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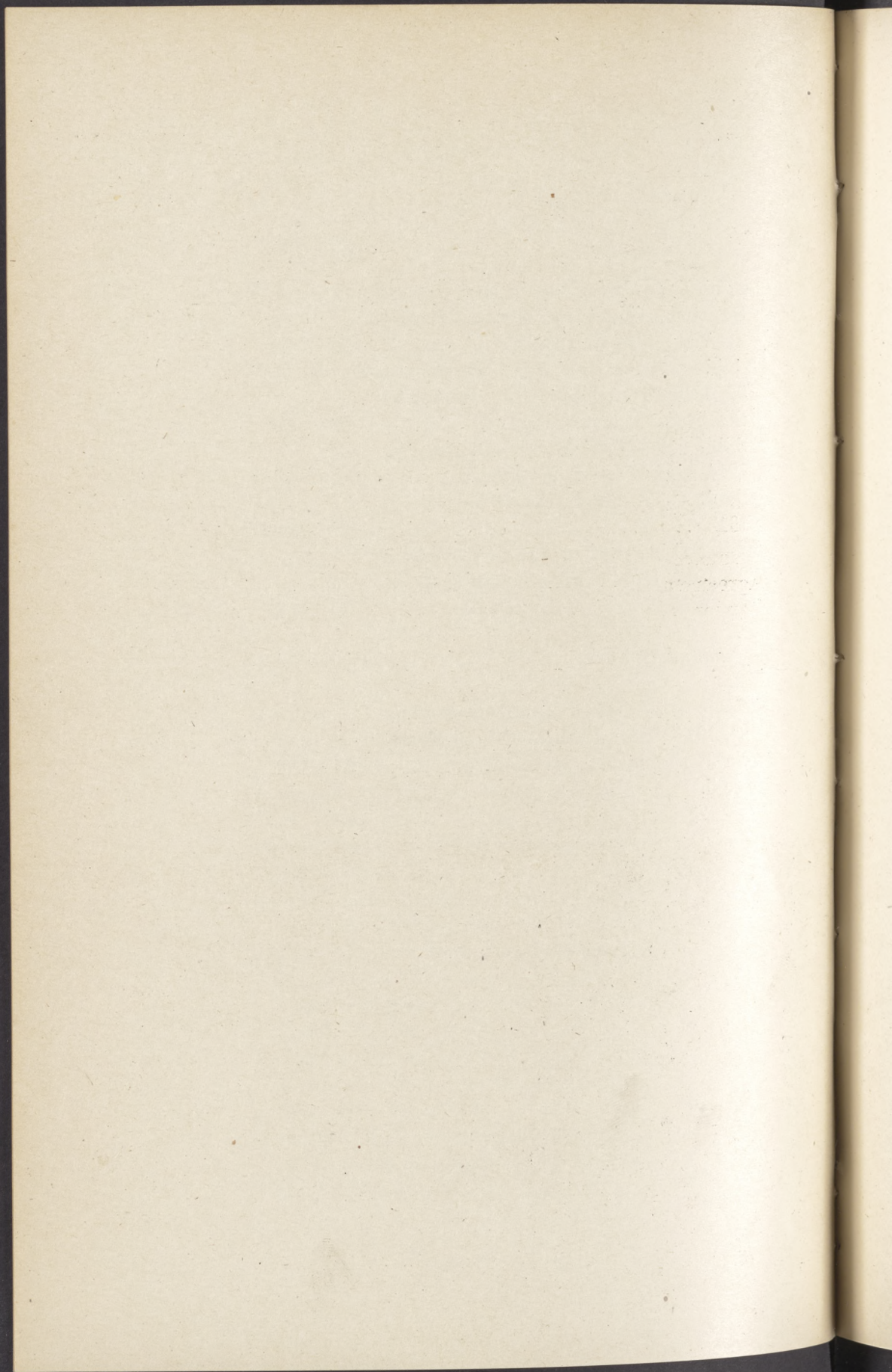
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New Jersey Court of Errors and Appeals

Bill of Complaint

(Filed, November 24, 1916)

IN CHANCERY OF NEW JERSEY

*To the Honorable Edwin Robert Walker Chan-
cellor of the State of New Jersey:* 20

The Complainant Henry Krouse, Trustee, of the Borough of Roselle, New Jersey, respectfully shows that:

1. On February 10th, 1914 The Development Realty Company, a corporation of New Jersey, being indebted to Francis J. Palmer in the sum of Seven thousand Five hundred (\$7500.00) Dollars executed to him a bond of that date to secure that sum, payable with interest at the rate 30 of six per centum per annum payable one year from the date of the bond.

2. To secure payment of the bond, said The Development Realty Company executed to said Francis J. Palmer a mortgage of even date with the bond; and thereby conveyed to him in fee, the land hereinafter described, on the express condition that such conveyance should be void 40 if payment should be made according to the terms

Bill of Complaint

of the bond. Which mortgage, having been first duly acknowledged and the certificate of acknowledgment duly indorsed thereon was recorded in the Register's office of Union County, in Book 349 of Mortgages, page 282.

10 3. The mortgaged premises are described as follows:

All that certain tract or parcel of land and premises situate, lying and being in the City of Westfield, County of Union and State of New Jersey.

20 BEGINNING at a point formed by the intersection of the Westerly line of Lawrence Avenue with the Northerly line of Dudley Avenue; thence from said BEGINNING and binding on the aforesaid line of Dudley Avenue for a distance of one hundred and seventy one and five tenths (171.5) feet more or less to the most Easterly corner in said Avenue of a lot of land said Stone sold to Charles D. Orth, now owned by Edward Perine; thence binding on said Perine's line of land formerly said Orth Northwesterly two hundred and eighty-three and five tenths (283.5) feet more or less to a point in said Perine's line of land and most Easterly rear corner of a lot of land said Stone lately sold to Clifford M. Maurer; thence binding on

30 said Maurer's line of land Northeasterly for a distance of one hundred and seventy and eight tenths (170.8) feet more or less to the most Easterly corner of said line of Maurer's lot of land and the aforesaid line of Lawrence Avenue; thence binding on the aforesaid line of Lawrence Avenue Southeasterly two hundred eighty-four (284) feet more or less to the point of BEGINNING.

40 4. The said Francis J. Palmer assigned said bond and mortgage to the State Trust Company

Bill of Complaint

a banking corporation of New Jersey by an assignment in writing dated February 10th, 1914, acknowledged the same date and recorded on February 11, 1914 in Book 54, page 390 of Assignments, to secure to the State Trust Company the payment of the sum of Three Thousand (\$3000.00) Dollars due to it on a promissory note of even date with said assignment.

10

5. Thereafter, that is to say, on November 24th, 1914, the said Francis J. Palmer having become indebted to Henry Krouse, Trustee, the complainant, in the total sum of Three Thousand Four Hundred (\$3400.00) Dollars did by an assignment in writing which is acknowledged on November 24th, 1914, recorded on the same date in Book 56, page 208 of Assignment assign to the said Henry Krouse, Trustee, all his equity in said mortgage retained by the said Francis J. Palmer which assignment was given "To secure an indebtedness of Three Thousand Six Hundred (\$3600.00) Dollars." Upon the payment of which said assignment was to be cancelled or the mortgage reassigned to the said Francis J. Palmer; that the actual amount due from the said Francis J. Palmer to Henry Krouse, Trustee, is the total sum of Three Thousand Four Hundred (\$3400.00) Dollars together with interest on the same at six per cent. from January 1st, 1914, no part of which has been paid.

20

30

6. Complainant shows that the said mortgage became due and payable on February 10th, 1915, no part thereof having been paid; and that if any extension has been granted for the payment of said mortgage loan such extension has been granted without the consent or knowledge of complain-

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Bill of Complaint

ant, and complainant further shows that he has demanded payment of the said sum of Three Thousand Four Hundred (\$3400.00) Dollars and interest but no part thereof has been paid by said Palmer.

10 7. Complainant desires to foreclose his right, title and interest in the said mortgage and has requested the said State Trust Company, the present holder of said mortgage, to the extent of Three Thousand (\$3000.00) Dollars under said first assignment, to foreclose said mortgage or join with complainant in an action to foreclose said mortgage, but the said State Trust Company has refused to commence such action or join with the complainant in this action.

20 8. The State Trust Company, a banking Company by virtue of having an interest in said mortgage to the extent of Three Thousand (\$3000.00) Dollars is made a party defendant; and the said Francis J. Palmer is made a party defendant because it is alleged that he still has some interest in said mortgage; the Development Realty Company is made a party defendant because it is alleged that they hold the fee in said premises.

30 9. That at the time the said Palmer made his Assignment to Complainant he agreed with complainant that the State Trust Company should on payment of Palmer's indebtedness to it by complainant assign to complainant all their interest in said Bond and mortgage which agreement was made on November 23d, 1914.

40 10. That complainant offered to purchase from the State Trust Company their interest in said bond and mortgage on January 13th, 1915 for

Bill of Complaint

the amount of the principal and interest due to it and tendered said sum to said Company, but the said Company refused and still does refuse to sell its interest therein to complainant or assign said bond and mortgage to complainant.

