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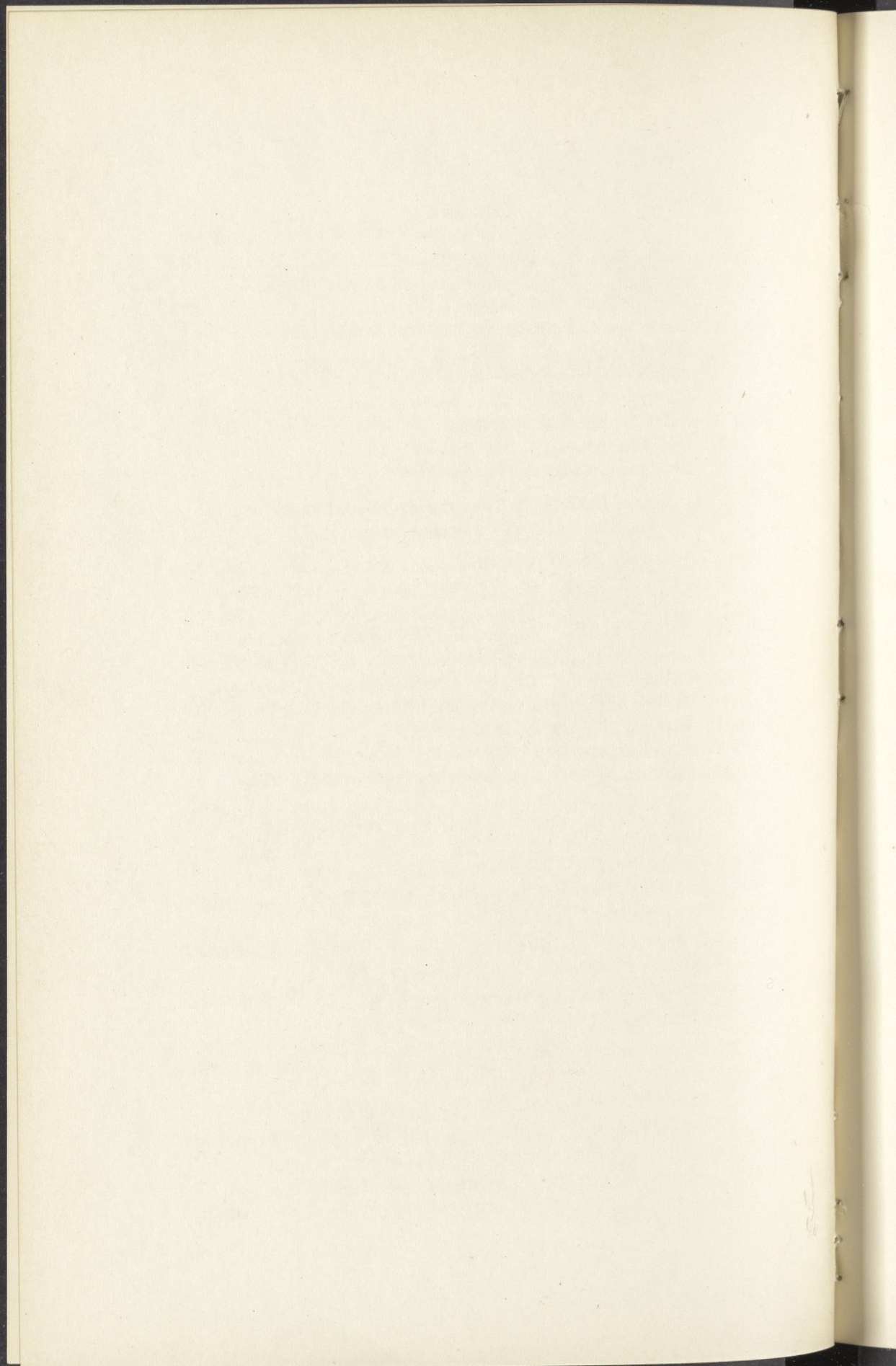
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BILL OF COMPLAINT.

Filed March 16, 1928.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey. 10

The complainant Vallatese Loan Association is a corporation of the State of New Jersey with its principal office located at No. 458 15th avenue, City of Newark, Essex County.

1. Complainant was incorporated under an act of the State of New Jersey entitled "An Act to provide for the incorporation and regulation of Provident Loan Associations," approved March 28, 1904, and pursuant to the powers given to it under and by virtue of said act has been conducting what is generally known as a "small loan association" for a number of years past. 20

2. Complainant shows that from January, 1926 to August, 1927, and before and after said dates the defendant Gaetano Travisano was the duly elected President of the association, and that the defendant Neale Travisano was the duly elected Secretary of the association and generally managed the affairs of complainant with the superintending management of the Board of Directors of said association. 30

3. Your complainant further shows that it was the duty of the defendant Gaetano Travisano as President of the association to investigate applications for loans from the association and to verify the signatures appearing on the notes given to the association for loans granted by it and further that it was the duty of said defendant 40

Bill of Complaint.

to receive and disburse the funds of the association and to render proper receipts therefor.

10 4. That it was the duty of the defendant Neale Travisano to deposit the funds of the association in a duly authorized depository and to make proper entries in the books of account of the association of the business which it conducted.

20 5. On or about August 5, 1927, the Board of Directors of complainant became suspicious of the manner in which the defendants Gaetano Travisano and Neale Travisano were performing their services for complainant as the President and Secretary of the association and demanded of the said defendants that they deliver over the books of account of the association to the Board of Directors for the purpose of having an audit of them made. The said defendants thereupon refused to turn over to the Board of Directors the books and other records of the association. The said defendants thereupon caused the combination of the safe of the association to be so altered that no other person but the said defendants could have access to the same.

30 6. Your complainant shows however that it finally obtained possession of the records of the association and that thereupon an audit thereof was made and that the said audit disclosed that from January, 1926 to August, 1927, a shortage in the amount of \$4,774.36 accumulated and that said shortage was brought about by the combined acts of the said President and Secretary whereby there existed a difference between the bank deposits of the association and the amount credited to borrowers and further a part of said shortage was made up by reason of funds having been
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Bill of Complaint.

paid to the association and not credited in the receipts of the association. Another audit of the affairs of the association was made on or about October 31, 1927, which disclosed additional shortages which occurred during the administration of the said defendants as President and Secretary respectively. The amount of such shortages being \$588.00. Your complainant therefore having sustained a loss in the amount of \$5,362.36. 10

7. Your complainant further shows that the affairs of the association were so conducted during the administrations of the aforesaid President and Secretary that the books of account and all other records of the association are in such condition that it can not definitely ascertain the actual amount of shortage it has suffered, and that the information required by complainant in order to definitely establish the amount of shortage which occurred during the period which said defendants held office is exclusively within the knowledge and control of the said defendants. 20

8. Your complainants show that it was the duty of the said defendants as President and Secretary of the association to render an account to the Board of Directors when and as required by them and that the said defendants have been requested to give such an accounting, but they have failed and refused and still fail and refuse to render such an account to the complainant or its representatives. 30

9. Your complainant further shows that on or about February 2, 1927, the defendant Gaetano Travisano presented with his approval two notes, one bearing the signature of Tony Caprio 40

Bill of Complaint.

- in the amount of \$250.00 and another with the signature of John Evangelista in the amount of \$300. The said Gaetano Travisano represented at that time that he knew the persons who had signed said notes and that he had been present when the notes were signed. Your complainant shows
- 10 that the persons alleged to have executed said notes have been consulted and they deny that they signed the instruments and allege that the signatures appearing thereon are forgeries. Your complainant shows that both of said notes were in the handwriting of the defendant Neale Travisano and that checks of the association were drawn for the amount of each loan, and were issued to the persons appearing as makers of the notes and said checks have been paid and
- 20 the endorsement of the persons to whom they are made payable appears on the notes: Although each of the said endorsers deny having received the checks or the proceeds thereof. Your complainant shows that both transactions were within the complete control of the said defendants and that it verily believes that the notes were made and the checks drawn for the purpose of obtaining the funds of the association for the benefit and use of the said defendants.
- 30 10. Your complainant further shows that on loan designated by it as No. 512, in the amount of \$300.00 made to one A. Schaeffer, there was due to it the sum of \$283.90 and that the same was paid to the defendant Gaetano Travisano and admitted by him and there exists a receipt showing that the said defendant obtained said moneys. The books of account of the association, however show no such receipt and the loan still appears to be open.

Bill of Complaint.

11. Your complainant shows that one Rose Quaglia was a borrower from the association on loan known by it as No. 746 and that said borrower paid to the association on March 3, 1927, \$199.70, and that said money was paid to the defendant Neale Travisano and was not deposited in the account of the association nor was there a credit given in the books of the association for the receipt of the funds and your complainant verily believes that the said defendant appropriated said moneys to his own use and benefit. 10

12. Your complainant shows that there exists a number of instances as hereinbefore related and that it has been impossible to definitely establish the amount of funds of the association which the said defendants either appropriated unto themselves or dissipated in some other manner, and that the only way in which the complainant can obtain the information which it desires as to the transactions which took place during the period from January, 1926 to October, 1927, is to secure from the said defendants Gaetano Travisano and Neale Travisano, an accounting. 20

13. Your complainant shows that the defendant Gaetano Travisano is the holder of thirty-one (31) shares of its capital stock represented by certificates 7-51-60-68-104 and 138, and the defendant Neale Travisano is the holder of certificate 140 for one (1) share of stock of the association; the value of which your complainant believes to be less than the amount which may be disclosed as being due from the said defendants Gaetano Travisano and Neale Travisano to the association by reason of their acts occurring during their incumbency as President and Secretary of the association and that the only definite 30 40

Bill of Complaint.

means of protection which complainant has as to the said shortages is to apply the value of the said stock towards it.

10 14. Your complainant shows that on or about September 23, 1927, it caused a complaint to be made in the Police Court of the City of Newark against both defendants herein, Gaetano Trav-
isano and Neale Travisano and that on September 26, 1927, they were arrested on warrants issued on said complaints and that the said defendants were released on bail furnished by the defendant Michael Rosano, who is a son-in-law of the de-
fendant Gaetano Travisano.

20 15. Your complainant shows that said stock is negotiable and is subject to being sold to inno-
cent purchasers for value without notice of the counter-claim which complainant would have against the defendants Gaetano Travisano and Neale Travisano if an action were instituted to recover the amount due on said stock. Your complainant was advised on or about February 11, 1928, that the said defendant Gaetano Trav-
isano had transferred his shares of stock in the association to the defendant Michael Rosano. Your complainant however alleges that the said
30 defendant Michael Rosano had actual knowledge of the conditions existing between complainant and the said Gaetano Travisano and the fact that complainant did have a counter-claim against the said Gaetano Travisano, the amount whereof had not been established and your complainant further alleges that it believes that the said
40 Michael Rosano is not the actual owner of said stock, but that the transfer was affected merely as a subterfuge and for the purpose of dissipating the assets of the said defendant Gaetano

Bill of Complaint.

Travisano so that they would not be subject to seizure by reason of the claim of your complainant and that the said Michael Rosano actually holds said stock in trust for the said Gaetano Travisano.

16. On or about January 2, 1928, the annual meeting of the stockholders of the complainant association was held and the defendants Gaetano Travisano and Neale Travisano failed to be elected to succeed themselves as President and Secretary of the association and have no official capacity with the association at the present time. Your complainant further shows that Pasquale Stanco was at that time elected President of complainant association. 10

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

1. That Gaetano Travisano, Neale Travisano and Michael Rosano, who are the defendants in this suit, may answer this bill of complaint and each statement therein made.

2. That the defendant Gaetano Travisano and Neale Travisano, be compelled to make discovery as to the whereabouts of certain of the funds of complainant obtained by them during the period when the said defendants were the President and Secretary of complainant association, and that they be compelled to account for any money received by them for and on behalf of the complainant association, and that they be compelled to disclose all the transactions wherein and whereby shortages on the books of the complainant association occurred, and that they may be ORDERED and DECREED to pay unto complainant the amount which might be found due to com- 30 40

Bill of Complaint—Affidavit of Pasquale Stanco.

plainant from the said defendants on such accounting.

10 3. That a decree may issue out of this Honorable Court adjudging and decreeing that the transfer of thirty-one (31) shares of stock of the complainant association originally in the name of the defendant Gaetano Travisano to the defendant Michael Rosano be declared to be a transfer to the said Michael Rosano in trust and for the benefit of the said defendant Gaetano Travisano.

20 4. That the defendants Gaetano Travisano, Neale Travisano and Michael Rosano may be enjoined and restrained from assigning, transferring or otherwise negotiating the shares of stock of the complainant association now in their possession, and that they may be ORDERED to deliver up said stock so that the same may be impounded until the determination of this cause.

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

30 WOLBER & GILHOOLY,
Solicitors for and of Counsel
with Complainant.

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

PASQUALE STANCO, being duly sworn according to law, upon his oath deposes and says:

On or about January 2, 1928, I was elected as President of the Vallatese Loan Association.

40 I have been duly authorized to institute proceedings in order to compel the defendants

Bill of Complaint—Affidavit of Pasquale Stanco.

Gaetano Travisano and Neale Travisano to make an accounting to the association for the period during which they served as President and Secretary of said association, and particularly between the period of January, 1926 to October, 1927, and to enjoin Neale Travisano and one Michael Rosano from assigning or transferring certain stock of the association. 10

I have been a Director of the Vallatese Loan Association for a number of years. On or about August 5, 1927, a situation arose which caused the Board of Directors to become suspicious of the manner in which Gaetano Travisano and Neale Travisano were performing their services for the association as President and Secretary and the Board demanded that they deliver over the books of account of the association for the purpose of having an audit made. 20
The said Gaetano Travisano and Neale Travisano refused to turn over the records of the association and they further caused the combination of the safe of the association to be so altered that no other person but them could have access to the same.

It was the duty of Gaetano Travisano as President of the association, among other things to investigate applications for loans from the association and to verify the signatures appearing on the notes to the association for such loans, and further it was the duty of the said President to receive and disburse the funds of the association and to render proper receipts therefor. 30

It was the duty of the defendant Neale Travisano as Secretary of the association to deposit the funds of the association in the duly authorized depository and to make proper entries of all receipts in the books of account of the association. 40

Bill of Complaint—Affidavit of Pasquale Stanco.

After considerable trouble the Board of Directors finally obtained possession of the records of the association and we thereupon authorized a firm of accountants to make an audit of the affairs of the association and said audit, which was made during the period from January, 1926, to August, 1927, disclosed a shortage in the amount of \$4,774.36. From the information that we have been able to secure I am of the belief said shortage was caused by the combined acts of Gaetano Travisano and his son Neale Travisano, respectively, President and Secretary of the association during the aforesaid period. Certain of the shortages resulted by reason of a difference between the bank deposits to the credit of the association and the amount credited to borrowers by payments on account of loans. Part of the deficit is also made up by reason of funds having been paid to the association and not credited by the said Gaetano Travisano and Neale Travisano in the receipts of the association. The Board of Directors caused another audit to be made of the affairs of the association on October 31, 1927, which disclosed additional shortages which occurred during the administration of the said President and Secretary. Such shortages amounted to \$588.00, which makes a total shortage suffered by the association of \$5,362.36.

From an examination of the records of the association available and from the investigation that we have made in connection with the shortages, I am firmly of the opinion that the shortages were occasioned by the act or acts of both the said Gaetano Travisano and Neale Travisano while in their capacity as President and Secretary of the association. They failed to keep the

Bill of Complaint—Affidavit of Pasquale Stanco.

books of account of the association in such a manner that one could definitely ascertain the actual amount of shortage and in order to enable the association to definitely determine the amount of the shortage and the manner in which it occurred it is essential that opportunity be given to examine the said Gaetano Travisano and Neale Travisano and procure an accounting from them. 10

It was the duty of the said President and Secretary of the association to render an account of their dealings as officers of the association to the Board of Directors when and as required by the Board, but the said officers although they have been requested to give such an accounting have failed and refused and still fail and refuse to render such an account.

From investigations which we have made since becoming aware of the shortages we have found the following situations: on or about February 2, 1927, Gaetano Travisano presented with his approval two notes, one bearing the signature of Tony Caprio in the amount of \$250 and another with the signature of John Evangelista in the amount of \$300. The said Gaetano Travisano represented at that time that he knew the persons who had signed said notes and that he had been present when the notes were signed. I have learned from the persons who are supposed to have made said notes that the signatures appearing on the notes are not theirs and that the notes are forgeries. Both notes are in the handwriting of Neale Travisano and checks of the association were drawn for the amount of each loan and were drawn to the order of persons appearing as makers of the notes and the checks have been paid and the endorsement of the persons to whom they are made payable 20
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Bill of Complaint—Affidavit of Pasquale Stanco.

appears on the notes, although each of said endorsers deny having received the checks or the proceeds thereof. Both of said transactions were completely within the control of Gaetano Travisano and Neale Travisano and I firmly believe that the notes were made and the checks
 10 drawn for the purpose of obtaining the funds of the association for the use and benefit and personal gain of said Gaetano Travisano and Neale Travisano.

I have also learned that on loan designated by our association as No. 512 in the amount of \$300.00 made to one A. Schaeffer, that there was due to the association the sum of \$283.90 balance and that the sum was paid to the defendant Gaetano Travisano and receipt thereof was ad-
 20 mitted by him and there exist receipts signed by the said Gaetano Travisano for having received the money. The books of account of the association, however, show no such receipt and the loan still appears to be open.

I have further learned that one Rose Quaglia was a borrower from the association on loan No. 746 and that on March 3, 1927, she paid \$199.70 to Neale Travisano and that said moneys were never deposited in the bank account of the
 30 association nor was there a credit given in the books of the association for the receipt of the funds, and I am firmly of the belief that said funds were appropriated by the said Neale Travisano for his own private account and benefit.

There are a number of instances parallel with those hereinbefore related, but it has been impossible for us to definitely establish them upon the information which is available to us, and in order to definitely conclude as to whether the entire
 40 shortage is chargeable to the said Gaetano Travi-

Bill of Complaint—Affidavit of Pasquale Stanco.

sano and Neale Travisano, it will be necessary to examine them as to each particular transaction and to secure an accounting from them of the affairs transacted by them during the period from January, 1926, to October, 1927.

On or about September 23rd the Valletese Loan Association caused a complaint to be made against the said Gaetano Travisano and Neale Travisano and on September 26th they were arrested on the complaint. One Michael Rosano supplied bail on which the said Travisanos were released. Michael Rosano is a son-in-law of the said Gaetano Travisano and at the time of the making of the complaint and subsequently upon the supplying of bail upon which the said Travisanos were released the said Michael Rosano was entirely familiar with the status of the said Travisanos with the association, and was fully aware of the fact that the said Travisano's affairs with the association were in such a state that the association had a legitimate counterclaim against the claim of the Travisanos for the amount due them on the stock of the association which they held.

Gaetano Travisano originally held thirty-one (31) shares of the capital stock of the association represented by certificates 7-51-60-68-104 and 138 and Neale Travisano is the holder of certificate 140 for one share of stock. The value of said stock, I believe, is not sufficient to entirely cover shortages which I believe an accounting will prove are directly chargeable to the said Gaetano Travisano and Neale Travisano and the association can only be protected by charging such shortages as may be chargeable to the Travisanos against the amount which may be due them on their holdings with the association.

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Bill of Complaint—Affidavit of Pasquale Stanco.

On or about February 11, 1928, I received a letter from the attorney for Gaetano Travisano stating that he had transferred his shares of stock in the association to the said Michael Rosano.

10 The stock of the association is of a negotiable character and may be transferred or pledged by either Michael Rosano or Neale Travisano and if said stock is transferred or pledged with innocent purchasers for value the association would be unable to urge its counter-claim as against the amount due on said stock.

20 I firmly believe that Michael Rosano had actual knowledge of the conditions existing between the association and Gaetano Travisano, and I further believe that said transfer of the stock is merely a subterfuge and was made for the purpose of dissipating the assets of the defendant Gaetano Travisano and to place them out of the reach of the association.

I believe that the said Gaetano Travisano is actually the owner of said stock and that Michael Rosano is merely holding the same in trust for him.

PASQUALE STANCO.

30 Sworn and subscribed to before
me this 15th day of March,
A. D. 1928.

JOHN H. YAUCH, JR.,
Master in Chancery of N. J.

SUBPOENA.

Filed March 26, 1928.

New Jersey, to wit:—The State of
New Jersey to Neale Travisano,
(SEAL) GREETING: Whereas a bill of com- 10
plaint has lately been exhibited
against you in our Court of Chancery
by Vallatese Loan Association to be relieved
touching the matters therein contained;

THEREFORE WE COMMAND YOU, if you intend to
make a defense, that you file an answer to said
bill in the office of the Clerk of our said Court at
Trenton, on or before the expiration of twenty
days from and after the 27th day of March, 1928,
and in default thereof such order or decree will 20
be made against you as the Court shall think
equitable and just.

WITNESS, his HONOR, EDWIN ROBERT WALKER,
Chancellor of our said State, at Trenton, the
15th day of March, in the year of our Lord, one
thousand nine hundred and twenty-eight.

THOMAS BARBER,
Clerk.

WOLBER & GILHOOLY,
Solicitors. 30

**ORDER TO SHOW CAUSE WITH
RESTRAINT.**

Filed March 16, 1928.

IN CHANCERY OF NEW JERSEY.

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Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

Defendants.

On Bill etc.

*Order to
Show Cause
with
Restraint.*

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This matter being opened to the Court by Wolber and Gilhooly, solicitors for and of counsel with the complainant, and upon reading and filing the bill of complaint and affidavit thereto annexed and the Court being satisfied with the sufficiency of the application made in this cause:

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It is, on this 15th day of March, 1928, ORDERED, that the defendants Gaetano Travisano, Neale Travisano and Michael Rosano show cause before the Chancellor at the Chancery Chambers, Industrial Office Building, No. 1060 Broad street, in the City of Newark on Tuesday the 27th day of March, at 10 o'clock in the forenoon of that date or as soon thereafter as the matter can be heard why the defendants should not be enjoined as in and by said bill prayed: And it is further ORDERED, that until the further Order of this Court, the defendants Gaetano Travisano, Neale Travisano and Michael Rosano, be and they are hereby enjoined and restrained from assigning,

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Order to Show Cause with Restraint.

transferring, pledging or otherwise negotiating certificates of stock of the Vallatese Loan Association numbers 7, 51, 60, 68, 104, 138 and 140.

AND IT IS FURTHER ORDERED, that a true copy of this Order and the bill of complaint with affidavit annexed, certified to be such by the solicitors for the complainant, be served upon the said defendants within five days from the date hereof. 10

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

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AFFIDAVITS OF DEFENDANTS.

Filed April 5, 1928.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">VALLATESE LOAN ASSOCIATION, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">GAETANO TRAVISANO, NEALE TRAVISANO and MICHAEL ROSANO,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p style="font-size: 3em; line-height: 1;">}</p> <p><i>On Bill, &c.</i> <i>Affidavit.</i></p>
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20 STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

GAETANO TRAVISANO, of full age, being duly sworn according to law, on his oath deposes and says:

30 That he was President of the Vallatese Loan Association up to August 5, 1927, and was the owner of thirty-one shares of stock in the said association, Pasquale Stanco was at that time one of the directors and Vice-President of the Vallatese Loan Association and had been such for a number of years. Rocco Pennella had been treasurer of the said association for quite a number of years. As President of the association it was his duty to preside at the meetings of the board of directors and to present to the board of directors applications which had been handed to him by the directors and by the borrowers in order that action might be taken thereon. The investigation of said applications was made by

40 the other directors who reported their findings

Affidavits of Defendants—Gaetano Trivisano.

at the meetings of the directors, he had nothing to do with the collection or disbursements of funds and at no time ever handled any of the funds of the said association, the same being done by the Treasurer.

Neil Trivisano was appointed Secretary in January, 1927, and continued as such until August 5, 1927. On or about July 2, 1927, Rocco Pennella, the treasurer of the association, committed suicide, and in going over the accounts of the treasurer, deponent together with the directors found several items which were suspicious and also a shortage in his accounts, and it was decided at that time to engage an accountant to go over the books and find out what was the amount of such shortage. On August 5, 1927, this deponent received a special delivery letter from William Azzoli, counsel for said association, requesting him to call a meeting of the board of directors for that evening and stated also that a representative of the bonding company which held the bond of the treasurer would be there and continuing: "and I must have the correct information as to the defalcation of Rocco Pennella tomorrow morning." Deponent personally notified all the directors and at 8 P. M. he was with them at the office of the association. The books of the company were in the hands of an accountant and Pasquale Stanco, Vito Sciavino and Neil Trivisano went to get the books. After returning with the books, Mr. William Azzoli informed deponent that the books were sequestered and that deponent was suspended. Deponent insisted that they should wait for the report of the accountant who had had the books until that time, but the rest of the directors told him that that was their business.

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Affidavits of Defendants—Gaetano Trivisano.

Deponent left and the next morning went to the office of the association and gave Mr. Stanco all the notes, documents etc., belonging to the association, which were in the safe and also \$45.00 in cash, which were in the safe representing monies found over in the payments during the several collections. About one week later he was informed by one Ralph Aquino that Mr. William Azzoli in speaking with him of the association affairs had requested Mr. Aquino to inform deponent and his son Neil Trivisano to be on the look-out as the rest of the directors were framing up this deponent and his son Neil.

At the time of the suicide of the treasurer, when shortages were found in his books, it appeared that this shortage had continued for quite a period of time and prior to January, 1927, but as above stated, this deponent has not had an opportunity to check up the records and decide as to the amount the treasurer had embezzled before and after January, 1927. At every meeting of the Board of Directors which was held every week on Wednesday, this deponent together with the secretary always reported to the association what was done the week previous. On or about February 2, 1927, the treasurer presented for approval two notes one in the name of Tony Caprio in the amount of \$250.00 and another in the name of John Evangelista in the sum of \$300.00 which were renewals of notes already in the hands of the association, and the applications for the same were turned over to the treasurer to get the proper signatures. The renewals were approved and the checks turned over to the treasurer, Rocco Pennella, to deliver to the applicants. This deponent is not cognizant of the fact that the said signatures were forged;

Affidavits of Defendants—Gaetano Travisano.

the body of the notes were probably written in by the secretary, Neil Travisano, who was often called to do so, but the signatures are certainly not in the handwriting of Neil Travisano. The notes with the applications were put in the safe as it was customary to do and neither this deponent nor his son, Neil Travisano handled or received any of the proceeds of said notes and neither deponent nor any of the directors had any suspicion as to the accounts of the treasurer, he having been one of the founders of the association, and being held in high esteem in the community. 10

On March 3, 1927, one Rose Quaglia came to the association and paid the balance due by her of \$199.70 to Neil Travisano, in the presence of this deponent, who immediately made a slip and turned the slip and the money over to the treasurer Rocco Pennella; that the said treasurer took the money and the slip and deposited it in his personal box. The said Rose Quaglia asked for a receipt for the money and there was an argument between the treasurer of the said association and the said Rose Quaglia, the treasurer claiming that he was too busy to write receipts as there was a line of people waiting to pay, and the argument was settled by the treasurer asking Neil Travisano to make the receipt and give it to the said Rose Quaglia, which he did. As to the loan of Shafer, this deponent says that Shafer was in arrears and suit was started against him by the counsel of the association. This deponent believes that the suit was settled with the counsel but does not know if any money was received by the association, so far as he is concerned he never received any money from Shafer or from the counsel. 20 30 40

Affidavits of Defendants—Gaetano Trivisano.

On or about September 23rd, this deponent was arrested on three complaints made by the Vallatese Loan Association in which were mentioned the said Shafer and the said Quaglia notes; he was put under bail, which was furnished by his son-in-law Michael Rosano and the case adjourned for a hearing on the charges. At the hearing, after the evidence of the directors was in, including that of Pasquale Stanco, the President of the association, the Judge dismissed the charges involving the monies alleged to have been paid by Shafer and Quaglia, and practically dismissed the other complaint endorsing on it that there was no evidence on which he could hold the deponent and his son Neil, but he would send it to the Grand Jury for investigation. The Grand Jury thereafter investigated the said complaint together with the other two and dismissed the three of them.

This deponent further states that several times he was compelled to borrow money from his son-in-law, Michael Rosano, and that he received the money at times in cash and at other times in checks and that on or about January, 1928 the amount which he owed to his son-in-law was \$2,500.00. On or about the last date, the son-in-law requested the payment of the sum of \$2,500.00 and he immediately notified the Vallatese Loan Association to purchase his thirty-one shares of stock which at that time were valued at \$85.00 per share, as they had been doing with other stockholders. He was told that they did not have any money available at that time, but would pay him in two or three weeks. No claim was made at that time that this deponent owed the association any money. He then pro-

Affidavits of Defendants—Gaetano Travisano.

posed to his son-in-law to sell him the thirty-one shares of stock as above stated in payment of his debt, and the son-in-law, after inquiring at the association as to the value of the shares, and as to the probability of buying, finally accepted this proposal, gave him the balance in cash and took the shares which this deponent duly assigned to him according to law. 10

Since August, 1927 this deponent although a stockholder of the said association up to January, 1928 has not received any communications whatsoever from said association for any meetings, etc., was not notified as to the annual meeting of the stockholders and was not present when the officers were elected, and as a matter of fact has been kept absolutely ignorant of all the transactions of the Vallatese Loan Association. 20

Deponent lastly states that he verily believes that there is a conspiracy among the directors of the Vallatese Loan Association in order to disclaim any responsibility for the defalcation of the treasurer, Rocco Pennella, to charge this deponent and his son with the embezzling of the money which is short in the accounts of the treasurer, although this deponent had nothing to do with the collection or disbursements of any of the funds of the association or of keeping the books of the association, and this deponent lastly states that he is not guilty of any defalcation or appropriation of any of the funds, documents or papers of the said Vallatese Loan Association. 30

GAETANO TRAVISANO.

Subscribed and sworn to before me
this day of March, 1928.

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Affidavits of Defendants—Neale Trivisano.

IN CHANCERY OF NEW JERSEY.

10	Between Vallatese Loan Association, Complainant, and Gaetano Trivisano, Neale Trivisano and Michael Ro- sano, Defendants.	}	On Bill, &c. Affidavit.
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State of New Jersey, }
 County of Essex. } ss.

20 NEALE TRIVISANO, being duly sworn according to law, on his oath deposes and says:

30 That he was the Secretary of the Vallatese Loan Association from January 1, 1927 to August 5, 1927, and as such Secretary it was his duty to enter in the books the amounts as shown by the pay slips handed to him by the treasurer for monies received during each meeting night, and also to write the minutes of the meetings of the board of directors and when necessary to help generally to fill in notes and checks of the association and for the association. It was not part of his duties and he never did do any collecting for the association.

40 Deponent further states that he had no right to, neither did he ever receive funds to deposit in any bank or banks or in any other authorized depository, the same being the duty of the treasurer who attended to that business. On July 2, 1927 Rocco Pennella, who had been treasurer of the association for a number of years and who had been one of the organizers of the Vallatese

Affidavits of Defendants—Neale Trivisano.

Loan Association, committed suicide. Up to that time no one had any suspicion as to the honesty or integrity of the treasurer, and as a matter of fact some of the directors had loaned him big amounts, he being well liked and thought very substantially of in the community. After his death, in going over his books this deponent, together with the president and the other directors, came across several items which cast some doubts as to the proper amounts and it was decided to engage an accountant to go over the books. While the books were in the hands of the accountant, late in the afternoon of August 5, 1927, the president, who is the father of deponent, received a letter from William Azzoli, counsel for the association, requesting the president to call a meeting for that evening, as the man of the bonding company, which had bonded the treasurer, would be present in order to find out the amount of the defalcation of the treasurer. He went with his father to the office of the association, where he found the other directors, and they requested him to go with Pasquale Stanco and Vito Sciavino to the accountant who had the books, to bring them back to the association. He did so, brought the books back, and on reaching the office, Mr. Azzoli stated that the books were sequestered and that both the president and himself were suspended and that they would turn the books over to another accountant. This deponent then requested to be permitted to be present with the accountant when the books were being gone over, but was denied that privilege.

On February 2, 1927, the treasurer, Rocco Pennella, presented two notes, one bearing the signature of Tony Caprio for \$250.00 and one of John Evangelista for \$300.00, the same being

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Affidavits of Defendants—Neale Travisano.

renewals of two other notes of the same parties, which were in the hands of the association. This deponent is not in a position to say if the body of the notes had been written in by him or not, as several times he had been requested by the directors to fill in checks and notes, but this
10 deponent emphatically states that the signatures or the endorsements were not made by him and that no money was ever received by him on said notes.

Deponent further states that on March 3, 1927, one Rose Quaglia appeared at the office of the association to pay the balance due by her to the association of \$199.70; that she counted the money in the presence of deponent and he immediately turned it over to the Treasurer after
20 making a slip which was customary and which he had been requested to make by the said Rose Quaglia. The Treasurer took both the money and the slip stating the amount that was being paid and deposited it in his personal box. The said Quaglia asked for a receipt, but the Treasurer started to argue with her and told her that he was too busy having to attend to other people who were paying their dues, and finally to settle the argument requested deponent to make the
30 receipt which deponent did.

Deponent further states that at the end of each meeting the Treasurer turned over the pay-slips by him received during the evening and this deponent entered them in the ledger, and if the slip for said amount of Quaglia does not appear entered in the books of the association, it is due to the fact that the same was not turned over to him by the Treasurer for some reason or other, and not because he received and took any of the monies represented by said
40 slip or payment.

Affidavits of Defendants—Neale Travisano.

Deponent further states that he has never been asked for an accounting, nor has he ever been permitted to go over the books together with the accountant or a representative of the association, so that he could help the association in finding out the shortage of the Treasurer.

Deponent further states that he was the owner of one share of the capital stock of said association of the par value of \$100.00, that at the time of his arrest he did not have money to engage a lawyer and requested his brother-in-law Michael Rosano to do so for him, and that he turned over to the said Michael Rosano the share that he owned in the association in order to repay the said Michael Rosano for the amount that he had paid the lawyer to represent deponent in the police court and who took care of the case for him.

This deponent lastly states that since August 5, 1927, although being a stockholder as above stated, he was never notified of any meetings or of any of the transactions of the Vallatese Loan Association; that he was not present and was not notified of the stockholders' meeting on January 2, 1928, and he does not know even at the present time officially who are the officers of the Vallatese Loan Association.

NEALE TRAVISANO.

Subscribed and sworn to before
me this day of March, 1928.

Affidavits of Defendants—Michael Rosano.

IN CHANCERY OF NEW JERSEY.

10	Between Vallatese Loan Association, Complainant, and Gaetano Trapisano, Neale Trapisano and Michael Ro- sano, Defendants.	}	On Bill, &c. Affidavit
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. }ss.

20 MICHAEL ROSANO, of full age, being duly sworn according to law, on his oath deposes and says:

That he conducts the business of cloak house, and that he has been in said business for the last twelve years.

30 Deponent further states that he is the son-in-law of Gaetano Trapisano, one of the defendants named in the said complaint; that at several times this deponent has loaned money to the said Gaetano Trapisano in different amounts to a total of \$2,500.00, which the said Gaetano Trapisano promised to pay as soon as he would be able to do so, which said amount was given by this deponent partly in cash and partly in checks.

