state. In that case the recorder had failed to index the mortgage and the question whether the index is a part of the record was necessarily raised. The statutes provided that it was the duty of the recorder to index records. The court said:

“In my opinion the proper office of the index is what its name imparts—to point to the record—but that it forms and constitutes no part of the record. The statute which was without reservation or qualification, that when an instru-

ment is filed with the recorder and transcribed on the record, it shall be considered as recorded from the time it was delivered. From that time forth it is constructive notice of what was actually copied. The subsequent section for that purpose of facilitating research besides recording, devolves a separate, distinct and independent duty upon the recorder and in the event of noncompliance with that duty the party injured has redress. The purchaser or grantee, when he has delivered his deed and seen that it was correctly copied, has done all the law requires of him for his protection and if any other person is injured by the fault of the recorder in not making the proper index, he must pursue his remedy against that officer for the injury." (Bishop v. Schneider, *Supra.*)

The New Jersey statute does not impose upon a purchaser any other obligation in order to make his instrument notice to subsequent mortgagees than to lodge the instrument for record with the County Clerk.

It would not seem to be necessary, however, to determine whether or not the index is a part of the record since, assuredly, the copy of the instrument spread upon the book kept for that purpose forms a part of the record and gives notice to the subsequent mortgagee of every fact contained in that copy.

For all of the reasons outlined above, Complainant-Appellant respectfully submits that the Building & Loan Association, at the time of the making of the \$1800 mortgage, had actual knowledge of the use by the other defendants of the name "Barbi"; that the records gave them constructive notice of the use by the defendants, Barbi, of that name by reason of the signature of Lizi Barbi to the Building & Loan Association's \$800 and \$300 mortgages; that the records gave them constructive notice of the making and record-

ing of Complainant's mortgage; and that the lien of the \$1800 Building and Loan Mortgage is subsequent to Complainant-Appellant's mortgage to the extent indicated above.

The decree of the Court of Chancery should be set aside.

Respectfully submitted,

D. EUGENE BLANKENHORN,

Solicitor for and of

Counsel with Complainant-Appellant.

New Jersey Court of Errors and Appeals

Between LEMBECK & BETZ EAGLE BREWING COMPANY, Complainant-Appellant, and MIKE BARBI and others, Defendants-Respondents.	} On Bill, etc.	10
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BRIEF OF ADRIAN LYON Counsel for Citizens Building and Loan Association, Defendant	20
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DATES.

March 11, 1908.	Deed to Michael Borbely and Elizabeth, his wife, for Lot 8.	
June 15, 1908.	Mortgage from Michael Borbely and Elizabeth, his wife, to Citizens Association for \$800.00.	
August 5, 1908.	Mortgage from Michael Borbely and Elizabeth, his wife, to Citizens Association for \$300.00.	30
May 11, 1910.	Mortgage from Mike Barbi and Lizi Barbi to Brewing Co. for \$800.00.	
October 21, 1912.	Deed to Michael Borbely and Elizabeth, his wife, for Lot 7.	
October 22, 1912.	Mortgage from Michael Borbely and Elizabeth, his wife, to Citizens Association for \$1,800.00.	40

FACTS.

In June of 1908 Michael Borbely applied to Citizens Building & Loan Association, of Perth Amboy, New Jersey, for a loan of \$800.00 on lot 8 on the northwest corner of Lawrence and Pine Streets, in that city, being 25 feet wide by 85 feet deep. For the purpose of said loan he brought to Adrian Lyon, the solicitor, his deed from Koyen and Ostergaard, bearing date March 11, 1908, and recorded March 20, 1908, in book 412, page 560, which was made out to him and his wife under the name and spelling as follows:

Michael Borbely and Elizabeth, his wife.

He was not known by any other name to the said solicitor. The bond and mortgage were drawn and signed by the parties as follows:

Michael Borbely signed his name "Mezk Barbily" and the wife signed her name "lizi Bourbi," or as nearly in that way as can be made out from the signatures.

The said solicitor procured a search of the title to the said lot made by the County Clerk of Middlesex County, which showed the said deed and mortgage and two lien claims, one by Gabriel Keszic for \$320.00, entered May 15, 1908; another of Nic Berei for \$120.00, entered May 15, 1908, both of which were against Michael Borbely, builder and owner, and Elizabeth Borbely, owner.