11. That said State Trust Company was at the time of the making of the Assignment to Complainant notified not to re-assign said bond and mortgage to said Palmer when this indebtedness to it was satisfied or at any other time but to re-assign said bond and mortgage to complainant but said State Trust Company still holds said assignment so made to it by said Palmer. 10

Said The Development Realty Company has always been in possession of the mortgaged premises. 20

Of the principal sum, due to complainant \$3400.00 with interest thereon, from January 1st, 1914 is due upon the complainants interest in said bond and mortgage.

COMPLAINANT is without adequate remedy in the courts of law and therefore prays—

1. That Francis J. Palmer, the Development Realty Company, a corporation, and State Trust company, a corporation, who are the defendants to this suit, may answer this bill of complainant without oath and each statement therein made: 30

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

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interests and costs, by a short day, to be appointed by this Court; and that in default of

Bill of Complaint

such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands: or

10 4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on said mortgage, with interests and costs:

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

20 6. Or that complainant's interest in said mortgage by virtue of said assignment may be sold by an order of this Court to raise and pay to complainant the amount so found to be due to him by virtue of said assignment with interest and costs.

N. R. LEAVITT,

Solicitor and Counsel with Complainant.

Answer of the Defendant, The Development
Realty Company, a corporation

5. It admits that the said mortgage became due and payable on February 10th, 1915, and that it has not been paid and denies knowledge or information sufficient to form a belief as to the other
10 allegations of Paragraphs 6 and 7.

6. It admits that the defendant, The State Trust Company, has a valid interest in the said mortgage to secure payment of the sum of Three Thousand Dollars, but denies that it has any knowledge or information sufficient to form a belief as to the allegations of Paragraphs 9, 10 and
11.

7. That the assignment of the said mortgage to the complainant, if any such assignment was
20 made, was without consideration and was in derogation of the rights of this defendant and was void and of no effect as against this defendant.

8. This defendant admits that the said mortgage is a good and valid lien upon the premises therein described to the amount of Three Thousand Dollars which amount is due and owing to defendant The State Trust Company, but denies that it is valid for any other or further sum
whatsoever.

30 By way of counterclaim against the complainant, this defendant further says:

1. On or about the tenth day of February, 1914, this defendant for the purpose of enabling the defendant, Francis J. Palmer, to borrow a certain sum of money by using the same as security with the defendant The State Trust Company and without other consideration executed and delivered its certain bond to secure the nominal sum of Seventy-five Hundred Dollars with interest at
40 the rate of six per centum per annum payable one

Answer of the Defendant, The Development
Realty Company, a corporation

year from the date of the bond as set forth in the bill of complaint and also its mortgage in the usual form to secure the said bond, which mortgage conveyed or described the premises mentioned and set forth in the third paragraph of the bill. 10

2. The said Francis J. Palmer thereupon borrowed from the defendant The State Trust Company the sum of Three Thousand Dollars upon the security of the said bond and mortgage as collateral according to the agreement and understanding between him and this defendant. Thereafter, but at what precise time this defendant is ignorant, the said Francis J. Palmer, without right or authority, assigned, or attempted to assign all his right, title and interest in the said bond and mortgage to the complainant to secure to him a debt or an alleged debt which had theretofore been contracted or alleged to have been contracted to the First National Bank of Roselle, a corporation of the United States, by some person or person unknown to this defendant, but who were at that time the directors of the said First National Bank of Roselle. The complainant was one of the said directors and was selected by them to act as trustee for himself and the others. 20
The said Francis J. Palmer had no liability for or interest in the said debt or the transactions out of which the same arose, but was induced and persuaded by the complainant and the other directors of the said bank by what means this defendant is ignorant to make the said assignment as an accommodation merely and without any consideration passing from the complainant or from any 30
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Answer of the Defendant, The Development
Realty Company, a corporation

other person either to the defendant Francis J. Palmer or to this defendant.

10 3. This defendant is advised and alleges that the said Francis J. Palmer had no power or authority to make any assignment thereof to the complainant and that the said assignment was void and of no effect as against this defendant and that the complainant thereby acquired no right, title or interest therein or in the lands in said mortgage described.

20 This defendant therefore prays that it may be decreed that the complainant has no right, title or interest in the said mortgage and no right or authority to foreclose the same and that he may be ordered and decreed to reassign the said mortgage to the said Francis J. Palmer in case he holds an assignment from him and surrender to the said Francis J. Palmer or to this defendant all assignments, documents and papers in their possession relating to the same to the end that this defendant may upon payment of the claim of the defendant The State Banking Company receive the said bond and mortgage receipted for cancellation.

30 (signed) EDWIN B. & PHILIP GOODELL,
Solicitor and of Counsel with the Defendant,
The Development Realty Company.

It is hereby consented that the within answer be filed as in time.

Dated Jan. 16, 1917.

N. R. LEAVITT,
Solr. of Complainant.

Supplemental Bill of Complaint

(Filed January 27, 1917)

IN CHANCERY OF NEW JERSEY

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

The Complainant, Henry Krouse, Trustee, respectfully shows:

1. That on December 26th, 1916, he filed a bill to foreclose a mortgage covering premises in the City of Westfield, County of Union and State of New Jersey and recited therein that the State Trust Company, a banking corporation, by virtue of an Assignment dated February 10th, 1914, recorded in Book 54, page 390 of Assignments held an interest in said mortgage under foreclosure to the extent of Three Thousand (\$3000.00) Dollars, the said Assignment having been made to the State Trust Company by Francis J. Palmer to secure a loan of Three Thousand (\$3000.00) Dollars and the said Bill of Complaint further set out that the balance of said Palmer's equity in said mortgage was assigned to complainant to secure an indebtedness of Three Thousand Six Hundred (\$3600.00) Dollars. 20 30

2. Complainant shows that since the filing of said Bill of Complaint the said State Trust Company by an assignment in writing assigned all its interest in the said mortgage to complainant for the sum of Three Thousand Fifty-one (\$3051.00) Dollars, the amount due thereon to the State Trust Company, on January 8th, 1917 which said assignment to complainant was dated 40

Supplemental Bill of Complaint

January 8th, 1917 which has not been recorded but is in possession of complainant and ready to be produced at the proper time. By reason of this assignment and the purchase by complainant of the interest of the State Trust Company in said mortgage complainant desires to amend the Bill of Complaint filed in this cause by discontinuing this action as against the State Trust Company and amending said Bill so that the whole title in said mortgage shall appear in complainant.

3. Complainant therefore amends his Bill of Complaint in the following manner by changing paragraphs nine (9), ten (10), and eleven (11) to read as follows:

20 “9. Complainant shows that since the Assignment made by Palmer to the State Trust Company, complainant has purchased from the State Trust Company all its interest in said mortgage for the sum of Three Thousand Fifty-one (\$3051.00) Dollars and on January 8th, 1917, the said State Trust Company assigned all its right, title and interest in said mortgage to complainant by an Assignment in writing.

30 “10. Complainant shows that by reason of said assignment to him as Trustee there is due on said mortgage to complainant the said sum of Three Thousand Fifty-one (\$3051.00) Dollars with interest from January 8th, 1917, besides the sum of Three Thousand Four Hundred (\$3400.) Dollars with interest from January 1st, 1914, by virtue of the Assignment from Palmer to complainant above set out.

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Answer to Supplemental Bill of Complaint

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

1. It admits the allegations of Paragraph 1.
2. It denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 2.

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3. This defendant admits that if the complainant has purchased the interest of the State Trust Company in the bond and mortgage mentioned in the bill of complaint there is due to the complainant upon the said mortgage the sum of \$3051.00 with interest thereon from the eighth day of January, 1917, and no more.

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By way of counter-claim, against the complainant, this defendant says:

1. On or about the tenth day of February, 1914, this defendant for the purpose of enabling the defendant Francis J. Palmer to borrow a certain sum of money by using the same as security with the defendant The State Trust Company and without other consideration executed and delivered its certain bond to secure the nominal sum of \$7500 with interest at the rate of six per centum per annum payable one year from the date of the bond as set forth in the bill of complaint and also its mortgage in the usual form to secure the said bond which mortgage conveyed or described the premises mentioned and set forth in the third paragraph of the bill.

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2. The said Francis J. Palmer thereupon borrowed from the State Trust Company, a corporation of the State of New Jersey, the sum of \$3000 upon the security of the said bond and mortgage

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Answer to Supplemental Bill of Complaint

as collateral according to the agreement and understanding between him and this defendant. Thereafter, but at what precise time this defendant is ignorant, the said Francis J. Palmer without right or authority and without any consideration assigned or attempted to assign all his right, title and interest in the said bond and mortgage to the complainant to secure to him a debt or an alleged debt of \$3400 claimed to be due to the complainant from some person or persons to this defendant unknown.

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3. This defendant denies that there was any debt due to the complaint as represented by him to the said Francis J. Palmer and denies that the said Francis J. Palmer had any right or interest in the equity of the said mortgage or any power or authority to bind this defendant by any assignment or pledge of the same other than the original pledge to the State Trust Company or that he received any consideration whatever for the said assignment to the complainant.

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This defendant therefore prays that an account may be taken of the amount due from the said Francis J. Palmer to the said The State Trust Company or to the complainant under its alleged assignment from the State Trust Company of its claim against the said Francis J. Palmer secured by the said mortgage and that the complainant upon receipt of the said sum so found to be due may be ordered and decreed to receipt and surrender the said mortgage for cancellation.