40 This deponent further states that about the end of September he was called by his father-in-law at the Fourth Precinct to give bail on three certain charges made against him and his son Neil Trapisano by the complainants herein; that he gave said bail in the police court and that on the adjourned day of the hearing two

Affidavits of Defendants—Michael Rosano.

charges were dismissed and one charge was practically dismissed, but the Judge of the Precinct sent it to the Grand Jury with an annotation that there was no evidence on which he could hold the defendants and paroled them for the Grand Jury which Grand Jury heard the case and dismissed it. That about the end of January, 1928, this deponent asked his father-in-law if it would be possible for him to raise the money and pay back the loans, as he needed the money for his business, and about the end of January the said Gaetano Trivisano asked the loan association, the complainant herein, to buy his shares, as they had done with other stockholders, but they informed him that they did not have any money at that time. He then proposed to deponent to sell to him the shares of the said association, which were worth at that time \$85.00 per share, as stated by the directors of said association; that before buying the said shares, this deponent went personally to the office of the Vallatese Loan Association, told the directors of the proposition made to him, and they, together with the President, Mr. Stanco, informed him that he could buy the shares, but would have to wait a few weeks for his money, and that the actual value of the shares was \$85.00 per share; and as a matter of fact they paid this deponent four shares which deponent's wife held in said association at \$85.00 per share. Acting on that information, deponent took in payment of the loans by him made to the said Gaetano Trivisano, the thirty-one shares which he, the said Gaetano Trivisano, held in the said association, and paid him the balance in cash, had the shares regularly transferred to him and notified the association by registered letter to make such a transfer on their books.

Affidavits of Defendants—Michael Rosano.

Deponent further states that at the time the said Gaetano Travisano and Neil Travisano were arrested they were compelled to engage a lawyer; that the said Neil Travisano did not have money to pay the lawyer and he asked this deponent to advance the sum of \$100.00 which he would repay in about one or two weeks; that instead of returning to him the money, the said Neil Travisano about January 20th went to deponent's residence and told him that he could not raise the money, but that he had a certificate of stock for one share in the Vallatese Loan Association, the complainant herein, which he would transfer to deponent in payment of his loan; that deponent accepted the said share in payment of said loan and demanded payment of the association, and was informed by the directors to wait a short time because they did not have the money ready and reiterated that the share was worth \$85.00.

This deponent lastly states that there was no understanding or agreement between deponent and the said Gaetano Travisano and Neil Travisano as to the certificates of stock herein mentioned, but that this deponent bought them bona fide and for value as above stated, and that he is the absolute owner of the said shares, no one having any claim against said shares.

Deponent further states that he was never informed of any counter-claim which the said association had against the said Gaetano Travisano or Neil Travisano, at the time he went up to the association to transfer the shares or to receive the money for the same, but that he was informed that the Treasurer of the association, Rocco Pennella, was the one who had defrauded the money of the association, and that for that reason he had committed suicide.

Answer of Defendant Michael Rosano.

Deponent lastly states that he is the owner of property No. 132 Springfield avenue, Newark, which is assessed for \$37,500.00 and No. 98 Howard street assessed for \$5,700.00 on which there is a mortgage of \$25,000.00; that he conducts the business above mentioned at No. 132 Springfield avenue, which is worth at least \$7,000.00 and that so far as finances are concerned, this deponent deems himself substantially sound. 10

MICHAEL ROSANO.

Subscribed and sworn to before
me this day of March, 1928.

**ANSWER OF DEFENDANT
MICHAEL ROSANO.**

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Filed May 9, 1928.

IN CHANCERY OF NEW JERSEY.

Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

Defendants.

On Bill, &c.

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Answer.

Defendant, Michael Rosano, residing in the City of Newark, County of Essex and State of New Jersey, says:

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Answer of Defendant Michael Rosano.

1. He has no knowledge or information to form a belief as to the statements contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

10 2. He has no knowledge or information to form a belief as to the statements contained in paragraph 13, excepting that up to January, 1928, the said Gaetano Travisano was the holder of thirty-one shares of the capital stock of the said association, which were duly sold to this defendant.

3. He admits paragraph 14.

20 4. He denies paragraph 15 with the exception of the negotiability of said stock, but further states that he is a bona fide purchaser, having paid full value for said stock and not being cognizant of any counter-claims against either Gaetano Travisano or Neil Travisano, and that he is the absolute owner of said stock and an innocent purchaser.

5. He has no knowledge or information to form a belief as to the statements contained in paragraph 16.

T. MANCUSI-UNGARO,
Solicitor for Defendant,
Michael Rosano.

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**ANSWER OF DEFENDANT
NEIL TRAVISANO.**

Filed May 9, 1928.

IN CHANCERY OF NEW JERSEY.

Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, *et als.*,
Defendants.

On Bill, &c.

Answer.

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The answer of the defendant Neil Travisano.

The defendant Neil Travisano, residing in the City of Newark, answering the bill of complaint herein, respectfully shows that:

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1. This defendant admits the allegations contained in paragraph 1.

2. This defendant admits that he was the secretary of the association from January, 1927, until August, 1927, but denies the other allegations contained in paragraph 2.

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3. This defendant denies the allegations contained in paragraphs 3, 4 and 5 and further shows that at no time did this defendant ever handle or receive any funds of the association; and further, that the books of the association were delivered to it and examined by an accountant.

4. This defendant has no knowledge as to the amount of the shortage and denies all the other allegations contained in paragraph 6. The defendant further alleges that the shortage was

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Answer of Defendant Neil Travisano.

caused solely by the defalcation of the treasurer, Rocco Pennella, without any knowledge or fault on the part of this defendant.

10 7. This defendant denies the allegations contained in paragraphs 7 and 8 of the bill of complaint herein, and further shows that he was never requested to make up and furnish any accounting.

8. This defendant denies the allegations contained in paragraphs 9 to 12 inclusive.

9. This defendant admits that he is the owner of one share of stock in the association but denies the other allegations contained in paragraph 13.

20 10. This defendant admits the allegations contained in paragraph 14 and further shows that the said complaints were dismissed by the said Court and by the Grand Jury in and for the County of Essex.

11. This defendant has no knowledge as to the allegations contained in paragraph 15 and therefore denies the same.

30 12. This defendant admits the allegations contained in paragraph 16 and further alleges that although he is a stockholder in the association, he was never notified of the said meeting.

This defendant therefore prays that the bill of complaint filed herein be dismissed.

THEMISTOCLES MANCUSI-UNGARO,
Solicitor for and of Counsel with the Defendant.

**ANSWER OF DEFENDANT
GAETANO TRAVISANO.**

Filed May 9, 1928.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p style="text-align: center;">VALLATESE LOAN ASSOCIATION, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">GAETANO TRAVISANO, <i>et als.,</i> <i>Defendants.</i></p>	}	<p style="text-align: right;">10</p> <p style="text-align: right;"><i>On Bill, &c.</i></p> <p style="text-align: right;"><i>Answer.</i></p>
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The answer of the defendant Gaetano Travisano. 20

The defendant Gaetano Travisano, answering the bill of complaint filed herein, respectfully shows that:

1. This defendant admits the allegations contained in paragraph one of the bill of complaint.
2. This defendant admits that he was the president of complainant association as alleged in the bill of complaint, but denies all the other allegations contained in paragraph two. 30
3. This defendant denies all the allegations contained in paragraph three of the bill of complaint and further alleges that at no time did this defendant handle or have charge of any of the funds of the complainant association.
4. This defendant denies the allegations contained in paragraph four of the bill of complaint.
5. This defendant denies the allegations contained in paragraph four of the bill of com- 40

Answer of Defendant Gaetano Travisano.

plaint and further alleges that the books of the association were delivered to the board of directors and examined by an accountant.

10 6. This defendant has no knowledge or information as to the amount of the shortage, if any, and denies all the other allegations contained in paragraph six; this defendant further alleges that the shortage, if any, was brought about by the defalcation of one Rocco Pennella, the treasurer of the complainant association, and without any knowledge or fault on the part of this defendant.

7. This defendant denies the allegations contained in paragraph seven of the bill of complaint.

20 8. This defendant denies that it was his duty to render any account to the board of directors of the said association, and further alleges that he was never requested to render any account to anyone.

30 9. This defendant denies that the facts set forth in paragraph nine are the true facts as to the transactions therein referred to and alleges that the true facts are as follows: That the notes therein referred to were renewal notes for notes already in the hands of the association and were presented by Rocco Pennella and that neither this defendant nor the defendant Neil Travisano received or handled the proceeds of the said notes nor had any knowledge of these transactions except as herein set forth.

With the exception of the above facts, this defendant denies the allegations contained in paragraph nine.

Answer of Defendant Gaetano Travisano.

10. This defendant denies the allegations contained in paragraph ten.

11. This defendant denies the allegations contained in paragraph eleven and paragraph twelve of the bill of complaint.

12. This defendant denies the allegations contained in paragraph thirteen and further alleges that he sold all the stock of the complainant association owned by him to Michael Rosano. 10

13. This defendant admits the allegations contained in paragraph fourteen and further shows that the said complaints were dismissed by the said Court and by the grand inquest in and for the County of Essex, after investigation.

14. This defendant admits that he sold his said stock to Michael Rosano but denies the other allegations contained in paragraph fifteen and further alleges that he sold the said stock for a valid and adequate consideration and after notice to the complainant association. 20

15. This defendant admits the allegations contained in paragraph sixteen and further alleges that the said meeting was held without notice to this defendant and that he was not present at the said meeting. 30

This defendant therefore prays that the bill of complaint filed herein be dismissed.

THEMISTOCLES MANCUSI-UNGARO,
Solicitor for and of Counsel with the Defendant.

ORDER OF REFERENCE.

Filed May 21, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, *et als.*,
Defendants.

On Bill, &c.

*Order of
Reference.*

20 This matter being opened to the Court by
Wolber and Gilhooly, solicitors for and of counsel
with complainant and Kessler & Kessler, solici-
tors for and of counsel with defendants, and
upon reading the consent hereto,

It is thereupon, on this 21st day of May, 1928,
ORDERED that the above stated cause be referred
to Alonzo Church, one of the Vice-Chancellors
of this Court, to hear the same for the Chancellor,
and to report thereon to him and advise what
order or decree should be made therein.

30 We consent to the above order of reference.

WOLBER and GILHOOLY,
Solicitors for and of Counsel
with Complainant.

KESSLER & KESSLER,
Solicitors for and of Counsel
with Defendants.

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ORDER OF DESIGNATION.

Filed June 7, 1928.

IN CHANCERY OF NEW JERSEY.

*Between*VALLATESE LOAN ASSOCIATION,
*Complainant,**and*GAETANO TRAVISANO, *et als.*,
Defendants.

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On Bill, &c.
Designation.

This matter being opened to the Court by
 Wolber and Gilhooly, solicitors for and of counsel
 with complainant, in the presence of Kessler &
 Kessler, solicitors for and of counsel with de-
 fendants, and upon hearing the arguments of
 counsel:

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It is on this 1st day of June, 1928 ORDERED
 that Monday the 18th day of June at ten o'clock
 in the forenoon at the Chancery Chambers, in
 the City of Newark, New Jersey, be and the same
 are hereby fixed as the time and place for the
 hearing of the above-entitled case.

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ALONZO CHURCH,
 V.-C.

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Order of Designation.

We consent to the within order of designation.

WOLBER and GILHOOLY,
Solicitors for and of Counsel
with Complainant.

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KESSLER & KESSLER,
Solicitors for and of Counsel
with Defendants.

T. MANCUSI-UNGARO,
Solicitor of Mike Rosano.

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DECREE FOR ACCOUNT.

Filed July 5, 1928

IN CHANCERY OF NEW JERSEY.

Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

Defendants.

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On Bill, etc.

*Decree for
Account.*

This cause coming in to be heard in the presence of Wolber and Gilhooly, solicitors of the complainant, and Kessler and Kessler and T. Mancusi-Ungaro, solicitors for the defendants;

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And the Court having examined the pleadings, and having heard and considered the arguments of counsel thereon, and counsel for complainant having agreed to deposit with the Special Master to which this matter is to be referred to for a report, the amount of said Special Master's fees;

It Is, on this 28th day of June, nineteen hundred and twenty-eight, ORDERED, ADJUDGED and DECREED that the said defendants, Gaetano Travisano and Neale Travisano, account under oath for any monies received by them for and on behalf of complainant association and regarding all the accounts during the period when the said defendants were president and secretary of complainant association, wherein and whereby shortages on the books of complainant association occurred, before Francis Child, Esquire, one of the

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Decree for Account.

Special Masters of this Court, to whom the said matters and things are hereby referred, to be ascertained by and reported on by him.

10 IT IS FURTHER ORDERED that complainant association deposit with the said Special Master, prior to the hearing or hearings to be held by said Master, an amount sufficient to cover the fees and costs of said Special Master in the proceedings.

IT IS FURTHER ORDERED that the said Master make his report on the said matters referred to him with all convenient speed; and all further equity is reserved until the coming in of said Master's Report.

Respectfully advised,

20 ALONZO CHURCH,
V.-C.

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NOTICE OF HEARING.

Filed July 24, 1928.

IN CHANCERY OF NEW JERSEY.

Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

Defendants.

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*On Bill, &c.
Notice of
Hearing
Before
Special
Master.*

To Kessler & Kessler, 9 Clinton street, Newark, New Jersey, and T. Mancusi-Ungaro, 164 Market street, Newark, New Jersey, attorneys for defendants.

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PLEASE TAKE NOTICE that Francis Child, Esquire, Special Master to whom the above-entitled matter has been referred for hearing has fixed August 20, 1928 at 10 o'clock in the forenoon of that day (daylight saving time) as the time of the hearing to be held, and his offices, No. 24 Commerce street, Newark, New Jersey, as the place of said meeting.

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WOLBER & GILHOOLY,
Solicitors for and of Counsel
with Complainant.

Dated July 19, 1928.

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NOTICE OF APPLICATION TO HAVE MASTER'S REPORT CONFIRMED, ETC.

Filed November 25, 1929.

IN CHANCERY OF NEW JERSEY.

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Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

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Defendants.

On Bill, etc.

*Notice of
Application*

*to Have
Master's
Report*

*Confirmed
and to Fix*

*Master's
Allowance*

*and
Application*

for Restraint.

*To Kessler & Kessler and T. Mancusi-Ungaro,
solicitors for and of counsel with defendants:*

30 PLEASE TAKE NOTICE that on Tuesday, November 19, 1929, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard we shall apply to Honorable Alonzo Church, one of the Vice-Chancellors of the Court of Chancery, to whom the above matter has been referred, for an order confirming the report filed by Francis Child, Esquire, one of the Special Masters in Chancery, dated November 6, 1929.

AND TAKE FURTHER NOTICE that at the same time and place we shall apply to the Court to fix a proper allowance to the said Special Master.

40 AND TAKE FURTHER NOTICE that at the same time and place we shall apply to the Court for

Notice of Application to Confirm Master's Report, etc.

an order restraining Gaetano Travisano, Neale Travisano and Michael Rosano from assigning, transferring, pledging or otherwise negotiating certificates of stock of the Vallatese Loan Association Nos. 7, 51, 60, 68, 104, 138 and 140. Said application will be based upon the affidavits annexed to the bill of complaint filed in this matter and on the findings of the Special Master as set forth in his said report. 10

Dated November 9, 1929.

WOLBER & GILHOOLY,
Solicitors for Complainant.

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ORDER FOR TEMPORARY RESTRAINT.

Filed November 25, 1929.

IN CHANCERY OF NEW JERSEY.

67/525.

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*Between*VALLATESE LOAN ASSOCIATION,
*Complainant,**and*GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,*Defendants.**On Bill, etc.**Order for
Temporary
Restraint.*

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This matter being opened to the Court by Wolber & Gilhooly, solicitors for and of counsel with the complainant, and the Court having considered the report of Francis Child, one of the Special Masters of this Court dated November 6, 1929, and the affidavits annexed to the bill of complaint filed in this cause, and it appearing that notice of application for this order was given to the solicitors for said defendants;

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IT IS on this 19th day of November, 1929, ORDERED that the defendants Gaetano Travisano, Neale Travisano and Michael Rosano, be and they are hereby, until the further order of this court, enjoined and restrained from assigning, transferring, pledging or otherwise negotiating certificates of stock of the Vallatese Loan Association Nos. 7, 51, 60, 68, 104, 138 and 140.

Respectfully advised,

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ALONZO CHURCH,

V.-C.

MASTER'S REPORT.

Filed February 3, 1930.

IN CHANCERY OF NEW JERSEY.

67/525.

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*Between*VALLATESE LOAN ASSOCIATION,
*Complainant,**and*GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,*Defendants.**On Bill, etc.**Master's
Report.*

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In pursuance of a decree made in the above-entitled cause on the 28th day of June, 1928, whereby among other things it was ordered that it be referred to the undersigned, one of the Special Masters of this Court, to take an account of any moneys due from the defendants to the complainant;

I do respectfully report to his Honor, the Chancellor, as follows:

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1. I have been attended by John H. Yauch, Jr., representing Wolber & Gilhooly, solicitors of the complainant, and by Samuel I. Kessler, of Kessler & Kessler, representing the defendants, Gaetano Travisano, Neale Travisano and Michael Rosano, and also by T. Mancusi-Ungaro, representing the said defendants, and in his presence have taken the depositions of witnesses and have examined into the matters referred to me.

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Master's Report.

2. The allegations of the bill are that the defendant, Gaetano Travisano, was the President and Neale Travisano was the Assistant-Secretary and later the Secretary of the complainant association; that while they were such President and Assistant-Secretary they so conducted the
10 affairs of the association that moneys were misappropriated, forgeries were perpetrated and the association suffered losses to the extent of \$6,606.81.

3. Prior to the 2nd day of July, 1927, one Rocco Pennella had been the Treasurer of the complainant association and on July 2, 1927, he committed suicide. An investigation of the affairs of the association after the suicide of
20 Pennella, disclosed the fact that there were substantial shortages. Pennella was under bond to the amount of \$1,000.00, which amount was paid by the bonding company, so that the net shortage existing at the date of the filing of the bill was \$5,606.81.

4. The defendants allege that the forgeries, defalcations and irregularities were caused by the conduct of Pennella.

5. With reference to the defendant, Michael Rosano, there is no evidence whatever to connect him with any irregularities that existed in
30 the management of the affairs of the complainant association and as to him, the bill should be dismissed.

6. Gaetano Travisano was the President of the association from the month of January, 1926, to the month of August, 1927, and in January, 1927, the complainant association passed a resolution giving to the defendant, Gaetano Travisano, an additional compensation of \$100.00 per
40 year so that he might investigate applicants for

Master's Report.

loans and see that the business of the association was properly run insofar as loan applications were concerned.

7. The defendant, Neale Travisano, was the Assistant-Secretary of the association in the year 1926 and became Secretary in January, 1927, and in the month of November, 1926, signed a report as Assistant-Secretary which report showed a shortage of some \$1,700.00. Part of the shortage arose from the forgery of notes, checks and applications for loans. I shall touch upon two of these loans which are forgeries, the Evangelisto loan and the Caprio loan aggregating some \$800.00.

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8. I am satisfied from the evidence produced before me and it is an irresistible conclusion, from the writing appearing on the forged loans above mentioned, the applications for such loans and the handwriting of the defendant, Neale Travisano, that Neale Travisano forged the signatures to the applications, to the notes and to the checks for the loans last mentioned, and I am further satisfied that the defendant, Gaetano Travisano, knew of the conduct of his son, Neale Travisano, and was either guilty of actually participating in the fraud committed upon the complainant association or of passively consenting thereto and if the deceased Treasurer, Rocco Pennella, was guilty of defrauding the association, that the defendants, Neale Travisano and Gaetano Travisano, were cognizant of that fact and took no steps to stop the fraud and participated, Neale Travisano actively and Gaetano Travisano passively, and possibly actively, in perpetrating a continuance of the fraud upon the complainant association.

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Master's Report.

10 Whether the defendants, Gaetano Travisano and Neale Travisano, were responsible for all of the frauds committed upon the association in my view of the case, does not make any difference. The fact that they were parties to such fraud renders them, in my opinion, personally liable to pay the entire loss occasioned by their fraudulent conduct and I, therefore, find and report that a decree should be entered in this cause against the defendants, Neale Travisano and Gaetano Travisano, to the amount of \$5,606.81, together with interest thereon from the 2nd day of January, 1928.

20 All of which is respectfully submitted this 6th day of November, nineteen hundred and twenty-nine.

FRANCIS CHILD,
Special Master in Chancery
of New Jersey.

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EXCEPTIONS TO MASTER'S REPORT.

Filed February 14, 1930.

IN CHANCERY OF NEW JERSEY.

Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

Defendants.

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On Bill, etc.
Exceptions
to Master's
Report.

The defendants Gaetano Travisano and Neale Travisano hereby except to the report filed in this cause by Francis Child, Esq., one of the Special Masters of this Court, bearing date the 6th day of November, 1929, for the following reasons: 20

1. The findings of the Special Master were contrary to the greater weight of the evidence and facts adduced at the hearing.

2. There was no testimony in the case showing that any shortage or deficit existed as alleged in the complaint. 30

3. There was no testimony or evidence produced showing that the shortage or deficit alleged to have existed, was in the same amount as that found by the Special Master in his report.

4. There was no testimony or evidence produced which afforded any basis for the findings 40

Exceptions to Master's Report.

of the Special Master or which warranted the Special Master to find that a shortage or deficit existed in the amount set out in the Master's report.

10 5. The Special Master does not set out in what manner he arrived at the amount of the deficit found by him to have existed, nor does the Special Master itemize or particularize how he arrived at the amount set out in the Master's report.

20 6. The Special Master does not report what items were chargeable to the defendant Gaetano Travisano or what items were chargeable to the defendant Neale Travisano, nor does the Master's report distinguish or itemize as to what items there were for which either of these defendants were responsible.

7. There was no evidence in the case of any forgery by these defendants or either of them; nor was forgery by these defendants or either of them alleged in the bill of complaint.

30 8. Defendants were not given an opportunity to produce a handwriting expert to disprove forgery on the part of the defendants or either of them, as was alleged at the hearing, although it had previously been agreed that the defendants would be given such an opportunity.

9. Defendants were not afforded an opportunity to examine the handwriting expert engaged by the Special Master, although it had previously been agreed that defendants would be given such an opportunity.

40 10. Defendants have never received a copy of the photographic enlargements of the ex-

Exceptions to Master's Report.

hibits of October 1, 1928, although it had previously been agreed that such enlargements would be sent to the solicitors for the defendants before the filing of the final report.

KESSLER & KESSLER,
Solicitors of Defendants,
Gaetano Travisano and Neale Travisano. 10

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**ORDER CONFIRMING MASTER'S REPORT
AND FINAL DECREE.**

Filed February 14, 1930.

IN CHANCERY OF NEW JERSEY.

10

67/525

Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

20

Defendants.

*Order Con-
firming
Special
Master's
Report; and
Final Decree.*

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This matter being opened to the Court by Wolber & Gilhooly, and John H. Yauch, Jr., Esquire, solicitors for and of counsel with complainant, in the presence of Kessler and Kessler, by Samuel Kessler, Esquire, solicitor for and of counsel with the defendants; and it appearing by the report of Francis Child, Esquire, one of the Special Masters of this Court, made in pursuance of a decree made by this court in this cause on the 28th day of June, 1926, and dated November 6, 1929, and duly filed herein, that the defendants Gaetano Travisano and Neale Travisano were grossly negligent in the conduct of the affairs of the complainant association while they were acting as president and secretary of the complainant association, and that such negligence on the part of said defendants resulted in a loss to the association which said Special Master has taken

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Order Confirming Master's Report and Final Decree.

an account of and that, upon such accounting, there appears to be due and owing by the said defendants Gaetano Trivisano and Neale Trivisano, to said complainant Vallatese Loan Association; the sum of \$5,606.81 with interest thereon from January 2, 1928.

And it further appearing that said Special Master found that no evidence was produced connecting the defendant Michael Rosano with any irregularities that existed in the management of the affairs of complainant association and as to him that the bill should be dismissed. 10

And it further appearing that the defendants Gaetano Trivisano and Neale Trivisano took exceptions to said Special Master's report and the Court having duly considered said report, and the exceptions thereto filed, by the said defendants Gaetano Trivisano and Neale Trivisano and having heard and considered the argument of counsel and being satisfied that the said Special Master's report should be ratified and confirmed, 20

It is, on this 3rd day of February, 1930, ORDERED, ADJUDGED AND DECREED that the said Special Master's report and the matters and things therein contained be and the same are hereby ratified and confirmed, and that there is due and owing by the defendants Gaetano Trivisano and Neale Trivisano to the complainant Vallatese Loan Association, the sum of \$5,606.81, with interest from January, 2, 1928. 30

It is further ORDERED, ADJUDGED AND DECREED, that the bill of complaint filed herein be dismissed as to the defendant Michael Rosano.

It is further ORDERED that the said defendants Gaetano Trivisano and Neale Trivisano pay to the said complainant or their solicitors costs 40

Order Confirming Master's Report and Final Decree.

of this suit to be taxed, including a counsel fee of \$750.00 which is hereby allowed to said complainant.

10 It is further ORDERED that the said defendants Gaetano Trivisano and Neale Trivisano pay to Francis H. Child, Esquire, the Special Master to whom this matter was referred, the sum of \$400.00 which is hereby allowed to said Special Master as and for his fees in this proceeding, to be taxed with the costs.

20 It is further ORDERED that the said defendants Gaetano Trivisano and Neale Trivisano within five days after the date hereof, pay to the said complainant, the sum of \$5,606.81 with interest thereon from January 2, 1928 due to it as aforesaid and said taxed costs; and that, in default of such payment, execution issue against the goods and chattels, lands, tenements, hereditaments and real estate of said defendants Gaetano Trivisano and Neale Trivisano directed to the Sheriff of the County of Essex, to make said sum of \$5,606.81 with interest from January 2, 1928 as aforesaid, and said taxed costs, according to the practice of this court.

E. R. WALKER,

C.

30 Respectfully advised,

ALONZO CHURCH,
V.-C.

NOTICE OF APPEAL.

Filed March 1, 1930.

IN CHANCERY OF NEW JERSEY.

Between

VALLATESE LOAN ASSOCIATION,
a corporation of N. J.,
Complainant,

and

GAETANO TRAVISANO and NEALE
TRAVISANO,
Defendants.

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On Bill, &c.
Notice of
Appeal.

The defendants Gaetano Travisano and Neale Travisano hereby appeal from the final decree made in the above-entitled cause on the 3rd day of February, 1930, and from the whole and every part thereof, to the Court or Errors and Appeals in the last resort in all causes. 20

Dated: February 11, 1930.

T. MANCUSI-UNGARO,
KESSLER & KESSLER,
Solicitors for Defendants.

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

T. MANCUSI-UNGARO,
Of Counsel with Defendants.

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PETITION OF APPEAL.

Filed March 3, 1930.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between

VALLATESE LOAN ASSOCIATION,
Plaintiff-Respondent,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,
Defendants-Appellants.

*On Appeal
from the
Court of
Chancery.*

*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 Gaetano Travisano and Neale Travisano, the appellants in the above-entitled cause, respectfully shows that:

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Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date February 3, 1930, in a certain cause in said Court of Chancery wherein the Vallatese Loan Association was complainant and Gaetano Travisano, Neale Travisano and Michael Rosano were defendants, in this respect, to wit: that the said decree adjudges that the defendants Gaetano Travisano and Neale Travisano were grossly negligent in the conduct of the affairs of the complainant association while they were acting as president and secretary of the complainant asso-

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Petition of Appeal.

ciation, and that such negligence on the part of said defendants resulted in a loss to the association in the sum of \$5,606.81, with interest thereon from January 2, 1928, which sum was found to be due by the said defendants Gaetano Travisano and Neale Travisano to the complainant; and which decree further adjudges that said defendants pay said sum to the complainant. 10

And petitioners appeal from that part of the decree of the Chancellor, which decrees as above set forth, upon the ground that the same is erroneous in the following particulars:

1. The said decree is contrary to the greater weight of the evidence and testimony adduced at the hearing in this matter.

2. There is no evidence or testimony in the case to support a finding that a shortage or deficit existed in the amount set forth in the final decree. 20

3. The bill of complaint does not allege forgery on the part of the defendant Neale Travisano and, therefore, a finding that said defendant committed forgery is contrary to law.

4. The finding that forgery was committed by the defendant Neale Travisano is contrary to the greater weight of the evidence adduced. 30

5. The greater weight of the evidence and testimony admits of only one logical inference—that if any shortage existed it was caused by the deceased treasurer of the complainant association, without the knowledge or consent of these defendants. 30

Petitioners therefore pray that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioners may have such 40

Answer to Petition of Appeal.

other relief in the premises as to this court shall seem proper.

KESSLER & KESSLER,
Solicitors for and of Counsel
with Appellants.

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ANSWER TO PETITION OF APPEAL.

Filed March 5, 1930.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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Between

VALLATESE LOAN ASSOCIATION,
Complainant-Respondent,

and

GAETANO TRAVISANO and NEALE
TRAVISANO,
Defendants-Appellants.

*On Appeal
from the
Court of
Chancery.*

*Answer to
Petition
of Appeal.*

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The answer of Vallatese Loan Association, the above-named respondent to the petition of appeal of Gaetano Travisano and Neale Travisano, the above-named appellants.

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained for answer thereto nevertheless admits that a decree was, on February 3, 1930, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned, and as therein set forth; but as to the substance

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Answer to Petition of Appeal.

and form of said decree this respondent begs leave to refer thereto when the same shall be produced.

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 taxed in favor of this respondent.

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WOLBER & GILHOOLY,
Solicitors for Respondent.

JOHN H. YAUCH, JR.,
Of Counsel with Respondent.

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*Stenographer's Oath.***TESTIMONY.**

IN CHANCERY OF NEW JERSEY.

Between

10 VALLATESE LOAN ASSOCIATION,
Complainant,
and
 GAETANO TRAVISANO, NEALE
 TRAVISANO and MICHAEL
 ROSANO,
Defendants.

*Stenog-
 rapher's
 Oath.*

20 STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. }*ss.*

I, LUCILLE R. TRUMBAUER, of Newark, New Jersey, do solemnly swear that I will, as stenographer, carefully, faithfully and truly take stenographically, the evidence of the witnesses produced and examined before Francis Child, a Special Master in Chancery of New Jersey, in the above-entitled cause, and that I will make a true and correct transcript of the said evidence to the best of my skill and understanding.

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Sworn and subscribed to before
 me this 24th day of August,
 1928.

FRANCIS CHILD.

A Master in Chancery of New Jersey.

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Julius E. Flink, direct.

IN CHANCERY OF NEW JERSEY.

Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

Defendants.

Depositions. 10

Examination of witnesses in the above entitled cause, this 24th day of August, 1928, before Francis Child, a Special Master in Chancery of New Jersey, at his office No. 24 Commerce street, Newark, N. J. 20

Appearances:

Wolber & Gilhooly, by John H. Yauch, Jr., for the complainant.

Kessler & Kessler, by Samuel Kessler, for defendants Gaetano and Neale Travisano.

T. Mancusi-Ungaro, Esq., for defendant Michael Rosano.

JULIUS E. FLINK, sworn. 30

Direct examination by Mr. Yauch.

Q Mr. Flink, what occupation are you engaged in? A I am a certified public accountant, commissioned by the State of New Jersey.

Q How long have you been engaged in practice? A Ten years.

Q Sometime in the month of August, 1927, you were engaged to examine the books of the 40

Julius E. Flink, direct.

Vallatese Loan Association, were you not? A Yes, I was.

Q What was the purpose of this examination, so far as you know? A To examine into the financial standing of the company at the close of business, August 3, 1927, to ascertain the amount and character of any discrepancies in the records and to reconstruct their book accounts.

Q What did your examination disclose as to the financial condition of the Vallatese Loan Association at the close of the business, August 3, 1927? A It disclosed a deficit of \$479.27, which was the result of discrepancies at that date amounting to \$4,774.36.

Q I show you a booklet which is entitled "Vallatese Loan Association, Audit Report, August 3, 1927," and ask you to tell us what it is? A This is the formal report submitted by me covering the examination, and disclosing the financial condition, together with the discrepancies which existed up to August 3, 1927.

Q And does it clearly state the financial condition of the Vallatese Loan Association as at the time of that audit? A It does.

Q And do the figures as set out in that audit agree with the original figures of the Vallatese Loan Association? A These figures are based upon the original figures of the Vallatese Loan Association.

Mr. Yauch: I offer this audit for evidence.

The Master: Audit received and offered in evidence and marked Exhibit C. 1.

Mr. Yauch.

Q Now, you just referred in your testimony to a deficit of \$479.22. Does your audit show

Julius E. Flink, direct.

any discrepancies? A Yes, it shows discrepancies which amount to \$4,774.36.

Q What is your analysis of this discrepancy?

A It is made up of the following items which are part of the formal report dated August 3rd: \$2,788.37, representing difference between actual bank deposits and the amount credited to accounts of borrowers in the Borrower's Ledger; Item No. 2, \$549.86, represents court costs advanced and reimbursed to the company; Item No. 3, \$687.30, consists of protested checks made good by borrowers, but not accounted for by the records of the company; Item No. 4, \$465.00, accounts written off without any supporting evidence. This account charges off the bad debts and no evidence to interpret what they are; Item No. 5, Loan No. 512, amounting to \$283.90, paid off by the borrowers, based on evidence given by the Borrower's Ledger but not accounted for on the records of the association.

Q That is the A. Schaeffer loan? A Yes. These five items just enumerated produce a total of \$4,774.36.

Q This discrepancy was arrived at as of what date? A As of August 3, 1927.

Q Referring to Item No. 1, \$2,788.37, tell us how you arrived at that? A The amount credited in the Roll Book exceeded the actual amount deposited to the credit of the association, at the bank, of \$2,788.37, and covers the entire period.

Q The amount shown on the Borrower's Pass Book and the amount shown on the Secretary's Ledger did not show that that amount of money was deposited in the bank account? A Yes.

Q Mr. Flink, did you examine the certain pass books issued by the Vallatase Loan Association,

Julius E. Flink, direct.

and certain deposit slips that were given at the time payments were received by the association?

A I did.

10 Q Mr. Flink, I show you a batch of papers which appear to be deposit slips of the Vallatese Loan Association, and ask you if you checked those deposit slips and others which I produce here? A Yes.

Q Did you use the information which you procured by checking these deposit slips in arriving at this item of \$2,788.37, which you refer to? A I did.

20 Q I ask you to refer to this batch of deposit slips which I just handed to you and ask you to testify as to whether the initials indicated thereon signify as to who received the moneys represented by each deposit slip? A You refer here to the initials "N. T."

Q Is that so throughout these deposit slips? A All of them bear evidence of a "N. T." receiving.

30 Q I show you a certain paper of the Vallatese Loan Association summary of weekly receipts from Roll Book, for the period March 2, 1927, to July 27, 1927, and ask you to tell us what that is? A This schedule limits the discrepancy between the amount deposited in the bank and the amount which should have been there, between March 3, 1927, and July 2, 1927, and shows that during that period the shortage amounted to \$1,350.68.

Q That starts from March 27th? A Yes, and goes to July 27th.

40 Q Can you say whether these deposit slips which you examined and say bear these initials "N. T." are the deposit slips that are the subject matter of this report? A These deposit

Julius E. Flink, direct.

slips are represented practically by the summary shown on this schedule.

Mr. Yauch: I offer the schedule and deposit slips in evidence.

The Master: Schedule and deposit slips received and offered in evidence and marked Exhibit C. 2. 10

Mr. Yauch: Direct.

Q Mr. Flink, I show you a batch of books which appear to be pass books of the Vallatese Loan Association, and ask you to testify to them, if you can. Do those pass books cover the period referred to in Exhibit C. 2? A Entries contained in these pass books refer to the exhibit you refer to as C. 2. 20

Q Referring to the entries from March, 1927, on, for a period up to July, 1927, who appears to have receipted for payments? A This first loan No. 658, payments between March and July, 1927, bear the signature of "N. T."

Q Do you know who "N. T." is? A I do not know definitely, my impression is that it is Neale Travisano.