The \$800.00 not being sufficient to pay the claims against the property, the mortgagors applied for a further loan of \$300.00, which was granted, and a further mortgage of \$300.00 was drawn and executed on August 5, 1908. In that bond and mortgage the names were used as in the prior mortgage and were signed in exactly the same way as the \$800.00 bond and mortgage, with the exception that on the mortgage the wife seems to have spelled her last name "Barbie" or "Barbei." It is hard to decipher from the signature of the wife just exactly what letters she intended to use in making her signature.

The parties had a pass book made out in the names as

given on the deed and in the mortgage, and continued to make payments on account of the mortgage until October of 1912, when they had reduced the amount due to the sum of \$876.58. At that time, wanting more money to pay for improvements, etc., they applied for a further loan of \$1,800.00, which was to include the amount due on the two former mortgages and the balance due on an additional lot known as lot No. 7, adjoining. This loan was granted and another deed for lot No. 7 was brought to the Building Association's solicitor, made out in exactly the same manner as the other deed, namely, Michael Borbely and Elizabeth Borbely, his wife, which was dated October 21, 1912, and recorded November 11, 1912, in book 508, page 506. 10

A new mortgage was made out to the Association for the sum of \$1,800.00 covering both lots, using the names as they had been given. For the purpose of making the loan Mr. MacWilliam, an attorney, searched the title to the two lots and presented to the solicitor of the Building Association an abstract which showed the two deeds, 20 the two prior mortgages and the two lien claims referred to. His search was made against Michael Borbely and Elizabeth Borbely as spelled, neither he nor the solicitor of the Building Association having any other names or knowing or having reason to know that the parties went under any other names or were known by any other name or spelling than as given in the deeds and prior mortgages. The new mortgage was executed and acknowledged and recorded.

Solicitor for the Building Association testified on the witness stand that in preparation for the trial of this case his attention was called for the first time to the fact that the signature to the \$1,800.00 mortgage, or last mortgage made by Borbely and wife, was signed by the man as follows: 30

"Mezk Barbi" and by the wife "Lizi Borbi" or as nearly thereto as can be made out.

The solicitor further testified that if his attention had been carefully directed to the manner of the signature at the time the mortgage was signed it would not have 40

made any difference to him, as he supposed that was merely an abbreviation or illiterate way the parties had in writing their names.

It appears that neither the solicitor of the Building Association nor the searcher who searched the title knew that the parties were known in any other manner or spelling than as given in the deeds, namely, Borbely; nor does it appear that the County Clerk, who made the first search and certified it to the Building Association,
 10 knew them in any other way.

Borbely was a liquor dealer, and on May 11, 1910, pretended to give a mortgage to the Lembeck & Betz Eagle Brewing Company for \$800.00. It was acknowledged on that day and recorded May 16, 1910, in book 228 of mortgages, page 587. This mortgage was made out in the names of "**Mike Barbi and Lizzie Barbi, sometimes known as Barboe,**" and pretended to cover property on the corner of the two streets, 25 feet wide by 100 feet deep, a greater depth by 15 feet than the
 20 parties owned. The names on the book of the Brewing Company produced in evidence was **Babia**

It will be observed, therefore, that the Brewing Company had the name in three ways, namely, **Barbi, Barboe** and **Babia**. The only two witnesses produced on the part of the Brewing Company were Mr. Kutcher and Mr. Horstmann. Mr. Kutcher testified that he was the agent at Perth Amboy, and while he knew the man as Barbi, he did not know by what name he was known at Perth Amboy or that he was known by that name
 30 among any other people. Mr. Horstmann knew nothing whatever about it except from the record he had before him, which he did not make.

It quite clearly appears that the Brewing Company made no inquiry or examination of the title to see how it was held. They improperly described the lot as being 25 feet by 100 feet when it should have been 25 feet by 85 feet. They were taking a mortgage on property they knew, or must have known, the mortgagors had title to, and that if that title was worth anything it was
 40 evidenced by a deed either properly recorded or in their

possession. Had they used the most ordinary care they would have found the deed to be in the name of Borbely and could have used that name in their mortgage, which upon its being recorded would have given notice to subsequent purchasers or encumbrancers.