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EDWIN B. AND PHILIP GOODELL,
Solicitor and of Counsel with the Defendant,
The Development Realty Company.

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Replication And Answer To Counter-claim

(Filed February 5, 1917)

IN CHANCERY OF NEW JERSEY

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Between HENRY KROUSE, Trustee, <div style="text-align: right; padding-right: 20px;">Complainant,</div> and FRANCIS J. PALMER, <i>et al.</i> , <div style="text-align: right; padding-right: 20px;">Defendants.</div>	}	On Bill, etc.
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20 The complainant joins issue on the Answer of the defendant, the Development Realty Company, a corporation, to the Bill of Complaint as amended.

30 As to the Counter-claim contained in said answer complainant denies the allegations contained in paragraphs one, two and three in the original counter-claim and in the counter-claim to the Supplemental bill filed by this defendant, to the effect that the bond and mortgage made to Francis J. Palmer were executed by this defendant merely
 40 to assist him to procure a loan from the State Trust Company and that Palmer had no further interest in said mortgage and without authority executed the assignment of said mortgage to complainant and without any consideration passing to the said Palmer or this defendant, and that said Assignment is invalid, but complainant says that the bond and mortgage were executed to the said Palmer for the benefit of the said Development Realty Company and for a valuable consideration;
 that the assignment made by said Palmer to com-

Supplemental Answer of Complainant to Counterclaim of Development Realty Company

1. The said Francis J. Palmer at the time of the assignment of complainant's mortgage from said Palmer to him the said Palmer was President, or some other officer, and a Director of the said Development Realty Company and was the real owner of approximately eighteen shares of \$100.00 each of the total issue of twenty shares of stock that up to that time had been issued by the defendant corporation and the only other shares of said Company then issued were held as follows: one share by John F. Dorvall and one share by Gerritt Smith for which nothing had been paid at that time, and that in fact the said Palmer was the sole owner of all the assets of said corporation which was organized to take over the real estate of said Palmer for his benefit, and said Palmer was in fact the corporation.

2. The Complainant's mortgage was assigned to Henry Krouse, Trustee for the Directors of the First National Bank of Roselle, subject to the interest therein of the State Trust Company of Plainfield as security for a note of \$3600.00 made by John M. Walsh at that time Cashier of said Bank to the said Henry Krouse, Trustee for said Directors under the following circumstances: The said Cashier had on March 24, 1913 accepted an \$8000.00 St. James rent Participation Certificate as collateral for a loan of \$8000.00 made to St. James Building, Incorporated, without the approval of the discount committee or any of the members of said Board of Directors and in violation of the Statute and the rules of said board, and was required by them to find security for a note to secure said Directors against loss who by virtue of the Statute in such case made and

Supplemental Answer of Complainant to Counterclaim of Development Realty Company

provided were liable to the stockholders of said Bank in case of any loss as a result of said illegal purchase. Under pressure the said Cashier caused the amount of said loan to be reduced to \$3,600 by March 24, 1914, which sum was made up by the said Directors namely: P. B. Polhemus, Clarence Crane, Henry Krouse, C. E. Chambers, E. L. Illibridge, F. C. Manley, E. C. Hill, W. T. West, and W. B. Powell and paid to said bank. And thereafter at the demand of Complainant one of said Directors and the said board of Directors the said Walsh, the Cashier, offered to give his note for \$3600.00 to said Complainant as Trustee, to secure those who had advanced said \$3600.00 but Complainant refused to accept said note from Walsh unless he furnished adequate security therefor on pain of being removed as Cashier of said Bank, and to protect said Walsh from such action that said bank or said Directors might take against said Walsh, the said Palmer assigned to Complainant as trustee the mortgage in question and complainant accepted the personal note of said Walsh for \$3600.00 with said Assignment as collateral security therefor on or about November 24, 1914, which note was reduced to \$3200.00 on October 25, 1915 by subsequent payments on account, and it was known by said Palmer that the Assignment was accepted by Complaint for the purpose aforesaid and was given by Palmer to save said Walsh from possible prosecution and from an action which said Board of Directors and Complainant threatened to bring against him in case proper security were not furnished for Walsh's note.

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Answer of Defendant Francis J. Palmer

3. By reason of the foregoing the said Development Realty Company is estopped from setting up the defense that said Assignment was made by Palmer without power or authority and is void, as the said Corporation was owned and controlled by said Palmer, and if such defense be sustained the said Corporation and said Palmer will be suffered to perpetrate a fraud on the Complainant with the aid of this Court.

N. R. LEAVITT,
Sol'r of Complainant.

20 **Answer Of The Defendant Francis J.
Palmer To The Amended Bill Of
Complaint And To The Supplemental
Bill of Complaint**

(Filed June 22, 1917)

IN CHANCERY OF NEW JERSEY

30	Between HENRY KROUSE, Trustee, and FRANCIS J. PALMER, <i>et al.</i> , Defendants.	}	On Bill, etc.
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40 This defendant, answering the bill of complaint,
says:

Answer of Defendant Francis J. Palmer

1. He admits the making and delivery of the bond and mortgage mentioned in Paragraphs 1 and 2 of the complaint and covering the land described in Paragraph 3, but denies that the Development Realty Company was indebted to this defendant and says that the mortgage was given in order that this defendant might use it as collateral with the said Trust Company mentioned in Paragraph 4 to secure payment of a note made by this defendant to said Trust Company and without any other consideration whatever. 10

2. He admits the allegations of Paragraph 4.

3. He denies that he was indebted to the complainant in any sum whatever, but admits the making and delivery of the assignment mentioned in Paragraph 5 of the complaint to secure an indebtedness of one John M. Walsh to the complainant, acting or claiming to be acting as trustee for others, and solely for the accommodation of the said Walsh and without other consideration. 20

4. He admits that the said bond and mortgage is due according to its terms.

5. And in answer to the Supplemental Bill of Complaint, he admits the allegations of Paragraph 1 of said bill.

6. He denies knowledge as to the allegations of Paragraph 2 and prays that the complainant may be required to prove the same. 30

7. He admits that he was indebted to the State Trust Company in the sum of \$3000 with interest, and that the said Trust Company had a valid assignment of the said mortgage to secure said indebtedness and that if the complainant has acquired their interest in the said mortgage by taking an assignment of the said indebtedness, the 40

Answer of Defendant Francis J. Palmer:

complainant is entitled to recover the amount so paid to the said Trust Company with interest, out of the said mortgage, but he denies that the complainant is entitled to hold the said bond and mortgage or to foreclose the same for any other or further sum.

10 8. Further answering the said Amended and Supplemental Bills, he says that he was induced to make and deliver the assignment mentioned in Paragraph 5 of the original bill by the following representations of fact made by the said John M. Walsh and Henry W. Evans claiming to have knowledge of the facts of the alleged indebtedness of the said John M. Walsh to the complainant as trustee, namely:

20 That the said John M. Walsh as cashier of the First National Bank of Roselle had assumed an indebtedness to the said Bank in the sum of \$3600 arising out of the fact that the said Walsh had assumed an indebtedness of St. James Building, Incorporated, a corporation of the State of New York to the said Bank in the sum of \$8000, which indebtedness at that time had been reduced to \$3600 as aforesaid, and that the said John M. Walsh was unable to meet the said indebtedness
30 and was required to give security therefor. It was further represented to this defendant by the said Henry W. Evans that he, the said Evans, had certain stock of the value of twelve or fifteen hundred dollars and that one Mooney, another mutual friend of the said Evans and the said Walsh, would contribute security of the value of \$1000 and it was specifically promised and agreed by
40 the said Evans that in case it should be necessary to pay the said indebtedness to the said Bank he,

Answer of Defendant Francis J. Palmer

the said Evans, and the said Mooney would pay equally with this defendant so that each should lose only one-third. In view of these representations this defendant was willing and offered to advance to the said Bank as security for the said indebtedness of Walsh with the securities to be offered by the said Evans and Mooney two shares of the capital stock of the Development Realty Company which was all the stock this defendant then owned. It was subsequently reported to this defendant by the said Walsh that the said stock and the other securities offered by the said Evans and Mooney were not acceptable to the Bank. And the said Walsh then suggested that this defendant endeavor to raise a larger amount with the Morris County Savings Bank upon the mortgage then pledged to the State Trust Company and after paying the said State Trust Company to pay the said alleged indebtedness of said Walsh to the First National Bank of Roselle and an attempt was made to induce the Morris County Savings Bank to advance upon the said mortgage the full face thereof, but this attempt was unsuccessful and it was then proposed by Mr. Walsh that this defendant should make the assignment set forth in the complaint and, upon the strength of these representations, the said assignment was made as therein set forth. But this defendant further says and expressly charges that the said representations were false for the said John M. Walsh was not at that time nor at any other time indebted to the First National Bank of Roselle in the manner represented to this defendant, but that the condition and state of the alleged indebtedness

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Answer of Defendant Francis J. Palmer

was as follows; namely, that the said loan upon the faith of the certificate of indebtedness of St. James Building, Incorporated, was made by the executive committee duly appointed by the Board of Directors of the said First National Bank of Roselle and reported by the said executive committee to the Board of Directors at the first meeting following the said loan in or about the month of March, 1913, and that the making of the said loan was duly approved and ratified by the Board of Directors; that thereafter, the said loan not having proved fortunate and being partly unpaid, the said Walsh voluntarily and without consideration of any sort assumed the responsibility therefor and that no action was taken on account of this assumption of the debt by the said Walsh for a long time thereafter, but at or shortly before the time of the making of this assignment the said Board of Directors began to press the said John M. Walsh to make payment of the balance of the said indebtedness to the Bank and the bank examiner having alleged that the loan was one which the Board of Directors had no right to make, the said Board of Directors, the said John M. Walsh with the others, advanced the balance of the said loan to the Bank by giving their joint promissory note therefor to the Bank and this defendant alleges that the said directors induced the said John M. Walsh to procure the assignment of the said mortgage to the said Krouse as trustee in order that they might reimburse themselves for the loss thus incurred out of the mortgage mentioned in the complainant's bill and now sought to be foreclosed, well knowing that the defendant would not have made the assign-

Testimony

Mr. Leavitt: I offer in evidence mortgage made by the Development Realty Company and Francis J. Palmer, dated February 10, 1914, given to secure the sum of \$7500, recorded in Book 349 of Mortgages, page 282.