The Master: It is consented to that the initials "N. T." appearing on the deposit books are the initials of Neale Travisano, subject to those deposit slips as he may, upon examination, claim were not initialed by him. 30

Mr. Yauch: I offer these pass books in evidence.

The Master: Pass books received and offered in evidence and marked Exhibit C. 3. 40

Julius E. Flink, direct.

By Mr. Yauch.

10 Q I show you what appears to be a book of the American National Bank in the name of the Vallatese Loan Association, and ask you if you referred to that bank book in making your audit? A Yes.

Q Exhibit C. 2 states what is in the bank and the statement that you examined was of the American National Bank? A That is correct.

Mr. Yauch: I offer the bank book of the American National Bank in evidence.

The Master: Bank book of the American National Bank received and offered in evidence and marked Exhibit C. 4.

20 *By Mr. Yauch.*

Q Mr. Flink, as I understand, Exhibit C. 2 sets forth correctly the amount of the bank deposits from March 2, 1927, until July 27, 1927? A That is correct.

Q The audit you prepared after August 3, 1927, did that refer to the period during which Gaetano and Neale Trivisano were officers of the Vallatese Loan Association? A It did.

30 Q What did that examination disclose? A The time we began our examination in August, we were not quite conclusive as to the discrepancy that arose in connection with the borrower's accounts. In our further examination we were able to conclude that the amount was \$558.00, not deposited in the bank but paid by borrowers. That came about by further examination of the pass books.

Julius E. Flink, direct.

The Master: A further examination of the pass books disclosed a further discrepancy?

A Yes, of \$558.00.

By Mr. Yauch.

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Q I show you what appears to be an audited report of the Vallatese Loan Association, dated October 31, 1927, and ask you if that is a correct statement of your audit which you have just referred to? A It is.

Q Are those figures based on the original records of the Vallatese Loan Association and upon your examination of the Borrower's Pass Books held by members of the Vallatese Loan Association? A Yes, that is right.

20

Q How does the additional difference between the amount paid to the association and the amount deposited by it in its bank account show your first result as indicated by Exhibit C. 1? A The difference between \$5,362.36 and \$4,774.36.

Q In what condition were the books of the Vallatese Loan Association? A They did not reflect a very perfect method of bookkeeping.

Q Were the deposits totalled up and the withdrawals from the bank totalled up so that any net result could be obtained as to the balance? A The check book endeavored to show the balance but it had to be verified by a complete examination.

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Q Was the check book totalled up at the time you got it? A Yes.

Q Referring to Exhibit C. 1, Schedule 3, will you explain to us what that represents? A This discloses differences between the bor-

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Julius E. Flink, direct.

rower's loan ledger and the pass books presented by borrowers.

Q Those figures are the result of your having examined certain pass books issued by the association? A Yes, that's right.

10 *By Mr. Kessler.*

Q What books does the Secretary of the association keep? A Borrower's Loan Ledger, General Ledger, Cash Book, Journal, also stockholders' records.

Q These slips offered in evidence, they were slips that were in the possession of the Secretary? A They were in the safe of the association.

20 Q And do these slips conform with the entries in the books of the Secretary? A Yes.

Q So far as the Secretary's records show do they agree with the pass books of the borrowers? A There is a difference of \$122.00.

Q The only difference between the Secretary's book and the Borrower's book is about \$122.00? A Yes.

30 Q The discrepancy of the second item that you pointed out exists by reason of the fact that there did not seem to have been certain money deposited in the bank to meet the Secretary's books? A That is correct.

Q Did you know during that period of time who was Treasurer of the association? A I only know that Travisano replaced Pinnella.

By Mr. Yauch.

40 Q Can you tell from your examination whether any discrepancy existed between the Secretary's books and the Treasurer's books after July 5th or 6th? A My impression is

Julius E. Flink, direct.

from this record that most of the discrepancies occurred before the 3rd of July.

Q Was there any discrepancy between the Secretary's and Treasurer's deposits after July 3rd, after the new Secretary came in? A I cannot answer that immediately without a complete examination.

10

Q Do you know the duties of the Secretary of this association? A I do not know.

Q From your examination of the records does it appear what he actually did? A Yes, it appears that he kept the Borrower's ledger, the general books of the association, and received the deposit slips.

Q Can you tell from your examination of the books and records and other information as to the method of receiving business? A I do not know what was done in this particular association.

20

Q Did you know during the period of your examination just how Neale Travisano was associated with the association? A No.

Q Referring to the difference of \$4,774.36, the item \$2,788.37, so far as that item is concerned the Secretary's records conform to the depositor's books, do they not, on that particular item? A I do not know whether I should say Secretary's records. The Roll Book and the pass books agree.

30

Q There has not been enough money deposited to meet the records of the Secretary's books? A The Borrower's ledger and what is described as the Secretary's books call for certain amounts of money which have not been accounted for.

Q Item No. 2, \$549.86, is money that the Secretary gave to the attorney as advanced

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Julius E. Flink, direct.

costs and which has not been returned as far as the records show? A Yes.

10 Q Item No. 3, \$687.30, those protested checks which you say were made good by borrowers, have you any evidence to testify as to that? A The pass books of the borrowers show that these protested checks have been made good.

Q Loan No. 512, which is the Schaeffer loan, claims to have paid \$283.90, do you know to whom that was paid? A I think a receipt was presented to us showing that one of the Trivisanos received it.

Q It was a check, was it? A I think it was a receipt.

20 Q Do you know whether Neale Travisano received any money on behalf of the association? A Only from documentary evidence.

Q Are there any items which appear to have been collected by the Secretary, Neale Travisano, which are not presented in the Roll Book? A I do not know of any.

Q Did you testify to a difference of \$122.00? A That difference refers to the entire check up between the pass books and the Roll Book. It covers the entire period.

30 Q In order to answer that question you would have to examine the pass books and deposit slips and compare them with the Roll Book? A That is right.

40 Q Does Schedule 3 of Exhibit C. 1 indicate such differences? A Yes, that is a summary of all the differences that existed between the pass books and the loan ledger and there appears, from January 1, 1927 to July 27, 1927, the period that Schedule 3 of Exhibit C. 1 refers to is the period that Neale Travisano was acting as Secretary.

Anthony Sciavina, direct.

Q What shortage does Schedule 3 of Exhibit C. 1 show between the pass books and the ledger credits? A \$13.10 interest and \$122.00 principal, \$135.10.

Mr. Yauch: That will be all, Mr. Flink.

10

ANTHONY SCIAVINA, sworn.

By the Master.

Q What is your business? A I work for the City of Newark.

Q Where do you live? A No. 354 Fairmount avenue.

Q You are an officer of the Vallatese Loan Association now? A Yes. 20

Q What are you? A Secretary.

Q When were you appointed Secretary? A August 10, 1927.

Q Were you also a director of the Vallatese Loan Association? A Yes, for three years.

By Mr. Yauch.

Q From about January, 1927, through until July 27, 1927, did you ask for Gaetano Trivisano any information with regard to the financial condition of the company? A I did. 30

Q And where was that done? A At the headquarters of the association.

Q At what time? A At Board of Directors meeting, about 9:30 o'clock.

Q When did you first ask him for such information? A About May, 1927.

Q What answer did he give you? A He said he had received no report from the State 40

Anthony Sciavina, direct.

Banking & Insurance Department and ask me why I come here all the time and make trouble and raise disturbance. Later on I asked him again for a report and told him that different associations with which I was connected had received reports a few days after examination
 10 was made, and he said he had not any report to give us. This was about June.

Q In June he said he had not received a report from the Department of Banking & Insurance? A Yes.

Q When did Rocco Pinnella die? A July 2, 1927.

Q He was treasurer of the Vallatese Loan Association at the time? A Yes.

Q Referring particularly to the Wednesday
 20 following the death of Rocco Pinnella, did you have a conversation with Gaetano Travisano as to the affairs of the association? A We asked him if we had any shortage in our books and he said he could not tell us as his son was away.

Q After that period did you again ask him as to whether there was any shortage? A Yes, at a meeting. He said his son did not come back or that they were not ready. About August 3rd, I demanded from him that an examination be
 30 made by a Special Committee and he refused to listen to me and said we did not have any right as Board of Directors to have the books examined, and that it was his business.

Q When did you first hear of any shortage in the accounts of the Vallatese Loan Association? A Thursday, August 4, 1927.

Q How did that come about? A Wednesday, the 3rd, I appointed myself and Mr. Stanco to investigate and through the advice of president, Gaetano Travisano, and counsel, everything was
 40

Anthony Sciavina, direct.

settled that the committee should investigate the books after we received the books from Mr. Fay.

Q How did he happen to have the books? A I do not know.

Q Who gave them to him? A Neale and Gaetano Trivisano.

Q Did anyone go down to Fay's office with you? A Me and Stanco. 10

Q Was Neale Trivisano with you? A No.

Q Did you get the books that day at the accountant's office? A No.

Q On August 5, 1927, there was a special meeting of the Board of Directors, what happened at that special meeting? A We demanded from Trivisano the books because on August 4th, we found through Fay's office that there was a shortage of \$1,800, which cannot be accounted for and I spoke to other directors about it. A meeting was held on Friday and demanded the books from Gaetano Trivisano and he said to me to go after and get them and Fay would not give us the books until either one of the Trivisanos would come down with us. We went to Gaetano Trivisano and got Neale Trivisano to go with us and get the books which we got that evening. 20

Q Did Gaetano Trivisano supply you with the other records of the association? A No. 30

Q What did he do? A He locked the safe and did not open it until Saturday afternoon, 3 o'clock, after we demanded that if he did not open the safe we would break safe open.

Q I direct your attention to what appears to be the minute book of the Vallatese Loan Association, and particularly to the minutes of January 7, 1927. Were you present at that meeting? A Yes. 40

Anthony Sciavina, direct.

The Master: Who wrote up the minutes?

A The secretary.

By Mr. Yauch.

10 Q Read those minutes, Mr. Stanco. A "Res-
olution: Gaetano Travisano, President, presided
throughout the meeting. The officers of last year
were elected. The President, Gaetano Travisano
was authorized by the Board of Directors to in-
vestigate all applicants before money was to be
issued on any loan, and he is to be given an addi-
tional \$100 for his extra work."

Mr. Yauch: I offer these minutes in evi-
dence.

20 The Master: Minute book received and
offered in evidence and marked Exhibit C. 6.

By Mr. Yauch.

Q After the meeting of January 7, 1927, and
the meeting on February 2, 1927, do you recall
whether Gaetano Travisano presented applica-
tions for loans and signed notes? A Yes.

30 Q I show you check of Vallatese Loan Asso-
ciation No. 842, note with the name "Tony
Caprio" dated February 2, 1927, to the order
of the Vallatese Loan Association, application
for loan from Vallatese Loan Association for
\$250.00, and ask you whether that application
and note were presented at that meeting? A
Yes, February 2, 1927.

40 Q I also call your attention to check No. 841
of the Vallatese Loan Association and note ap-
pearing to have the words "John Evangelista,"
dated February 2, 1927, to the order of the
Vallatese Loan Association, for \$300.00, and ap-

Anthony Sciavina, direct.

plication for loan from Vallatese Loan Association, dated February 2, 1927, and ask you whether those papers were presented at the meeting on February 2, 1927? A Yes, they were.

Q What did Gaetano Trivisano have to say regarding those applications? A When he presented them to the association he said, "This is John Evangelista, and he borrowed \$300.00. He is a good fellow." Tony Caprio he said had a note once before and that it was all right to grant his loan.

10

Q Do you know whether Gaetano Trivisano knew John Evangelista? A I do.

Q Very well? A Yes.

Q How well? A They were brought up together in Italy, and in this country.

Q Do you know whether the records of the Vallatese Loan Association disclose any loan given to Vito Palmisano? A It discloses a note endorsed by him but he was not the applicant.

20

Q Who was the applicant? A Costanza Palmisano.

Q Do you know the facts regarding that transaction? A There were two loans open in our Roll Book. One application was endorsed by Palmisano to pay off the two loans and the balance he should get in cash and pay the amount of the two loans.

30

Q When did that transaction take place? A I do not remember just when.

Q The two loans that the third loan was supposed to make up, have they been marked paid in the books of the association? A No.

Q Are they still open? A Yes.

Q Have we the two notes which are taken up by the third note? A No, sir.

40

Anthony Sciavina, direct.

Q I show you an application for loan by one A. Schaeffer from Vallatese Loan Association, dated September 2, 1925, for a loan of \$260. Do you know whether that loan was granted? A It was made by association. It is still open on the books.

10 Q Have you got the original note? A No.

Q I show you this application that I referred to in my previous question and direct your attention to the word in the left corner? A It says "Pagoto" and means "paid" in Italian.

Q Do you know who put the word "Pagoto" there? A I think it is Gaetano Trivisano's writing.

20 Mr. Yauch: I offer that application in evidence.

The Master: Application received and offered in evidence and marked Exhibit C. 7.

By Mr. Yauch.

30 Q I direct your attention to check No. 635, Vallatese Loan Association, note No. 744, apparently made by Mariana Pinnella and Vincenzo Cuzzo, an application dated August 25, 1926, by Mariana Pinnella, whose handwriting appears on the application? A Gaetano Trivisano's—his handwriting.

Q Do you know whether this loan is still open on the records? A Yes.

Q Do you know whether one Rose Quaglia made a loan from the association? A I do.

Q Was that loan No. 746? A Yes.

40 Q I show you a paper bearing some writing and ask you if you know what it is? A A receipt signed by Neale Trivisano, for \$199.70, on March 30, 1927.

Anthony Sciavina, direct.

Mr. Yauch: I offer this receipt in evidence.

The Master: Receipt received and offered in evidence and marked Exhibit C. 8.

By Mr. Yauch.

Q I show you what appears to be Vallatese Loan Association loan register and direct your attention to loan No. 746, Rose Quaglia, and ask you to state who kept that record? A Neale Travisano.

10

Q Is that his handwriting? A Yes.

Q Do you find disclosed in that loan register receipt for a payment made on March 30, 1927, for \$199.70? A No, nothing to show.

Q What does the loan register show as being due? A \$192.00 balance.

20

Mr. Yauch: I offer this loan register in evidence.

The Master: Loan register received and offered in evidence and marked Exhibit C. 9.

By Mr. Yauch.

Q Referring to the Caprio note, John Evangelista note, Vito Palmisano note, Schaeffer loan, made by Mariana Pinella, endorsed by Vincenzo Cuzzo, will you tell us whether this loan register shows the payments of those various loans? A No. It shows that Caprio and Evangelista have made no payments; Mariana Pinella has made some payments.

30

Q Those records regarding the items that I have just referred to are in the handwriting of Neale Travisano? A Yes.

40

Anthony Sciavina, direct.

Q Did the secretary at any time, at the meetings of the Board of Directors, report that any of the loans were in arrears? A No.

Q Did you ever ask him if there were any loans in arrears? A Yes. He made a report list and I think we had to sue them.

10 Q Did he ever report these items that I have reference to? A No, sir.

Q Who reported as to the balance in the bank each week? A Anybody reported to us; the secretary used to tell us.

Q The secretary would report as to the balance in the bank? A Yes.

Q Do you know who used to sign the checks of the association first? A Ralph Pinnella.

20 Q I show you two checks, No. 708—No. 795 of the Vallatese Loan Association and ask you to tell us what you know about them. A They are signed by the treasurer, Rocco Pinnella.

Q Referring to check No. 708, the words "Two Hundred" whose handwriting is that? A Looks like Neale Travisano.

Mr. Yauch: I offer these two checks in evidence.

30 Mr. Kessler: I object. On one check there is no signature or writing at all and the other check it appears like Neale Travisano's writing.

Mr. Yauch: It shows that Rocco Pinnella signed blank checks and all that was required was the signature of the president and secretary, and they were signed in advance.

40 The Master: For the purpose of showing the control of the defendant we would offer the checks. There were two checks signed,

Anthony Sciavina, direct.

presumably, in blank by the treasurer Rocco Pinnella. These checks are received and offered in evidence and marked Exhibit C. 10.

Direct examination by Mr. Yauch.

Q Do you know whether there were any other checks signed in blank by Rocco Pinnella? A There were. 10

Direct examination by Mr. Kessler.

Q Mr. Sciavina, is this your signature? A Yes.

Q This letter was mailed on the 23rd day of August, 1927, under your signature as acting secretary? A Yes.

Q I offer that for identification. 20

The Master: Letter received and offered for identification and marked Exhibit E. 1.

By Mr. Kessler.

Q How long have you been a director? A Three years.

Q From when? A About three years from now.

Q So you were a director in January, 1926? A Yes. 30

Q When did you have your meetings of Board of Directors? A Wednesday evenings, 9:30.

Q When was your collection night? A Wednesday evenings.

Q Were all the directors present? A Mostly.

Q From January, 1926, to January, 1927, did you ever take an application yourself and have it signed outside by the applicant? A No. 40

Rocco Dantico, direct.

Q Did any of the directors? A Not that I know of.

Q This Tony Caprio note, did you know that that note was a renewal of another note that was in the association in the same name, which Pinnella presented at the Board of Directors' meeting? A No, sir.

Q Are you positive? A It was not recommended to us in that way.

Q The Evangelista note, that was a new note or a renewal note? A A new note.

Q Do you know if it was or not? A It was brought up to us as a new note.

Q When? A February 2, 1927.

Q Are you sure it was brought up as a new note and not a renewal note? A Yes, sir.

The Master: The witness is withdrawn with the right of the solicitor for the defendant to continue examination at a later date.

The Master: Counsel for complainant offers in evidence the papers relating to the Tony Caprio loan, the Evangelista loan and the Mariana Pinnella loan, which are marked Exhibits C. 12, C. 13 and C. 14.

ROCCO DANTICO, sworn.

By Mr. Yauch.

Q Where do you live? A No. 310 South 7th street.

Q Do you remember July 2, 1927, in the morning when you were on the way down to the Central Railroad station, who were you with?

Tony Caprio, direct.

A Gaetano Travisano, Amedeo Stanco and Frank Travinsano.

Q Did Gaetano Travisano have anything to say about Rocco Pinnella? A At the time we go down to Central Railroad to make contract for the Vallatese Loan Association, we talk about Pinnella and Stanco. We talked about the Pinnella affair and if there was any shortage and Gaetano Travisano did not want to say anything right away but afterwards he said there was \$2,000.00 short. 10

Q That was after Rocco Pinnella died? A The same morning.

TONY CAPRIO, sworn.

By Mr. Yauch. 20

Q Where do you live? A 150 Parker street.

Q Do you know Gaetano Travisano? A No.

Q I show you Exhibit C. 12 and direct your attention to the signature appearing to be that of Tony Caprio and ask you if that is your signature? A No.

Q Is the signature on the application your signature? A No.

Q Where did you live in February, 1927, the date of this note? A 142 Ridge street, Newark. 30

Q Did you ever see Gaetano Travisano? A No, not until this wrangle began, I did not know him.

By Mr. Kessler.

Q Did you know Rocco Pinnella? A Yes, I worked for him.

Mr. Yauch: That is all, Mr. Caprio. 40

John Evangelista, direct.

JOHN EVANGELISTA, sworn.

By Mr. Yauch.

Q Where do you live? A 23 Monticello avenue.

10 Q Do you know Gaetano Travisano? A Sure.

Q How long? A He is my countryman.

Q Have you seen him since you were boys? A No.

Q How many years? A Twenty or twenty-five years.

Q Have you known him very well? A Sure.

Q Were you together a lot? A No.

Q Were you very friendly with him? A Yes, used to be.

20 Q I show you Exhibit C. 13, is that your signature? A No.

Q Is that your signature on the application? A No.

Q Where did you live in February, 1927? A 165 Hunterdon street.

Q Is that your signature on back of the check? A No.

Q Did Gaetano Travisano come to see you about this loan? A No.

30 Q Ever talk to you about it? A No.

Q Did you ever get any money on this from the association? A No.

Mr. Yauch: That is all, Mr. Evangelista.

Vincenzo Cuzzo, direct.

VINCENZO CUZZO, sworn.

By Mr. Yauch.

Q Where do you live? A No. 472 2nd street, New York City.

Q Where did you live in August, 1926? A 10
In Italy.

Q Did you have a place of business on South Orange avenue? A Yes, No. 243.

Q Photographer? A Yes.

Q Do you know Gaetano Travisano? A No.

Q I show you Exhibit C. 14, is the signature appearing on the note "Vincenzo Cuzzo" your signature? A No.

Q Did you sign that? A No.

Q Did you sign this application? A No. 20

Q Suit was started against you on this note, was it? A Yes.

Q And you were in court about it? A Yes, the first time when I signed the paper that that was not my signature.

Q Who was your solicitor? A Judge Ungaro.

Q Did you ever get any money from the Val-latese Loan Association on this loan? A No. 30

By Mr. Kessler.

Q Mr. Cuzzo, you are a photographer by profession? A Yes.

Q And your studio was right over Mr. Pinnella's tailor shop? A Alongside of Mr. Pinnella.

By Mr. Yauch.

Q What was his name? A Silvia Pinnella. 40

Vito Palmisano, direct.

By Mr. Kessler.

Q Did you know Rocco Pinnella? A No.

Mr. Kessler: That is all, Mr. Cuzzo.

10

VITO PALMISANO, sworn.

By Mr. Yauch.

Q Did you make a note to the Vallatese Loan Association? A Yes.

Q About what time? A About two years ago.

Q Was there an endorser on the note? A I was endorser.

20 Q How much was the note for? A \$300.00.

Q Was that the only note that you signed? A No, there were two.

Q At the same time? A No, later.

Q Why? A I needed money and they gave it to me.

Q Did you pay anything on account of those two notes? A Yes, I paid both.

Q Was there another note given to make up the balance that was due on those two notes?

30 A Yes, one was my wife, Constanzo Palmisano and, sister-in-law, Parrochia Palmisano.

Q How much was due on those two notes? A \$218.00.

Q Your wife, Constanzo, and your sister-in-law, Parrochia Palmisano, made a new note for \$300.00 to pay the balance of \$218 due? A Yes, this took place in my store and he did not want to give me the balance due me of \$82.00.

40 Q How much did he want to give you? A He said there was a mistake in the interest.

Vito Palmisano, direct.

Q What happened after that? A He came to me and said the account was not correct because they needed more interest on it. Then he gave me \$70.00, and I did not take it. Then he returned to my store and gave me \$70.00 and a check for \$6.00 and I took it and shut up about it.

10

Q When did you get that \$6.00? A Two weeks later. He sent it to my shop.

Q The \$300.00 note that was made to take up the balance due on the two \$300.00 notes, who made that? A Rocco Rentvino.

By Mr. Kessler.

Q Mr. Palmisano, did you go up to the association office one evening and kick that they charged you too much for interest and got your \$6.00 at the association office? A I went there and had a fight with them because it was not true. They sent it from the association to my store by Nunzio Ciasca.

20

Q Was that after you went up there and put in a kick? A Yes.

Q And you did that with the directors? A I did not have anything to do with the directors, Travisano fixed me up.

30

Q You said you put in a kick at the association office? A There was everybody there collecting.

Q State some of the names? A Pasquale Stanco, the President, and Neale Travisano.

Q Was the lawyer there? A I think so.

Q Who else? A All the people were there.

Q You registered your kick and got the \$6.00?

A Not at that time, they sent it to me.

40

Victor Rendina—Vito Palmisano, recalled.

Q Who did you kick to, what man? A Everybody there.

Mr. Kessler: That is all, Mr. Palmisano.

10 VICTOR RENDINA, sworn.

By Mr. Yauch.

Q Where do you live? A No. 583 15th avenue.

Q Do you remember making a note to the Vallatese Loan Association, June 19, 1927? A Yes.

20 Q Tell us about what you know. A Mr. Palmisano, the man that just went out, he said to me to come to the loan association and sign a note for \$300.00, and I did.

Q Did you sign that check, No. 970, of the Vallatese Loan Association? A Yes.

Q Who did you give the check to? A Mr. Palmisano.

Mr. Yauch: I offer this check in evidence.

30 The Master: Check No. 970 of the Vallatese Loan Association received and offered in evidence and marked Exhibit C. 15.

Mr. Yauch: That is all, Mr. Rendina.

VITO PALMISANO, recalled.

By Mr. Yauch.

40 Q Did you ever see this check, Exhibit C. 15?
A Yes.

Vito Palmisano, recalled.

Q What did you do with the check? A Left it with the association.

By Mr. Kessler.

Q Mr. Rendina signed this check and turned it over to you? A Yes.

Q You took the check and got cash for it? A Yes. 10

Q Did you get \$300.00 cash? A No, the other amount was to pay the two notes.

Q Who gave you the money? A Gaetano Travisano, \$70.00.

Mr. Yauch: That is all, Mr. Palmisano.

Hearing adjourned until September 27, 1928.

20

30

40

Joseph A. Moore, direct.

IN CHANCERY OF NEW JERSEY.

Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

Defendants.

*Continuation
of
Depositions.*

10

Continuation of depositions of witnesses in the above-entitled cause, this 27th day of September, 1928, before Francis Child, a Special Master in Chancery of New Jersey, at his office, 24 Commerce street, Newark, N. J.

20

Appearances same as at previous hearing.

JOSEPH A. MOORE, sworn.

By the Master.

Q You live where? A Gloucester, N. J.

Q You are connected with the Department of Banking & Insurance of New Jersey? A Yes.

Q In what capacity? A Examiner of small loan brokers.

30

Direct examination by Mr. Yauch.

Q Does that cover the examination of the Vallatese Loan Association? A Yes.

Q How long have you been with the Department of Banking? A Since July 26, 1926.

Q Did you make an examination of the affairs of the Vallatese Loan Association as of February 28, 1927? A Yes, sir.

40

Joseph A. Moore, direct.

Q Did you make a written report of your examination? A Yes, sir.

Q Have you that with you? A Yes. (Witness produces report marked "filed March 30, 1927, Edward Maxson, Commissioner of Banking & Insurance," reporting on the condition of the
10 Vallatese Loan Association as of February 28, 1927.)

Mr. Kessler: We object to it as improper evidence.

The Master: I will mark the exhibit for identification and if testimony is afterwards produced to show that it is material, I will admit it.

Mr. Yauch: I understand this will be
20 admitted.

The Master: The difficulty is that you are seeking to introduce evidence here, a paper based on hearsay statements and unless it can be shown by other evidence that the facts in this report are true, then the report in itself has no evidential value.

Q Mr. Moore, where did you get the figures set forth in this report that is marked C. 1 for
30 Identification? A From the records of the Vallatese Loan Association.

Q The report brings the condition of the association up to February 28, 1927? A Yes, sir.

Q In making this report and checking the records of the association as you have testified you did, will you tell us just what you did? A The figures as shown in the report are taken from the records of the association. We do not
40 verify each item, we merely see that Chapter

Joseph A. Moore, direct.

49 of the Laws of 1914 are lived up to, particularly pertaining to the charge of interest, the amount of loans that are made, that is, principally what the department is concerned with.

By the Master.

Q In other words, Mr. Moore, in making this report, you didn't make an audit of the deposit books, nor of the check book nor of the secretary's ledger to ascertain whether the figures shown on those books were correct? A No, sir, our examination doesn't cover that.

10

The Master: That makes this report of no evidential value whatever.

Mr. Yauch: I offered it for the purpose of showing that as of that time the secretary made his affidavit stating that the figures set forth are correct.

20

The Master: I will admit it for the purpose of impeaching the testimony of the secretary when he testifies. That will properly go in as impeaching his testimony. I am not going to admit it now because it is apparent that the department merely took the books.

30

By Mr. Yauch.

Q What did you do with this report after you made it? A Sent it to the Department of Banking.

By the Master.

Q When you made up this report, what did you do with the original report? A I mailed

40

Joseph A. Moore, direct.

the original and duplicate to the Department of Banking.

Q When did you mail it? A The report is dated March 18th, that is when it was mailed, March 18, 1927.

10 Q Where did you get this report which you now produce? A From the files of the Department of Banking.

By Mr. Yauch.

Q When was the report mailed to the Vallatese Association, if you know? A I don't know.

Q What is the usual procedure with reference to that?

20 The Master: I don't see how it is material whether they ever got it or not.

Mr. Yauch: It is going to be material because there is testimony already that this report was not called to the attention of the Board of Directors until August 1927, although they asked whether the report was received as far back as May 1927.

30 The Master: Neale Travisano. He either made a false report or he didn't. His affidavit is there and it doesn't make any difference whether it was kept away from the the knowledge of the men or not.

Q I call you attention to an early report which appears to have been made by the Vallatese Loan Association on December 18, 1926, and ask you if you can identify that? A This is the usual form that small loan associations send in on November 30th of each year.

40

Joseph A. Moore, cross.

Q Where did you obtain that? A From the Department of Banking.

Q Their files? A Yes, sir.

Q That is the original report? A Yes.

(Report of the Vallatese Loan Association to the Commissioner of Banking and Insurance for the year 1926 marked "filed December 21, 1926" is offered in evidence and is marked C. 2 for identification, with the understanding that the original being a public record of the State of New Jersey, a certified copy will be produced by the complainant and will be marked as above indicated.) 10

It is admitted that the signatures appearing on the report last mentioned are the genuine signatures of the persons signing the same. 20

Cross examination by Mr. Kessler.

Q I notice in your file that you have another report which seems to have been filed on the 17th day of December 1927, is that a copy of the report in your files? A Yes, sir.

Mr. Kessler: I ask that that be marked for identification. 30

The Master: Report of Vallatese Loan Association for the year ending November 30, 1927, filed December 17, 1927 in the office of the Commissioner of Banking & Insurance is marked Exhibit D. 1 for identification, with the understanding that the defendant will produce a certified copy thereof in the place of the original here offered. 40

Joseph A. Moore, cross.

Q Mr. Moore, the affidavit that is attached to Exhibit C. 1 for identification containing the affidavit of Neale Travisano, that is a state department form that you are using, is it not? A Yes, sir.

10 Q What you do is fill in the respective names of the organizations? A Yes.

Q And the facts as they are given to you by the secretary? A That is true.

Q You don't ascertain whether these figures are correct so far as the assets and liabilities are concerned, do you? A No.

Q Have you any personal knowledge of where this secretary got these facts from? A I compiled them from the records of the association.

20 Q With the secretary? A Yes.

Q So that as a matter of fact, these figures are figures compiled by you from the records of the association with the assistance of the secretary? A Yes.

Q And the books set out these figures as set out in the affidavit? A Yes.

Q And you verified that yourself? A Yes.

30 It is admitted that the signature appearing on the form of affidavit annexed to the report of the Department of Banking & Insurance as of February 28, 1927, is the signature of Neale Travisano.

Anthony Schiavino, recalled, cross.

ANTHONY SCHIAVINO, recalled.

Cross examination by Mr. Ungaro.

Q Mr. Schiavino, referring to the John Evangelisto note No. 857, have you got your books here? A Yes, sir.

10

Q You said that that is an original note? A Yes, sir.

Q Can you give me the date when that note was made? A February 2, 1927.

Q Will you kindly look back at note 720 and tell me what that is, what kind of a note is that?

A John Evangelisto.

Q For how much? A \$300.00.

Q What is the date of that note? A 7/14/26.

Q Can you tell me how much was paid on that note? A Nothing was paid until February 2, 1927.

20

Q Will you kindly now refer to the note 857, what is the date of that note? A 2/2/27.

Q Isn't it a fact, Mr. Schiavino, that this note 857 is in lieu of note 720, a renewal of 720?

A Not to my knowledge.

Q Does it show in the books? A It shows in the books.

Q That shows that it is a renewal? A Not to my knowledge.

30

Q Where is the check for the February 1927 note? A Mr. Yauch has it.

Q This is the check for the \$300.00, isn't it? A Yes, sir.

Q This is a check dated February 2, 1927 No. 841 to the order of John Evangelisto for \$300.00, was that cashed by the loan association, do you know? A I couldn't tell you.

Q Will you kindly look at the back of the check and tell me whether there is a stamp for

40

Anthony Schiavino, recalled, cross.

deposit to the account of the Vallatese Loan Association? A There is.

Q What does that mean? A I couldn't tell you, to my knowledge I don't know.

10 Mr. Yauch: I am willing to admit that it means it was deposited to the bank account of the association.

Q Why was that check given to the association? A It was a loan granted to John Evangelisto.

Q Why did John Evangelisto turn it over to the loan association? A I couldn't tell you.

20 Q You have on your book here No. 720 paid February 2, 1927 and here is a check dated February 2, 1927, can't you tell from that according to the books that this is a renewal of 720? A According to the books.

Q Does it show according to the books? A According to the books.

Q So it wasn't an original note, was it? A Not according to the books.

Q Will you kindly look at note No. 858, Tony Caprio, what kind of a note is that? A It is a loan for \$250.00.

30 Q The date? A 2/2/27.

Q You also testified that that is an original note? A It was an original note at the time, yes.

Q Will you kindly look back at note 721, what does it say? A Tony Caprio, 7/14/26, \$250.00.

Q Will you tell me how much has been paid on that note 721? A Nothing was paid until February 2, 1927.

40 Q Have you got the check of February 2, 1927? A Mr. Yauch has it.

Anthony Schiavino, recalled, cross.

Mr. Yauch: I don't see that this is material because the testimony of Evangelisto and Caprio is that they didn't sign these notes.

Mr. Ungaro: This man testified that these were original notes and that the president produced original notes and said that there was an original note and our contention is that these are not original notes. 10

Q Nothing was paid until February 2, 1927?

A Yes, sir.

Q I show you check which is in evidence as C. 12, which is dated February 2, 1927, to the order of Tony Caprio for \$250.00, is there any endorsement on that check? A Yes.

Q What does the endorsement say? A Vallatese Loan Association. 20

Q Did Tony Caprio sign that check? A No, sir.

Q How did that check get to the Vallatese Loan Association?

Mr. Kessler: Will counsel admit that it was deposited?

Mr. Yauch: I cannot say that it was deposited. 30

Mr. Kessler: We will have to have an examination of the books.

The Master: I will direct that the books be open for examination.

Q The books show that this check of February 2, 1927, was cashed by the association in payment of note 721 of Tony Caprio? A That is what the books show. 40

Anthony Schiavino, recalled, cross.

Q Pinnella, the treasurer of the association committed suicide on July 2, 1927, was there a meeting of the Board of Directors after that?

A On Wednesday night.

10 Q Wasn't it at that meeting that it was decided to turn the books over to an accountant, Mr. Fay, to go over the books? A No, sir, not by the Board of Directors.

Q Who ordered it? A Our president, he said he was going to have someone audit the books, but whom we don't know.

Q He said he was going to have the books audited? A That is what he said.

Q He told that to the directors? A Yes.

20 Q In the month of August you knew that the books were in the hands of the accountant? A Yes.

Q Who was the accountant? A The accountant at that time they claimed was a man named Moore, so we finally checked up and we found it was somebody by the name of Wilbur Fay.

Q Didn't the president tell you the books were in the hands of Mr. Fay? A No.

Q How did you happen to go to Mr. Fay's office to get the books? A That was the following night.

30 Q It was decided that you should go and get the books and find out what the books showed? A Yes.

Q Did you go and get the books? A Yes.

Q You brought the books back to the association? A Yes, sir.

40 Q What did the auditor say at that time or show at that time? A The auditor said "Why don't you give me a chance, I only had the books a few days," I told him we couldn't leave the books there, they were there since July, so we

Anthony Schiavino, recalled, cross.

had to get the books audited by ourselves. We got the books through Neale Trivisano, he wouldn't give them to us.

Q He gave you the books? A Yes.

Q Because Neale Trivisano was with you?
A Yes. Me and Stanco went there alone and he wouldn't give us the books unless Trivisano was with us, the older Trivisano wouldn't go with us, so we went over with Neale Trivisano.

10

Q At the meeting of January 7, 1927, you were present, weren't you? A Yes.