**Borbely was undoubtedly the mortgagor's
right name and not Barbi.**

It was testified by Stephen F. Somogyi, a lawyer of sixteen years standing at the bar, the court interpreter of Middlesex County for many years, a Magyar by birth, and of the same nationality with Borbely, who has had years of experience with these names, that the name Borbely in Hungarian or Magyar means barber, and that Barbi has no meaning or significance whatever. Common observation shows this word on Hungarian barber shops spelled exactly as in the deeds and the mortgages to the Citizens Association. 10

Emil Koyen, one of the grantors in the two deeds, who made out the deeds at the request of Borbely, testified that the deeds were made out in the names as given to him by Borbely and in no other way, and that he did not know them by any other name and particularly not by the name of Barbi. 20

**ANSWER TO COMPLAINANT'S BRIEF
ON FACTS.**

It is not true that the Citizens "Association had in its possession a contract (Exhibit D 6) signed Barbi at the time of making the mortgage to it for \$1,800." This contract was made at the same time and as a part of the same transaction. 30

Counsel for Complainant lays great stress that some of the papers in possession of the Citizens Association were signed by either the husband or the wife as Barbi or Bourbi. It was testified by the solicitor that had this been called to his attention he would have presumed it was their illiterate or ignorant way of signing their name or their manner of abbreviating it. The writing 40

was almost unintelligible. It was hard to make out the letters. They were ignorant of our language. They were uncertain as to their signatures. As nearly as can be made out, the following are the various ways in which they wrote their names: Mezk Bably; lizi Bowbi; Mezk Borbely; lizi Bourbi; Mezk Borbily; lizi Bourbi; Mezk Bobily; lizi Barbu; Mezk Barbi; lizi Barlii; Mezk Barbi; lizi Borbi or Borlii; Mezk Barbi; lizi Bourbi.

10 It is a matter of common knowledge how uncertain are the signatures even of educated persons, and how frequently they look unlike the names of the persons whose signatures they are. To say that every conveyancer who takes a signature should scrutinize closely the letters in the signature and be bound by an apparent difference in the spelling, where there is nothing else to give him notice, would lead to endless trouble and confusion. We take a signature to be the signature of the person it purports to be if it has a reasonable approach to the name. Furthermore, this same man had presented a deed with his name spelled Borbely and had signed his name with nearly that exact spelling four times before. The solicitor could not be expected to anticipate or notice a different spelling if it approximated the former as this signature did. That they intended their signatures to mean Borbely is shown by the fact that on four occasions when the husband wrote his name plainly in that way the wife at the same time wrote her name right below her husband Bourbi or Bowbi or Barbu. Surely from this course of conduct the solicitor could not believe the parties intended to adopt a different name or to make a change in their name from Borbely to Barbi.

Furthermore, it will be observed that Borbely took the second deed for lot No. 7 made out to him by that spelling and delivered it to the Citizens Association over two years **after** the Brewing Company had taken its mortgage, and that it was delivered to the Association simultaneously with giving the \$1,800.00 mortgage. The first deed and mortgage in exactly the same spelling were two years **prior** to the Brewing Company mortgage. The Citizens Association could hardly have an-

anticipated that between those times the mortgagor had used another name.

It must be remembered that there is no proof in this case to show that these parties were ever known generally or held themselves out to any one by the name of Barbi. There is only one witness, namely, Mr. Kutcher, who testified that he knew them as Barbi; but he testified at the same time that he did not know that they ever held themselves out to any other persons as Barbi. The only other testimony on the subject of the name was by Mr. Horstmann, who testified that all he knew about the name was what he got from the books and papers which he did not make, on which the name was given in still a different way, namely, Babia. I observe that the Plaintiff's brief uses still another spelling, Borbi. 10

Furthermore, the learned Vice-Chancellor found, as a matter of fact, that neither the searcher nor the solicitor knew Borbely by any other name than that given in the deed and the mortgages to the Citizens Association. 20

It is respectfully submitted that the foregoing facts show that the Citizens Association did not have actual notice that the holders of the title to the mortgaged premises were known as Barbi or Borbi, and that the complainant's contention on this point must fall.

There was no constructive notice to the Building Association of the mortgage of the Complainant. 30

It is respectfully submitted that the cases cited in complainant's brief are not authority for the proposition contended for. That a party can assume a name, however honestly, different from that in which he holds title to land and which is not known to third persons, and then convey away his property in that assumed name, which would be constructive notice under our Recording Acts, is too unreasonable and absurd to be sound in law.