10 Marked Exhibit C-1.

Also, bond accompanying said mortgage, bearing the same date, in the penal sum of \$15,000, to secure the full sum of \$7500.

Marked Exhibit C-2.

Also, assignment of this mortgage, by Francis J. Palmer to the State Trust Company of Plainfield, dated February 10, 1914, recorded in Book 54 of Assignments, page 390 &c.

Marked Exhibit C-3.

20 Also, assignment by State Trust Company to Henry Krouse, Trustee, the complainant, dated January 8, 1917; assigned in consideration of the payment of \$3051; recorded in Book 60, page 458.

Marked Exhibit C-4.

Also, another assignment made by Francis J. Palmer to Henry Krouse, Trustee, dated November 24, 1914, assigning this same mortgage subject to a previous assignment made to the State Trust Company of Plainfield.

30 Marked Exhibit C-5.

This assignment is given to secure an indebtedness of \$3600; recorded in Book 56 of Assignments, page 208. The original assignment is lost; it was in my possession and I cannot find it.

Court: If Mr. Goodell insists upon the proof, you will have to prove that.

Mr. Goodell: We do not contest the \$3051, but we dispute the second assignment.

Testimony

Mr. Leavitt: I also offer in evidence a note bearing date November 24, 1914, for \$3600, made by John M. Walsh to Henry Krouse, Trustee, payable three months after date.

Marked Exhibit C-6.

I also offer in evidence a transcript of a judgment obtained in the New Jersey Supreme Court against John M. Walsh by Henry Krouse, Trustee, on this note. 10

Mr. Goodell: I object as not binding on these defendants in any way, and immaterial.

Court: I will let it in for the present; if I find it has no bearing, then I will strike it out.

Mr. Leavitt: Judgment obtained in the New Jersey Supreme Court by Henry Krouse, Trustee, plaintiff, against John M. Walsh, defendant, for \$3357.33 and costs on August 19, 1916, the costs amounting to \$37.04. 20

Marked Exhibit C-7.

At the time Palmer assigned the mortgage to Henry Krouse, Trustee, the mortgage had been previously assigned to the State Trust Company of Plainfield, who held it for the three thousand dollar obligation which is admitted.

At the time of the assignment to Henry Krouse, Trustee, Mr. Palmer signed a letter dated November 23, 1914, addressed to the State Trust Company: 30

"I have this day assigned my equity in the mortgage made by the Development Realty Company to me, dated February 10, 1914, given to secure the sum of \$7500, recorded in Book 349 pages 282 of Mortgages, and by me assigned to you to secure the payment of a note made by me for 40

Testimony

\$3000, which note was purchased by you, and which assignment bears date February 10, 1915, recorded in Book 54, pages 391, to Henry Krouse, Trustee, of Roselle, New Jersey. I have agreed as part of the consideration for the acceptance
 10 of said assignment to notify you that the afore-said mortgage shall not be cancelled by you upon the payment of the amount due you, without the consent of the said Henry Krouse; and further, that upon payment to you of your indebtedness, that you will assign the said mortgage to the said Henry Krouse, Trustee.

Very truly yours,

Francis J. Palmer."

Mr. Goodell: Do you know why that letter is
 20 dated the day before the assignment?

Mr. Leavitt: In preparing for Mr. Palmer's arrival at my office, I dictated certain papers, and this paper was dictated the day before, and the stenographer dated it November 23rd; I had expected Mr. Palmer in the office to sign these papers.

Mr. Goodell: He signed it on the 24th?

Mr. Leavitt: Yes.

Letter marked Exhibit C-8.

30 Court: It is admitted that the complainant is properly in court and entitled to a decree for the amount due on the assignment from Mr. Palmer to the State Trust Company and assigned by the State Trust Company to Mr. Krouse, the complainant, for \$3051, with interest.

Mr. Leavitt: The only issue raised in the papers is whether or not there was a debt in ex-
 40 sistence.

Peres B. Polhemus—Direct

PERES B. POLHEMUS, sworn for complainant:

Direct-examination by Mr. Leavitt:

Q. You are a director of the First National Bank of Roselle? A. I am.

Q. You were a director on November 24, 1914? A. Yes. 10

Q. How long have you been a director? A. About eight years, if my memory serves me.

Q. In November 1914 Mr. John M. Walsh was the cashier of the First National Bank of Roselle? A. Yes, he was.

Q. At that time were you a member of the discount committee? A. Yes.

Q. Do you recall the St. James rent participating note transaction? A. I do. 20

Q. When did you first hear of that note? A. That was brought to the attention of the discount committee at its meeting at the bank.

Q. Who was on the discount committee besides yourself? A. Present that morning was Mr. Krouse and myself.

Court: How many members were on the discount committee and known as the board?

Witness: Four at that time. 30

Q. The Mr. Krouse you refer to is the complainant? A. Yes.

Q. Who brought it to your attention? A. Mr. Walsh.

Q. What did he say about the note?

Mr. Goodell: I object as immaterial.

Court: I will admit it for the present; I will strike it out later if its materiality isn't shown. 40

Peres B. Polhemus—Direct

A. He said that was a loan which he had made and wanted us to approve of it.

Q. The loan was made by Walsh at the time he called your attention to it; am I right? A. Yes, the loan had already been made.

10 Q. The money of the bank had been paid out by Walsh? A. As I so understood.

Q. What did you and Mr. Krouse do about this note? A. Refused to approve of it.

Q. What was done subsequently? A. It was brought to the meeting of directors that night.

Q. Who was present at that meeting? A. The greater portion of the board.

20 Mr. Goodell: I understand I have the minutes of that board, and I think before he testifies, the minutes should be produced.

Mr. Leavitt: We will put that in.

Q. What was done at the meeting?

It is admitted that the book produced by Mr. Leavitt contains the minutes of the meeting of the Board of Directors held on the 25th of March, 1913, of the bank, to which the witness, Mr. Polhemus, was about to refer.

Mr. Leavitt: I offer that minute.

30 Q. Do you recall the date of the meeting at which this note was discussed? A. It was in March, as I looked up the record; I believe the 25th.

Q. Do you recall whether it is the 25th, or is it because you see it on the minutes here?

Court: Have you any independent recollection of the matter?

40 Witness: Not the precise date; it was the latter part of March; my recollection is of the directors present, without consulting the minutes—

Peres B. Polhemus—Direct

Q. Suppose you give us that; who was present?
A. Mr. Manley, Mr. Krouse, Hill, Chambers, President West and myself were present.

Q. How many members did you have on your board at that time? A. I think there were nine, including the president.

Q. What was said about the note? 10

Mr. Goodell: Will you examine the minutes and state whether anything is shown to have been said by the minutes?

Q. Who was secretary of the meeting? A. Mr. Walsh.

Q. Did Mr. Walsh report the note, the St. James note? A. Yes.

Q. Did the board approve or reject the note?
A. I cannot say they approved it, because we got in a discussion about the note and I raised objection to it at once. 20

Q. What was the action of the board; did they approve of this transaction? A. They allowed it to go on the minutes because our cashier had already—

Q. That isn't the question. Did they at that meeting approve of this transaction? I am not talking about subsequent meeting, but this meeting. 30

Mr. Goodell: Does he mean the individuals approved or disapproved, or does he mean as a board?

Court: He is talking about the board as a board.

Q. What action did the board take in approving or disapproving the money loaned on this note? A. We never approved of that loan. 40

Court: At that meeting he asked.

Peres B. Polhemus—Direct

Witness: At that meeting or any other.

Q. At that meeting or any other? A. No, sir.

Q. What did Mr. Walsh have to say about the note as that meeting? A. He made an appeal for the note, asking us to approve it, stating he
10 would be personally responsible for it.

Q. What did he say about being personally responsible? A. When we objected to it, he said it was a very good loan, and that he was so sure of it that he would reimburse the bank for any loss that would come from it, and would stand for it at any time.

Q. Why did Walsh say that he would personally guarantee a loan made by him with bank's money?

20 Court: If you know.

Mr. Goodell: I object.

A. I took it because we objected to it so strenuously and he wanted us to approve of it.

Court: That was merely your conclusion.