Q That is the time that you claim that the resolution was passed authorizing the president to investigate loans? A According to the minutes of January 7th.

Q Have you got the minutes here? A Yes, sir.

20

Q Why weren't these minutes signed at the time? A I couldn't tell you.

Q Are they signed by anybody? A No, sir.

Q It was only then on January 7, 1927, that the president was authorized to investigate all the loans? A Previous to that too.

Q Here is a resolution dated January 7, 1927, have you got any resolution before that time that the president was authorized to investigate the loans? A No, sir.

30

Q Did you at any time, Mr. Schiavino, have notes and applications signed outside of the meeting place? A No, sir.

Q What is the name of your brother or sister-in-law, Bovi, isn't it? A I have no brother or sister-in-law.

Q Do you know of any Bovi who is related to you in any way at all by marriage? A My aunt.

Q What is her name? A Marie Michele Bovi.

40

Anthony Schiavino, recalled, cross.

Q You have a cousin of yours by the name of Bovi, what is her name? A Angelina.

Q Did she have a loan in the Vallatese? A I think she did.

Q Didn't you get her to sign the note and the application? A No, sir.

10 Q Didn't you bring that note in the director's meeting? A No, sir. She made application to the officers of the association.

Q Have you got that application here for Angelina Bovi? A No.

The Master: What is the purpose of this?

Mr. Ungaro: To show that that was signed outside and brought in to the Board of Directors. The point is to show the practice of the directors.

20 Mr. Yauch: Do I understand that the Judge made a demand to bring every paper that we have?

The Master: I don't recall.

Mr. Ungaro: We have not been able to look at the books and check up.

The Master: I will give you an opportunity of seeing the books.

30 Q Do you remember a loan made to one Frank Lynch?

Mr. Yauch: The last hearing in this matter was about the middle of August and counsel has had over a month and the books have been available. No demand for an examination of the books has been made of me.

40 Mr. Ungaro: We made several demands to Travisano.

Anthony Schiavino, recalled, cross.

The Master: The demand that should have been made was on the attorney.

Mr. Kessler: We ask for the suspension of further examination of this witness until we can examine the books.

Q Do you remember a note passed in the name of Virginia Stanco? A I couldn't remember the note, it might have been passed. 10

Q Do you remember that such a note was passed? A I couldn't tell you.

Q You couldn't tell me if a note of Louis Stanco was passed or not? A If it is in the books, it must have been passed.

Q Your testimony in regard to this case is what the books show? A Yes.

Q You were present at every meeting, weren't you? A Mostly all the meetings. 20

Q Do you know who presented these notes? A The president.

Q Positive? A When he was at the meetings.

Q Was he at the meetings all the time? A Maybe one or two meetings he wasn't there, I don't know.

Q Who presided when he wasn't there? A The Vice-President. 30

Q What is his name? A Pasquale Stanco.

Q Who presented the notes when Stanco was presiding? A Stanco.

Q How many times was Stanco presiding from January, 1927, to August, 1927? A I couldn't tell you, maybe once or twice.

Q When the notes were presented by Stanco at the meetings, the directors passed on them? A According to the way the investigation was made. 40

Anthony Schiavino, recalled, cross.

Q Isn't it a fact that loans were granted the same night that the application and the note were signed? A If the applicant was a good payer, we would.

Q It all depended on the name that appeared on the notes? A Yes.

10 Q That was the custom in all the other cases? A I suppose it was.

Q Did you know Tony Caprio? A No.

Q Did you know John Evangelisto? A Yes, sir.

Q You had a check signed by Schaffer in the Police Court, didn't you? A I couldn't tell you.

Q Didn't you make a complaint on that check in the Police Court and presented that check?

A I couldn't tell you.

20 Q Why couldn't you tell me? A There was no check presented.

Mr. Yauch: I object to that, I don't think the question is clear.

30 Q You made a complaint against Trivisano on a check given by a man named Schaffer to the Vallatese Loan Association? A I made a complaint against Trivisano that the loan Schaffer was supposed to pay was still open on the record.

Q Don't you remember presenting a check of Schaffer? A The check was never presented.

Q Do you say now that no check was ever presented of Schaffer's in the Police Court? A Yes, sir.

40 Q Was the check presented? A There was no check presented of Schaffer in the Police Court. All I can tell you is that we wrote letters to him but we couldn't find him and we

Anthony Schiavino, recalled, cross.

looked at the application and it was paid. Our counsel told us the loan was paid, I couldn't tell you how he paid it, by check or what.

Mr. Kessler: We call upon counsel to produce that check.

Mr. Yauch: Counsel says he hasn't it. 10

Mr. Kessler: Did he ever have it?

Mr. Yauch: No.

Q I show you account No. 556, whose name is that? A Tony Caprio.

Q What is the date? A 11/4/25.

Q What is the amount? A \$200.00.

Q How much was paid on that loan? A Nothing paid until 7/14, the money was borrowed 11/25. 20

Q Let us look back at loan No. 721, the new loan of \$300.00 was made on what date? A 7/14/26.

Q That is No. 721? A Yes.

Q This note was paid 7/14/26? A Yes.

Q So this 721 is a renewal of 556? A Yes, sir; according to the books.

Q 858 is a renewal of 721? A According to the books. 30

Mr. Kessler: We would like to reserve the opportunity to cross examine this witness until we have an opportunity to examine the books.

Mr. Yauch: I object to it because the books have always been available and the reason for my objection is mainly that I don't think this matter should be delayed any longer. 40

Anthony Schiavino, recalled, re-direct.

The Master: I will permit them to examine the books or I will give them the opportunity of examining the books with leave to recall this man for further cross examination.

10 Mr. Yauch: Re-direct.

Q Mr. Schiavino, the loan 556 which has just been called to your attention in the loan register of the association, in whose handwriting are those figures all the way through the books? A I think it is Neale's.

Q Can you identify as to whose writing those figures are? A By checking up on other figures.

By the Master.

20 Q Aren't you sufficiently familiar with his writing to tell by examination? A No.

By Mr. Yauch.

Q With reference to the Evangelisto and Caprio notes, when they were presented on February 2, 1927, was anything said as to the notes being a renewal? A No, sir. As far as the information that the Board of Directors had at the time these notes were presented.

30 Q What was that?

Mr. Kessler: I object to it as to what information they had unless it can be shown what the Board had.

The Master: He was a member of the Board, if he can recall what representation was made to the Board, all right.

A To my knowledge, these two loans were presented as Tony Caprio.

40

Anthony Schiavino, recalled, re-direct.

Q Do you know that Tony Caprio made a loan? A He had a previous note to this association that was all paid up and on that statement we granted the loan. John Evangelisto is a good man and we granted the loan to him without asking if he had a loan there or not. We have a practice that on a renewal loan it should be paid up at least half. According to our records, there was nothing paid until this renewal. 10

Q Were the prior accounts of Evangelisto and Caprio with the association in good standing at the time, February 2, 1927?

Mr. Kessler: That is objected to as immaterial.

The Master: I will admit it. 20

A They were not.

Q What did the arrears amount to on both those accounts? A The full amount and interest.

Q For how long a period? A Seven months.

Q The Caprio and Evangelisto accounts were in arrears for a period of seven months as to interest at the time the two loans of February 2, 1927, were granted? A Yes. 30

Q After the death of Pinnella, you testified on cross examination that Mr. Gaetano Travisano sent the books to Mr. Fay to be audited? A Yes.

Q Where were the books at the time that Mr. Gaetano Travisano told you that? A They were at Mr. Fay's office.

Q Then the books had already been sent there before the Board had been notified? A Yes, sir. 40

Anthony Schiavino, recalled, re-direct.

Q The minutes of January 7, 1927, in whose handwriting are they, Mr. Schiavino? A Neale Travisano's.

Q Do you know whether or not it was the duty of Gaetano Travisano to investigate loans before January 7, 1927?

10

Mr. Kessler: I object to that as immaterial. It doesn't make any difference whether he knows or not, the record will speak for itself. What his duties were is laid down by the Board of Directors.

The Master: Isn't it a fact, Mr. Yauch, that the duties of the secretary and assistant-secretary are fully covered by the by-laws?

Mr. Yauch: They are not.

20

Mr. Kessler: Where are the by-laws of this association, will you produce them, Mr. Yauch?

Mr. Yauch: Yes, I will produce them.

The Master: I will permit you to ask him what the president did with reference to any particular thing, not what his duties were.

30

Mr. Kessler: We will object to that on the ground that assuming that he offered to do certain work, he didn't do it.

The Master: If he undertook as president of this company to do certain things, irrespective of whether the by-laws permitted him to do it or not, he is responsible.

Q What did Gaetano Travisano do with reference to applications before the date of the meeting of January 7, 1927? A If there was any application at that meeting and we thought

40

Anthony Schiavino, recalled, re-direct.

it was not satisfactory to grant the loan, we told him we wouldn't grant the loan until an investigation had been made, and he would tell the party making the application to go to his home in a couple of days and he would give him the money. We left all the power to him to give him the check if he thought fit after the investigation. 10

By the Master.

Q In other words, you delegated to the president the authority to grant these loans? A Yes.

By Mr. Yauch.

Q Can you tell us why the resolution appearing in the minutes of January 7, 1927, was passed? A He was present at that meeting and said that the work he had done all the years previous to that was gratis and he was entitled to a little compensation. 20

Q The only purpose of that meeting at that time was to give him compensation? A Yes.

Q If you know, who made the investigation with reference to loans when Mr. Pasquale Stanco acted as president in Gaetano Trivisano's absence? A It was left up to Pasquale Stanco or else granted at the following meeting. 30

Mr. Ungaro: I want to state for the record that in this register of loans there are missing from the record Nos. 1 to 472. The book is not complete and we would like to have those pages to show the renewals of these other notes.

Q Counsel for the defendants calls attention to the fact that in the loan register accounts Nos. 40

Anthony Schiavino, recalled, re-direct.

1 to 472 are missing, were those accounts in this loan register when the books were turned over to you? A No, sir.

Q I notice that a key is required to open this loose leaf loan register, was the key turned over to you when the book was delivered to you? A

10 No, sir.

Q Have you the key now? A No, sir.

Q Have you removed any pages from this book? A No, sir.

Q Have you those pages from 1 to 472 in your possession? A No, sir.

Q Has the association, as far as you know? A No, sir.

By Mr. Ungaro.

20 Q Have you looked for them? A Yes, sir.

Q Where did you look for them? A In the safe.

By Mr. Kessler.

Q Why did you look for them? A I looked for all papers of the association.

Q Why did you especially look for these papers? A I didn't look for these papers especially.

30

By Mr. Yauch.

Q Did Mr. Aizello ask you to look for those records? A Yes, he did.

By Mr. Kessler.

Q Mr. Aizello asked you to do that? A No.

Q Why did you say he did a minute ago that he did? A I said I looked for all the papers of the association.

40

Amedeo Stanco, direct.

AMEDEO STANCO, sworn.

By the Master.

Q You live where? A 311 So. 7th street,
Newark, N. J.

Direct examination by Mr. Yauch.

10

Q You are a director of the Vallatese Loan
Association? A Lately.

Q When did you become a director? A A
week after Pinnella's death.

By Mr. Ungaro.

Q That would be July, 1927? A Yes, sir.

By Mr. Yauch.

20

Q Did you attend a meeting of the Board of
Directors of the Vallatese Association about the
second week of July, 1927? A Yes, sir.

Q Do you recall what took place at that meet-
ing? A They were arguing about the annual
report.

Q Who were? A Schiavino was arguing and
I asked for it myself.

Q Who were you arguing with and who did
you ask? A Gaetano Travisano. I knew it
from before that they were all arguing about it,
because I belong to the club right next door and
I know they were arguing about that report
always. When I got in as director I asked for
the report myself and he claimed he didn't have
it, hadn't received it yet.

30

Q What report was that? A March 30th.

Mr. Kessler: We have no objection to
that report being marked.

40

Amedeo Stanco, direct.

The Master: Exhibit C. 1 for Identification is marked in evidence as C. 1.

Q Did Gaetano Travisano say whether or not he had received the report? A He didn't have it.

10 Q Did he say that? A He did.

Q Did he object to your asking for the report?

Mr. Kessler: I object to that as leading.

Q Were you present at a meeting the following week after the one you have just testified about? A Yes.

20 Q What took place then? A We had to call detectives to get the books.

Mr. Kessler: I ask that that be stricken out.

Q What was said and done at that meeting?
A We appointed two committees to look after these books, and we appointed Pasquale Stanco and Anthony Schiavino to investigate these books, and Gaetano Travisano said he didn't want us to have our books audited by our accountant and he said he wanted Fay to do it, he was good enough, so we told him we wouldn't do that and then they sent him to get the books and they wouldn't give them to him.

30

Q Where were the books at that time? A Mr. Fay's.

Q Were you along? A No, sir.

Q Do you know when the books were finally obtained? A On Friday night, two days after.

Amedeo Stanco, direct.

By Mr. Ungaro.

Q Two days after what? A Two days after that meeting of Wednesday.

By Mr. Yauch.

Q When was that about, do you know? A 10
Two weeks after I was elected.

Q Mr. Stanco, after meetings at night when the association collected funds, what was done with the funds at that time, after you became director? A The older Travisano took it to the bank. The younger Travisano was cashier and he used to turn it over to Gaetano Travisano to take to the bank.

Q What was done with the funds which the association received at the meeting, right after the meeting until the next day, who kept the money? A Gaetano Travisano. 20

Q What would he do with it that night of the meeting? A Took it home.

Mr. Kessler: I might suggest for the record that there isn't any charge of any defalcation until after Pinnella's death which was the early part of July.

The Master: I was under the impression that the testimony of the last hearing was that everything was all regular according to the books at least, down to the death of the treasurer and that any defalcation after that was limited to \$15.00 or \$20.00. 30

Mr. Yauch: I think this is what your Honor has in mind, the difference in the cash books and the cash deposits.

The Master: Yes, that is correct.

Q Were you with Rocco Dontico on July 2, 1927 on the morning of that day? A Yes, sir. 40

Amedeo Stanco, cross.

Q Where were you? A We were down at the Central Railroad.

Q What was your object in going down to the Central Railroad? A We were running an excursion the following day and as I was treasurer of that excursion and Gaetano Travisano
10 was chairman or president, something like that, we went down together, me, Gaetano Travisano and Rocco Dontico, we went to the Central Railroad and then he heard about Pinnella's death.

Q With respect to Pinnella's death, when was that? A We heard that in the morning.

Q This meeting at the Central Railroad was the morning after Pinnella's death? A The same morning.

Q Tell us what conversation, if any, took
20 place there? A We seen Gaetano Travisano was a little white in his face and we asked him what is the trouble, he said there was nothing the matter. I said "Why, did he stick him any money?" and he said "No." I asked him if he stuck the loan association any money, he said no for a while then we kept on asking him a few times and he said "There might be a shortage of a couple of thousand dollars."

30 *Cross examination by Mr. Kessler.*

Q Why did you press Gaetano Travisano after he once told you that he didn't think there was a shortage, did you suspect that there was a shortage? A You can tell by a man's face, he was trembling.

Q They were friends, weren't they? A Yes.

Q Didn't you feel terrible when you heard this man committed suicide? A No, it didn't
40 make any difference to me.

Frank Travisano, direct.

Q When you asked him the first question, did he stick the association and he said no, why did you keep on pressing him, did you suspect that the treasurer had taken some money from the association? A Probably I did.

Q What made you suspect him? A I seen there was something wrong with him. 10

FRANK TRAVISANO, sworn.

Direct examination by Mr. Yauch.

Q Where do you live? A 477 S. 14th street, Newark, N. J.

Q Are you related to Gaetano Travisano? A Yes.

Q In what way? A He is my father's cousin. 20

Q Were you with Gaetano Travisano and Amedeo Stanco on July 2, 1927? A Yes, sir.

Q Where were you? A Down at the Central Railroad.

Q When was that with respect to the death of Rocco Pinnella? A July 2nd, the same day.

Q What conversation, if any, took place at that time? A We went down to the Central station and we started to talk. I asked him if he was any money short. 30

Q If who was any money short? A The Loan Association, he said it was a couple of thousand dollars short, that is all I know.

Q Who were you talking about? A About Rocco Pinnella.

Q Did Gaetano Travisano ever say anything to you with reference to a report received from the Department of Banking & Insurance? A One day— 40

Frank Trivisano, direct.

Q When was that about? A I can't remember, last year, 1927.

Q Do you know whether it was the middle of the year or the end? A I can't remember, he came up in front of me with a big envelope it was marked "first class mail" and he said,
10 "Look, this is first class, came in good condition," that is all I know about the statement; I never see the statement.

Q The envelope you say had a stamp on it "first class mail"? A It was on the top "first class mail." He said, "My son this year made a statement, it came first class mail."

Mr. Kessler: I ask that this testimony be stricken out, together with the testimony of the other witnesses, as it does not confirm the issue.
20

We are charged with certain defalcations of money. This testimony only goes to prove knowledge on our part that we know there was a defalcation. Assuming that to be a fact for the purpose of this we cannot be held for any liability on that part.

The Master: The agitation of the man was due to the fear of discovery of his own defalcation after the treasurer's death.
30

Q Do you know whether this conversation that you told us about, first class mail, was before or after the death of Rocco Pinnella? A I can't tell you.

Q You don't know whether it was before or after? A I can't tell you.

Q Are you connected with the association at this time? A Yes.

Q In what way? A Treasurer.
40

Frank Trivisano, direct.

Q How long have you been treasurer? A Since July 12, 1927.

Q Were you a director of the association? A Yes, I was before.

Q How long have you been a director? A About three years.

Q Was Gaetano Trivisano asked for any information regarding the financial condition of the association during the time you were director? A Sure. 10

Q What did he say? A He said it was in good condition.

Q When was that? A In July 1927. I remember once when there was a loan made to someone in Elizabeth, we asked what was the balance in the bank and he said about a couple of thousand dollars, we granted the loan and found there was only \$58.00 in the bank; and the check came back. 20

Q Did the Board take that up with Gaetano Trivisano? A Sure.

Q What did he say about it? A The only thing he said was that Pinnella was dead.

Q Did he explain it? A We went over and looked for the bank book to see if there was any money in the bank and there was only \$58.00.

By the Master. 30

Q Did Trivisano seem to be surprised that there was only \$58.00, was he excited? A Yes.

Q Are you sure that Pinnella was dead then? A Sure.

By Mr. Yauch.

Q What was done after it was discovered that there was only \$58.00 in the bank in the association's account? A I don't remember. 40

Frank Trivisano, direct.

Q At the time that the check that you have referred to in your testimony came back, did Gaetano Trivisano say whether or not there was a balance in the bank at that time? A He didn't say anything, he said before they granted the loan there was \$2,000.00, after the check
10 came back there was no money in the bank.

Q In May 1927, were you present at the meeting of the Board of Directors? A Yes.

Q Do you remember any conversation with reference to the report of the Department of Banking & Insurance? A I don't remember.

Q With reference to this report from the examiner? A I don't remember.

Q Do you remember a conversation in June
20 1927, with reference to the report from the Department of Banking & Insurance, the report that the Department of Banking & Insurance made? A We asked about a report.

Q In June? A Yes.

Q Who did you ask? A Gaetano Trivisano.

Q What did he say? A He said he didn't get it yet.

Q On the Wednesday after Rocco Pinnella
30 died, did you have any conversation with Gaetano Trivisano? A A week after Pinnella died I wasn't present, I was in Long Branch, I was off for a week. The next week they nominated me treasurer of the Loan Association.

Q Were you present after that time? A Yes.

Q Were there any conversations with Gaetano Trivisano then? A Sure.

Q What did they talk about, what did they ask him?

40

Frank Travisano, direct.

By the Master.

Q What, if anything, did the Board of Directors ask Travisano in your presence after you became treasurer of this association about the money affairs of the association. A They talked about the shortage that there was.

Q What did Travisano say to them in your presence about the shortage? A They talked about having the books examined.

10

Q Was anything else said by Travisano except about having the books examined? A Travisano said he wanted Mr. Fay to fix the books, the Board of Directors gave orders to somebody else.

By Mr. Yauch.

Q When did you first know of the shortage in the association? A I knew it July 2nd when Travisano told me about it, there was two thousand dollars short.

20

Q That was down at the Central Railroad? A Yes.

Q That was the first time you heard it? A That was the first time I heard it.

Q When did you know from the books? A After Mr. Fay examined the books.

Q Do you remember August 5, 1927, when a special meeting was held? A Yes.

30

Q What was done at that time, why did you hold the special meeting?

Mr. Kessler: I ask that the minutes be produced.

Mr. Yauch: There aren't any.

Q Do you know whether or not the association had any trouble getting the books? A Yes, sir.

40

Frank Travisano, direct.

Q Did you have any trouble getting the safe of the association opened? A On the night we took the books, on Friday night in July, we took the books off him, we pulled the door of the safe and it wouldn't open, that is all I know.

Q Did you ask him to open the safe for you?
10 A There was a fight that night, the next day he came up, it was two o'clock, and he opened up the safe.

Q Were you present at the meeting on January 7, 1927? A Yes, I was a director.

Q The resolution was passed authorizing the payment of \$100.00 to Gaetano Travisano to investigate loans? A Yes, sir.

Q Was that resolution passed at the time?
A Yes, it was.

20 Q Do you remember when this note by Tony Caprio and the note by John Evangelisto were presented to the Board of Directors, notes marked C. 12 and C. 13? A Yes.

Q Who presented those notes to the Board of Directors? A Gaetano Travisano.

Q Did he say anything about them? A He didn't say anything about them, he just presented them, that's all.

30 Q And the loans were passed? A Yes.

Q Do you know whether or not Mr. Gaetano Travisano knows the people that made these notes, Tony Caprio and John Evangelisto? A He knew John Evangelisto very well.

Q Did he know the other one? A He said, "Tony Caprio wants this loan, we will pass it," I don't know whether he knew him or not.

40 Q Do you know whether or not Neale Travisano when he was secretary, ever reported that there were arrears on the loans of John Evan-

Frank Travisano, cross.

gelisto and Tony Caprio and the Rose Quaglia and Vito Palmisano loans? A I cannot recall.

Q Who took the money that was received by the association on the meeting nights before Pinnella's death? A I never saw nobody take the money, I can't say who took the money, I never saw who took the money.

10

Cross examination by Mr. Kessler.

Q Isn't it a fact, Travisano, that when the check came back and you ascertained at the bank that \$58.00 was the balance, that at that time Mr. Gaetano Travisano said "I am going to send the books to Fay, the auditor, to check up and see why, when we are supposed to have \$2,000.00, we only have \$58.00"? A First when he said there was \$2,000.00 short it was down at the station. This check came back, the week before we granted the loan we asked the treasurer how much there was in the bank, he said a couple of thousand dollars.

20

Q When was the check given to the man? A I can't remember.

Q The check was given to the man before Pinnella's death, wasn't it, and came back after Pinnella was dead? A Yes.

30

Q Wasn't it at that time, Mr. Travisano said "I will send the books over to Fay to see what is the matter"? A He said he would have somebody fix the books.

Q You say that it was in June that the Board asked Travisano for the report of the Banking Commissioner and he said he didn't have it, is that right? A Yes.

Q You knew that he had it? A I saw the envelope, but I don't know what it was.

40

Frank Travisano, cross.

Q You knew that he had it because he had told you he had and showed you an envelope that was marked "first class mail," that you remember? A Yes.

Q When was it that he showed you this envelope? A I don't remember the date.

10 Q Was it before June or after June? A I don't remember.

Q Did you see that envelope before that June meeting when you say he was asked for the report, had you seen that before or after? A I think I saw it before.

Q When you knew you saw it before, when he told you he had it before, and when he said he didn't have it, why didn't you speak then and say "I know you have it"? A I only saw the
20 envelope, I don't know what was in it.

Q Didn't you say it was a first class report from the Banking Commissioners? A I said it was first class mail.

Q Didn't he say it was a report? A Yes.

Q You knew that he had a report? A Yes.

Q When you came to the meeting in June why didn't you tell Mr. Travisano "You showed me the envelope that the report came in," why didn't you call the attention of the Board of
30 Directors to the fact that Travisano did have the report, because he showed you the envelope it came in? A He told the Board he didn't have it. After the meeting he said to me, "didn't you see the report yourself"?

Q Why didn't you tell the members of the Board that you had seen the envelope and Gaetano Travisano told you he had the report? A Maybe I forgot to tell them.

Q You say you went to get the bank book, where was the bank book when this check came
40

William V. Azolli, direct.

back, did you go to the bank to get it? A He went to Pinnella's house and got the bank book.

Q You checked it up with the bank and found only \$58.00 when there was supposed to be a couple of thousand, is that correct? A Yes.

10

WILLIAM V. AZOLLI, sworn.

Direct examination by Mr. Yauch.

Q Mr. Azolli, you are counsel for the Vallatese Loan Association? A Yes.

Q How long have you acted in that capacity? A Since its incorporation.

Q I show you Exhibit C. 7 and ask you if you ever saw that before? A Yes, sir. 20

Q What was the occasion? A This is loan 512 of A. Schaeffer, it was handed over to me for suit, then this was paid I think by check of A. Schaeffer to the order of the Vallatese Loan Association and I turned over the note, check and the application to the association for marking off on the books, because it was collected.

Q Who did you turn it over to? A Gaetano Travisano, he marked those words there in my presence. 30

Q This wording in the lower left-hand corner? A Yes.

Q "Pagato"? A Yes.

Q What does that word mean? A "Paid."

Q That is Gaetano Travisano's handwriting? A Yes.

Q I show you Exhibits C. 12, C. 13 and C. 14 and ask you if you have ever seen those before?

A This application loan No. 144 of Gialenella 40

William V. Azolli, direct.

and Cuzzo, also loan 857 and loan 858, were given to me by Gaetano Travisano to enter suit.

10 Q What did you do? A I entered suit in the Cuzzo application, loan 744 and upon receipt of a copy of an affidavit filed in the Irvington District Court by Judge Ungaro that the signature of Vincenzo Cuzzo was a forgery, I notified Gaetano Travisano of the fact. He told me that was not true, that Cuzzo signed in his presence. I asked him about the other two because I had no addresses for them and he said "Let me have those and I will look them up." I said "You have only Evangelisto's address," he said "It's allright." I told him to get Caprio's address, he said "I will bring you the full particulars when I come back, let me have them," he said "I think they will be fixed up," so I handed them over to him but I kept the Cuzzo note.

20 Q Did he come back after that? A He did not. Trouble occurred sometime later, there was the death of the treasurer of the association and I went up there on Saturday morning, I think, and everything was in great excitement there.

30 Q At the time was there any question as to the signatures of Evangelisto and Caprio on these notes? A None whatever, only at a later meeting they wanted to know from me what I was doing with the cases pending and I called attention to Cuzzo's case and I told them I didn't have the others, as I had turned them over for further investigation as to their addresses. At that time Mr. Travisano said these notes were signed in his presence.

Q You mean the Caprio and Evangelisto notes? A Yes.

40 Q I show you carbon copy of letter dated August 31, 1927, directed to Mr. Gaetano Trav-

William V. Azolli, direct.

isano and ask you if you can identify that? A Yes, sir, I wrote this letter to Mr. Travisano.

Q Do you know whether that letter was mailed to Mr. Travisano? A It certainly was.

Mr. Yauch: I offer the letter in evidence.

Mr. Kessler: I object to it as a self-serving declaration. 10

The Master: What is there that is harmful to you in that letter?

Mr. Kessler: What is it evidential of?

The Master: All it does is demand Caprio's address. The letter is admissible.

Mr. Yauch: I am showing that this letter was sent to Gaetano Travisano and the allegation made in it that he stated that the signatures were genuine and that there was never any denial of that on the part of Gaetano Travisano. 20

The Master: I think this letter is only admissible to show the effort of the attorney to get the address of the debtor.

Mr. Kessler: We claim that the statement is untrue.

Q Did you ever see this paper before? A Yes, sir. 30

Q When did you receive that? A Within three or four days, I think. Pinnella, I think, died on Friday or Saturday and Monday or Tuesday Neale Travisano called at my office and I wasn't in, he left this note for me and I talked with him afterwards, I think it was on Wednesday night.

(Paper offered in evidence and marked Exhibit CX. 1.)

William V. Azolli, direct.

Q Were you present at the meeting of the Board of Directors on January 7, 1927, when a resolution was passed with reference to investigation of loans? A I was present at pretty near every board meeting, in and out.

10 Q You were present at a great many board meetings? A A great many of them, I couldn't specify any particular one.

Q Do you know whether or not Gaetano Travisano ever reported as to investigations on applications for loans? A Yes, I do.

20 Q Did he? A He did, he took very keen interest in the matter. That was his general practice to see that each person who was an applicant was the proper person to get a loan. He was the only man that gave the information, he knew the information as to whether the debtor was good, bad or indifferent.

Q Did you ever attempt to examine the books of the association before Pinnella's death? A I never examined the books.

30 Q Did you ever ask Mr. Neale Travisano as to how he entered the books up before Pinnella's death? A The only thing I did ask Neale Travisano was whenever I would make collections as to cases pending in court, I would make one check and then I wanted them properly placed in the book, giving proper charge as to court costs. That was the only thing I asked him, to see that it was properly entered in the book in accordance with the check I would give.

40 Q Did you have conversation with Gaetano Travisano the day after Pinnella's death, with reference to any possible shortages? A He and I talked generally, he said he would have the books looked over, but he said if there were any he didn't think there would be over two thousand

William V. Azolli, direct.

dollars, because he said there was two thousand dollars before in the bank, but that there had been a check for \$58.00 returned and he would have it looked up.

Q Were you present when the safe was opened after Pinnella's death? A I think I was.

10

Q Can you tell us the circumstances surrounding that? A We wanted a meeting, I think it was a special meeting, called. At that time a claim was being made from the insurance company, there was some representative of the insurance company going to come up and, I think, go over the facts and get proper affidavits to substantiate the claim. All the talk at that time was centered about the treasurer. I told Mr. Travisano the best thing to do would be to hold a special meeting. When we called the special meeting, the directors commanded for the books and the opening of the safe. I discovered that the only person who had the combination to the safe was the elder Travisano and I advised Mr. Travisano that the directors could demand the books of the company at any time and demand him to open that safe. He said, "I will not open the safe, there are many things I must look over first, before I turn the books over to them." There was so much arguing going on that I didn't interfere any more; they called some officer to watch the safe during the night and I think it was on Saturday, two days later, Mr. Travisano went up and opened the safe and at the time of the opening of the safe, we looked for documents and notes and then I advised the proper person, I think the secretary, to go over each note, check them up in the ledger, check up each application and verify each and every one

20

30

40

William V. Azolli, cross.

of the loans, and go over the books and look at any and all documents and hold them until I would go over it with them and the proper officers of the association.

Q Did you find these Schaeffer application and Evangelisto and Caprio notes in the safe?

10 A Yes.

Q Do you know whether or not the statement from the Department of Banking & Insurance was in the safe at that time? A I don't know.

Q I show you Exhibit D. 1 for Identification and ask you if you can identify that? A I don't recall that at all.

Q I don't mean this particular letter or that form. A No, I don't know anything about it.

Q Do you know why that letter was sent out?
20 A I don't know. I knew there was going to be a special meeting. In fairness to everybody, I suggested that they get the books and have an auditor go over them and I suggested that all documents be looked over and then have a special meeting called and I suppose this special meeting was called, but I don't know who called it or how the wording was done.

Q You didn't have anything to do with the drafting of this letter? A No.

30

Cross examination by Mr. Kessler.

Q Mr. Azolli, do I understand that every time the application was paid the application was returned to the applicant? A Yes.

Q How does it come that this note being paid you still have the application? A I turned this application over to Mr. Travisano.

Q When you collected the money and returned
40 the note back to the person, why didn't you also

William V. Azolli, cross.

give them the application? A There was a check shown to me made by Schaeffer to the order of the association and I immediately said, "All right, here's your note and the application, deal with the man." I went Wednesday night and he kept this application.

Q Isn't it the practice to return the application? A They didn't in this case. 10

Q The one that shows Mr. Travisano marked paid? A Yes.

Q That is the only one you found? A That is the only one we found like that kept there.

Q You were counsel for this association when a criminal complaint was made against Travisano? A I was.

Q You made a complaint against them because of the misappropriation of moneys from Ianelli? A No. 20

Q Weren't the Travisanos charged with misappropriation of moneys supposed to have been paid by Ianelli to them? A Not in any criminal complaint.

Q In the complaint we are charged with misappropriating \$345.10 from Michael Ianelli, as a matter of fact, you produced a check here payable to the order of the Vallatese Loan Association for \$345.10 and which appears to have been deposited to the account of the association and paid? A Yes. 30

Q In that Ianelli account? A Yes. This is a check produced by me by demand from Judge Ungaro in asking me whether or not I had any checks and I said yes, and I produced checks, that was a check forwarded by me for \$345.10 on June 30, 1927, to the order of the Vallatese Loan Association in full for the Quaglia loan. 40

William V. Azolli, cross.

I don't know who wrote that back here, "pay to the order of Vallatese Loan Association."

Q Does it appear that it was deposited to the account of the association? A Yes, I received the check back from the bank.

10 (Check in question marked Exhibit DX. 2.)

Q I understand you attended all the meetings of the association? A Not all.

Q With rare exceptions? A Not many exceptions.

Q You attended most every meeting? A Not many.

Q How many did you attend in about a year and a half? A I couldn't say, they had weekly meetings.

20 Q Has that suit been concluded, the Cuzzo suit? A Suit is pending, it is marked "not moved."

Q Why? A Evidence submitted to me by Judge Ungaro and by the talks I have had with Mr. Travisano, I am satisfied that his signature is not a forgery, so I have not moved the suit.

30 Q As to these other two claims, do you want us to understand that you talked with Mr. Travisano on the telephone? A No, sir; I never said a word about the telephone. I never called him up, he brought them to me personally at my office.

Q He brought them to you and asked you to start suit on them and you started several suits? A I started one suit.

Q He brought them down himself and asked you to start suit on them? A Yes.

40 Q These particular three cases he brought to you personally and asked you to start suit, is that correct? A Yes.

William V. Azolli, cross.

Q In one case you started suit because of forgery? A Yes. He said he would locate addresses on the others, he took them back with him.

Q You discovered the fact that they didn't have the addresses? A He left them there and I started one suit and looked over the others and found there were no addresses and I told him and he said, "Let me have those two notes, I think I can arrange them," that was the end. 10

Q You had the notes in your possession delivered to you to start suit and the only reason you didn't start suit was because you didn't have the addresses? A Addresses, and the notes weren't full.

Q What do you mean, the notes weren't full? A They weren't complete. 20

Q Are they in the same state now as they were then? A Yes.

Q The note was just as it appears now? A Yes.

Q The reason you didn't start suit was because you didn't have the addresses? A Yes.

Q That was the only reason you didn't start suit? A Yes.

Q He said he would get the addresses for you? A Yes. In loan cases when the loan association makes a loan the man may move two or three months after and we always verify addresses. 30

Q You had addresses but they weren't verified? A That's right.

Q If you hadn't insisted upon verification, you could have started suit then and there? A Yes.

Q So that nothing was done on the part of Travisano to hinder you in any way to prosecute these suits on the three notes? A No. 40

William V. Azolli, cross.

Q You said something about Mr. Travisano saying to you that the Cuzzo note was signed in his presence? A That is what he told me.

Q When was that conversation had? A In my office, he said Mr. Cuzzo signed in his presence.

10 Q He still insisted upon that up to the present time, as far as you know? He hasn't changed his assertion as far as you know? A I don't know, I haven't seen him.

Q Did he say specifically in those particular instances that he witnessed these signatures, he was talking of these three notes at that time? A He said specifically in each case that he witnessed the signatures.