If such is true, a man by the name, for instance, of 40

John Brown who has purchased property in that name and is known only by that name in his title deeds, could, if notion took him, convey it away under the name of John Smith, and then afterwards resume his right name and convey away again in absolute fraud of the subsequent purchaser.

The utmost that the cases cited can be authority for is the principle that as **"between the parties** a conveyance of property by the owner by any name will transfer the title." That is a point and the language
 10 in the case of Wiehl vs. Robertson.

The latter case cites as its authority the case of Fallon vs. Kehoe. It seems to me the latter case is limited by the following words: "If the true owner conveys property by any name, the conveyance, **as between grantor and grantee**, will transfer the title."

In the case of David vs. Williamsburg Fire Insurance Company cited in complainant's brief, the rights of an innocent third person were not in question.

20 In the case of Wakefield vs. Brown, also cited in complainant's brief, the language of the Court is that such an instrument as was there in question "was effectual, **as between grantor and grantee**, to convey title."

All the cases cited are to the same effect. It is not disputed that as **between grantor and grantee** any name assumed by the grantor would be effective to transfer the title. The contention is that it does not apply to any innocent third party who has no knowledge of such fictitious name.

30 It seems that the true rule would be the one that is cited in the case of Gillespie vs. Rogers, 146 Mass., 610.

"When a person is equally well known by two different names, the recording of a deed made by him in which either name is used will sufficiently notice the conveyance to subsequent purchasers."

40 In this case there is no proof that the parties were

equally well known by the names of Borbely and Barbi. All we have on one side is that he was known by the name of Barbi to one person; while on the other hand the title to his property, which is the subject matter in this case, was taken by him at his own direction in the name of Borbely and was the way in which he signed the mortgages to the Building Association.

What is stated above applies to the complainant's next contention that the mortgagors used the name Barbi pro hac vice. While a conveyance under such a name would be effectual to pass the title from grantor to grantee the contention here is that it cannot operate as against innocent third persons without notice. 10

RECORDS AS CONSTRUCTIVE NOTICE.

The record of the mortgage in the name of Barbi could not be constructive notice to a person unless he knew or had reason to know that that name was the name of the owner under which he held title. In other words, it would be absurd to hold that a man could adopt a fictitious name and convey away his property under that name and an innocent party be bound by it. 20

The rule as to the record being constructive notice certainly applies to charge the complainant. This grantor held the title in the name of Borbely and in no other way by two deeds that had been properly recorded. The learned Vice-Chancellor cites the case of Wallace vs. Silsby, 42 N. J. Law (13 Vr.), page 1, which holds that "a grantee is chargeable with knowledge of the title of his grantor as it exists in unbroken sequence on the records in the Clerk's office." 30

In the case of Losey vs. Simpson, 11 N. J. Equity (3 Stockton), at page 249, Chancellor Williamson held "the title upon the record is the purchaser's protection."

The complainant is guilty of fraud upon the Building Association in taking a mortgage in the name of Barbi when it knew the title was in the name of Borbely. 40

Whatever the Building Association might have known as to the name (and there is no proof that it knew the mortgagor by any other name than that of Borbely) yet it is quite clear that the complainant knew that the mortgagor was known by the name of Borbely and took the title and held it in that way. At least complainant is chargeable with such knowledge.

10 The deeds were on record and the complainant was charged with constructive notice of them. They held the title in that way and in no other. The most ordinary precaution would have been to look at the deeds and see how the title was held that they were dealing with. How did they know it was in the name of both the husband and the wife, or in one rather than the other? They made a most careless guess and did not take the ordinary care of a careless conveyancer. One can hardly imagine a more careless act. They were so uncertain of the name that they made their mortgage read "Barbi, sometimes known as Barboe," (page 34) while
20 the name on their books was "Babia," (page 44) and yet did not ask for the title deed or look up the record. Had they asked the mortgagors for their title deeds or looked at the records, as ninety-nine out of a hundred persons would have done, they would have found the only name in which the mortgagors ever dealt with the title. They did not do this, but took a mortgage in a name that a subsequent encumbrancer knew nothing about and consequently did not find on the record.

30 This was constructive fraud upon the Building Association, the subsequent encumbrancer.

It is respectfully submitted that the mortgage of the Citizens Building & Loan Association for the full amount should take precedence over the mortgage given to the Brewing Company.

Respectfully submitted,

ADRIAN LYON,

Counsel for Citizens Building & Loan
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