Witness: That was my conclusion.

Q. At that time did you know it was a rent participating certificate? A. At that time I was not entirely familiar with the conditions of the loan; it was simply put to us that he had made
30 the loan.

Court: For what amount?

Witness: \$8,000.

Court: On what paper; on a note given by him or what?

Witness: A note given by the St. James Building Company, or some such term as that.

Court: Made payable to the order of itself or endorsed by anybody?

40 Witness: He didn't ever show the paper; that

Peres B. Polhemus—Direct

morning I didn't see the paper: he told us about it.

Court: Or that night either?

Witness: I don't recall of seeing the paper at all.

Court: Was there any collateral for the loan? 10

Witness: No.

Q. Why didn't you as a member of the discount committee and as a member of the board of directors approve that loan? A. Because I didn't think it was a proper loan; I didn't think it was a good loan for the bank.

Q. What do you mean by a proper loan? A. I knew the St. James Building Company, and what little Mr. Walsh told us about the loan, I didn't think it was safe loan. 20

Q. Do you mean with regard to the security when you say "proper," or do you mean something else? A. I mean in regard to the security.

Q. You didn't consider it was a safe loan at that time? A. No.

Q. What was done subsequent to this meeting relative to this note, if anything? A. I didn't just catch the drift of your question.

Q. At any other meeting subsequent was any further action taken about it? A. There were payments reported from time to time. 30

Court: By whom?

Witness: Mr. Walsh, and the note came up for discussion very often, and it was the cause of many bitter discussions.

Court: Before you leave that meeting of the 25th of March, you say Mr. Walsh offered to assume liability for the entire note?

Witness: Yes. 40

Peres B. Polhemus—Direct

Court: Did you accept his offer, or the board?

Witness: The board let it stand on Mr. Walsh putting it that way.

Court: Let the loan stand; is that what you mean?

10 Witness: Yes, because he was to become responsible for it so as to relieve the bank.

Court: Did he give the bank any paper or anything to show that he assumed the liability?

Witness: No, we assumed Mr. Walsh's word was good for what he told us.

Q. At that time did he give the bank any paper, on the 25th of March? A. At that time, no, we took his word for it.

Q. Did he subsequently? A. He did.

20 Q. Did Walsh have authority as cashier to negotiate notes or purchase notes?

Court: The by-laws and the National Bank Act would determine that better than Mr. Polhemus's construction of his powers.

Mr. Leavitt: The National Bank Act comes in very strong in this case; I haven't the reference to the statute, but the Court will take judicious notice of it.

30 Court: You may put it in later if you haven't it here.

Q. What action was taken, if any, at any subsequent meeting relative to the St. James transaction? A. The matter came up at various times and we reminded Mr. Walsh of his promise, and when the National Bank Examiner got after us, we called Mr. Walsh to make good his promise; he then—

40 Q. What do you mean by "got after us"? A. Told us that that loan had been made illegally.

Peres B. Polhemus—Direct

Q. Did he say how; why was it illegal? A. He said it was a real estate transaction.

Q. When; can you give us some idea as to the dates? A. The exact date I cannot say, but not very long before Mr. Walsh gave us the note.

Q. What note did Mr. Walsh give the note? A. His personal note. 10

Q. For how much?

Mr. Goodell: I object.

Q. At the time Mr. Walsh gave his note to the bank how much was that for, if you recall? A. I think it was \$3600 and interest.

Q. You as a director of that bank paid a certain amount of money as your share of this transaction, did you not? A. I did.

Q. How much did you pay? A. I paid one-ninth of it. 20

Q. How much in dollars and cents? A. Four hundred and some odd dollars. I will have to look up my own records, to make sure of that.

Q. Did Walsh at any time offer the bank security as collateral for this indebtedness? A. Yes, at the time he gave us the note we asked for further security, and he offered us collateral.

Q. What collateral did he offer, if you recall? A. The first collateral was bonds of the Nappa Improvement Company—some corporation in California. 30

Q. What did the directors of the bank do with this offer? A. Referred it to the securities committee to look up the value, and they reported it adversely and refused it.

Q. Do you remember seeing this note dated September 8th, 1914? A. For \$4800, made by J. M. Walsh, in his own handwriting, a collateral 40

Peres B. Polhemus—Direct

note, in the body of which reads that the bonds numbered 192-3-4-5-6-7-8. 198, 279, 273, 276, 383, Nappa Improvement Company bonds for \$500, which is offered as collateral security for the note for \$4800; this note was dated September 8th,
 10 due November 8th, 1914.

Q. The committee is the First National Bank of Roselle? A. Yes.

Q. Was this note ever accepted by the bank? A. No.

Q. Why not? A. Because it didn't consider the collateral good.

Q. What happened after the directors refused to accept this collateral? A. Mr. Walsh told us that some friends of his would help him out, and
 20 he offered us as collateral the mortgage on certain property in Westfield.

Q. Held by Mr. Palmer? A. Yes.

Q. Did he say why he was doing all this? A. He said Mr. Palmer was a friend of his and didn't want to see him get in trouble; he was ready to help him out.

Q. What trouble was Walsh in at that time? A. He owed us money and we were pressing him to pay it.

30 Court: Owed you money on this transaction you mean?

Witness: Yes.

Q. Did he owe you any other money? A. No, sir.

Q. Did Walsh say why he assumed the responsibility of this transaction? A. He said he had agreed from the beginning to make good on it,
 40 and he was keeping his word.

Peres B. Polhemus—Direct

Q. Did he assume the obligation in the beginning? A. He assumed the obligation in the beginning to endeavor to get us to approve of it.

Q. Were you present when Mr. Walsh spoke to Mr. Chambers, one of your co-directors? A. I was.

Q. Do you recall the conversation that took place between these two men about this transaction? 10

Court: And when did it occur? A. At a meeting of the board at the time the mortgage was offered.

Court: That would be November, 1914, about?

Mr. Leavitt: Shortly prior to November, 1914. I can show by my correspondence. 20

Q. Do you recall the conversation or parts of it affecting this transaction? A. Mr. Chambers asked Mr. Walsh why Mr. Palmer did this, and Mr. Walsh said that Mr. Palmer was a friend of his and didn't want him to get in trouble or lose his job.

Q. Was Walsh's job threatened at that time? A. Yes.

Court: Who threatened it?

Witness: The board. 30

Court: What had you said or done about it or intimated?

Witness: We had intimated that he had to pay up or get out.

Court: When was that?

Witness: At the time, just prior to his giving us this note.

Court: Did the bank actually suffer a loss on the St. James transaction? 40

Peres B. Polhemus—Direct

Witness: The directors assumed it and took it off the bank's hands.

Court: Did the St. James default on this note?

Witness: Yes.

10 Court: What was there to show that the St. James couldn't pay?

Q. Mr. Polhemus, what is due to-day from the St. James note? A. Thirty-two hundred and some odd dollars and interest.

Q. Did the St. James Building, Inc., pay the \$3600 or any part of it? A. Not to my knowledge.

Court: \$8000 originally was the loan?

Witness: Yes.

Court: How did it get reduced to \$3600?

20 Witness: The St. James Company made payments from time to time.

Court: And renewed the note for the balance?

Witness: Yes.

Mr. Leavitt: Are you sure about renewing the note?

Court: Or did they pay on account?

Witness: I cannot say whether the note was renewed, because the payments were reported by the cashier.

30 Court: Did the bank actually carry a note of \$8000 of the St. James Company?

Witness: At first there was a note of \$8000 from the St. James Company.

Court: Payments were made by the St. James Company, not by Walsh or anyone else, on account of this loan?

Witness: Thus reducing it down to \$3600.

Court: The payments stopped then?

Witness: Yes.

Peres B. Polhemus—Direct

Court: What action did the bank take, if any, to collect the \$3600 from the St. James Company?

Witness: The bank took no action because it had been put off on the directors at that time.

Court: What action did the directors then take to collect the \$3600 that had been put off on them on account of the St. James loan, from the St. James Company? 10

Witness: We put it up to Mr. Walsh as the guarantor.

Q. This note was in the bank? A. Yes.

Q. Did you ever see the note of the St. James Company? A. Not to my knowledge.

Q. Do you recall the last payment of \$1200? A. I do.

Q. What was done at that time? A. There was an offer came for the payment of \$1200 on the note, as at the time we were bringing pressure on Mr. Walsh to pay up, and we put it up to him to accept that \$1200, and he asked us to do it as it would reduce his loan that much. 20

Q. What did he say at that time? A. He asked us to accept that \$1200 as a payment on account of the note.

Court: As it would reduce his liability?

Witness: Yes. 30

Q. At the time the offer came from the St. James people, it was taken up, I assume, at a meeting of the Board of Directors? A. Yes.

Q. Then I understand the offer was referred to Walsh? A. The offer was referred to him, yes.

Q. And Walsh asked the directors to accept it as it would reduce his liability \$1200? A. That is right.

Q. Who kept the minutes? A. Mr. Walsh. 40

Peres B. Polhemus—Direct

Q. Who made the reports? A. Mr. Walsh.

Q. Did the bank directors as directors, ask Walsh to take that note out of the bank—the St. James note? A. What?

10 Q. You didn't approve of the loan? A. No, we did not approve of the loan.

Q. The directors didn't approve of it? A. No.

Q. Did you ask him to take the note out of the bank? A. We told him he had to take that debt off our hands.

Q. Did he ever take it out of the bank, as far as you know, or did he ever take the debt off your hands? A. When he gave us this note, the collateral note secured us; that is the only way we took it out.