20 Q In this note that you produced which Neale Travisano left in your office; do you know when that was left? A It was the following week.

Q Are you sure about the date, how long after the death of the treasurer? A Four or five days after.

Q What makes you say that? A Because it was on Saturday I was up there and he came to see me the following week.

Q When did you see it? A I think it was on Tuesday.

30 Q Don't you know it to be a fact that between the time of the death of Pinnella and the leaving of that note that Mr. Fay had made a preliminary report to Travisano and that was the information he was giving you? A I told him on Wednesday to get the books straightened out and he said he would get Mr. Fay to straighten them out.

Q That was after that note was brought in? A No, I received the note first and I saw him on Wednesday night.

40

Louis Pennell, direct.

Q Do you know where Neale got the information about the shortage? A No, I do not.

Q Isn't it a fact that he told you that Fay gave him that amount as being short? A No.

Q You haven't any idea how he got this information, whether he got it from the books?

A From his own books, I don't know, I assume that the secretary ought to know. 10

LOUIS PENNELL, sworn.

Direct examination by Mr. Ungaro.

Q Mr. Pennell, you are the son of the late Rocco Pennell? A Yes, sir.

Q Who was the treasurer of the Vallatese Loan Association? A Yes, sir. 20

Q Were you at the Vallatese Loan Association at any time? A Every Wednesday night I went up to take my father home at night when the meeting was through.

Q They have meetings on Wednesday night? A Yes.

Q You were there to accompany your father home? A Yes.

Q What did your father do after the meeting was over, did he have any money or checks? A Yes. 30

Q What would he do with that? A He would take them and put them in his pocket.

Q Then he would come right straight home? A Yes.

Q You did this for how long? A About two years.

Q Of course, you don't know what he did with the money afterwards? A No, sir. 40

Rose Quaglia, direct.

Cross examination by Mr. Yauch.

Q How many times a week would you go down to the Vallatese Loan Association to get your father? A Once a week, every Wednesday.

10 Q You weren't there every Wednesday night, were you, Mr. Pennell? A Practically every one, once or twice I wasn't there.

Q Did you actually see your father put the money in his pocket? A Yes, sir.

Q Did your father go home with you every time you went down for him? A Yes, sir.

Q Didn't your father ever tell you he was afraid to take the money home himself? A No, sir.

20

ROSE QUAGLIA, a witness produced on the part of the defendant, being unable to sufficiently understand English to answer questions, her examination was conducted through Anthony J. Salvatore, an interpreter duly sworn by the Master.

Direct examination by Mr. Ungaro.

30 Q Mrs. Quaglia, where do you live? A 479 15th avenue, Newark, N. J.

Q Did you borrow some money from the Vallatese Loan Association? A Yes.

Q How much? A I don't remember, I have the receipt.

Q Did you pay the loan? A Yes.

Q How did you pay it? A They have the receipts, as I paid all.

40 Q When you went to pay that money, did you have cash with you? A Yes, cash.

Rose Quaglia, cross.

Q What happened, what did you do? A I gave the money to Mr. Travisano, he gave the money to his boy, the boy gave it to Mr. Rocco Pennell; they gave me a receipt.

Q Did you ask Mr. Pennell for a receipt? A Yes.

Q Did he give it to you? A No, Mr. Travisano's boy gave it to me. Pennell told me that I had paid and didn't make any receipt. 10

Q So there was an argument with you and Pennell? A No, that is all he said.

Q Neale Travisano gave you the receipt? A Yes.

Q Did you see the money given by Neale Travisano to Rocco Pennell? A Yes.

Q Who was there with you at that time when you gave the money? A There were a lot of people there who were paying. 20

Q Who did you have with you? A My daughter.

Cross examination by Mr. Yauch.

Q Have you got the receipt? A No, the building and loan has the receipt.

Q (Showing witness Exhibit C. 8.) Is this the receipt you refer to? A I gave the receipt to my husband and that is all I know. 30

By Mr. Ungaro.

Q Look at the receipt and see if you can refresh your memory as to the amount you paid? A No, I don't remember.

By the Master.

Q Is this the receipt you got? A Yes, they gave me a receipt and I went away. 40

Beatrice Quaglia, direct.

Q Is this receipt that you have in your hand the receipt you got? A Yes.

By Mr. Yauch.

10 Q Did you ask Pennell for a receipt? A Yes.

Q What did he say? A He told me "I have the money so what's the use of giving you a receipt" and I told him "I have paid, so therefore I want a receipt." He called Neale Travisano and he gave me the receipt.

Q I understand that you said that you gave the money first to Gaetano Travisano and that he then gave it to Neale and then Neale turned it over to Mr. Pennell, is that right? A Yes.

20 Q Did you ever get any notices after the time you paid the loan that the interest on the loan was unpaid? A After this mix-up I got a letter that they wanted to be paid. My husband had the receipt and we took it over to them.

Q You didn't get any notices of any kind before that time? A No.

Q Did you see whether Pennell gave Neale Travisano a receipt for the money? A Travisano made the receipt for me.

30 Q When Neale gave the money to Pennell, did Neale get a receipt from Pennell for the money? A No, he said "Give her a receipt."

BEATRICE QUAGLIA, sworn.

Direct examination by Mr. Ungaro.

40 Q You are the daughter of Mrs. Quaglia? A Yes.

Beatrice Quaglia, cross.

Q You accompanied your mother to the Vallatese Association to pay the note? A Yes.

Q Did you see your mother give the money to the people in the loan? A Yes.

Q To whom did your mother give the money?
A My mother handed the money to Mr. Travisano, the old man, and Mr. Travisano handed it to his son, Neale, and his son Neale gave it to Mr. Pennell and Mr. Pennell put it in the drawer.

10

Q You didn't see the writing of the receipt at that time? A No. After I saw my mother hand the money, I went and take a seat.

Q Did you see Pennell put the money in the drawer? A Yes, sir.

Cross examination by Mr. Yauch.

20

Q Who did your mother hand the money to?
A My mother handed the money to Mr. Travisano, the father.

Q What did he do with it? A He gave it to his son, Neale.

Q Did he count it? A I can't say, because I didn't see him count it.

Q You saw him give it to Neale, but you can't say whether he counted it or not? A I can't say, I didn't look at him counting the money.

30

Q You were standing right there, weren't you? A Yes.

Q Do you know whether Neale counted the money when he got it from his father? A Neale counted it, yes.

Q You are sure that Neale counted it, but you aren't sure that his father did? A Not about the father, Neale counted it and handed it to Mr. Pennell and Mr. Pennell put it in the drawer.

40

Beatrice Quaglia, cross.

Q Did Mr. Pennell count it? A No, he didn't.

Q What kind of bills were they, fives or tens or what? A I don't remember.

Q How many bills were there? A More than one.

10 Q How much money was it, do you know? A I don't know, my mother handed Mr. Travisano the money.

Q Did you see whether Mr. Pennell gave Neale a receipt? A No, I went and sit down.

Q Do you know why they passed it from one to the other? A The father was first and then the son and then Pennell.

Q Where was Pennell, at what window? A Pennell was near the cashier's window.

20 Q What window was the older Travisano in? A He was at the door as soon as you go in and Neale Travisano was in the middle.

Q Did you go back with your mother the time she got the letter telling that the loan was open, that she hadn't paid her interest? A I don't know anything about that.

Q Was there any argument about this matter? A There was a little argument.

30 Q A little one or a big one? A Not so big, they had a little argument, that's all I know.

Q Was there quite a bit of excitement about it? A Yes, there was.

Q With all that excitement, you saw what you have told us? A The money was handed first and at the end was the excitement. After we handed them the money, my mother had a little argument.

Francisco Vella, direct—cross.

FRANCISCO VELLA, a witness produced on the part of the defendant, being unable to sufficiently understand English to answer questions, his examination was conducted through Anthony J. Salvadore, an interpreter duly sworn by the Master.

10

Direct examination by Mr. Ungaro.

Q Where do you live, Mr. Vella? A 383 Sixth street, Newark, N. J.

Q Did you ever borrow money from the Vallatese Loan Association? A I made a note and I paid it.

Q When was that? A Two years ago.

Q You signed the note, Mr. Vella? A Myself and wife.

20

Q Where did you sign the note? A I signed it at the loan and my wife at home.

Q Who came at your home to have your wife sign the note? A I don't remember the name, it was either Tedesco or Bove, I don't remember, it was two years ago. It was one of those two.

Q Do you know if the man who came to your house was one of the directors of the loan? A Yes, the president took the application, called one of the members of the Board of Directors and asked for one of them to go to have this note signed.

30

Q The president didn't come, did he? A No.

Cross examination by Mr. Yauch.

Q Did the president know you? A Yes, we are townsmen from Italy.

Q Did he know your wife? A Yes.

40

Joseph Mastrangelo, direct.

Q Did he know your wife's signature? A
Yes.

Hearing adjourned to Monday, October
1, 1928.

10

IN CHANCERY OF NEW JERSEY.

Between

VALLATESE LOAN ASSOCIATION,
Complainant,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,

Defendants.

*Continuation
of
Depositions.*

20

Further continuation of depositions of witnesses in the above entitled cause, this 1st day of October 1928, before Francis Child, a Special Master in Chancery of New Jersey, at his office, 24 Commerce street, Newark, N. J.

30 Appearances: Same as at previous hearing.

JOSEPH MASTRANGELO, sworn.

Direct examination by Mr. Ungaro.

Q Where do you live? A 80 Hayes street,
Newark, N. J.

Q On July 14, 1926, did you borrow any
money from the Vallatese Loan Association? A
I did.

40

Neale Travisano, direct.

Q How much, do you remember? A Fifty dollars.

Q Where did you sign the application and the note? A In the place.

Q Who took this application and note? A Travisano, the father.

Q In June 1927 you obtained another loan of fifty dollars? A Yes. 10

Q Where was that signed? A At the same place.

Q Before whom? A I can't remember, the one who stood up for me.

Q Who was that? A Charles Bove.

By the Master.

Q At the same place you mean at the association rooms? A Yes. 20

NEALE TRAVISANO, sworn.

By the Master.

Q You are one of the defendants, aren't you? A Yes.

Q Where do you live? A 60 Hayes street, Newark, N. J. 30

Direct examination by Mr. Ungaro.

Q Mr. Travisano, you were the secretary of the Vallatese Loan Association, weren't you? A I was assistant and secretary.

Q When were you secretary, when did you start to be secretary? A In the end of December 1926, starting the first of January 1927. 40

Neale Travisano, direct.

Q Before January 1927 you were what? A Just assistant secretary.

Q Who was the secretary? A Mr. Opitz was secretary.

10 Q In November 1926, you signed a report to the state for the Vallatese Loan Association, will you explain how did you come to sign that report?

Mr. Yauch: I object to that, the report speaks for itself.

A At that time, Mr. Opitz was secretary and he wasn't there and I was forced to sign that statement, otherwise it couldn't be sent to Trenton.

20

By the Master.

Q Do you mean that at the time that report was signed that Mr. Opitz had ceased to be a member of the association or an officer? A He was a member until the last day of the year, because he was paid until the last of that year, but at that time when the statement came from Trenton to be made up I was forced to sign it myself, as he wasn't there and I was told by the
30 lawyer that I could sign.

Q Where was Opitz? A I don't know.

Q Why did he leave the association, do you know? A No, sir.

By Mr. Kessler.

Q Did you see the figures that were in that report? A No.

40

Mr. Yauch: I object to that.

Neale Trivisano, direct.

Mr. Kessler: We have a right to show just how he came to sign it and how the figures were compiled.

Q How was this report made out? A It was made out by someone else.

Q Who made it out? A Mr. Opitz sent me down to Mr. Fay to make it out. 10

Q Mr. Fay made it out? A Yes.

Q Where did he get the information from? A From my books and from the treasurer's books.

Q This examiner from the Banking Department, did he go over the books? A Yes.

Q Were those figures in his handwriting or your handwriting or anybody else's handwriting? A They were made out by Mr. Fay, he made out the report to be sent to Trenton. 20

Q The figures that were put in and the affidavit that was filled out which was later signed attached to the report of the Banking Department, who put those in? A Mr. Fay did.

Q Are you sure? A The only thing I did for that report is to put my signature on.

Q Do you know whether those figures were put in by the examiner, yourself, or Mr. Fay or anybody else? A No, sir, that I don't know. 30

Q Did you have any personal knowledge of whether those figures were correct or not? A No, sir.

Q How far did you advance in school? A High school graduate.

Q Have you any bookkeeping experience? A No, sir.

Q Do you know how to keep a system of books? A No, sir. 40

Neale Travisano, direct.

Q Have you taken any course in high school or anywhere else on keeping books? A I never did.

Q The system that was accepted by the association, was that installed when you became secretary or was it there? A It was there.

10 Q Was it also there when you became assistant secretary? A Yes.

Q When did you become assistant secretary? A I think it was January 1, 1926. I was being told how to take care of the ledger by Mr. Tedesco before that time. I was up there in November 1925, I didn't have anything to do, so I was just being shown what to do.

Q In January 1926 you were appointed assistant secretary? A Yes.

20 Q What were your duties as assistant secretary? A Marking the slips in my books and taking care of the general ledger.

Q Where did you get the information for your general ledger? A I was shown by Mr. Tedesco.

Q Who was Mr. Tedesco? A He was the assistant before me.

Q You followed that system down to the time you ceased being secretary? A Yes, sir.

30 Q What did you do as secretary? A I marked my slips in my general ledger, that is all I did.

Q Explain to the Master just how your company operated, on pay nights when money came in what happened? A On pay night when people came to the loan, quite a few people would come to me and let me make out the slip.

Q The depositor had a book, did he? A Yes, sir.

40 Mr. Yauch: I object to that as leading.

Neale Travisano, direct.

By the Master.

Q What was the first thing a borrower did when he came to the association on pay nights?

A He would come up to my window and he would hand in his book to me and I would make out the slip for whatever amount he wanted to pay, then when I was through making out the slip and entering it in the book, I would pass it over to the treasurer. I passed the book over to the treasurer.

10

Q And the money? A Yes.

By Mr. Kessler.

Q Did you assume the money other than handing it over to the treasurer? A No, sir.

Q Did you ever collect any of the money in groups together or did you turn every individual account over to the treasurer? A Yes.

20

Q Who was the treasurer at that time? A Mr. Rocco Pennell.

Q Did you ever have anything to do with making deposits? A No, sir.

Q Did you ever make any deposits for the association? A No, sir.

Q Did you ever have anything to do with keeping money over night? A No.

30

Q When you would make out these slips and turn them over to the treasurer, what would the treasurer do with the slips, do you know? A I had a cigar box there, an empty cigar box, and when he would get through with the slips he would put them in the cigar box.

Q After pay nights what would be done with those slips? A I would take the box home and enter the slips up in the books at my house and sometimes would enter them there.

40

Neale Travisano, direct.

Q What would happen to the slips? A I would group the slips together and they would put them in the safe.

Q Who put them in the safe? A Sometimes I would do it and sometimes my dad would put them away for me.

10 Q These minutes that have been offered in evidence, particularly the minutes of January 1927, I think you admitted that the minutes were in your handwriting? A Yes, sir.

Q How did it come that those minutes were written by you? A They were written by me but they were dictated by Mr. Azolli, the lawyer of the loan.

Q Mr. Azolli was counsel for the loan association at that time? A Yes, sir.

20 Q You testified to something about getting the slips, where would you get the slips from at the end of the meeting? A From the cigar box.

Q Who would give them to you? A The treasurer, he would look at the slips before I would enter them in my books. He always had possession of the slips before I entered them in the book.

30 Q Do I understand that your system in book-keeping was that you would make out the slips and you would make no entry in the book until after the meeting was closed? A Yes.

Q At the end of the meeting, you would take those slips and enter them in your book opposite the name of the man who paid? A Yes.

Q Was that the practice? A Yes.

By Mr. Ungaro.

40 Q Was there at any time, Mr. Trabisano, that you found some surplus money at the end of the evening? A I did.

Neale Travisano, direct.

Q What was done with that surplus money?

A That money was put in the safe.

Q Will you explain how this happened? A Before the time I got there, there were certain errors being made; when a person would come out and make out his own slip, instead of putting his own number, perhaps he would put down another number; for instance, if his number was 667 perhaps he would put down 567 and number 567 would get the credit; sometimes two people would both put down the same number and I would have to keep a part of that money and sometimes when a borrower paid his book up in full there would be a shortage of about \$6.00 and I would have to take it out of that surplus money, as he would have \$6.00 more in his book than I had in my book.

10

20

Q How much money was in the safe of the surplus money at the time that you were taken on as secretary, if you know? A I never did keep an account of that.

Q About how much? A About \$40.00 or something like that.

Q Were you at the meeting of August 3, 1927? A I was.

Q Who had the books at that time? A The books were in the safe at that time.

30

Q They were in the safe? A Yes.

Q What happened? A They came up—

Q Who came up? A The Board of Directors came up and demanded the books and the way they demanded the books it was entirely out of the question to give them the books, because they were boisterous in speaking; I think if they came up in a different manner I was willing to give them the books. They wanted to use force.

40

Neale Travisano, direct.

Q What did you do? A I was told to have the books examined. I was told by the Board of Directors, not by my dad or anybody else, and I had the books taken down to Mr. Fay.

10 Q Who was Mr. Fay? A He is the accountant that took charge of the books, because I didn't know enough to take charge of the books myself.

Q Was he taking care of the books before you became secretary? A Yes, sir.

Q He always took care of the books for the association during that time? A To my knowledge he did.

Q Who went to get the books from Mr. Fay?

A At first some of the Board of Directors tried to get them, but Mr. Fay said that if I came
20 down with them he would give them the books, otherwise he wouldn't.

Q Did you go down? A Yes.

Q Who came with you? A Mr. Stanco came with me and Schiavino came with me also.

Q You got the books? A Yes.

Q They were brought to the association? A Yes.

30 Q What happened when they were brought to the association? A They were taken over by Mr. Schiavino, he took them over. I think the Board of Directors took the books over then.

40 It is admitted by solicitors for the complainant that the defendant association presented its claim to the surety company that was principal on the bond of Pennell, the treasurer, and that the complainant received from the said surety company the sum of \$1,000, the full amount of the treasurer's bond on account of defalcations of the said Pennell.

Neale Travisano, cross.

Cross examination by Mr. Yauch.

Q You said you made out the deposit slips for the borrowers of the association? A Yes, sir.

Q You also say that a lot of them were made out in error that is how the surplus money accrued? A That was before the time I made out the slips. 10

Q There weren't any errors after you made out the slips? A That I don't know.

Q You don't know whether there were any errors or not after you made them out? A No, sir.

Q You mean to say that all you did was to make out the deposit slips and hand the deposit slips and cash to the treasurer? A Yes, sir. 20

Q That was the limit of your duty at the meeting nights of the association? A Yes.

Q Didn't you receipt for payments made by shareholders? A On the slip I made, that's about all.

Q Didn't you do it on the pass books? A At times I did, yes, sir.

Q Quite a few times? A I wouldn't say quite a few times, I did for a while. 30

Q How long? A That I don't know.

Q You referred to Mr. Opitz as being secretary of the association? A Yes, sir.

Q What business was Mr. Opitz in, do you know? A I don't know.

Q Wasn't he an accountant or bookkeeper? A That I don't know.

Q Isn't it a fact that he did the same sort of work as Mr. Fay did later? A He might have done that, it isn't any of my business. 40

Neale Travisano, cross.

By the Master.

Q Do you know whether Mr. Opitz did the same sort of work while he was connected with the association, that Mr. Fay also did, auditing the books, etc.? A I guess he did.

10 *By Mr. Yauch.*

Q Mr. Opitz didn't attend the meetings of the association? A I don't know.

Q Was Mr. Opitz always there while you were there at the meetings? A He might have been, maybe he might have missed a night or two.

Q As a general run Mr. Opitz was there? A Yes, sir.

20 Q You say you were forced to sign the statements that were sent to the Department of Banking & Insurance? A Yes.

Q Will you kindly tell us just what force was used? A Mr. Opitz wasn't around at that time and I had to sign that statement, otherwise it couldn't be sent to Trenton.

Q Where did you sign that report? A I think down in Azolli's office.

30 Q Did Mr. Azolli force you to sign it? A Someone had to sign the statement. The secretary wasn't around and that statement was to leave my house, I only had another day or two before it was to be in Trenton.

Q At the time you signed you came down to Mr. Azolli's office all alone, didn't you? A That I don't remember.

40 Q Mr. Azolli didn't use any force to compel you to sign the statement? A I mean I had to sign it because there wasn't anyone else there to sign it and it was supposed to be in Trenton in a day or two.

Neale Trivisano, cross.

Q You signed the statement referred to which was forwarded to the Department of Banking & Insurance? A Yes.

Q And made an affidavit that you were secretary of the association at that time? A Yes.

Q You weren't secretary then, were you? A No, sir. 10

Q That affidavit that you made in that report that you were secretary, was false? A Mr. Azolli told me it was O.K. to sign it, otherwise I never would have signed it, because I wasn't secretary, but he told me being assistant secretary I was able to sign it.

Q You know that if you make a statement that you are secretary and you aren't, that that isn't proper, don't you? A I thought being assistant secretary, I was able to sign it. 20

Q As secretary? A Yes, if the secretary wasn't there.

Q You say you had Mr. Fay make out the report? A Yes, sir.

Q That was your duty though? A That wasn't my duty. I think Mr. Pennell received a letter from Mr. Opitz stating that I should take the books down to Mr. Fay and have him examine the books and make a report.

Q Who paid Mr. Fay for his services in making the report? A Mr. Opitz. 30

Q In other words, the association didn't pay? A They might have paid it, but I don't remember.

Q Who paid for it while you were acting as secretary? A I paid for that myself.

Q In other words, you retained Mr. Fay as an accountant to help you do your work as secretary? A Yes.

Q Who paid Mr. Fay for auditing the books the last time? A He was paid with my pay. 40

Neale Travisano, cross.

Q You are sure of that? A I'm positive of that. I didn't receive my share from the loan and they told me they paid Mr. Fay.

Q You say that you received instructions as to how to keep the books as far back as November, 1926? A Yes, sir.

10 Q How long did it take you to learn how to keep the books? A It took me quite some time, I always went back and asked certain things concerning the books.

Q Did you know when you were secretary in keeping the books of the association that if a payment was received on any particular account that it ought to be credited in the ledger? A Certainly, if I got the slips.

20 Q I show you Exhibit C. 8, that is in your handwriting, isn't it? A Certainly.

Q Was the credit represented by that receipt made in the ledger? A I don't know.

Q You don't know whether it was entered or not? A No.

30 Q How long after the pay night would you make the credits in the ledger? A I would make it right at the end of the night, when we closed up; other times I took the books home and made the entries at the house.

Q If a depositor of the association made a deposit of \$300.00 on a pay night and you didn't get the deposit slip and make the entry in the ledger, did you investigate to see what happened to the \$300.00? A No.

40 Q Didn't you think it was your duty to find out what happened to the money? A How was I going to know, when I had maybe one hundred other slips, I couldn't think of any special slip.

Neale Travisano, cross.

Q You were forced to sign this receipt, I suppose (referring to Exhibit C. 8)? A Certainly, there was a big argument about that.

By the Master.

Q Why was there any argument about this particular payment of \$199.70? A The woman that came in to pay that slip, she wanted a receipt for the amount being paid and the treasurer didn't care to give it to her, he said he was too busy, but the woman demanded the receipt, so after arguing about five minutes the treasurer asked me to make out a receipt for her and sign it myself and I gladly did it. 10

Q Why didn't the treasurer sign the receipt himself? A I don't know why he didn't do it.

Q Why didn't you ask him to sign the receipt himself? A I didn't ask him, because I signed several other receipts also and there was never anything said about it. 20

Q Didn't you know that when you signed a receipt that you made yourself personally responsible for that money if anything happened to it? A That I didn't know; being that he said he was too busy to make out a receipt I didn't think about it that moment and I made it out myself. 30

Q Didn't you think it was rather strange that a man was too busy to sign his name if you made the receipt? A At that time I was so busy I didn't think of it at all.

By Mr. Yauch.

Q How long did you act as secretary? A From the end of December until the time I left.

Q When was that? A January 1, 1927, to whenever I left. 40

Neale Travisano, cross.

Q When did you leave? A That I don't know.

Q I would like to have you look up account 746. (Witness refers to loan register.) Mr. Travisano, referring to the loan register or ledger of the Vallatese Loan Association, account
10 No. 764, is that your handwriting? A Yes.

Q Does that record show whether the loan has been paid? A It is left open.

Q Was it your duty to report when a borrower of the association failed to pay interest? A Yes, sir; that is why she received a letter right after she made that payment. If I thought she paid I wouldn't send her a letter.

Q Where is the letter? A That I haven't got.

20 Q Did you report the fact that this loan remained open from March 30, 1927, until August sometime when you acted as secretary of the association, did you report to the Board of Directors during that period that the interest hadn't been paid? A Yes.

Q You did report that to the association? A Mr. Azolli knows about that.

By the Master.

30 Q Did you report to the association that this particular loan was open and unpaid? A Not to the association.

Q Who did you report to? A To Mr. Azolli, our lawyer at that time.

By Mr. Yauch.

40 Q When did you tell Mr. Azolli that this loan was unpaid? A That I don't know. I can't answer that because I made so many reports

Neale Travisano, cross.

in that way and I always handed them over to him.

Q At the time that you reported that this loan 746 of Quaglia was unpaid and you reported that to Mr. Azolli, didn't you remember that you had given a receipt for that payment? A No, sir.

10

Q You forgot all about the fact that that loan was paid directly to you? A It wasn't paid directly to me, it was paid to my dad.

Q You gave the receipt for it? A I can't remember everything. When that slip was paid to me I just forgot about it and took up many other slips that were to be taken.

Q You remember the circumstances of the payment of the money represented by this receipt C. 8? A I never did think about it.

20

Q You can tell us now that an argument took place? A Yes, this just came up to my mind and I can say that it was paid that night.

Q You didn't remember that until this was called to your attention in these proceedings? A Yes, sir.

Q Did you have a regular form of letter to send out to people when they were in arrears on their interest? A I had two forms.

Q Did you consult Mr. Azolli before you sent out those forms? A No.

30

Q You just sent them out as a matter of course? A Yes.

Q Mr. Travisano, I show you a batch of deposit slips of the Vallatese Loan Association which have been marked in evidence and call your attention to slip No. 607 dated March 16, 1927, and ask you whether you receipted for the payment of the money represented by that slip?

A My signature is on the slip.

40

Neale Travisano, cross.

Q Is that your signature? A Yes.

Q Your signature appears throughout those slips? A Yes, sir.

Q I show you another batch starting March 30, 1927 No. 806 and ask if your signature appears on those slips? A Yes, sir.

10 Q I call your attention to all of these slips and ask you if it isn't a fact that throughout these slips your signature appears on these slips? A Yes, they do.

By the Master.

Q When you say signature you mean your initials, don't you? A Yes.

By Mr. Yauch.

20 Q Did you total up the amount of these slips after you received them? A I did.

Q Did you check up the amount of the slips with the amount of money that was deposited in the bank? A No, sir, I never checked up with the amount of money that was in the bank, because I never got the bank book to check it up.

30 Q Wasn't it your duty to check up the total of the deposit slips with the bank deposit for that particular night? A It might have been my duty, but I didn't get a chance to get hold of the bank book to check up.

Q Then you never really did check up the bank deposits with the total of deposit slips for any meeting night? A I couldn't, I asked for the book quite a few times, he told me once he had it at the shop and once he had it home. I asked him a few times, he told he would have it that morning at the shop. I would go down to the shop and he would tell me he forgot the
40 book home.

Neale Travisano, cross.

Q I show you one batch of books which have been marked in evidence as Exhibit C. 3 numbering twenty-six and ask you to refer to them and see if it isn't a fact that you receipted on numerous occasions for the payments of money to the association? A It is only a short while, according to this.

10

Q What period? A Eleven times.

Q On what book? A Book 718.

Q You started to receipt for payments on what date? A 13th to the 16th of March 1927.

Q Until practically the time that you resigned? A Until July 13, 1927.

Q The same is true throughout these pass books, isn't that so? A This one is from March 16th to July 29th.

Q Will you look through them generally and see if that isn't so all the way throughout the pass books referred to as Exhibit C. 3?

20

By the Master.

Q How did it come that you receipted on these particular books? A There were so many errors being made on the numbers that the people put on the slips that I made up the slip myself and sometimes I would enter it in the book myself and passed the money and the slip over to the treasurer.

30

By Mr. Yauch.

Q In other words, you gave the borrower from the association a receipt in the pass book for the amount of money represented by that particular receipt? A Yes.

Q When did you first learn of the shortages in the accounts of the association? A In August.

40

Neale Travisano, cross.

Q That was the first time? A Yes, sir.

Q When did you first see the report of the Department of Banking & Insurance marked Exhibit C. 1? A I don't remember when I first saw it.

10 *By the Master.*

Q With reference to the time you swore to it, how long before that had you seen it, a week or three days or three weeks? A It might have been a week and it might have been more, I don't know.

By Mr. Yauch.

20 Q Would you say it was on the date of this affidavit annexed to this report? A It might have been a day or two before, I don't know.

Q If the date was put on the affidavit and you signed the affidavit that was probably the day that you saw the report, isn't that so? A It might have been.

Q I call your attention to this Exhibit C. 1, the last page, wherein the items "shortages and assessments" appear—\$1,777.03, doesn't that appear as being an item of shortage in the association? A It does.

30 Q Did you report that to the Board of Directors of the association? A I didn't know of that shortage.

Q You signed the report? A I did, but I didn't read it through.

Q You signed it but you didn't read it? A No.

40 Q Isn't it a fact that if you signed this report that it was then that you started to receipt for payments to the association? A No, it was in March.

Neale Travisano, cross.

Q Isn't this report dated March? A Yes, but this report is the report from Trenton.

Q I am talking about this report, you signed that report? A No, sir, my signature isn't on this report.

Q Isn't it a fact that after you signed the affidavit annexed to this report Exhibit C. 1, that you started to receipt for payments made to the association? A No, sir. 10

Q Referring to this batch of books that you have referred to before, marked C. 3, tell us when you first receipted for payments? A March 16th and I think there's one in here March 9th.

Q You started to receipt for payments as evidenced by these batches of books marked C. 3 in March, 1927, isn't that so? A Yes.

Q And the affidavit to the report of the Department of Banking & Insurance marked C. 1 was made in March, 1927, wasn't it? A Yes. 20

Q You referred to the fact that there was a surplus of moneys on hand, how did you know that was a surplus? A That money was surplus coming in on slips that were made up wrong and at the end of the year when they paid up they would be say about \$12.00 over and they would come in to pay \$24.00 and on my general ledger they would only have to pay 30 \$12.00, so, of course, I couldn't hand those \$12.00 back to the payer so I collected those \$12.00 and they were put in the safe and when somebody was short I was asked for that money and I would make up the difference.

Q Then you mean that the total of the money was greater than the total of the deposit slips? A At times.

Q How do you know that, if you didn't know what the total of the money was as you said be- 40

Neale Travisano, cross.

fore? A At the end of the night I would know and according to my general ledger I would know that I was supposed to be \$12.00 over.

Q You checked the amount of money received at a meeting night with the total of the deposit slips? A Yes.

10 Q Do you know why the directors were so angry and boisterous as you have related, on the meeting night of August, 1927, when the books were demanded? A Due to the death of Pennell.

Q Pennell died sometime before that, didn't he? A That I don't know, I thought that was the cause of it.

Q Mr. Pennell died early in July, didn't he? A I don't know the cause of that.

20 Q At that time do you say that the books were in the safe of the association? A If they weren't in the safe of the association they were down at Mr. Fay's.

Q You said in your direct testimony that the books were in the safe at the time the directors demanded them, do you mean to change it now? A The first time they demanded the books they were in the safe.

Q They weren't at Fay's office? A No, sir, not then.

30 Q When was then? A I don't know.

Q How long after Pennell's death was it? A August 3rd.

Q Isn't it a fact that the Board of Directors were angry and boisterous, as you say, because of the fact that you didn't advise them of the shortages as indicated in this report C. 1 of the Department of Banking & Insurance? A No, sir.

40 Q After you arrived at a total of the payments made on a pay night to the association,

Neale Travisano, cross.

wasn't it your duty to check that total with the deposit in the bank? A I stated before that I couldn't get the bank book and I couldn't check it up.

By Mr. Ungaro.

Q You testified that you left the note at Mr. Azolli's office stating what the shortage was, how did you know about the shortage? A After I had taken the books to Mr. Fay I asked him if there was any money missing and he said he would let me know more and after about a day or two, he told me there was a shortage and I went to Mr. Azolli and I told him there was a shortage since March and I put down the figures what I thought it was. As he wasn't there I made out a note stating that since March there had been a shortage. 10 20

Q How much was that shortage, if you remember? A I can't remember.

Q Where did you get the figures? A From the accountant.

Q Which accountant? A Mr. Fay.

Q In referring to these slips, all the slips that are marked here and all the other slips that were presented the night of the meeting, what was done with them and the money? A They were handed to the treasurer. 30

Q And at the end of the meeting what became of those slips? A I would take the slips from the cigar box, because that was where the cashier would leave them, and I would enter them in my book.

Q And the amount of the collection was taken from the amount of the slips that were turned over to you? A Yes, sir. 40

Gaetano Trivisano, direct.

Q And the money that you received on the books on which your initials are, what was done with that money and the slips accompanying the books? A The money and the slips were handed over to the treasurer and he would look in the book and see what was supposed to be paid and
10 then he would just hand back the book.

By Mr. Yauch.

Q When did Mr. Fay give you the information as to the shortages? A That I don't know, I can't remember.

Q How long before you resigned as secretary? A It might have been a few days later or a week later. I don't know when I resigned.

20

GAETANO TRAVISANO, witness sworn on behalf of the defendant, not being able to sufficiently understand English to answer questions put to him, his examination was conducted through William V. Azolli, an interpreter duly sworn by the Master.

Direct examination by Mr. Ungaro.

30

Q Where do you live, Mr. Trivisano? A 60
Hayes street, Newark, N. J.

Q You were president of the Vallatese Loan Association? A Yes.

Q How long have you been president? A
From the time of its incorporation.

Q Who was the treasurer of the association?
A The first one was Vito Vennino for two or
three weeks and then Frank Trivisano and then
40 afterwards Rocco Pennell.

Gaetano Travisano, direct.

Q How long was Rocco Pennell treasurer of the association? A Two or three times when Vito Vennino went to Italy.

Q Was he treasurer between January, 1926 and July, 1927? A Yes, the books show it.

Q When did Mr. Pennell die? A July 2nd or 3, 1927. 10

Q On that day did you have a conversation with Stanco and Dantico and Travisano? A No, sir.

Q Did you go to the Central Railroad? A I don't remember, but I think it was the day after we went down to get the tickets at the Central Railroad.

Q At the time when you got the tickets of the Central Railroad, did you have a conversation with these three men? A No, sir, all we talked about was the tickets. 20

Q Did you tell them that the treasurer, Rocco Pennell, was short \$1,000.00 in the loan? A No, sir, nothing.

Q Did you know at that time if he was short or not? A If there had been a shortage, I wouldn't have bought four shares in the month of June.

Q What do you mean you bought four shares? A If I had thought that there had been any shortage, I wouldn't have bought shares, because it was for my interest to make money. 30

Q How much money did you personally have invested in the loan association? A Between I, my family and brother pretty near \$6,000.00.

Mr. Yauch: I object to that.

Q How much did you personally have? A About \$3,100.00 or \$3,200.00, in shares. 40

Gaetano Trivisano, direct.

Q Mr. Trivisano, do you remember when you got the report from the state? A When I went up to the association I found a package, a large envelope and at that time there was Rocco Dantico and Frank Trivisano.

10 Q When was it, do you remember? A That I don't remember.

Q What did you do with the report? A I took the report and showed it to Dantico and Trivisano and I said "Here's a report that has come in, look it's first class mail," and so it was opened and they saw it and they understood what it was.

20 Q What did you do with the report afterwards? A I went and opened the safe and put it in the safe. One or two weeks later at the association Mr. Azolli came up, I showed him the report and I asked "Mr. Azolli what about this report?" and he said "Everything is O. K., fine."

Q What else happened to the report after that? A The secretary took the report and put it in the safe and that was the end of it.

Q What was the custom of the directors in regard to having notes and applications signed?

30 Mr. Yauch: I object to that because it is not material as to what the directors did.

A Over there there was such a situation it was all mixed up. Everyone signed, a lot of people took loans and notes.

40 Q What happened when somebody made application for a loan? A The applications were such that when the notes came in there those that were made there were produced and about half-past nine when the directors met action was taken upon them.

Gaetano Trivisano, direct.

Q Did the directors ever go out and get applications and notes signed? A Yes, every one, if you want names of people I will give you the names.

Q Can you give us the names of some of the loans that were signed outside of the association's office and by whom they were brought in? A Rocco Cereste brought loans in. 10

Q Did you make this list from the books of the association? A Yes.

Q Give me some other names? A Generosa Gialenella gave them the papers and brought them home.

Q Tell us of someone else. A Antonio Schiavino and Pasquale Stanco signed eight notes in the association, nobody being present.

Q Who else, if you remember? A Rocco Branco made a loan of the association to his wife without his wife being present; Pasquale Ippolito, Alfonso Arminio went over to get his signature; Alessandro Tedesco went, but I don't know for who. Mr. Azolli came up and brought some of them signed from his office, one in the name of Schaeffer and he took the check. 20

Mr. Ungaro: It has been testified that there was a resolution passed authorizing the President to investigate all the applications and I am going to prove that although that resolution is in the book, the directors themselves went out and got the applications and passed them the same date that they got the applications. When they were in the place of business they took them in the place of business; when the people were ready to sign some director would go out and have them sign. 30 40

Gaetano Trivisano, direct.

Q In regard to the note of Evangelisto, did you have that signed and if not who brought it in? A Rocco Pennell.

Q And the Tony Caprio note? A The same thing.

10 Q Were those new notes or were they renewals? A They were renewed three or four times.

Q What about this Marianinna Pennella note, who brought in this note? A Rocco Pennell.

Q Were you present when the note was signed by Marianinna Pennella? A No.

Q Was that a new loan or a renewal loan? A Sylvia Pennella had five loans.

20 Q Who took the signatures to these five loans? A This was in the beginning, then there were three notes and the signatures weren't on there of Tedesco because the law was that those who were board of directors or stockholders in the company couldn't sign the guarantee and that is how their signatures aren't on the note.

Q Who took the notes to the association, who brought them in?

Mr. Yauch: I object to that because it is not material in this matter.

30 Mr. Ungaro: We have demanded the production of these notes and checks, I will give you a list of them, I want to know if they are here now.

Mr. Yauch: They are all here.

The Master: Is it claimed that Cuzzo endorsement is a forgery?

Mr. Ungaro: Yes.

Q Who got the notes of Giovanni Gialenella?

40 A Giovanni Gialenella came over to get them.

Gaetano Travisano, direct.

Q Who got the signatures of Generosa Gialenella on this note for \$300.00, dated April 13, 1927? A The Board of Directors were present and Generosa Gialenella came and said he wanted to renew the loan. His son brought it and he gave it to Generosa Gialenella and got the signatures without anybody going and the notes came back. 10

Q What is the name of the one that Mr. Ceresta got? A Rocco Ceresta came over and made a loan of \$200.00 in the name of his wife. He took the paper and went out, nothing being said and came back and presented it and got the money. The Board of Directors passed it without knowing who signed it.

Q Mr. Travisano, what was done at the meetings of the Board of Directors when these notes were passed? A Whatever loans were had there were taken at the association and those which were brought in by the directors, were taken and presented to the Board for discussion and passed on pay night. 20

Q They were passed the same night of the meeting? A They were passed and some maybe they wouldn't pass, but they generally passed.

Q Before giving out the money before making out the check, were all the notes presented to the Board of Directors? A Always. Whenever a check would go out I would mark on the application "Paid," but Mr. Azolli told me to stop that it wasn't good. There's lots of them signed that way. 30

By the Master.

Q Who made out the checks to borrowers? A Mr. Azolli, the secretary, Schiavino, Stanco, whoever would be there. 40

Gaetano Travisano, direct.

Q Take that piece of paper and sign your name there, Gaetano Travisano.

(Witness writes name.)

Q Underneath it write out Tony Caprio.

10

(Witness writes name.)

Q Right out Vingenzo Cuzzo and John Evangelisto.

(Witness writes.)

Q Who reported to you, Mr. Travisano, when people were in arrears? A We used to see it by the book.

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By Mr. Ungaro.

Q When you say "we," what do you mean by "we"? A The secretary, and we used to sign and sent out letters.

Q Was that the form letter? A Yes.

Q When they didn't pay what did you do? A After we would write to them and there was no response or anything, we would report it to the Board of Directors and discuss it.

30

Q Who decided when to sue? A In the evening at the meeting it would be presented to the Board and I would explain that this man was in arrears, this other doesn't show up, this other one doesn't care and if they felt like it they would order suit and who they didn't feel like suing they wouldn't sue.

Q Who brought the papers down to the lawyer's office? A They used to make me go down two or three times a week.

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Gaetano Trivisano, direct.

Q When this Cuzzo note came in question and suit was started did Mr. Azolli, the counsel for the association, tell you that Mr. Cuzzo claimed that his signature was a forgery? A That I don't remember.

Q Did you tell Mr. Azolli that Cuzzo had signed in your presence? A No, sir. 10

Q Did you go out and find out the addresses of these people? A No, sir.

Q What did you do when you brought the notes down to the lawyer on which the directors wanted to start suit, what did you bring down? A I would bring him the notes and the applications and would say "Sue these people, and ask for the costs with it."

Q Mr. Trivisano, I believe Mr. Schiavino testified that he never had any notes signed by anybody, do you remember which note he brought? A Schiavino signed for his cousin. 20

Q What is her name? A Adelina Bove, he signed the note himself for her. He went to the house, but he brought it back signed.

Q I believe Amedeo Stanco also stated that he didn't have any notes in the association, do you remember of any? A No.

Q I show you check made to the order of Amedeo Stanco for \$200.00, endorsed A. Stanco, Amedeo Stanco and Joseph—? is this Amedeo Stanco's check? A Yes. 30

Q That is his note, is it, that was discounted in the association? A Yes.

Q Do you remember, Mr. Trivisano, who brought in the application for note of Katerina Avido? A The lawyer brought it from downtown.

Q Do you know who brought in the note of Frank Lynn No. 637? A Nobody brought in 40

Gaetano Travisano, direct.

the note of Lynn; Pasquale Stanco made four loans at one time.

Q Was that one of the four loans? A They renewed the four over again.

Q No. 637 of Frank Lynn was brought in by Pasquale Stanco? A Yes.

10 Q Who brought in the note of Virginia Stanco? A Nobody brought those notes in, he made those in front of the Board of Directors and the Board of Directors gave them the money.

Q And also 639 of Louise Stanco? A Same thing.

Q And 640 Antonio Callanno? A Same thing.

Q These notes were dated March 9, 1926, all four of them? A Yes.

20 Q They were renewed on January 26, 1927, by notes 852, 853, 854 and 851? A Yes.

Q Who brought in No. 904 signed by Angelo Cereste? A Rocco Cereste.

By the Master.

Q Is it alleged that this Cuzzo note and the application is a forgery?

30 Mr. Ungaro: That is what is claimed.

By the Master.

Q I show you an application for loan No. 744 and ask you if you saw Vincenzo Cuzzo sign that? A No, sir; the only thing I did I made a cross there where Cuzzo was to sign when I gave it to Rocco Pennell.

Q Who made out the endorser's statement? A I made it. I filled in the first part of the application and also filled in the endorsements

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Gaetano Trivisano, direct.

and gave it to Mr. Pennell and marked it where Cuzzo was to sign. After the Board of Directors had passed it I filled it in.

Q Did you fill out the application on loan No. 857? A Yes, I wrote in the applicant.

By Mr. Ungaro.

10

Q I show you application 857, there are two initials on the bottom, what does that mean? A This means I gave it to Pennell Rocco, to have it signed.

Q When did you first find out that there was a shortage in the association? A I don't even know it today if there is a shortage.

Q Tell us what happened when the question of the books came up. A The question of the books was on a Friday. I received a special delivery letter, it was in the month of August, I think. I got a special delivery letter from the lawyer at two o'clock in the afternoon that I had to call the Board of Directors at six o'clock that evening. I got the special delivery and went out and advised the Board of Directors to be on hand. By consent of the Board of Directors Mr. Fay had the books; the books were on Belmont avenue. My boy was working. I had advised the Board of Directors to be there at six o'clock that evening. I saw that my boy wasn't home, so I went up to the club and I asked Stanco and Schiavino, "My boy hasn't got back yet and the books are on Belmont avenue; go down around my house, see if my boy is home and go and get the books." They went to my house and waited a while and came back with my boy. They went to Belmont avenue and got the books. The lawyer had written that there was to be someone there from the insurance

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Gaetano Travisano, cross.

company. They came up there with the books, the Board of Directors started opening the books and now the books are sequestered. They wanted the notes that night and I wouldn't give them to them. I went to the lawyer the next morning to get advice and I was told to go and give them
10 the notes. The books were taken the night before.

Q Since then you haven't been President any more? A I went up there to deliver the notes and without my consent, I didn't even give any resignation, I got a letter from Mr. Schiavino without any authorization. I called a special meeting of the Board of Directors and the only directors that came were Amedeo Stanco and Pasquale Stanco and maybe Frank Travisano
20 came.

By the Master.

Q Who wrote the name "John Evangelisto" in the body of that check No. 841? A I don't know who wrote that, it isn't my writing.

Cross examination by Mr. Yauch.

Q Do you know John Evangelisto? A Yes.
30 Q How long have you known him? A I knew him in Italy and I knew him in America.

Q How long has that been? A Fifty-eight years.

Q Have you been very friendly with him? A Yes, we are townsmen.

Q Did you ever see him sign his signature at any time? A Yes, he was cashier in the society, I have often seen him.

Q Referring to Exhibit C. 13, is that John
40 Evangelisto's signature? A No.

Gaetano Trivisano, cross.

Q Referring to Exhibit C. 13, the note, is that John Evangelisto's signature? A I don't know, it looks something like it, it is somewhat similar.

Q (Referring the witness to the application part of that exhibit), is that John Evangelisto's signature? A I don't know who signed that, it is written John Evangelisto. 10

Q You know the signature of John Evangelisto, do you not? A I don't think so, I am not sure.

Q You are familiar with John Evangelisto's handwriting? A He writes kind of trembling now.

Q Did you see the note, the application part of Exhibit C. 13, before you signed the check? A How was I to see it, Pennell took the note over and got it signed. 20

Q Did you see the note and application at that time? A I saw that it was signed John Evangelisto and I didn't know whether the signature was his or not, the Board of Directors afterwards passed it.

Q I call your attention to Exhibit C. 7 and ask you who wrote that word "Pagato" in the corner? A I wrote that. 30

Q What does "Pagato" mean in English? A That it has been paid.

Q Was the loan actually paid? A I mean that the check was paid out to the man.

Q You don't mean that the loan was paid? A No, sir.

Q When did you put that word "Pagato" on that? A The night that we paid out the checks. The lawyer said, "Stop, don't put that down because it is no good." 40

Gaetano Travisano, cross.

Q When did you first see the report of the Department of Banking & Insurance marked C. 1? A After it came by mail I put it in the safe.

Q What month was that? A When it came, I don't remember the month.

10 Q Was it before Pennell died or after? A I don't know it is two years now.

Q Do you know when Pennell died? A Sure.

Q What year? A Last year.

Q Did you have this report when he died? A I don't remember.

Q Do you know whether or not you had this report C. 1 at the time you went down to the Central Railroad with Dantico and Travisano and the other man? A I don't remember.

20 Q Weren't you paid for investigating applications for loans? A No, sir.

Q Isn't it a fact that at the meeting of January 7, 1927, you kicked because you had so much work to do on investigating applications and it was then that the resolution was put in the books to pay you an extra \$100.00? A They gave me \$100.00 more to go up there and clean around and light the stove for them and go down to the lawyer's office and see that he didn't

30 handle any more of our papers.

Q Did you see your son write those minutes of January 7, 1927? A I can't remember, I don't know anything about it.

Q Weren't you present at that meeting of January 7, 1927, when they authorized that payment of \$100.00 to you? A Yes.

Q You say you took this report from the Department of Banking & Insurance marked C. 1 and showed it to Mr. Azolli? A Yes.

40 Q And he said it was fine, O.K.? A Yes.

Gaetano Trivisano, cross.

Q Adeline Bove is a cousin of Schiavino, isn't she? A Yes.

Q You say that Mr. Azolli had some applications for notes signed outside the office? A Yes.

Q Did you ever let anybody that wasn't a director or officer of the association take notes out to have them signed outside? A Gialenella the Board of Directors gave permission to. 10

Q Was that the only one? A That is the only one I remember.

Q Did you say the handwriting appearing in this application of Vincenzo Cuzzo is your writing? A The handwriting at the top part of the application is mine.

Q Whose handwriting is that below the words "Endorser's Statement"? A When this was brought to me there were only signatures on there as it was the paper I filled in the application and the endorser's statement. The handwriting in the application and in the endorser's statement is in my handwriting. 20

Q Did you give this, referring to C. 14, to Rocco Pennell to take care of? A The way the other members of the directors took applications, he took applications to sign.

Q You told us that on Exhibit P. 13 the "P. R." on the left-hand corner indicates that you gave this to Rocco Pennell, is that so? A Yes, sir. 30

Q Did you notice that the endorser's statement is not filled in on this application C. 13? A That is the way he brought it to me and that is the way the Board of Directors passed it.

Q Did you give the applications of Vincenzo Cuzzo or Marianina Pinnella and Tony Caprio to Rocco Pennell? A Yes, sir. 40

Gaetano Travisano, cross.

Q How is it that you haven't got the "P. R." on the Cuzzo and Caprio applications? A It was a question of family and we took it in such a good friendly way.

Q Did you ever receipt for moneys paid to the association? A Whenever Mr. Azolli gave me money he made me sign receipts, I don't know what those receipts were.

By the Master.

Q Did you sign receipts for any other money you got from members of the association? A Mr. Azolli made me sign a couple of those, I don't know what he made me sign.

Q Except the receipts that Mr. Azolli gave you to sign, did you sign for any other members of the association? A I don't remember.

By Mr. Yauch.

Q Do you know why it was that your son started to receipt for payments in March, 1927? A I don't know anything.

Q Isn't it a fact that you used to sign receipts in the pass books of certain borrowers of the association? A Once or twice, when the treasurer wasn't around.

Q Do you know why it was that the application of Tony Caprio wasn't filled in at all? A I don't know, they belonged to Rocco Pennell.

Q You let Rocco Pennell do whatever he wanted to do with it, is that it? A Whatever the Board of Directors did with the application that is the way we did with him.

Q You didn't find any fault with this application at the time you signed the check for the amount of the loan, did you? A When I pre-

Adelina Bove, direct.

sented it to the Board of Directors they found no fault and I passed it and gave them the check.

Q Did you do anything at all about the fact that the application wasn't filled in? A I presented it to the Board of Directors and said, "Here's a renewal of Rocco Pennell, here's the application," they passed it, that was the end of it. 10

Q Do you know Tony Caprio? A I don't know him.

Q Do you know Vincenzo Cuzzo? A If I saw him on the street I wouldn't know him.

By Mr. Ungaro.

Q Whenever you receipted in the books of the borrowers, what did you do with the money that you received? A I would generally be there about six or six-thirty, and if someone came there around that time I would take his money, receipt his book until the treasurer would come. When the treasurer came over I would turn the money over to him together with the deposit slips. 20

ADELINA BOVE, a witness sworn on behalf of the complainant, not being able to sufficiently understand English to answer questions put to her, her examination was conducted through William V. Azolli, an interpreter duly sworn by the Master. 30

Direct examination by Mr. Yauch.

Q Where do you live? A 44 Palm street, Newark, N. J. 40

William V. Azolli, recalled, direct.

Q You are a cousin of Vito Schiavino? A Yes.

Q Did you make an application for a loan from the Vallatense Loan Association? A Yes.

Q Do you remember signing the application? A Yes.

10 Q Where did you sign it? A At the Vallatense Club, the president was there when I signed the application.

By Mr. Ungaro.

Q Is this your signature? A Yes.

Q You turned the check over to Mr. Schiavino? A Yes.

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WILLIAM V. AZOLLI, recalled.

Direct examination by Mr. Yauch.

Q Did you dictate the minutes of January 7, 1927, referring to the \$100.00 payment to the president for investigating loans? A No they were shown to me.

30 Q Were they written at the time you saw them? A They were written when I saw them and they asked me if it was all right and I said it was all right.

Q Do you know why that resolution was passed at the time? A It was passed one meeting when I wasn't there. The following meeting I was there and they said Mr. Travisano was doing a great deal of work and I backed him up and I said he was doing a lot of work, coming to my office, etc., and I thought the man deserved the money. They said "We passed a

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William V. Azolli, recalled, direct.

resolution giving him \$100.00"; I said "There must be investigation made, a lot of people make the loans and the loans are granted; then the people move and we don't know where they moved to and there has to be an investigation made as to where they are." The Board said if that was so they would want investigations made at the time the loan was made. 10

Q Do you know who was secretary of the Vallatese Loan Association in November, 1926?

A They had a man named Opitz, who rarely came around and the man who took full charge of the books, entered loans, entered collections, carried on meetings of the association and recorded everything that was to go on record was Mr. Neale Travisano.

Q At the time the report was filled in to the Department of Banking & Insurance in November, 1926, was there any attempt made to get Mr. Opitz to sign that report? A None whatever, Mr. Opitz was never around much. 20

Q Was there any question about Mr. Neale Travisano being secretary? A Not at all. He came to my office and I told him he would have to fill it in. I asked him about his books and he said he was getting Mr. Fay to go over them. He went up and I asked him to verify all his statements and go over the books and he said "Mr. Fay has gone over them, I think it is correct" and I said "All right, you will have to make this affidavit if necessary." 30

Q Do you recall whether or not Neale Travisano reported that the interest on the Quaglia loan was unpaid? A He never called my attention to it.

Q When did you first hear about the Quaglia loan being open? A Right after Neale Trav- 40

William V. Azolli, recalled, cross.

isano was forced to resign; when Mr. Travisano resigned I ordered a checking up on all loans; upon a letter forwarded to the Quaglia woman I think she came in and brought the receipt. That was the first time we knew that the loan was paid.

- 10 Q With reference to the Evangelisto loan, when did you hear about that the first time? A First when it was brought to me for suit, then I didn't hear any more from it and then we started an investigation on it and I found it was still in existence.

By the Master.

- Q That was the loan Mr. Travisano brought down to you and you told him there wasn't any address? A There wasn't any address and he took them with him and said he would investigate or something and he never brought them back.

By Mr. Yauch.

Q Mr. Azolli, do you recall Gaetano Travisano showing you this report from the Department of Banking & Insurance marked Exhibit C. 1? A I have never seen that report.

- 30 Q Did you ever tell Mr. Gaetano Travisano that that report was fine and it was O. K.? A No, sir.

Q Did you ever take any notes or applications to be signed by people before money was loaned? A I never did anything of the kind.

Cross examination by Mr. Ungaro.

Q Mr. Azolli, try to remember, didn't you ever see that report C. 1? A No, sir.

- 40 Q You're sure about that? A Positive.

Pasquale Stanco, direct.

Q Do you remember when Michael Rosano was with Mr. Travisano down to your office with this report? A They never were at my office with that report. Mr. Rosano never came to my office.

Q So you are positive Mr. Rosano never came to your office and showed you this report? A 10
Mr. Rosano came to my office after this report, but they never had that report, never showed it to me.

Q You never saw that report at any of the meetings? A No, sir, I never had it.

PASQUALE STANCO, sworn.

Direct examination by Mr. Yauch. 20

Q You live where? A 85 Lillie street, Newark, N. J.

Q Did you hear the testimony of Neale Travisano this morning that you brought four loans into the association? A I wasn't there, I didn't hear it; I did bring four loans.

Q Where were those papers signed, do you know? A At the office of the Vallatese Loan Association. 30

Q Do you know whether those loans have been paid? A Yes.

By Mr. Ungaro.

Q Known by numbers 637, 638, 639, 640, that was on the 9th of March, 1926? A Yes, sir.

Q Then you renewed those loans, didn't you, on January 26, 1927? A Yes.

Q They were the same loans by numbers 851, 852, 853 and 854? A Yes. 40

Rocco Ceresta, direct.

Re-direct examination by Mr. Yauch.

Q You are a director of the Vallatese Loan Association? A Vice-president.

Q Also a director? A Yes.

10 Q How long have you been a director? A Ever since the loan association was started.

Q Do you know whether or not it was a common practice to take the notes out to be signed outside of the association? A Not outside, in the office.

Cross examination by Mr. Ungaro.

Q Didn't you take any of these out to have them signed? A No, sir.

20 Q Didn't any of the other directors take notes out to have signed? A Not that I know of.

Q Did Mr. Pennell take any of the notes out and have them signed? A I don't know.

Q Do you know if Mr. Schiavino brought any out? A He did not.

Q Do you know if Mr. Cuzzo took any out? A I don't know.

30

ROCCO CERESTA, sworn on behalf of complainant (examination through William V. Azolli, interpreter duly sworn).

Direct examination by Mr. Yauch.

40 Q Did you take any of the notes out to the order of the Vallatese Loan Association outside of the office to be signed by people? A No, sir.

John Bove, direct.

Q Do you remember a note made by Generosa Genella? A I don't remember, there were so many loans.

Q You didn't take any of the loans outside of the office of the association to be signed? A No, sir.

10

Cross examination by Mr. Ungaro.

Q Who was the woman up in Irvington that you went to have the note signed, what was her name? A Nobody.

Q What about Angelina Ceresta, did you take that note to have it signed? A I took my wife up to the loan to sign.

Q Do you know a woman by the name of Pinata? A Yes, I know her.

20

Q Laura Pinata? A Yes.

Q Isn't that one of the notes you had signed? A No, she came down to the loan, she came to my house and from my house I took her to the loan.

JOHN BOVE, sworn.

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Direct examination by Mr. Yauch.

Q Did you ever take any applications for loans to the Vallatese Loan Association or notes made to the order of the Vallatese Loan Association outside to be signed? A No, sir.

Q You are a director of the Vallatese Loan Association? A Yes.

Q How long have you been? A Since the loan started.

40

Alessandro Tedesco, direct—cross.

Cross examination by Mr. Ungaro.

Q Do you know of anybody else who took notes out? A No.

Q Do you know if they took them out or not? A No.

10 Q Do you remember Joseph Mastrangelo? A Yes.

Q Did you take that note to him? A He came to the loan himself and signed it.

ALESSANDRO TEDESCO, sworn.

Direct examination by Mr. Yauch.

20 Q You are a director of the Vallatese Loan Association? A Yes.

Q How long have you been a director? A All the time.

Q Did you ever take any applications or notes of the Vallatese Loan Association outside of the office to be signed? A No.

30 *By the Master.*

Q Do you know of anyone else who ever took them outside of the office of the association to be signed? A No.

Cross examination by Mr. Ungaro.

Q Did Pennell ever bring at the meetings some applications and notes that he had taken out to have people sign? A No.

By the Master.

I want photographic enlargements made of these three or four loan applications, together with all the papers including the checks accompanying the applications. I would suggest that the photographic enlargement be about four times normal size. Then I want photographic enlargements made of the papers the paper that I have marked "October 1, 1928, F. C." and the signatures on it and I want counsel to obtain some of the handwriting of this man who committed suicide, the treasurer; and I want several samples of his handwriting enlarged four times.

10

I will say now that this case resolved itself largely into a question as to whether these forged applications and forged signatures to checks were written by any of the parties now sought to be charged. If I determine that they are, then, of course, I will disregard all testimony that they have given on the ground that it is proven to be false and if they are not proved to have been made by any of these people, the matter will then remain open in my mind and I will have to go further into the evidence and determine what is to be done. I will say now that if I find that the defendant, Gaetano Travisano, has written any of these which he denies writing, any of the signatures or indorsements and I find that he has, I will decide against him on the whole case.

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40

Anthony Schiavino, recalled, direct.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>VALLATESE LOAN ASSOCIATION, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>GAETANO TRAVISANO, <i>et als.,</i> <i>Defendants.</i></p>	} <i>Continuation of Depositions.</i>
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Further examination of witnesses in the above-entitled cause, this 15th day of October, 1928, before Francis Child, a Special Master in Chancery of New Jersey, at his office No. 24 Commerce street, Newark, N. J.

20 *Appearances:*

Thomas G. Walker, appearing for Wolber & Gilhooly, solicitors of complainant.

T. Mancusi-Ungaro, appearing for Samuel I. Kessler, solicitors for the defendant.

ANTHONY SCHIAVINO, recalled for further examination.

30 *Direct examination* by Mr. Walker.

Q You are associated with the complainant, are you not? A Yes.

Q You have associated with Mr. Travisano, the defendant in this matter, have you not? A Yes.

Q Have had occasion to observe his handwriting? A Almost every Wednesday night.

40 Q You are familiar with his handwriting? A Yes.

Anthony Schiavino, recalled, cross.

Q Are you in a position to say that you would recognize his handwriting? A Yes.

Q I show you deposit slip and ask you whose handwriting it is? A It is in the handwriting of Gaetano Travisano, the defendant in this matter.

10

(Deposit slip on loan 721 Vallatese Loan Association, dated 2/2/27, Tony Caprio, marked "Paid in Full," amount—\$274.00, offered in evidence and marked Exhibit C. 1 of Oct. 15, 1928.)

Q Mr. Schiavino, I show you this deposit slip and ask you in whose handwriting it is? A Gaetano Travisano's.

20

(Deposit slip on loan 720, Vallatese Loan Association, dated Newark, N. J., 2/2/27, Evangelisto G. for \$300.00 principal, \$28.00 interest, total \$328.00, marked "Paid in full," marked Exhibit C. 2 of October 15, 1928.)

Cross examination by Mr. Ungaro.

Q These slips represent the checks that the association gave for the renewal of the note, does it, on February 2, 1927? A I couldn't tell you.

30

Q You remember that in the testimony there was shown on the 2nd day of February, 1927, the note was renewed of both Caprio and Evangelisto and that note was re-renewed, I believe, in August or July?

40

Anthony Schiavino, recalled, cross.

By the Master.

Q Where did you get these papers from, Mr. Schiavino? A From the slips of the association.

10 Q You went through the slips of the association and you found these two? A Yes.

By Mr. Ungaro.

Q You are positive that this is Gaetano Travisano's handwriting? A Yes, I checked up on other writings.

Q You say you checked up on other writings? A I am positive because I checked up on other writings and I have seen him write.

20 Q How many times did you see him write? A Every Wednesday night.

Q You were looking at him each night? A When he made up applications.

Q You say when he made applications, you checked them up, you were present when he took the applications? A Not when he took them, when he presented the applications.

Q How do you know he wrote the applications? A He said he made them himself.

30 Q Which application, for example? A All applications he presented he would say, "Here's an application I filled in."

Q There were other people that were giving applications, too, weren't there? A Not that I know of.

Pasquale Stanco, recalled, direct—cross.

PASQUALE STANCO, recalled for further

Direct examination by Mr. Walker.

Q Mr. Stanco, you have observed Mr. Travisano's handwriting? A Yes.

Q You are familiar with his handwriting? A 10
Yes.

Q I show you deposit slips which are respectively marked Exhibits C. 1 and C. 2 and ask you in whose handwriting they are? A Gaetano Travisano's.

Q You are sure of that, Mr. Stanco? A Yes.

Cross examination by Mr. Ungaro.

Q You also looked over when he took over the applications? A No, I can tell his handwriting. 20

Q You are very familiar with it? A Yes.

The Master: I will return these slips to Wolber & Gilhooly and I want Gaetano Travisano to go over to their office and examine these and then if he denies the handwriting, I will give him an opportunity to put his denial on the record.

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Gaetano Travisano, recalled, By the Master.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>VALLATESE LOAN ASSOCIATION, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>GAETANO TRAVISANO, <i>et als.</i>, <i>Defendants.</i></p>	}	<p><i>Continuation of Depositions.</i></p>
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Continuation of examination of witnesses in the above-entitled cause this 5th day of June, 1929, before Francis Child, a Special Master in Chancery of New Jersey, at his office, Room 1427, Federal Trust Building, 24 Commerce street, Newark, N. J.

Appearances:

Wolber & Gilhooly, by John H. Yauch, Jr., for the complainant.

Kessler & Kessler, by Samuel Kessler, for defendants, Gaetano and Neale Travisano.

T. Mancusi-Ungaro, Esq., for defendant, Michael Rosano.

30 GAETANO TRAVISANO, recalled.

By the Master.

Q Mr. Travisano, I show you a check dated February 2, 1927, for \$300.00, payable to the order of John Evangelisto and ask you if that is your signature on that check? A Yes.

Q Did you sign blank checks ever? A No, sir; only when they were filled in I signed them.

Q Whose handwriting is the John Evangelisto in that check in? A Three or four men put

40

Neale Travisano, recalled.

names on the checks, I don't know. The Vice-President, the Secretary, Treasurer and the other Secretary before wrote checks.

Q Do you know whose handwriting the \$300.00 is in? A I don't know.

Q I show you a check marked Exhibit C. 12 to the order of Tony Caprio and ask you if you know who wrote in the two hundred and fifty dollars in writing on that check? A I don't know, everybody filled them in. 10

Q I show you application for loan 857 signed by John Evangelisto and I ask you whose writing the three hundred in writing is? A I really don't know.

Q I show you application for loan 857 and ask you in whose writing the words, "Giovanni Evangelisto" after the word "applicant" is? A I wrote that. 20

Q Did you see John Evangelisto sign his name to that application? A No, sir; Rocco Pennell bring it back signed.

Q I thought you said in your direct examination that where you made out an application for a loan that you saw the man sign, is that right or not? A I prepared the application, then gave it to someone who the directors pointed out to go and get the signature. 30

NEALE TRAVISANO, recalled.

By the Master.

Q I show you check, Exhibit C. 13, payable to the order of John Evangelisto and I ask you if you know in whose handwriting three hundred in that check is? A I don't know, I haven't the least idea. It isn't mine, I know that much. 40

Neale Travisano, recalled.

Q I show you promissory note dated February 2, 1927, for \$300.00 and ask you in whose handwriting the three hundred is written out in that check, if you know? A That might be my handwriting.

10 Q Is the fifty weeks in your handwriting? A That may be mine, also.

Q I show you the loan No. 858 for \$250.00 of Tony Caprio and ask you in whose handwriting the fifty weeks and the two hundred and fifty are? A It looks like my handwriting.

Q Where you made out a note, did the borrower usually sign the note in your presence? A At times he would and at times he wouldn't because I just made out the note and let it lay on the side and just leave it there.

20 Q I show you the loan application No. 858 of Tony Caprio and ask you in whose handwriting the figures 858 and the date and the amount two hundred and fifty are in? A That isn't mine.

Q I show you check Exhibit C. 12 and ask you in whose writing, if you know, the two hundred and fifty is written out there? A I don't know, it isn't mine.

30 Q Who was it that made out the bodies of checks? A There were several persons who used to make them out, the lawyer, the President, Vice-President and some of the Board of Directors also made them out.

By Mr. Yauch.

Q Mr. Travisano, the check made out to the order of John Evangelisto, that was a renewal of that loan, wasn't it? A Offhand I can't tell you anything, by looking it up in the books I can tell you.

Neale Travisano, recalled.

Q Did you ever draw any checks of the Val-latese Loan Association payable to the order of John Evangelisto? A Not that I can remember, maybe I did and maybe I didn't.

Q You know John Evangelisto, don't you? A No, I don't know him.

Q Did you ever draw any of the checks of the association in your own handwriting? A I did at times. 10

Q Were checks of the association always drawn on the meeting nights or were they drawn at other times? A I don't know about that.

Q Is that check in your handwriting? A It is.

(Check of July 13, 1926, to the order of John Evangelisto for \$300.00 offered in evidence and marked Exhibit PA. 1.) 20

(Check of July 13, 1926, to the order of Tony Caprio for \$250.00 offered in evidence and marked Exhibit PA. 2.)

Q Was that in your handwriting? A Yes.

Q Who were those checks given to after you wrote them out, do you know? A I don't know.

Q On what day of the week did you meet at the time these checks were drawn in July, 1926? A Wednesday night. 30

Q Isn't it a fact that it was your usual practice to draw checks of the association on meeting nights? A No, sir; somebody else made them out before that.

Q Isn't it a fact when you did make out checks that you made them out on meeting nights? A Yes, sir.

Q Do you know whether or not July 13th, the date of these two checks marked Exhibits PA. 1 40

Gaetano Trivisano, recalled, By Mr. Yauch.

and PA. 2, was a Wednesday night? A I don't know.

Q Did you ever draw any checks of the association on any other day but a Wednesday? A I don't remember.

10 Mr. Kessler: I call the Master's attention on the record to the endorsements of these checks. You will observe they were redeposited to the Vallatese Loan Association which would seem to indicate that these were for renewal loans or for some other reason, as to why these moneys were returned to the Vallatese.

20 Mr. Yauch: I would also like to call the Master's attention that it is altogether possible for a borrower to receive a check and cash it with the cash that is in the till of the association at the time the check is drawn.

GAETANO TRAVISANO, recalled.

By Mr. Yauch.

30 Q Mr. Trivisano, you know John Evangelisto, don't you? A Yes.

Q Did you ever see John Evangelisto in the office of the Vallatese Loan Association? A No, sir.

Q And still you knew that apparently there was a loan made to a John Evangelisto? A I gave the application to Rocco Pennell.

40 Q You knew the application was there for the loan, didn't you? A Yes, the Board of Directors passed on it.

Gaetano Travisano, recalled, By Mr. Yauch.

Q Was it part of your duty to collect money paid by customers of the Vallatese Loan Association? A No, sir.

Q When you gave a receipt for money paid to the Vallatese Loan Association, you would receive that money, wouldn't you, for which you gave the receipt? A The treasurer received the money. 10

Q Would you receipt for payments in cash where the treasurer received the money? A Sometimes I made the slips and gave them to the treasurer and the treasurer got the money.

Q I show you Exhibits C. 2 and C. 1 and ask you if they are receipts for payments of moneys set forth on those receipts? A These slips show that the payment was made that night for \$250.00 principal and \$24.00 interest and here's the initial of the treasurer. He told me they were paid in full with this amount and I marked it paid in full. 20

Q As a matter of fact, you didn't know whether in one case \$274.00 and in another case \$324.00 was actually paid to the association, did you? A That was paid in part with the checks for the renewal loan.

Q Do you remember that the money was paid? A \$24.00 was paid in cash and the loan was renewed according to the checks which you have here. 30

Q What paid the \$24.00? A Mr. Pennell.

Q Didn't you think it strange that Pennell was paying interest on the loan made to Caprio and Evangelisto? A They were Pennell's loans.

Q Do you mean that Pennell actually got the money on these loans? A He brought the checks signed, he took the money the first time 40

Gaetano Travisano, recalled, By Mr. Yauch.

and he brought the notes back. Pennell was the treasurer, he did everything there.