20 Q. Prior to that time? A. No.

Q. Between the time of the first report of the note and the offer of \$1200, the last payment made by the St. James Company, did he take the note out of the bank and substitute the money or other collateral? A. Not to my knowledge.

Q. Did he ever report to you that he had done so? A. No.

30 Q. Do you remember a conversation between Mr. Walsh and Mr. Krouse just prior to November, 1914, when this note was accepted—Mr. Krouse, the complainant? A. In reference to making good?

Q. I mean in reference to the acceptance of the Palmer mortgage as security for Walsh's debt? A. There were different conversations; I don't know which one you allude to.

40 Court: He is alluding to accepting the Palmer mortgage for this debt—conversation between Walsh and Krouse.

Peres B. Polhemus—Direct

Witness: If the conversation you allude to is the one morning between Mr. Krouse and Walsh, in which we discussed this matter, and Mr. Walsh said to Mr. Krouse that he hoped we wouldn't prosecute him, because it would mean his job, and make it so hard for him to get another.

10

Court: At what stage did the bank finally get the \$8000 into its possession?

Witness: I got the balance of the \$8000 when the directors paid what was left on the note.

Court: When was that?

Witness: The exact date I cannot say—the note which we gave.

Court: About?

Witness: About the time Mr. Walsh gave us this note.

20

Mr. Goodell: About November 24th?

Witness: Yes.

Q. When Mr. Walsh gave his note for \$3600 and Palmer assigned to Henry Krouse, Trustee, the Development Realty Company mortgage, the bank directors, as individuals, paid the bank the \$3600? A. Yes.

Q. And that cleared up the St. James transaction, as far as the bank was concerned?

Mr. Goodell: That was about November 24th?

30

Witness: Yes.

Court: Do you know whether the directors, as such, having paid off the balance of the St. James indebtedness, ever attempted to collect the balance of the indebtedness from the St. James Company?

Witness: No, because we looked to Mr. Walsh, who guaranteed it to us.

Q. The last payment Mr. Walsh reported to you was a payment in liquidation by the St. James

40

Peres B. Polhemus—Cross

people of their obligation? A. As I recall the phrasing, it was.

Court: What portion of the minutes do you need on the record?

10 Mr. Leavitt: I don't care at this time to offer any of the minutes. They are here, if Mr. Goodell wants them for any purpose.

CROSS-EXAMINATION by Mr. Goodell:

Q. Will you turn to the minutes of the Board of Directors for March 25th, 1913, and will you state in what form the report of this purchase of the St. James Building appears on the minutes?

20 A. On page 183 I find the following: "Finance committee reported the following notes and bills receivable to have been passed upon and discounted since the last regular meeting." On page 184: "E. S. Hamilton, Trustee, participation, assignment of rents \$8,000."

Q. So much about that loan you understood at that meeting, didn't you? A. I understood it, yes.

Q. Why do you say that that was without any collateral security? A. Because I didn't look on that as any security.

30 Q. In other words, an assignment of rents from a rented building you didn't consider security?

A. Not that building, no, sir.

Q. Will you look through those minutes after that date, and see if you find any reference to any offer or proposition made by Mr. Walsh in connection with that note? A. I don't know that he made any report in his minutes of that.

40 Q. Look and see if there is anything there? A. I see none.

Peres B. Polhemus—Cross

Q. Is there any consent made by any member of the board on that proposition, recorded in the minutes of that meeting?

Mr. Leavitt: To save time, the minute book is here. I will consent to the entire book being offered in evidence, and if Mr. Goodell has taken any extracts from the minutes, he can read the extracts right into the record.

10

Witness: There is no consent.

Q. Do you now say that the Board of Directors, as a board, accepted that note on the strength of Mr. Walsh's promise? A. No, it did not accept it.

Q. It didn't accept it on any basis whatever?

20

EXAMINATION by the Court:

Q. I am getting confused about it, then. Is this the customary way in which all notes that have been discounted is acted upon by the Board of Directors? A. Referring to minutes pages 183 and 184. They are reported by the finance committee as approved by the finance committee, but in this case the finance committee would not approve.

Q. What is there in the list of paper that has been approved by the finance committee that shows that an exception was made as to this transaction, and that the finance committee or board did not approve it? A. "Motion duly made and carried that the report of the finance committee be received and spread on the minutes," on page 186; that does not mark an approval of it. I and some others objected strenuously to the approval of that loan.

30

40

Peres B. Polhemus—Cross

Q. But the secretary or the president did not note your objections on the minutes, did he? A. No.

Q. And as far as the minutes showed, that was approved the same as all other actions of the finance committee relating to loans? A. It doesn't say it was approved.

Q. I am asking you if that isn't the way it was done? A. We approved them as a rule.

Q. In the form it appears here? A. Yes.

Further EXAMINATION by Mr. Goodell:

Q. You mean to be understood that the board didn't approve any note that night? A. We wouldn't accept that night.

20 Court: Unless he shows to the contrary that he approved that along with all other paper.

Q. You may turn to the minutes of the meeting of the board for April 8th. A. Right here.

Q. There was a special meeting of the board in between, was there not? A. There had been, yes, sir.

Q. Any action taken at either of these meetings in regard to this note? A. I don't see anything.

30 Q. You do find in the minutes of the meeting of April 8th that the minutes of the board for March 25th were approved, do you not? A. Yes.

Q. I now call your attention to page 384 of the minutes, under date of August 24th, 1914, and call your attention to a clause beginning, "The cashier reported that the St. James Building"; do you find such an entry, and if so, will you read it into the record? A. "Cashier reported that
40 the St. James Building had not made any pay-

Peres B. Polhemus—Cross

ment on the indebtedness to the bank, and he offered personally to substitute his note for \$4200 covering this loan and to give as security \$6000 bonds of the Napa Improvement Company as collateral. On motion duly made and carried, his offer was accepted.”

Q. Did that offer have any relation to the note offered in evidence, dated September 8th, 1914, marked Exhibit C 9? A. Quite likely.

Q. Do you recall? A. To the best of my recollection, yes.

Court: That it did?

Witness: That did have connection with this.

Q. Your recollection is that note, C 9, was given to carry out the offer made as recorded in the minutes of the meeting of August 24th? A. Yes.

Q. That proposition of Mr. Walsh's was spread on the minutes? A. Before it was accepted.

Court: Answer the question.

Witness: It was spread on the minutes.

Q. Can you give any reason why the various prior offers and propositions of Mr. Walsh were not spread on the minutes? A. Simply because that he had made good, and didn't want to put him in trouble.

Q. And this one you thought he wouldn't make good and you did want to get him into trouble?

A. Things became very uncertain about this time. He assumes that he wanted to get Mr. Walsh in trouble; we didn't want to get him in trouble; we wanted to make good covering our loss.

Q. I asked you why you put this proposition of Mr. Walsh's on the minutes, but neglected to put his other propositions on. Your answer was that you didn't put the others down because you didn't

Peres B. Polhemus—Cross

10 want to get Mr. Walsh in trouble, and thought he would make good; in view of that answer, I ask you whether we are to gather from that, that you did put it down this time because you didn't think he would make good, and did want to get him in trouble? A. I think Mr. Walsh put it down this time because he had something to absolutely show.

Q. You were present when the minutes of the meeting of March 25th, 1913, were approved? A. On page 186, that is the meeting of April 4th; I was present.

20 Q. That is the special meeting; the minutes were approved on April 8th, and not at the special meeting of April 4th. A. I was also present at the meeting of April 8th.

Q. You didn't object to the minutes of March 25th as being in any way incomplete or improper, did you? A. No.

Q. You stated in your direct-examination—and I think probably didn't mean to—that these various payments that were made on that note from time to time were made by Mr. Walsh. A. I did not.

30 Court: He said from the St. James Company.

Q. Can you tell how long the St. James Company continued to pay on this indebtedness? A. I cannot tell you the actual dates; my knowledge of the last payment was that \$1200 which was spoken of.

40 Q. But that was way out of time; that was after a long time; a delinquency, wasn't it? A. To the best of my recollection, yes; but for a time they paid regularly, didn't they?

Peres B. Polhemus—Cross

Q. Will you turn to page 295 of the minutes, under date of March 23, 1914; do you find there an account of the report from the cashier, of an offer of settlement from the St. James Building? A. Yes, sir.

Q. Will you read what it says about that? A. 10
 "The cashier reported that he had received from the president of the St. James Building, Incorporated, a letter offering in settlement of their indebtedness to the bank \$1200 in cash and \$3600., in eight months notes, to be made by the St. James Building, Incorporated, and endorsed by Charles Wolf; interest on same to be payable monthly. On motion duly made and carried, the cashier was authorized to endorse the participation certificate now held by the bank and deliver the same to Mr. Walsh upon payment of \$1200 and receipt of the notes referred to." 20

Q. That is the proposition you referred to in your direct-examination, which you said was referred to the cashier, isn't it? A. Yes.