Q You say that in the case of Exhibit C. 2 the receipt in the Evangelisto loan, that the check for \$300.00 was there at the time that this receipt was made out? A Yes.

10 Q The \$28.00 was also there at that time? A Yes.

Q I show you Exhibit C. 13 and ask you if that is the check for \$300.00 referred to on the receipt Exhibit C. 2? A That is the check.

Q Will you tell me why it was that the check wasn't cashed until thirteen days after the date of it? A It is up to the treasurer, I don't know anything about that.

Q Did you know the treasurer's handwriting? A I don't know.

20 Q Is that his handwriting, "John Evangelisto"? A I don't know.

Q In your opinion is that Rocco Pennell's handwriting on check Exhibit C. 13? A I don't know.

Q Would you know Rocco Pennell's handwriting if you saw it? A He used to write in several different ways.

30 Q Pennell used to write in several different ways, in different languages or what? A I don't know, he wrote different ways that is all I know.

Q Is the office of the Vallatese Loan Association open any other time than Wednesday night? A Sometimes it is open for special meetings.

19 OCT. T. 1930

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

New Jersey Court of Errors and Appeals

Between

VALLATESE LOAN ASSOCIATION,
Plaintiff-Respondent,

and

GAETANO TRAVISANO, NEALE
TRAVISANO and MICHAEL
ROSANO,
Defendants-Appellants.

*On Appeal
from the
Court of
Chancery.*

BRIEF FOR DEFENDANTS-APPELLANTS.

Facts.

This is an appeal from a decree of the Court of Chancery affirming the report of Francis Child, Special Master.

The case is one involving shortages and deficits alleged to have existed in the accounts of the complainant loan association, for which it is sought to hold the defendants, officers of the association, responsible. The defendants are president and secretary, respectively, of the complainant association.

Complainant alleges that deficits arose from numerous distinct and separate transactions concerning the loan company's affairs, and the amount claimed is the sum total of the separate items claimed.

The Master's report, which was affirmed by the Court of Chancery, finds that the defendant Neale Travisano forged certain documents, although this is not specifically alleged in the bill of complaint. The report further finds that

Gaetano Travisano knew of the activities of his son and, for this reason, the decree was entered against both defendants. The evidence shows that the association had a treasurer, one, Rocco Pennell, whose duty it was to receive the funds and deposit them in the bank, and who committed suicide on the 2nd day of July, 1927. The Master, in his report, finds that if this treasurer was guilty of defrauding the association, then the defendants were cognizant of that fact and were in league with the deceased treasurer.

With reference to the defendant Michael Rosano, there was no evidence whatever to connect him with any of the irregularities and the bill was dismissed as to him, and he may, therefore, be considered as out of the case.

I.

There is no evidence to support the finding that a shortage existed in the amount alleged in the bill of complaint, nor that these defendants were responsible for any deficit.

Complainant alleges a deficit in the accounts of the association in a total amount of \$6,606.81, less \$1,000.00 which was received by the association from the bonding company on the bond of the treasurer, Rocco Pennell, because of his defalcations and fraudulent conduct. The total sum claimed, \$5,606.81, is composed of various distinct items, each of which we shall discuss separately. It is sought to charge these defendants with either receiving or being responsible for the deficit suffered. It is our contention that the evidence does not sustain complainant's allegation that a shortage actually existed in the sum claimed, and that the evidence fails utterly to prove that these defendants received any part

of the said amount or were in anywise responsible for the shortage.

1.

The first item composing the total deficit is the sum of \$2,788.37, representing a discrepancy between the amounts credited by the secretary to the accounts of borrowers in the roll book, and the amounts actually deposited in the bank by the treasurer, Rocco Pennell; plus an additional discrepancy of \$588.00 found upon a later examination of the books and resulting from the same reason. The discrepancy here alleged, from the testimony of the accountant, Mr. Flink, was due solely to the fact that not enough money was deposited in the bank to meet the amounts which should have been deposited, as shown by the secretary's books (State of Case, page 71, line 33; page 70, line 27). It is also his testimony that as to these two items the secretary's books and the pass books of the borrowers agreed and there was no discrepancy as between them and, on page 72, line 21, he affirmatively states *that he knows of no items which appear to have been collected by Neale Travisano which are not presented in the roll book.*

Complainant seeks to hold Neale Travisano responsible for this discrepancy by introducing evidence to show that he receipted the deposit slips of the association. We submit that the mere fact that he receipted these deposit slips is not proof that he received the monies represented thereby. The testimony shows that it was the custom of the defendant to receipt these slips on behalf of the treasurer as a matter of convenience on meeting nights, and that the treasurer actually received the money, the secretary having had at

no time possession or control of the money. This is corroborated by the testimony of Mrs. Quaglia, on page 136, who testifies that when she paid, it was Rocco Pennell, the treasurer, who took the money and who requested Neale Travisano to make out the receipt. Further, it was the treasurer, Rocco Pennell, who, by the testimony of his own son on page 133, took home the money on each meeting night and who assumed full charge of the actual cash deposits. It was his duty as treasurer to deposit these monies, and the bank book was always in his possession.

We think these facts to be conclusive proof that any discrepancy which was present was due solely to the fact that the treasurer failed to deposit the monies which he received. It is significant that the accountant testified that the entire discrepancy complained of occurred prior to July 3, 1927, the time when the treasurer, Rocco Pennell, committed suicide. There is no evidence proving that either of these defendants received or kept any of the monies represented by this item.

The testimony shows that Neale Travisano commenced the receipting of deposit slips in March, 1927. Mr. Flink's testimony shows that the amount of discrepancy between March 3rd and July 2, 1927, was \$1,350.68. It is inconceivable that the defendants be held responsible for discrepancies arising other than during this period, and even as to this amount there is no proof whatsoever that the defendants either received the amount involved or were responsible for the discrepancy. The facts show that as secretary, Neale Travisano kept his books in proper order and that no items were collected by him which were not presented in the roll book. If the monies which should have been

were not deposited, and if the bank balance did not meet the amounts shown in the secretary's books, which of themselves show no discrepancies, it was the fault of the treasurer and no one else.

It is true that the accountant testifies to a difference of \$122.00 between the secretary's books and the borrowers' pass books. He states that this difference occurred over the entire period covered by his examination, including the time before which Neale Travisano became secretary. An amount so small as this and arising over so long a period of time is certainly not indicative of any defalcation and may be explained, in part at least, by the testimony of Neale Travisano on page 147. He there testified that there was a surplus fund kept in the safe of the association which resulted from over-payments to the association made by reason of clerical errors on the part of borrowers, and which was used to pay small deficits occurring from the same reason. There is no testimony to prove that this discrepancy resulted from any omission on the part of Neale Travisano or that he received the amount involved.

It is contended that if the defendants themselves were not personally guilty of defalcation, that then they were in league with and conspired with the treasurer in committing these defalcations or that they should have known of them by virtue of their duties as officers. If it is sought to charge these defendants with conspiring with the treasurer to appropriate the monies which were not deposited by the treasurer, the logical conclusion would be that they would have covered up their misdeeds by manipulating the entries in the secretary's records. Certainly, if they had taken the money they would not have permitted the secretary's books, which were at

all times open for inspection to the directors and shareholders, to show a wide variance with the bank balance. These books were under their control and an examination of them would have left the defendants open to detection at any time had the directors demanded reports from the treasurer or investigated the accounts. It does not follow that these defendants, as officers, should have known of the admitted defalcations on the part of Rocco Pennell. If the treasurer was guilty, it was the directors' duty, as well as that of the defendants, to discover the shortage. The directors assented to the treasurer's reports as to the amount deposited in the bank without raising any inquiries and without doubting his statements. It was not incumbent for the defendants to look for suspicious circumstances on the part of Rocco Pennell in the face of the directors' tacit acceptance. The defendants were absorbed in their own duties as officers and were not required to adopt an espionage system to detect possible acts of fraud.

We again repeat that there is not the slightest evidence to prove that these defendants were responsible for the discrepancy alleged. There is no suggestion that either of these defendants received any monies or kept any monies belonging to the association, and the charge that they conspired with Rocco Pennell is without the slightest foundation and injected into the case merely for the purpose of creating atmosphere. The proofs point to but one logical conclusion—that it was Rocco Pennell, the treasurer, the man who received the money and took it home with him and assumed sole control of it, and the man whose duty it was to deposit that money—who misappropriated it to his own use and who, having become enmeshed in the web of his own

making, took his life when he knew detection was imminent.

2.

The second item making up this deficit claimed from the defendants is the sum of \$549.86, representing court costs advanced to the counsel for the association, money which the secretary gave to the attorney as advanced costs and which has not been returned according to the records. We think it significant that the testimony of the counsel, William Azzoli, who, of all persons, should have full knowledge concerning this item, *discloses no reference thereto*. It is not shown whether this money was to be returned to the association or whether it was to be retained by the attorney. There is no proof that the money was ever repaid to the association. There is no proof that the secretary ever received this money or whether he should have received it. No attempt is made to prove that the secretary either appropriated it or is responsible for its loss. Under this evidence, therefore, we submit that it has not been proven that a deficit in this amount actually exists and, under the circumstances, we do not see how these defendants can possibly be held responsible for the amount involved.

We submit that the complainant has failed to sustain the burden of proving either that a shortage actually exists in this amount or that the defendants were responsible therefor.

3.

The third item for which defendants are held responsible is the sum of \$687.30, consisting of protested checks made good by the borrowers and not accounted for by the records of the association (page 65). The only evidence on this item is that of the accountant, Mr. Flink, on page 72, wherein he testifies that the pass books of the borrowers show that these protested checks had been made good. It is not disclosed to whom these items were paid or to whom they should have been paid. It is not shown that either of these defendants received that money or were responsible for it. On the other hand, on page 72, Mr. Flink testifies that he knows of no items which appear to have been collected by Neale Travisano which are not presented in the roll book. *This is the only evidence* in the entire case bearing on this third item and it is inconceivable that these defendants should be held responsible for the sum involved. Not only does the complainant fail to prove that a shortage in that sum actually did exist, but there is not the slightest evidence to warrant the finding that these defendants received the money or are responsible for it.

4.

The fourth item with which these defendants are charged is the sum of \$465.00 and represents bad debts which were written off the books, with no evidence to interpret what they are (page 65). *There is no further evidence on this item* in the entire case and it is most unjust and clearly against the weight of evidence to charge these defendants with receiving the amount involved. No explanation of this item is made

and it is not proven by whom or at whose order the accounts were written off, or that the amounts were paid to anyone or received by anyone, or that these defendants were in anywise connected with the transaction. As it has not been proven that a shortage in this amount actually exists, we submit that this amount should not have been included to make up the total deficit, and that these defendants certainly should not be held responsible for appropriating the same.

The next item, in the amount of \$283.90, is referred to as the Schaffer loan. It is charged that this loan was paid off by the borrower and not credited to the association. The finding that these defendants received this money is directly controverted by the testimony of William Azzoli, counsel for the association, on page 129, wherein the witness testifies that the check was forwarded to him on June 30, 1927, to the order of the Vallatese Loan Association, in full payment of the loan. The witness refers to the loan as the Quaglia loan, but this is undoubtedly a slip of the tongue as the Quaglia loan was paid in cash at the offices of the association by Mrs. Quaglia (page 134), and was not paid to the attorney. He is undoubtedly referring to the Schaffer loan. The check in question was received and deposited to the account of the association and bears the endorsement of the Vallatese Loan Association (page 130). This evidence clearly and conclusively proves that the association received this money and that no shortage ever existed as to this item. We submit that it should not have been considered as a part of the deficit and that the defendants should

not be held liable for appropriating the same, and that a finding that these defendants received the same is clearly against the weight of the evidence.

6.

The next item is referred to as the Quaglia loan, No. 476, which is charged to have been collected by Gaetano Travisano. The testimony of both Mrs. Quaglia and her daughter, on pages 134 and 136, clearly shows that this loan was paid in cash at the offices of the association and was received by the treasurer, Rocco Pennell. Mrs. Quaglia testified that she came in on a meeting night and handed the money to Gaetano Travisano, who was at a window nearest the door; that he immediately handed it to his son, Neale Travisano, who was next to him, and that Neale Travisano handed it to the treasurer, Rocco Pennell, who was farthest from the door. There is nothing to show that these transfers were anything more than a mechanical handing of the money from one to another down the line. The treasurer, Rocco Pennell, took the money and put it in a drawer (page 137). Mrs. Quaglia asked for a receipt but Rocco Pennell made excuses that he was too busy and finally told Neale Travisano to make out the receipt. This Neale did in Pennell's presence. It is folly to argue that the signing of this receipt made Neale Travisano responsible for the money and that he should have gotten another receipt from Rocco Pennell when he handed him the money. It was made at Pennell's direction and in his presence, and Neale Travisano's act was nothing more than a ministerial signing on behalf of Rocco Pennell. He never assumed control of the money and the fact remains clear and undisputed that Rocco Pennell took the money, put it in a

drawer, and then took it home with him (testimony of Louis Pennell, page 133).

It is significant that Rocco Pennell was sufficiently artful to contrive to get Neale Travisano to sign the receipt although he himself kept the money. The testimony clearly points to the conclusion, as it does throughout the entire case, that it was the deceased treasurer, Rocco Pennell, and not these defendants, who was the real culprit. The testimony does not substantiate the finding that these defendants received or kept this money or that they were responsible for it.

7.

The next item sought to be charged against these defendants is that referred to as the Palmisano note. Mr. Palmisano made a renewal note in the sum of \$300.00 in payment of a former loan held by himself, upon which there was due \$218.00. It is undisputed that the sum of \$218.00 was immediately deposited to the account of the association in payment of the former loan. He himself testifies on pages 86 to 89 that he received \$70.00 from Gaetano Travisano in payment of the difference, but that there was a mistake in the interest. He went to the offices of the association on a regular meeting night and put up a "kick" and the association later sent him \$6.00 in settlement of the difference. This complaint he made to "everybody there" at the meeting and everyone present was fully apprised of the transaction. From his own testimony, therefore, it clearly appears that Mr. Palmisano received payment of all of the money, and it cannot possibly be contended that either of these defendants received this money or ap-

propriated it to their own use. A finding that a shortage existed in this amount and that these defendants were responsible therefor, is grossly contrary to the evidence.

8.

The entire testimony as to the discrepancies and shortage alleged does not establish the fact that either Neale Travisano or Gaetano Travisano received or kept any of the monies belonging to the association. It is uncontroverted that the Quaglia and Schaffer loans were paid to the association or to Rocco Pennell, the treasurer; that the Caprio and Evangelista loans, upon which we will dwell later, were deposited immediately to the account of the association and that the Palmisano loan was paid to the borrower himself. As to these items, it has not been proven that a deficit existed and it is inconceivable that we should now be charged with receiving the money involved. The Master, in his report, makes no attempt to explain in what manner he arrived at the amount of the deficit found to exist, nor does he relate upon what evidence or upon what testimony he bases his calculations. No distinction is made as to what items are chargeable to Neale Travisano and what items to Gaetano Travisano. It is uncontradicted, however, that it was the treasurer, Rocco Pennell, who received the monies and deposited them or should have deposited them, not only from the fact that it was his duty to do so nor from the fact that he had exclusive possession of the deposit book, but from the testimony of his own son, Louis Pennell, who said he went to the association offices on each Wednesday evening and accompanied his father home, and that his father put the money in his pocket and took it home with him.

We respectfully urge, therefore, that a decree that a deficit existed in the amount found, is grossly contrary to and in direct contradiction of the greater weight of the evidence produced, and that a finding that these defendants were responsible for that deficit or that they were actually guilty of the defalcation, is not warranted by any of the testimony in this case.

II.

The finding that the defendant Neale Travisano committed forgery, is against the greater weight of evidence.

The Master in deciding the case found forgery to have been committed by the defendant Neale Travisano and grounded the entire claim of complainant upon this finding. The notes alleged to have been forged are referred to as the Caprio and Evangelista loans.

Throughout the entire case complainant sought to infer that it was the defendant *Gaetano* Travisano who forged these notes. Indeed, the Master himself seemed to be of this opinion, for at the end of the case he made the following statement:

"I will say now that if I find that the defendant Gaetano Travisano has written any of these which he denies writing, any of the signatures or endorsements, and I find that he has, I will decide against him on the whole case."

Although it is our contention that this procedure was not warranted by the evidence, we will argue that point later and confine ourselves at the present stage to the evidence proving the forgeries alleged.

The only evidence in the case to prove that these applications were in fact forged, is the

testimony of Caprio and Evangelista that they did not sign the notes in question. We should here like to point out that this testimony is in itself self-serving, for it is to the advantage of these defendants to deny their signatures and so avoid payment of the loan. It seems to us that the question of who did actually sign these applications or notes could have been easily determined by a comparison of the disputed signatures with the handwriting of Caprio and Evangelista and the other parties implicated. This the Master did not do. No examination was made of the signatures of Caprio and Evangelista and the Master at no time required them to write out their signatures; no examination was made of Neale Travisano's writing; no examination or comparison was made of the writing of the treasurer, Rocco Pennell, whom, from all of the circumstances in this case, should have been the one most to be suspected of the defalcations. There is absolutely no proof that Neale Travisano committed the forgery or that he took the money, and the mere statements of these witnesses, uncorroborated, *are the only proofs* that these notes were in fact forged.

Moreover, the very circumstances of the transactions involving the Caprio and Evangelista notes negative any idea of forgery. It is conclusively shown that each of these notes were renewals of former loans held by these parties. These notes were on the books of the association for at least two years prior to their renewal in February 2, 1929. The checks given on the date mentioned, in payment of the new loans, each bear endorsements which show that they were *immediately deposited* to the account of the Val-latese Loan Association (pages 98 and 99), and this, counsel for complainant admits (page 98). In other words, no money was passed at the

time the forgeries were alleged to have been committed. The renewal loans were taken out and the checks at once deposited to the account of the association in payment of the former loans. In the face of this testimony, which is uncontradicted, and the endorsements on the checks, it is not understandable why these defendants should be charged with receiving the sums involved. It is still more inconceivable, under the slender evidence produced, why Neale Travisano should be charged with forging these notes when it is admitted that the monies were never received by him.

Still further proof that these notes could not have been forged is to be found in the testimony of the counsel for the association, William Azzoli. Mr. Azzoli testified that Gaetano Travisano brought the two notes in question, together with a note of one, Cuzzo, to his office for the purpose of starting suit. Mr. Azzoli suggested that the addresses given be verified before starting suit and Gaetano Travisano took them back for that purpose. On page 131 Mr. Azzoli says that nothing was done on Travisano's part to hinder him in any way from prosecuting suit on these notes. If Neale Travisano was the forger and if Gaetano Travisano was, as the Master's report implies, cognizant of these forgeries, is it likely that Gaetano Travisano would have requested Mr. Azzoli to start suit on the notes, knowing that such procedure would in all probability result in the detection of the forgeries?

The same situation applies to the Cuzzo note which, it is also claimed, was a forgery. Gaetano Travisano also instructed Mr. Azzoli to start suit on this note and Mr. Azzoli did sue. There is no evidence whatsoever that Neale Travisano was the forger of this signature, and the check in this

instance bears the endorsement of Rocco Pennell, the deceased treasurer, which clearly shows that it was Pennell and not Gaetano or Neale Travisano who received the proceeds of this note. If Neale Travisano forged this note or if Gaetano Travisano knew that his son had forged this note, why should Rocco Pennell receive the proceeds thereof? Is it not more reasonable that it was Pennell himself who forged the note, endorsed the check to himself and took the proceeds?

We respectfully submit that it has not been sufficiently proven that any of the notes in question were in fact forgeries. It most certainly has not been proven that Neale Travisano forged these notes or that either he or Gaetano Travisano received any of the proceeds thereof, or kept the same for their own use. If there was any question whatsoever in the Master's mind as to whether or not Neale Travisano did forge the notes, we submit that the signatures in question should, in all fairness, have been submitted to a handwriting expert as the Master agreed.

The expert did determine that the forgeries were not made by Gaetano Travisano. Defendants were at all times willing to have the expert pass upon Neale Travisano's writing. In fact, it was the Master's agreement with the defendants that this procedure would be followed. In the absence of this proof, however, we think the evidence adduced fails to prove a forgery on the part of Neale Travisano, and that the decree is in this respect erroneous.

III.

The evidence does not disclose that either Neale Travisano or Gaetano Travisano conspired with the treasurer, Rocco Pennell, to defraud the Association.

The Master's report, upon which the decree was based, finds that if the deceased treasurer, Rocco Pennell, was guilty of defrauding the association, that the defendants were cognizant of that fact and took no steps to stop the fraud. This finding seems to proceed upon the theory that it was the duty of the defendants to discover the defalcations of Rocco Pennell, even if they did not actually participate therein. We think that this view is entirely unsupported by the evidence.

In the first place, they cannot be held for failure to discover Rocco Pennell's misdeeds unless all of the directors and officers be held equally guilty with them. The directors were aware of no suspicious circumstances in the affairs of the association or they would have acted upon them. And if they had no cause to suspect the treasurer, it was even less incumbent upon the defendants to suspect him. It was the directors' duty to require reports from the treasurer and to supervise and check up all the work of the officers. There is no distinction in the responsibility of the directors and officers in this regard, and if the defendants be held, the directors should be held equally with them.

There is not the slightest evidence to base an inference that these defendants either conspired with or that they had knowledge of Pennell's activities.

The argument is made that Gaetano Travisano was paid an additional compensation to investigate applications. Complainant insists that it was Gaetano Travisano's duty to see that all applications were authentic and proper, and to report upon them to the directors, and this the Master mentions in his report. Complainant claims that for this reason Gaetano Travisano should have known that the Caprio and Evangelista loans were forgeries.

In the first instance the testimony as to what this investigation was to consist of is in conflict, but the counsel for the association, William Azzoli, on page 179, explains fully the purposes of the additional compensation, saying in substance: "A lot of people make loans and then move and we don't know where they move to, and there has to be an investigation made as to where they are." This testimony from complainant's own witness cannot possibly, though however ingeniously, be construed to mean that Gaetano Travisano was to investigate all new applications. Moreover, the conduct of the directors themselves clearly shows that they did not rely upon Gaetano Travisano's investigations in granting loans. Anthony Schiavino, complainant's witness, on page 104 testifies that loans were frequently passed on the same night that the application was made if the application was made by a good payer. And when Gaetano Travisano was not present the vice-president, Amadio Stanko, presided and presented applications (page 103). And in spite of the fact that the directors absolutely denied that they ever took applications outside to be signed, the testimony of Francisco Vella, on page 139, among others, proves that this procedure was in fact followed by the directors themselves, and if it is proven to have been done in some

instances, we may reasonably infer that it was done in many instances, although the directors would have us believe otherwise. All of this testimony disproves any intention on the part of the directors to make Gaetano Trivisano solely responsible for the investigation of loans and to charge him with culpability for the forged notes, if in fact they were forged. On the other hand, it proves that the directors themselves assumed the burden of passing upon loans without the advice of the president and when the president did not even attend the meetings.

Emphasis is also placed upon the fact that Gaetano Trivisano wrote the word "pagato" (paid) on some of the applications. It is indisputable from the evidence that Gaetano Trivisano placed this word upon the application when the check was made out and paid to the borrower, and not when the loan was paid. This practice was discontinued by the counsel, William Azzoli, who pointed out to Gaetano Trivisano the inadvisability of such procedure. This is further corroborated by the fact that when the loan was paid, both the application and the note were returned to the borrower.

Complainant endeavored to infer that defendants knew that a shortage existed in March, 1927, when the statement was mailed to Trenton, showing that a deficit existed. It is alleged that Neale Trivisano signed this report, but did not disclose the deficit to the directors. The testimony is uncontradicted that Neale Trivisano was at that time assistant secretary and that a Mr. Opitz was secretary. Neale Trivisano was called to the office of William Azzoli, counsel, and instructed by Mr. Azzoli to sign the report, Mr. Opitz being unavailable. It is undisputed that the report was not in Neale Trivisano's hand-

writing and that he had no knowledge of its contents, it having been prepared by Mr. Opitz and the accountant Mr. Fay. If Neale Trivisano knew that this report disclosed a deficit, so did Mr. Azzoli and the secretary, Mr. Opitz, and also the accountant Mr. Fay. Neale Trivisano followed Mr. Azzoli's instructions in signing it, and if he be blamed for not disclosing the contents to the directors, then the others mentioned, who certainly had knowledge of its contents, should be held equally responsible with Neale Trivisano.

Again it is sought to hold the defendant Gaetano Trivisano responsible by inferring that he received a report from the State Board at Trenton which showed a deficit to exist, and that he failed to disclose the contents of this report to the association. The principal proof which complainant relies upon to prove that Gaetano Trivisano received this report is the testimony of Frank Trivisano who says that Gaetano Trivisano received the report some time in June. He says that Gaetano Trivisano showed him an envelope in June marked "first class mail," and that Gaetano Trivisano said it was the report from Trenton. His testimony is hardly convincing and does not bear up under a close analysis, for although he states that in June Gaetano Trivisano informed the directors that he had not yet received any report and although he states further that he knew Gaetano Trivisano to have received the report at that time, yet he did not contradict Gaetano Trivisano's statement to the directors at the June meeting and told no one of his knowledge that Gaetano Trivisano had received the report. There is no direct evidence proving that Gaetano Trivisano ever did receive a report prior to Rocco Pennell's death or that

either defendant knew of any shortage prior to that time.

It is also sought to infer that Gaetano Trivisano had knowledge of a shortage before any report was received because he admitted just after Rocco Pennell's death that there might be a shortage of \$2,000.00. This statement is easily accounted for by the testimony. A check had been drawn for \$2,000.00 prior to Rocco Pennell's death to pay a loan, the treasurer having stated that there was that amount in the bank. After Rocco Pennell's death the check came back marked "insufficient funds" and there was found to be a balance of only \$58.00 in the bank. It was to this that Gaetano Trivisano referred when he said there might be a shortage of \$2,000.00 and there is no evidence contradicting this. Gaetano Trivisano immediately said that he would have someone go over the books. The bank book at this time was in Rocco Pennell's possession and Gaetano Trivisano and Frank Trivisano went to Rocco Pennell's home to obtain it.

This was the first intimation that Gaetano Trivisano had that there was a shortage. The report was not received from Trenton at that time and the testimony that it was received in June is not, in our opinion, worthy of credibility, unsubstantiated as it is. There is no testimony to show that either defendant knew of a shortage before this time. If we believe complainant's witnesses that defendants did have such knowledge, then complainant's witnesses have inculpated themselves for not disclosing their knowledge. The proofs are entirely inconsistent with any thought that these defendants knew of Rocco Pennell's activities.

Seemingly for the purpose of injecting atmosphere, it was attempted to prove that Neale Travisano was grossly negligent in the conduct of his office as secretary; and that the defendants attempted to withhold the books of the association after Rocco Pennell's death; and that Gaetano Travisano took the books for examination to Mr. Fay, the accountant, without the directors' consent.

Frank Travisano, in his testimony, states that Gaetano Travisano, after Rocco Pennell's death, informed the directors that he wanted Mr. Fay to fix the books. The books were subsequently taken to Mr. Fay for examination. To this the directors apparently made no objection and they were informed of Gaetano Travisano's intention.

Again, in spite of the testimony that the defendants attempted to withhold the books from the directors after Rocco Pennell's death, it was Neale Travisano who got the books for the directors.

Furthermore, Neale Travisano testified that it was his custom to report all unpaid accounts and accounts in arrears to the counsel, William Azzoli (page 154). It is further shown that he kept the books at all times under the supervision of Mr. Fay, the accountant (page 148). He endeavored on many occasions to secure the bank book from Rocco Pennell for the purpose of checking it with his records. If Rocco Pennell was clever enough to always find some excuse for not delivering it to him, is this fact alone sufficient to make Neale Travisano responsible or to charge him with an improper management of his office? We submit that complainant has utterly failed in the attempt to make these facts of any importance and that complainant has merely introduced them for the

purpose of beclouding the main issue in the case, which was—did these defendants appropriate the amount of money belonging to the association, represented by the alleged deficit?

SUMMARY.

The entire evidence and circumstances surrounding this case lead to but one logical conclusion. Rocco Pennell, the treasurer, received all the monies and it was his duty to deposit them. He retained sole control of the bank book. It has been proven that not enough money was deposited to meet the amounts as shown in the secretary's records which, as the testimony shows, were properly kept. For how long a time these defalcations continued on the part of the treasurer we do not know. Finally a check was drawn in payment of a loan, which was returned from the bank marked "insufficient funds" and which disclosed the entire shortage in the bank account. Before this check was returned from the bank, Rocco Pennell was found to have committed suicide. That he was the actual defaulter cannot be seriously denied, particularly in view of the fact that the association has accepted the full amount of his bond as part payment on his admitted defalcations.

When the shortage was discovered the remaining directors who now found themselves liable personally for the default, immediately attempted to shoulder the entire responsibility upon the president and his son, the secretary. They charge the defendants with forging notes, with misappropriating monies and failing to deposit monies in the association's accounts, although this was neither the duty of the president nor secretary. Being aware of the fact that they

cannot evade the culpability of the treasurer, Rocco Pennell, in this transaction, they further seek to charge the defendants with being in conspiracy with the treasurer and seek to hold the defendants equally responsible for the treasurer's misdeeds.

In the burden of proving these charges, we submit that complainant has failed utterly to implicate these defendants by a fair preponderance of the evidence. There is not the slightest evidence directly proving that Neale Travisano forged these notes; there is not one scintilla of testimony in the entire case to prove that either of these defendants received or kept any money belonging to the Vallatese Loan Association. There is absolutely no proof that they conspired with the treasurer, Rocco Pennell, or that they were cognizant of his activities. The evidence directly contradicts the finding that a shortage or discrepancy existed in the amount found to be due in the decree. For these reasons we submit that the decree of the Court of Chancery is grossly contrary to the greater weight of the evidence.

CONCLUSION.

We therefore most respectfully pray that the decree of the Court of Chancery be reversed and for nothing holden.

Respectfully submitted,

KESSLER & KESSLER,
Solicitors for and of Counsel
with Defendants-Appellants.

SAMUEL I. KESSLER,
Of Counsel.

19 OCT. T. 1930

New Jersey Court of Errors and Appeals

Between

VALLATESE LOAN ASSOCIATION,
Complainant-Respondent,

and

GAETANO TRAVISANO, NEALE TRA-
VISANO and MICHAEL ROSANO,
Defendants-Appellants.

On Appeal
from the
Court of
Chancery.

BRIEF FOR COMPLAINANT-RESPONDENT.

Facts.

The bill of complaint filed in this cause sought to obtain of the defendants Gaetano Travisano and Neale Travisano an accounting and discovery concerning losses alleged to have been sustained by complainant association due to the fraudulent and negligent act of said defendants, during their term of office as President and Secretary of said Association.

Misappropriation of association funds by way of forgery and diversion of collections was charged by the bill. The aforesaid defendants were in actual control of the affairs of the Association and its accounts and records were under their control. After discovery of shortages this action was commenced so that discovery could be had regarding the cause thereof and the fixing of responsibility by way of accounting.

After issue was joined, the cause was referred to Vice Chancellor Church for hearing and after hearing, decree for account was advised. Subsequently the matter was referred to Francis Child, as Special Master. Several hearings were held before the Master which were concluded with the report of the Master finding the said defendants chargeable with shortages sustained by complainant in the amount of the decree which was advised by the Vice Chancellor after confirming the Master's report.

Michael Rosano was joined as a defendant because it was alleged that the shares of stock of complainant association owned by Gaetano Travisano and Neale Travisano had been transferred to him by them for the purpose of making them judgment proof. The bill was dismissed as to the defendant Michael Rosano.

Further recital of the facts at this point would result in repetition. Appellant's brief has been devoted exclusively to argument on the facts and our answer will therefore necessarily outline the facts as we find them.

I.

A reading of the record in this case will indicate that the evidence supports an irresistible conclusion that the shortages suffered by the association occurred as a result of the defendants' actual fraud or indifference to their duties as officers of the association.

The brief submitted on behalf of the defendants-appellants under the heading as set forth above recites that the evidence fails to prove that the defendants received any part of the shortage. If it is meant that the money was not actually traced to the pockets of the defendants then that statement is correct. A reading of the testimony will show that the defendant Neale Travisano gave a receipt to one Rose Quaglia for \$199.70 (Exhibit C-8 offered at page 79) and that the money never reached the coffers of the Association. The loan register of the Association did not set forth the credit and said loan register was kept by Neale Travisano (Testimony Anthony Sciavina, pages 78-79).

The defendant Gaetano Travisano has also been directly connected with the receipt of moneys of the Association which never was deposited to its credit (See Exhibit C-7 offered at page 78). A loan was granted by the Association in the amount of \$260.00 and was placed in the hands of Counsel for collection and thereupon the claim was paid to Counsel, who in turn delivered the money to Gaetano Travisano and thereupon the latter wrote the word "Paid" on the Exhibit C-7 (Testimony William V. Azzoli, page 123). The amount was never deposited in the account of the Association

and at the time of the hearing in this matter the loan was still open on the records of the Association. (Testimony Anthony Sciavina, page 78).

We submit that the above is positive proof that directly connects the defendants with actual fraud.

1.

The appellants contend that they have not been directly connected with the shortage of \$2788.37 (testimony Julius E. Flink, page 65, l. 7) together with shortage of \$558.00 (Flink, page 69, l. 9). The testimony is that Gaetano Travisano acted as President of the Association from the time of its incorporation and that Neale Travisano acted as Secretary as far back as November 1926 (testimony William V. Azzoli, page 179, l. 19).

The two items referred to above constituted the difference between the actual bank deposits and the amount credited to the accounts of borrowers in the borrowers ledger (Flink 65, l. 10). The Secretary Neale Travisano receipted for the payments that were set up in the borrowers pass book and which were carried into the borrowers ledger, and he should have checked his entries in the borrowers ledger with the cash deposits made to the account of the Association (N. Travisano 156, l. 30). Neale Travisano receipted for payments made to the Association over a long period of time and in hundreds of instances (Flink 65, 66 and 67), (Exhibits C-2 and C-3 offered at 67).

Counsel for the appellants in the second paragraph of Point One of the Brief state that the mere fact that Neale Travisano receipted for payments made to the Association is not proof that he received the moneys represented thereby. It is difficult to accept that statement and to say the least,

the giving of a receipt for payment of moneys raises a presumption that the party giving the receipt secured the money.

It is evident that both Neale Travisano and Gaetano Travisano knew of the shortages in the accounts of the Association in March 1927 because it was at that time that Neale Travisano signed an affidavit swearing to the correctness of a report filed with the Department of Banking and Insurance in which report a shortage of \$1777.03 is set forth. It is more than a coincidence that at the same time, namely March 1927, Neale Travisano commenced to receipt for payments made to the Association (Neale Travisano 157, 158, 159).

Appellants contend that if they are responsible for the losses suffered by the Association then in turn the Directors are also. In that regard it is evident from a reading of the testimony that the facts relating to the losses suffered by the Association were solely within the knowledge of the President and Secretary and that the directors repeatedly asked for information as to the condition of the Association and were either uninformed or misinformed on the subject. (Anthony Sciavina 73 and 74) (Amedeo Stanco 111, l. 30). The bill filed in this matter was by the Association as complainant which after consideration charged the President and Secretary with the loss. If the proof satisfied the court as to the liability of the President and Secretary, surely the fact that the directors might possibly be liable because of lack of persistence in obtaining information on the status of the Association, would not excuse the President and Secretary.

In the case of Roseville Trust Company vs. Mott, 93 New Jersey Equity, 229, affirmed by the Court of Errors and Appeals in 93 N. J. Eq. 229, the release of certain directors did not operate as a re-

lease of those joined as defendants. If the President and Secretary of the Association are liable the Association is certainly within its rights in selecting them to answer and leaving out the directors.