Q. When you said it was referred to the cashier you didn't mean that it was referred to the cashier to accept it or reject it, but referred to the cashier to carry it out, is that right? A. We gave him the option of accepting it and reducing his indebtedness. 30

Q. Doesn't that say that he was authorized to endorse it and turn it over on receiving— A. It says so over his signature, but I say we put it up to him.

Q. Did you ever object to those minutes as being incorrect when they were read to you? A. No. 40

Peres B. Polhemus—Cross

Q. Please look at page 301, under date of April 14—a report from the cashier about St. James Building? A. “The cashier reported that the Participants in the St. James Building, Incorporated, loan, had not all signed agreements submitted at last meeting, and that on this account settlement had been held up.”

10 Q. Turn to page 330, under date of July 14, 1914—the matter of St. James Building loan taken up at that meeting; will you read that? A. “The matter of St. James Building loan was taken up and Mr. West directed the cashier to write Mr. Wolf that unless some action towards carrying out the agreement was taken before Monday July 20th, we would be compelled to take legal proceedings to collect the amount due.”

20 Q. You don't know the full details about the nature of this loan, or what it was; how it was evidenced; you say you never saw the note? A. No, sir.

The Court: You are talking about the original loan now?

Mr. Goodell: Yes.

Q. The original loan of \$8000 you don't know how it was evidenced or how secured? A. No.

The Court: Was that \$1200 finally paid?

30 The Witness: Yes, sir.

The Court: And the eight notes given by the St. James Company, endorsed by Wolf?

The Witness: At the time that \$1200 was paid, Mr. Walsh had taken the thing over, as I remember it, and we never saw those eight notes.

40 Q. Will you turn to page 349, under date of September 22d? A. Yes.

Peres B. Polhemus—Cross

Q. Any action taken in regard to St. James Building on that date? A. "On motion the cashier was directed to turn over the St. James Building matters to the Attorney Leavitt."

Q. Attorney Leavitt was the general counsel for the bank? A. He was.

The Court: What St. James Building matters were still connected with the bank at that time and were to be turned over to him? 10

The Witness: As I recall, at that time there was a balance of \$4800 and interest due.

Q. Take the minutes of the same date; any reference there to criticism by the Controller of the Currency? A. "The meeting considered the matter of criticism by the Controller of the Currency made in recent examination by Examiner H. B. Hanna. 20

Q. There is no reference made in that to the St. James Building? A. No.

Q. Was the letter of the National Bank Examiner before the meeting at that time? A. What letter?

Q. The letter that he is reporting, or whatever it was that is referred to in that minute. A. This requirement of the Controller was before the meeting, of course. 30

Q. Did that requirement make any mention of this St. James Company? A. I haven't the report before me; I cannot say; I cannot tell from these minutes all that showed on the report.

Q. You stated in your direct-examination that the National Bank Examiner objected to this? A. He did.

Q. Shortly before Mr. Walsh gave his note? A. Yes. 40

Peres B. Polhemus—Cross

Q. Was it in connection with this criticism from the Controller that that objection was made? A. No.

10 Q. Was it about this time? A. I cannot say whether it was just—it may have been this examination; Mr. Hanna took it up with us verbally.

Q. In that examination? A. It may have been.

Q. How often did he make examinations? A. From three to six months apart.

Q. How long before Mr. Walsh gave his note to the bank for \$4,800 did the National Bank Examiner object to this loan? A. I cannot tell you the exact dates.

Q. Approximately? A. It wasn't very long; we took it up with Mr. Walsh right away.

20 Q. As soon as he made the objection you took it up with Walsh? A. Yes.

Q. And it resulted in giving this note for \$4800? A. Yes.

Q. When Mr. Walsh gave that note for \$4800 did the bank turn over to Walsh anything? A. I don't know definitely what the bank turned over to him.

Q. Do you know where that St. James participation certificate is now? A. No, sir, I do not.

30 Q. Do you know who owns it now? A. I do not.

Q. When you and the eight others took up this loan, by paying the balance to the bank, did you receive that certificate? A. The matter was left in Mr. Leavitt's hands to take care of our interest, as counsel.

Q. You don't know whether you got the certificate or not? A. No.

40 Q. That date was some little time before Mr.

Peres B. Polhemus—Cross

Palmer gave his assignment, wasn't it—the date when you took that up? A. What date?

Q. The date when you and the eight others took up that participation certificate was some little time before Mr. Palmer gave his assignment to Krouse, Trustee, was it not? A. Not to my recollection. 10

Q. Will you refer to page 357, under date of October 21, 1914, a report by the president in regard to this matter? A. Yes. "Mr. West reported an offer of 25 per cent for the participation certificate of St. James Building matter, but stated that inasmuch as the bank had sold this certificate it had no further interest in the proceeding."

Q. Do you know to whom the bank had sold that certificate at that time? A. Yes. 20

Q. To whom? A. The directors had taken it and paid the bank.

Q. That was more than a month before Mr. Palmer gave his assignment, wasn't it? A. I haven't the date of that before me.

Q. The date is in evidence November 24.

The Court: Who made that offer that appears on these minutes on page 357, which Mr. West reported the twenty-five per cent? 30

The Witness: As I recall, it came from the St. James Building people.

The Court: What did you start to tell me a moment ago, that it was the same \$1200 that you have been testifying about?

The Witness: As I recall, it was the same \$1200; that was one-fourth of the \$4800, 25 per cent of the \$4800. 40

Peres B. Polhemus—Cross

Q. Then it was the same offer made before making the \$3600 in notes? A. It don't say anything about any notes there.

Q. When was that \$1200 actually paid? A. I don't know the date.

10 Q. How was it paid; if you rejected the offer, how did it come to be paid? A. That was an action of the board of directors; we had then as private individuals taken up that note, and all the negotiations were carried on with Mr. Walsh representing them as individuals, and not as officers of the bank or as a board of directors.

Q. But Mr. West was speaking for the bank when he said that he had received the offer, but inasmuch as they had sold the paper, they were no longer interested? A. That is what it says.

20 Q. How long before that had the bank sold the paper? A. You will have to refer to the records; I cannot carry all these dates in my mind; I have other things besides this.

Q. You cannot tell how long? A. Not by date, no, sir.

Q. But from sometime prior to this, all negotiations for the payment of that note were made on behalf of the directors as individuals and not on behalf of the bank; is that correct? A. Apparently so.

30 Q. I now refer to page 375, under date of December 29, 1914, and ask if you find a minute there of a tender of resignation by Mr. Walsh, will you read it? A. "Mr. Walsh tendered his resignation as vice-president and cashier of this bank, such resignation to take effect at the pleasure of the board."

Q. What action did the board take? A. The resignation was duly accepted after much regret
40 by Mr. West.

Peres B. Polhemus—Cross

Q. Turn to the minutes of January 26, 1915, on page 387; anything there with regard to the resignation of Mr. Walsh? A. "The resignation of J. M. Walsh, cashier, was on motion duly accepted, his salary to continue to March 1, 1915."

Q. Do you now say that Mr. Walsh was told that if he didn't make good on that note, he would be removed as cashier? A. We didn't make any such direct threat, but it was put to him just as plain as could be. 10

Q. Put to him by whom? A. By all of us practically; Mr. Manley and Mr. Chambers, as I recall, especially.

Q. You were all agreed that if Mr. Walsh did not make good on that note, he wasn't fit to be cashier, didn't you? That was what you all agreed on, was it? 20

Mr. Leavitt: I object; I don't think it is cross-examination.

The Court: You went into the action of the board in relation to the matter, and Mr. Goodell has a right to go into it as fully as he pleases.

A. I won't say that he was unfit to be cashier.

Q. Why were you going to put him out if he was fit? A. Simply because he did something we told him not to, and he wasn't making good; he may have been honest and all right; I don't want to say he was unfit. 30

Q. What do you mean to say he had done something you told him not to? A. Taking this note in the first place.

Q. You haven't testified that you told him not to do it? A. Because he did it before we knew anything about it. 40

Peres B. Polhemus—Cross

Q. Then you didn't tell him not to? A. He didn't give us a chance.

Q. Your idea was that if he would make that good, you would keep him as cashier? A. We might have.

10 Q. Did you tell him so? A. I don't know as we told him so.

Q. Did you make any such proposition to him whatever? A. Personally, no.

Q. Did anyone in your hearing? A. Not in my hearing.

Q. So that when you said he was told that, you only meant that you had heard he had been told something like that; is it not? A. No. because I heard him told that.

20 Q. What? A. What I stated to you was my own hearing.

Q. Tell us what you heard and who said it. A. It is a matter of record.

The Court: Tell us what you heard and who said it.

The Witness: I testified to that a moment ago.

The Court: I thought you meant in this book here.

30 Q. Who made that remark? A. Mr. Chambers and Mr. Manley were the ones that spoke principally about that; we all backed them up.

Q. When was that remark made? A. I don't know the date.

Q. Approximate date, as near as you can, in connection with this other evidence. A. At the time Mr. Walsh gave us that note; the giving of that note was the outcome of it.