We submit that to determine whether the defendants herein are liable we must know what their duty was as officers of the Association and how they failed in that.

In the Roseville Trust Company vs. Mott case, the opinion discloses that the court held that directors of a trust company who knowingly retained a dishonest cashier and permitted loaning of money, contrary to the constitution and by-laws, were liable to the same extent. The case is most important on the subject with which we are dealing and as the opinion of the court is a lengthy one we will not attempt to give excerpts from it.

In the case of Campbell vs. Watson, 66 New Jersey Law 432, 50 Atl. at 143 the court stated:

“Coming now to the individual answers, it is quite impossible to see any escape ~~from~~ ^{or} the President, Muriah B. Watson. He was not only a director, but he was President of the Bank, and its principal executive officer and it was especially his duty to examine into all the matters and things which have been heretofore referred to.”

In Crane vs. Hearn, et als, 11 C. E. Green, 378, 26 New Jersey Equity, 378 it was held:

“It is the duty of a trustee to protect the trust estate from any misfeasance by his co-trustee. Upon being made aware of the intended act by obtaining an injunction against him; and if the wrongful act has been already committed to take measures, by suit or otherwise to compel the restitution of the property, and its application in the manner

required by the trust. *Without such action he would himself be liable * * **"

The relationship between complainant and the defendants as officers was that of principal and agent or cestui que trust and trustee.

In the case of *Williams vs. Reilly*, 34 New Jersey Equity, 401 it was held:

"Had a stranger sought to obtain from the bank the money for the bond and mortgage (which was an illegal investment) it would have been the duty of the defendant, if the matter had come to his knowledge in time, to object to it, although his objection had been not solicited, it would then have been incumbent upon him to do what he could do to prevent an illegal transaction. Manifestly he is without excuse now. He has been guilty of a misapplication, at least of the funds of the bank; *and where there has been a waste or misapplication of the funds of a corporation by an officer or agent of the corporation, suit may be brought in equity, in the name of the company to compel him to account for such waste or misapplication or breach of trust.*"

In the case of *Scott vs. De Peyster*, First Edition Chancery, New York 541, the court stated:

"I know of no law which requires the President or directors * * to adopt a system of espionage in relation to their Secretary * * or to set any watch upon * * their acts. *Should any suspicious circumstances transpire to awaken a just suspicion of their want of integrity and it be suffered to pass unheeded, a different rule would prevail, if loss ensued.*"

In the case of Williams vs. McKay, 46 New Jersey Equity, 68, the court stated:

“It appears that \$4,000. was drawn by Halliard (President) and Reilly. This transaction appears to be a loan, I do not think it can fairly be classed as such. Halliard had in his power, because of the loose practice of the Treasurer Reilly, and the Secretary Hallanan, and the supine indifference of the committee men and managers, to withdraw whatever funds he pleased from the bank. The check used to obtain this \$4,000. was probably one that Reilly had signed in blank. The books and papers were in the immediate custody and control of the defendant Donelan, who was sub-servient to Halliard’s will, although he must have been aware of Halliard’s dishonesty.”

It was held in that case that Halliard, the President was primarily liable, Reilly, the Treasurer, secondarily, and the executive committee thirdly.

In the same case cited above at page 73, the court stated:

“The duty required of them was the care that an ordinarily prudent man exercises in a similar business of his own, not a blind, unsuspecting confidence in their President.”

And further at page 65 the court stated:

“The only difference would be in adjusting the equity between the defendants, because under the first stated view, officers of the bank should be held to be primarily liable.”

And in the same case the court stated:

“The burden of proving an excusable mistake is upon them.”

Appellants allege that there is no direct proof

that the item referred to under this heading has been directly fastened on the defendants. We submit however that the testimony makes such proof beyond a reasonable doubt as to both defendants. By reason of the position of an officer of a trust company, the courts have gone far to hold them liable for actual participation in fraud or passively consenting thereto. The defendants herein are in the same class and should bear like responsibility.

In the case cited above at page 71 the court stated:

“It is impossible to say how this money was abstracted. Mr. Halliard’s (President) admissions do not go so far as to disclose his methods. Hallanan (Secretary) was undoubtedly a party to the wrong-doing. All depositions received at the bank and all moneys paid by depositors passed through his hands, and withdrawals may have been had from such moneys as well as from funds in the bank’s depository * * *. There can be little question that his negligence afforded opportunity for withdrawals * * *. It is impossible to determine how the moneys were taken, but that they were taken is not denied.”

In this case we agree that it is impossible to say how the items of \$2788.37 and \$588.00 were abstracted from the funds of the Association. But under the duties imposed upon the defendants by reason of their official positions we submit that such proof was unnecessary.

The record in this case will certainly indicate that the defendants did not conduct themselves as would men of ordinary care and prudence. We believe the testimony indicates that the defendants were parties to diverting or misappropriating the

assets of the Association, and it is charitable to characterize their conduct as supine neglect.

It will be noted that Exhibit C-2 offered at page 67 is a record of the differences between receipts and deposits, and that the differences started to occur after March 1927 (Flink 66, ll. 33-37), which was the date when the defendants started to receipt for payments. (Exhibits C-2 and C-3, Flink 66, l. 16, 67, l. 7). There can be no question about the defendant Neale Travisano knowing about the shortages as far back as February 1927, because that is the date when a report was made to the Department of Banking and Insurance which he signed (Moore 96, l. 30). Neale Travisano admitted that he might have seen the report a week or more before the date of his affidavit. (Neale Travisano 158, l. 20). The report showed shortage of \$~~177.03~~ 1777.03 (Neale Travisano 158, l. 25).

Can it fairly be said that the conduct of Neale Travisano was that of a man of ordinary care and prudence?

Neale Travisano must have known of the difference between receipts and deposits which constitute the shortages of \$2788.37 and \$588.00. As a matter of fact he admitted checking the total of money received with the total of deposit slips. (Neale Travisano 160, l. 7). It was a simple matter to examine the bank book of the Association to determine whether the receipts agreed with the deposit in the bank. He admits that it might have been his duty to check up with the bank book, but that he failed to do so (Neale Travisano 156, l. 30). In view of the testimony (Anthony Sciavina 80, l. 15) it would appear that Neale Travisano knew of the bank balance because he reported on them weekly at the meetings of the Board of Directors of the Association.

The conduct of the defendant Gaetano Travisano

was on a par with that of Neale Travisano, his son. His conduct was just as culpable. He also knew of the shortage prior to June 1927 and the inference is reasonable that he, as the Chief Executive Officer of the Association had at least the same information as that possessed by Neale Travisano. After the report to the Department of Banking and Insurance *both Neale and Gaetano Travisano commenced to receipt for payments made to the Association.* (Gaetano Travisano 176, l. 26. Exhibit C-1 and C-2 of October 15, 1928 offered at page 187, Gaetano Travisano 195, l. 12, Neale Travisano 157, l. 13.)

With the information of existing shortages as was disclosed by the report to the Department of Banking and Insurance and with the information that they could have procured had they exercised ordinary diligence, the defendants failed to disclose the shortages to the Board of Directors of the Association and it was not until the Board took possession of the records of the Association that the shortages were known to them. (Anthony Scia-vina 74, ll. 34-40).

Gaetano Travisano is further connected by Exhibits C-1 and C-2 on October 15, 1928, offered at page 187. The first was a deposit slip for \$274.00 marked by Gaetano Travisano in his handwriting "Paid in full". \$250.00 thereof was represented by the check of the complainant association issued on renewal loan and \$24.00 was cash paid by Pennell. Gaetano did not think it strange that Pennell should pay interest on another's note. (Gaetano Travisano 195, l. 35.) The second was a deposit slip for \$328.00 also signed by Gaetano Travisano "Paid in full". (Anthony Scia-vina 187, l. 17). \$300.00 was the proceeds of a renewal loan and \$28.00 cash for payment of interest. Both of these loans were carried open on the books for a

long time and any one of ordinary diligence should have had their suspicions aroused by that fact alone and certainly when it is coupled with the fact that some one other than the borrower was paying the interest on the loans.

Assuming, but not admitting for the purpose of this argument, that actual fraud has not been proven as to the defendants, we submit the facts that transpired as outlined by the testimony and referred to under this heading, cast upon the defendants the "duty to examine into all the matters and things" (*Campbell vs. Watson, supra*). Did the defendants fulfill the duty as set forth in *Crane vs. Hearn?* (*Supra*) namely: "to protect the trust estate from any misfeasance". Did there not arise suspicious circumstances which were passed unheeded? (*Scott vs. De Peyster, Supra*).

Defendants would cast the responsibility and cause of the losses on Rocco Pennell, the unfortunate deceased Treasurer. That course is altogether safe at this time because "dead men tell no tales". But granting that Pennell may have been involved, we say Pennell had it in his power to so act because of the practices of the defendants, and therefore they are nevertheless responsible and chargeable for the losses. *William vs. McKay (Supra)*. Defendants can not justify a blind, unsuspecting confidence in the Treasurer.

In the case of *Hodges vs. Screw Co., 1 R. I. 312*, it was held:

"An excusable mistake in the meaning of the law is one which occurs after all means of action that suggest themselves to a man of ordinary care and prudence have been exhausted."

It is submitted that the defendants' conduct cannot fairly come within that definition.

Loans were carried open on the books of the Association for a long period of time after default and no report thereof was made by Neale Travisano or the President Gaetano Travisano (Anthony Sciavina 80, ll. 1-11.) Such loans were the disputed ones, connected with the forgery charges later referred to.

After giving consideration to the foregoing and taking it in connection with the acts of forgery perpetrated and later referred to, we submit that most certainly there transpired during the official financial careers of the defendants, circumstances which would awaken the suspicion of any one, and it is submitted that their passing it by unheeded charges them with the items of \$2788.37 and \$588.00, and that the report of the Special Master and the subsequent confirmation thereof with reference to those items was entirely proper and sustained by the evidence.

2 - 3 - 4.

These items of the total loss sustained by the Association are referred to in appellant's brief under the designation set forth above and in our opinion they are of the same general character and we will direct our argument under this heading to the three points.

Regarding the item of \$549.85 counsel for appellant states that it represents court costs advanced to counsel for the Association and which has not been returned according to the records of the Association. However the testimony of complainant's witness referred to the item as item #2 and states that it represents court costs advanced *and reimbursed to the company.* (Flink page 65, l. 12). It was another case of payments due to the Associ-

ation not being deposited in its bank account and being diverted from the funds of the Association.

We take it that because of the position of the defendants with the Association, a duty as hereinbefore defined was placed upon them, and nevertheless they either actually or passively acquiesced in the irregular methods which resulted in this loss to the Association. Their position was as Trustees who were bound to reasonable vigilance and a duty of maintaining a watchful supervision of the affairs of the Association and in this we submit they failed and they should therefore be chargeable with said loss.

The defendant Gaetano Trivisano showed a complete lack of interest in performing his duties on behalf of the Association. When asked when he first found out that a shortage existed he answered, "I don't know it today if there is a shortage" (page 171, l. 15). He claimed that the principal part of his duties was to clean up the office of the Association and lighting the stove (Gaetano Trivisano 175, l. 26) and again on the very first question that he was asked on cross-examination he answered, "I don't know anything" (Gaetano Trivisano 176, l. 25.)

It was the duty of Gaetano Trivisano to investigate loans and he was paid an additional compensation to perform that duty and it is evident from the loss that he failed to perform it. A resolution was passed by the board of directors of the Association giving Gaetano Trivisano \$100.00 extra salary to investigate all applicants before money was to be issued on any loan (Anthony Sciavina, 76, l. 10; exhibit C-6 offered at page 76).

As to the third item of \$687.30 consisting of protested checks made good by borrowers and not accounted for by the records of the Association; the testimony is that receipts for the payments in ques-

tion were given in pass books of borrowers (Flink, page 73, l. 10). It should be recalled that receipts were entered in the pass books by both defendants herein. Most certainly the Secretary who had charge of making the entries in the borrowers loan ledger (Flink, 70, l. 12) should have been placed on his guard when he found that the loans of borrowers remained open on the records and unpaid for a considerable time after default thereof. He certainly was not prudent in his disregard of such items. That also applies to item #2 of \$549.86, because that item was made up of court costs advanced, presumably on claims of the Association which were in default and if they continued to remain in that condition he certainly should have reported it to the Board of Directors.

Gaetano Travisano as the President of the Association and its chief executive officer certainly should have maintained a casual supervision over the records of the Association particularly as to such accounts that were in default.

The same argument holds good as to item #4 of \$465.00 representing bad debts that were written off the books. The books were in charge of the Secretary (Flink, 70, l. 12), and as stated the President should have interested himself in an item charged off as bad accounts when it amounted to the sum of \$465.00 which item was substantial considering the size of the Association.

The defendants had abundant opportunity to prevent the losses sustained by the Association had they exercised a reasonable amount of supervision and their failure to do so should charge them with the losses sustained by the Association.

5.

This item deals with the amount of \$283.90 which was a loan made by the Association and which was repaid and a receipt was given therefor by Gaetano Travisano. Appellants claim that the testimony of Azzoli at page 129 contradicts the contention that Gaetano Travisano received the money and receipted for it. We believe it is a misconstruction of the testimony. Mr. Azzoli testified that he saw the check with which the loan was paid and that he did not receive it but directed that it be taken up with "the man" evidently referring to Gaetano Travisano.

Appellants attempt to make a point of the fact that the check in the Schaefer matter bears the endorsement of the Association. They however, did not account for the fact that the credit was not entered in the books of the Association. Of course the check was received by the Association and it would be an easy matter to abstract cash in the amount of the Schaefer check and then deposit the Schaefer check. (Anthony Scivina, page 78, ll. 1 to 18). Gaetano Travisano wrote the word "Paid" on the application and the loan was permitted to remain open and unpaid although in default. The application with the receipt on it was not discovered until the Board of Directors took possession of the papers of the Association after removing the defendants as officers.

Counsel for the appellants in his brief under this point states that the defendants should not be held liable for appropriating the item of \$283.90 and that the finding that they received the same is against the weight of the evidence. In making such a statement counsel have entirely overlooked

the testimony where Mr. Azzoli testified that the Schaefer loan had been handed over to him for suit and then it was paid by the check of A. Schaefer to the order of the Vallatese Loan Association and he stated that he turned over the note, check and the application to Gaetano Travisano and he, Travisano, marked the word "Paid" thereon in his (Azzoli's) presence.

We submit that a fair reading of the testimony and of all of it, regarding this item will indicate that it was proven beyond a doubt that the money was received and that it was never credited in the records of the Association, and that the money was received by Gaetano Travisano and that he gave a receipt for it and therefor the defendants should be chargeable with it.

6.

This item deals with what is designated in the testimony as the Quaglia loan #476. It deals with the amount of \$199.70. Neale Travisano gave a receipt when the amount was paid by the borrower and said receipt was given on March 30th, 1929 (Exhibit C-8, offered at page 79—Anthony Scavina, 79, ll. 10 to 30). At the time of the hearing the loan register which had been kept by Neale Travisano had no record of the payment of \$199.70, and as far as the loan register was concerned the loan was still open and unpaid.

Defendants attempted to excuse themselves by the testimony of Rose Quaglia and her daughter, that the loan was paid in cash and that the money was delivered to Gaetano Travisano, ^{AND} then he handed it to Neale Travisano and that finally it was given to the Treasurer Rocco Pennell. They argue that Neale Travisano's act was a mere mechanical

handling of the money from one to another down the line. Suppose we admit that Neale Travisano handed the money to Rocco Pennell and that the latter appropriated the money to his own use. That does not excuse Neale Travisano or Gaetano Travisano because with ordinary diligence they should have observed that the payment which they received and for which Neale Travisano receipted in writing, did not come into the coffers of the Association and was not credited in the loan register which was kept by Neale Travisano. We certainly have connected up the defendants with this item and there can be no possible excuse for them. They received the money, one gave a receipt for it and the money never came to the Association's credit and the loan for which the money was given as payment still remains open on the records of the Association as unpaid.

The item of loss under this heading has been clearly and beyond a question attributed to the defendants and they are chargeable therewith.

7.

This item consists of what is termed as the Palmisano note for \$300.00. This was another transaction that was put through in order to cover up the abstracting of cash from the funds of the Association. The check of the Association for \$300.00 (Anthony Sciavina, 77, ll. 20 to 40) was drawn as a loan to Constanzo Palmisano and applied to pay two loans which were already on the books of the Association in the aggregate of \$224.00 and the notes which were to have been paid by the granting of the new loan were never paid and they remain open on the records of the Association. The amount of the two loans namely \$224.00 was di-

verted from the Association. This matter was discovered because the borrower claimed a mistake had been made as to a charge of interest and Gaetano Trivisano handled the matter and went to the store of Palmisano in an attempt to adjust it (Vito Palmisano, pages 86 to 89). The transaction was handled by Gaetano Trivisano (Vito Palmisano 89, l. 14).

This is another case where two loans remained open on the records over a long period of time. Gaetano Trivisano handled the transaction whereby the loans should have been paid. A loan was granted and the principal thereof was to be applied in payment of two existing loans and the balance to be delivered to the borrower in cash. Gaetano Trivisano delivered the cash to wit \$70.00 but no credit of payment of the two pre-existing loans was ever made. Bearing in mind that Gaetano Trivisano handled the transaction and that Neale Trivisano was supposed to make entries in the loan register and had charge thereof, there arises, we believe, an unescapable conclusion that both defendants either actually appropriated this money to themselves or they most certainly by their negligence made it possible, and we therefore submit that this item is directly chargeable against them.

8.

Counsel for appellants under this heading claims that there was no proof that either of the defendants received or kept any of the Association moneys. We submit that counsel misconceives the point. To hold the defendants liable, the moneys need not be followed to their pockets. Their lack of ordinary judgment, care and prudence stamps

them as responsible as if they had cracked the complainant's safe and abstracted moneys.

The giving of receipts by the defendants for moneys due the Association in the Quaglia and Schaefer matters heretofore referred to, raises a presumption that the defendants received the money. The inference is un rebuttable that they shared in the spoils. Would honest and conscientious officers receipt for money and thereafter leave unreported for months the fact that no credits were made of such moneys received for, in the records of the Association, which were actually maintained and kept by them, and under their direct exclusive supervision?

As to the Schaefer payment receipted for by Gaetano Travisano, the testimony of the Attorney (Azzoli) for the Association, that he handed the check to Gaetano Travisano is not controverted.

Can it seriously be contended that there was no proof that a deficit existed? Consider the testimony of Flink the accountant, and officers that succeeded the defendants. The loans in payment of which, the diverted moneys were given, still remain open on the records of the Association and altogether unpaid. Does not the fact the borrowers paid their obligations to the Association and received receipts, and that the funds were not applied to extinguish such obligations, and in fact were never actually received by the Association constitute a loss or deficit?

The Master in his report arrived at the amount of the deficit by adding to the amount as shown by the audit of the accountant, Flink, the items subsequently discovered, all of which total \$6606.81. The Association received on account, the sum of \$1000. which left a balance of \$5606.81, the amount

of the decree. Counsel for appellants saw fit to exclude from the State of the Case, copies of audits which were marked in evidence, (Exhibits C-1 and C-2) which set forth how the deficit was arrived at.

No distinction need be made as to the amount chargeable to each of the defendants. They both are liable because as the Master stated in his report (page 47 at page 50) "the fact that they were parties to such fraud renders them, in my opinion, liable to pay the entire loss."

The evidence, we submit, justified the Master, after hearing fully all the witnesses, in making the report in this case and also the Court of Chancery, in confirming the report and making the decree.

II.

The evidence was sufficient to warrant the finding that the defendant Neale Travisano committed forgery and that the defendant Gaetano Travisano actually participated or aided therein.

Counsel for the appellants alleges that the only evidence of forgery, is the testimony of Caprio and Evangelista. That statement is not sustained by a reading of the testimony and an examination of the evidence, the latter of which appellants did not include in the State of the Case, probably because that part of the evidence dealing with the forgery was in writing and it could not very readily be incorporated in the State of the Case.

Exhibit C-14 offered at page 182 were papers relating to the loan granted by the Association to Mariana Pinnella and Vincenzo Cuzzo. The handwriting on the application in this matter was that of Gaetano Travisano (Sciavina page 78, l. 30). The signature of Vincenzo Cuzzo on the note and on the endorsement on the back were forgeries. Suit was instituted on the note and Cuzzo, by his Attorney Judge Ungaro, who appeared as Counsel for Neale Travisano in these proceedings (page 63, l. 28), filed an affidavit stating that the signature was a forgery (Anthony Sciavina page 124, l. 6 to 10). Cuzzo appeared as a witness in these proceedings and testified that the signature was not his (Cuzzo's page 85, l. 10). Gaetano Travisano stated that Cuzzo signed the note in his presence (Azzoli page 124, l. 11).

There was no question at the time of the hearing but that the note was a forgery. An examination of the testimony of Vincenzo Cuzzo (page 85)

will show that no cross-examination was directed by defendant's counsel to that point.

The note of John Evangelista was also a forgery (Exhibit C-13 offered at page 82). The alleged maker of the note testified so in these proceedings (84, l. 20). There was no question about the fact that the note was a forgery. Counsel for defendants did not even cross examine Evangelista (Evangelista page 84). Gaetano Travisano knew Evangelista since childhood (Gaetano Travisano page 172, l. 30). He was familiar with the writing of Evangelista (page 172, l. 36). *Gaetano Travisano admitted at the hearing that the note (Exhibit C-13) did not bear the signature of Evangelista (page 172, l. 40)*. With such testimony in the record appellants still contend that the only proof that the instruments in question were forgeries was the alleged self-serving testimony of Evangelista and Caprio. *Counsel could not have read the testimony*. Fault is found with the Master because he did not compare the handwriting of Evangelista with the disputed signatures. The defendant himself admitted that the disputed signature was not that of Evangelista and there was no question at the hearing but that Evangelista Cuzzo or Caprio did not sign the disputed documents.

As to Exhibit C-12 offered at page 82 the note of Tony Caprio, this was also a forgery. Caprio was called and testified that the note did not bear his signature (page 83, l. 25). No one questioned the fact that it was a forgery. Counsel for defendants at the hearing did not cross examine Caprio as to the question of forgery. Gaetano Travisano presented the note in question at a meeting of the board of directors and said "Caprio wants this loan" (Frank Travisano page 120, l. 35). That certainly was actual fraud or Gaetano Travisano

at least helped a great deal to perpetrate a fraud.

W. V. Azzoli testified (page 124, l. 34) that Gaetano Travisano told him the disputed notes were signed in his (Travisano's) presence.

Neale Travisano admitted that the body of the Caprio note was in his handwriting (Neale Travisano 192, l. 12). The checks of the Association on the Evangelista and Caprio loans were drawn by Neale Travisano (193, l. 25).

The statement of counsel for the appellants that no examination was made of Neale Travisano's writing and that no examination or comparison was made of the writing of the Association's former Treasurer Rocco Pennell, is not borne out by the testimony and the record as disclosed by the State of the Case. The writing of Gaetano Travisano was obtained as indicated at page 168 of the State of Case. There was before the Master in this matter several specimens of the handwriting of both Neale Travisano and Rocco Pennell and the Vice Chancellor had these specimens before him at the time that he considered the confirmation of the Master's report. At page 185 of the State of the Case the Special Master stated that he wanted photostatic enlargements made of the disputed documents and the papers that he marked "October 1st, 1928 F. C." and the signatures on the receipts. Those papers had on them the handwriting of Neale Travisano which was written at the hearing before the Master. The Master went into the question of forgery just as thoroughly as possibly could be. A great many samples of the handwriting of the former Treasurer Rocco Pennell were submitted for his consideration and a number of specimens of handwriting of both Gaetano and Neale Travisano were presented and all of the samples of handwriting were enlarged so that the details and characteristics of the handwriting could be

easily observed. It is difficult to realize how counsel could make any such statements in view of the record in this matter.

Counsel would apparently make capital of the fact that the Caprio and Evangelista notes were renewals of former loans held by these parties. The fact is however that they were forgeries whether or not they were renewals and we believe that because they were renewals, makes the situation that much worse. The notes for which the ones in question were given to renew were never signed by Caprio and Evangelista. So that therefore the forgery was not only carried out on the notes in question but the ones for which they were given as a renewal. There never had been paid any interest on the notes. They were carried without payments for months, and although Neale Travisano was in charge of the records of the Association he did not make any report of the arrearages to the Board of Directors. If he had not been a party to the fraud it would have been just his common duty to report that no interest or payments had been made on account of the loan for a long period of time. Gaetano Travisano certainly could not have done much investigating of loans for which he was paid extra compensation, when a mere casual examination of the records would have disclosed that the loans for which renewal loans were given were in default and that no interest had ever been paid on them. It is an unescapable conclusion that both defendants made no report of the arrears in these cases because of their desire to withhold the facts from the Board of Directors and such action on their part, even if they did not actually commit the forgery was sufficient to fasten liability on both of them and it was on such facts that the Special Master concluded that

they were liable for the entire loss occasioned by their fraudulent conduct, and that they participated in the fraud, either actively or passively.

As heretofore stated the fact that the checks given in the matter of the loans which were involved in the forgery, were actually deposited to the account of the association, does not mean that the credit was actually retained by the Association. The records speak for themselves and show that the payments were not actually received by the Association. As heretofore stated what occurred was that cash in the amount of the checks was abstracted by the parties.

The fact that Gaetano Travisano eventually and shortly before the death of Rocco Pennell brought the disputed documents to counsel for the purpose of collecting on them, does not alter the situation or is not materially important. The fact is that at the time the loans had remained open and unpaid for a space of many months and it was only a question of time until the facts would have been discovered; as a matter of fact the notes were not left at the office of Mr. Azzoli, because Gaetano Travisano took them back with him and never returned with them (Azzoli page 124, l. 22). They were not recovered until both Gaetano and Neale Travisano were removed from office and possession of the records of the Association was secured by the Board of Directors.

We agree that it is altogether possible that Rocco Pennell may have shared in the spoils resulting from the combined acts of himself and the defendants herein, but that fact does not excuse the defendants herein. The utter neglect of their duties render them just as responsible as if Rocco Pennell had not been in the matter at all, and the argument of counsel with respect to the Cuzzo note that it bears the endorsement of Rocco Pen-

nell does not alter the fact that the defendants herein are nevertheless chargeable.

Appellants complain because the Master did not require the testimony of a handwriting expert. We submit that many of the courts of our State have lost faith in so-called handwriting experts and it is apparent from the record in this case that the Special Master went very thoroughly into the question, and used photographic enlargements of disputed and admittedly genuine writing and after thorough consideration came to his final conclusion.

We have no information as to the source of the statement of counsel for the appellants at the last paragraph on page 16 of his brief, namely that the expert did determine that the forgeries were not made by Gaetano Travisano. The record does not disclose that a handwriting expert was employed or participated in any of the hearings held in this matter.

We submit that a reading of the testimony and an examination of the evidence that was before the Special Master and Vice Chancellor in this matter, will result in the forming of an irresistible conclusion that Neale Travisano committed forgery and that Gaetano Travisano knew of the conduct of his son, and was either guilty of actually participating in the fraud committed on the complainant association or of passively consenting thereto and that if the Treasurer Rocco Pennell was guilty of defrauding the Association that the defendants Neale Travisano and Gaetano Travisano were cognizant of that fact and took no steps to stop the fraud and participated with Pennell either actively or passively in perpetrating the fraud or a continuance thereof.

III.

The evidence discloses that the defendants actually participated or passively consented in the fraud committed which resulted in the losses to complainant.

Appellants in the argument set forth under this heading of their brief repeat the statement that if the defendants be held responsible and chargeable that then the directors should be held to be equally guilty and chargeable with them. Complainant association brought this action against the defendants and if the defendants believed that the other officers or directors were also responsible and chargeable they could have petitioned the court to bring them in as additional defendants.

The facts relating to the losses suffered, were solely within the knowledge of the defendants. The directors repeatedly asked for information as to the condition of the Association and were either uninformed or misinformed on the subject.

In the case of Attorney General vs. Wilson, 1 C. R. N. and Ph. 2 High Court of Chancery of England 1840, the court held:

“This case is therefore one in which an illegal attempt has been made by certain members of the governing body to alienate corporate property and for the consequence of such an attempt they may be made personally liable, either in a suit by the corporation itself, whose agents they are, or in an action by the Attorney General. In cases of this kind, where the liability arises from the wrongful act of the parties each is liable for all the consequences and there is no contribution between them and each case is dis-

tinct, depending upon the evidence against each party."

There are many instances in the record where one could find that the defendants conspired with Pennell or knew of his activities and "sat supinely by" viz:

(a) Neale Travisano gave a receipt (Quaglia Exhibit C-8) for moneys which he claims were paid to Rocco Pennell. The payment was never recorded in the Records of the Association, although under the control of Neale.

(b) Gaetano Travisano gave a receipt for moneys (Schaefer Exhibit C-7) which never found their way to the Association, and were either lost or stolen.

(c) Neale Travisano started to receipt for payments when shortages were reported in the statement to the Department of Banking and Insurance (March 1927).

(d) Both Neale and Gaetano knew of the shortage as set up in the Department of Banking and Insurance report, but withheld such information from the Board of Directors.

(e) John Evangelista note (Exhibit C-13) who was a friend of Gaetano Travisano of long standing. Gaetano admitted that the disputed signature was not Evangelista's, nevertheless, the records show that Gaetano claims that he saw the disputed document signed by Evangelista.

(f) The same is true as to the Caprio note (Exhibit C-12).

(g) Cuzzo note (Exhibit C-13) the same situation is present.

(h) Notes were in default involving forgery which remained open on the records with no payments for months and months with no report by Neale Travisano who had charge thereof.

(i) Payment of interest due on two notes by some one other than the borrower (Exhibit C-1 and 2 of October 15th).

The above are just the high lights from which it is reasonable to more than infer that the defendants conspired with or had knowledge of Pennell's wrong doing.

Not only because of Gaetano Travisano's duty to investigate applications should he have known that the Caprio and Evangelista loans were forgeries, but in addition he testified that he knew the handwriting of Evangelista and further he stated that he saw the notes in question signed by the parties (Azzoli, 124, l. 38).

Appellants contend that no importance should be attributed to the fact that Gaetano Travisano wrote the word "Pagato" which was interpreted to mean "Paid" on the application in the A. Schaefer loan #512. The testimony is that this matter had been placed in the hands of Counsel for suit and that he received a check in payment of the amount due and that he turned over the note, check and application to Gaetano Travisano and that thereupon the latter wrote the word "Pagato" on the application (Azzoli, page 123, lines 20-35). Appellants evidently ignore the testimony which directly connected the defendant Gaetano Travisano with the Schaefer matter and explains the circumstances under which the word "Pagato" was marked on the application.

As to the remaining arguments under this heading set forth in appellant's brief we believe that

we have already taken that up and will therefore not repeat at this time.

It is submitted that the complainant proved facts which indicated beyond a reasonable doubt that the defendants either actively conspired with Rocco Pennell or passively sat by permitting the losses sustained by the Association to occur when ordinary diligence would have made it impossible.

Summary.

We are satisfied that the record in this case will show that the lower court was entirely justified in finding that the defendants were either guilty of actually participating in the fraud committed, on the complainant association or of passively consenting thereto and if the deceased Treasurer Rocco Pennell was guilty of defrauding the Association, that the defendants, Neale Travisano and Gaetano Travisano, were cognizant of that fact and took no steps to stop the fraud and participated, passively, and possibly actively, in perpetrating the continuance of the fraud upon the complainant association.

An examination of the testimony and the evidence produced will indicate that the complainant association was justified in selecting the defendants herein as responsible for the losses which it sustained. We submit that it is apparent that Gaetano Travisano was the guiding influence of the Association, he was its chief executive officer. The excuses given by the defendants are such that may possibly relieve them of the charge of actual fraud but they certainly condemn them as having utterly failed in their duties as ^{CEERS} officers of the Association, and in this case either proof of the act or the omission is sufficient to fasten responsibility on the de-

defendants, and we believe that the Special Master after giving consideration to the testimony and evidence submitted before him and considering the demeanor and attitude of the witnesses on the stand, was entirely justified and was reasonably driven to the conclusion that the defendants herein either:

1. Committed actual fraud.
2. Aided or abetted in it.
3. Or closed their eyes to it and sat supinely by.

One or either condemns them as guilty and makes them chargeable under the law as established by the cases hereinbefore cited.

We believe that this court should consider the fact that the Special Master in this matter had an opportunity of being with the witnesses personally and observing them on the witness stand. It would appear that before the findings of the Special Master, and the subsequent approval of his report by the Vice Chancellor in this matter, are reversed by this court on the questions of fact that the record discloses, that the record should disclose that the Special Master's report was absolutely contrary to the evidence, and we are satisfied that a reading of the testimony will most certainly disclose to your Honor that the finding of the Special Master was justified in this case.

The Special Master used language in his report which left no doubt as to the fact that he was entirely convinced as to the defendants' guilt. In the 8th paragraph of the Special Master's report he set forth "*I am satisfied from the evidence produced before me, and it is an irresistible conclusion, from the writing appearing on the forged*

loans above mentioned, the applications for such loans and the handwriting of the defendant Neale Travisano, that Neale Travisano forged the signatures of the applications, to the notes, and to the checks for the loans last mentioned, and I am further satisfied that the defendant, Gaetano Travisano knew of the conduct of his son, Neale Travisano, and was either guilty of actually participating in the fraud committed on the complainant association or he passively consented thereto."

It is evident that the Special Master is very positive in his statement and that positive and direct finding was made after he listened to all of the testimony and after he had observed the witnesses on the stand, not on one occasion, but on several occasions. There were many hearings in this matter before the report was made.

We believe it is important to consider in this matter that the Special Master is a lawyer of mature age with years of experience and would not lightly find a person guilty of forgery unless he had been convinced of the fact beyond a reasonable doubt.

Vice Chancellor Backes in the case of *Wilson vs. Sandall*, 92 N. J. Equity, 130, affirmed by the Court of Errors and Appeals held:

"The master's findings are sustained by the evidence. There was sharp conflict in the testimony on the question of percentage the defendant was entitled to for compensation, so called expert testimony. The master had first hand opportunity to value and weigh it, and as well that of the defendant,

which was not at all times attuned to frankness. The Master's resolve in favor of the complainant's contention is not to be disputed, unless he erred in matter of law or plainly as to the facts" (cases cited).

Counsel for appellants make no contention that the Special Master in this matter erred as a matter of law and we respectfully submit that the record will disclose that most certainly the said Master did not err, plainly, as to the facts.

In the case of Bagley and Sewall Co., et al vs. Trader Paper Board Co., Chancery New Jersey 1911, 86 Atl. at 1030 (not officially reported) Vice Chancellor Howell held: "The evidence on this point is voluminous, contradictory, uncertain, and very unsatisfactory. I have perused it carefully with the purpose of ascertaining the fact touching this suit and I am obliged to say that I have not been able to find clear and plain statements on the part of the Railroad Company which satisfy me that the situation is any different from that which the Master has reported. *"The master, who is an experienced lawyer, had the advantage of seeing the witnesses, of observing their manner on the witness stand, and of examining in detail with the aid of counsel and witnesses, the books, vouchers, and other records upon which the rights of the parties depend. He was therefore in a better position to judge of the character and weight of the evidence than any one else could be."*

For all of the reasons as hereinbefore set forth we submit that the report of the Special Master and the subsequent confirmation thereof and decree by the Court of Chancery is clearly in accord-

ance with the weight of the evidence and we therefore respectfully submit that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

WOLBER AND GILHOOLY,
Solicitors for Complainant-Respondent.

JOHN H. YAUCH, JR., ESQUIRE,
Of Counsel.

Note: Italics throughout this brief are ours.

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