Peres B. Polhemus—Re-direct

RE-DIRECT-EXAMINATION by Mr. Leavitt:

Q. The minutes of the meeting where Walsh offered Nappa Improvement bonds, page 324, you have read those? A. Yes.

Q. Turn to the meeting of September 22, 1914, page 346; who was the secretary at that meeting? A. Mr. Walsh.

10

Q. He has signed the minutes? A. Yes.

Q. Read the part relating to the St. James note transaction. A. "The minutes of the meeting of August 24 were read and ordered corrected to read as follows: 'Offer of J. M. Walsh to take up loan of St. James Building, Incorporated, giving his note secured by \$6,000 bonds Nappa Improvement Company bonds to be accepted if approved by the committee.' Otherwise the minutes were proved.

20

Q. At the previous meeting the minutes read that his offer of \$6,000 Nappa Improvement bonds to secure his note of \$4,800 had been accepted; those minutes were changed at a subsequent meeting by Walsh himself to read "if approved:

The Court: They were changed by the directors, but recorded by Walsh, so the bonds had to be approved by the finance committee.

30

Q. Were those bonds ever approved? A. No.

Q. Were they considered and disapproved? A. They were considered and disapproved.

Q. Walsh as cashier of the bank kept those minutes and read those minutes to you gentlemen at each meeting, did he not? A. Right.

Q. The bank examiner who insisted upon this

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Peres B. Polhemus—Re-direct

note being taken out of the bank was named Hanna? A. He was.

Q. Didn't Hanna or some authority from the banking department write or state that the resignation of Mr. Walsh must be asked?

10 Mr. Goodell: I object as leading.

A. I don't remember whether he wrote or not, but he told us so.

Q. You said before that Walsh had done this and other things; had he made other loans using the bank's money and notifying you afterwards?

A. I don't recall of giving an answer like that.

Q. Did you ever see the St. James Building note? A. Not to my knowledge.

20 Q. At the time Walsh stated at the meeting that the St. James Building people had offered \$1200 in liquidation of their \$8000 note, or the balance then due, the matter was referred to Walsh, I understand your answer to be? A. That is right.

Q. Was it then considered a bank transaction?

A. No.

Mr. Goodell: I object.

Q. And when Walsh reported these matters to you, were they reported to you as directors of the bank or as individuals? A. He reported it to us

30 as individuals.

The Court: How do you reconcile that with the fact that they are recorded on the minutes of the directors meeting?

The Witness: They are brought up and read there, but after we took that note they were acted on in our individual capacity.

40 Q. Then why is any record made of the fact in the minutes of the directors meeting; what have the directors, as such, to do with it? Nothing,

Peres B. Polhemus—Re-direct

you say. Mr. West made a report before it was finally taken up, that the matter had been sold, so the bank had no further interest in it; do you recall that Mr. Walsh read these extracts of the minutes at any meeting? A. He always read the minutes.

Q. Do you know that he read all of those matters? A. No.

10

The Court: Those minutes are reported or they approved of them.

Q. Do you know whether Mr. Krouse handed the St. James Building note to Walsh when the bank took Walsh's note for \$3,600? A. Do I know? Personally, I do not.

By the Court: Q. Do you know where that St. James note was kept; was it in the file of the bank? A. I never saw the note, to start with, so I don't know where it was kept.

20

Q. Following the report of the finance committee, held on March 25, 1913, the minutes read: "A motion was duly made and carried that the report of the finance committee be received and spread on the minutes." At the next meeting, held April 8, 1913, when the same committee made its report, what follows? A. "A motion was made that the report of the finance committee be received and spread on the minutes and their action approved."

30

Q. So at the meeting of March 25, the finance committee's report as made by Walsh was not approved? A. So the record shows.

Q. In answering Mr. Goodell's questions, you have said, "So the record show", or "So it states"; you mean "so the minutes read"? A. Yes.

40

Frank C. Manley—Direct

RE-CROSS-EXAMINATION by Mr. Goodell:

Q. There was one meeting of the board held between August 24, 1914, at which Mr. Walsh made his offer, and the meeting held September 22, 1914, at which the minutes of August 24, 1914, were corrected, was there not? A. This meeting
10 of August 24, 1914.

Q. And there was a meeting on September 8, 1914, wasn't there? A. Yes.

Q. Any action taken at that meeting with regard to the minutes of the previous meeting?

The Court: I am going to consider, unless they show me to the contrary, that these minutes were all approved.

Q. So it was at the second meeting after, that those minutes were corrected? A. Yes.
20

Mr. Leavitt: The note of Walsh, dated September 8, 1914, for \$4800 was then made prior to the \$1200 payment by the St. James?

The Witness: As I remember it, yes.

FRANK C. MANLEY, sworn for complainant,

30 Direct-examination by Mr. Leavitt:

Q. You are a director of the First National Bank of Roselle? A. Yes.

Q. And were such director in November, 1914? A. Yes.

Q. And were a director for how many years? A. Since the incorporation of the bank.

Q. You live in Roselle? A. I do.

40 Q. When did you first hear of the St. James rent participation certificate? A. I heard of the

Frank C. Manley—Direct

participation certificate at the meeting of the directors of the bank.

Q. Who made the report? A. The action came up in regard to the St. James loan, and we wanted to know who authorized it. The finance committee, consisting of Mr. Krouse and Mr. Polhemus, who were both present, stated that the loan had been made without their knowledge. Mr. Walsh at first denied it, but after considerable argument, we decided Mr. Polhemus and Mr. Krouse were right, that the St. James participation had been made without the knowledge of the discount committee.

10

Q. What did Mr. Walsh at that time say, if anything? A. At first he tried to convince Mr. Polhemus, in particular, that he did know of this St. James participation, but after considerable argument, we decided that Mr. Polhemus was right, that he did not know of this participation until after the loan had been made.

20

Q. Did the board approve or reject the note? A. The board would not approve the note.

Q. What was Walsh told to do? A. Mr. Walsh was told that the note must be taken out of the bank.

Q. The bank's money had then been used? A. The bank's money was gone.

30

Q. What did Walsh do? A. Mr. Walsh stated that he would personally see that the bank never lost a dollar on that loan.

Q. Did you object to that note at that meeting? A. I did.

Q. Why? A. Because, in the first place, I didn't consider any note proper until it had been approved by the finance committee; and in the

40

Frank C. Manley—Direct

second place, I didn't know about the proposition, and I thought the matter was of considerable importance and involved such a large amount it should be brought before the board before the loan was made.

10 Q. Was Walsh told to take the note out of the bank and secure the money or substitute other security? A. Yes, he was; he was told that the note must be taken out of the bank.

Q. When was he told that? A. Either at that meeting, or perhaps a meeting or two afterwards.

Q. Who told him? A. Several of the men in the bank at these directors meetings.

Q. While you were present? A. While I was present.

20 Q. Did you ever tell him that he had to take the note out? A. I think I did; I think we all had a hand in it; we were all opposed to the note from the very start.

Q. Why wasn't the note taken out of the bank?

A. The question came up at a subsequent meeting, and in the meantime the note was rapidly being reduced and we didn't force any action at that time. The note was being reduced and Mr. Walsh assured us that it would be paid, and that it was a good note, and no action was taken at that time until the payment stopped.

30 Q. Mr. Walsh would report payments on account of this debt; did the directors at any of their meetings confirm or approve of that transaction from the time it was first reported by Walsh to this time? A. No, they did not.

Q. Did they ever vote to accept that note? A. No.

40 Q. How many meetings have you missed, if any, since 1913? A. Not more than three or four.

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Q. Do you recall the last payment of \$1200 that Walsh reported to you? A. I do.

Q. What was said at the directors meeting? A. Mr. Walsh reported that a party had made an offer to take the note out of the bank—I don't think it was in the bank at that time—had made an offer of \$1200 for the note. Mr. Walsh—after talking it over, we told Mr. Walsh that it was strictly up to him, and that he must decide what he wished to do; my recollection is that he went to the telephone at that time and talked to this party who had made this offer, and while he was at the telephone, Mr. West impressed us that the matter must be decided by Mr. Walsh; it was Mr. Walsh's matter; he had guaranteed the note, and has said that he would be responsible for it, and see that the bank would not lose a dollar, and if any decision was made, he must make it.

Q. Do you recall that just prior to this payment, Mr. Walsh offered some bonds as security?

A. I do.

Q. For the amount then due? A. I do.

Q. Do you recall the name of those bonds? A. They were bonds of the Nappa Improvement, I think it was.

Q. I show you note, Exhibit C-9, did you ever see this note before? A. I don't think I have; I saw this note within the last three or four weeks.

Q. Prior to that? A. Prior to that I had never seen it.

Q. Do you recall what was done with that offer?

A. It was referred to the discount committee.

Q. What was their report? A. They reported that they didn't consider the bonds of the Nappa Improvement Company sufficient security, and on

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their recommendation, we turned the proposition down.

Q. Then what was done? A. Then the first thing that came up was an offer of a mortgage to secure this loan.

10 Q. The Palmer mortgage? A. Yes.

Q. Then the matter was referred to him? A. Yes.

The Court: Wasn't there another stage before you reached the Palmer mortgage; didn't someone receive \$1200?

The Witness: The \$1200 offer was accepted by Mr. Walsh and it was paid on the note; I think previous to the Palmer mortgage.

20 Q. Did you contribute to paying anything toward the St. James loan? A. I paid my share.

Q. How much? A. \$300 and some odd dollars—340 some odd dollars, I cannot remember the exact amount; I have a record of it.

Q. Did you pay one-ninth of the amount? A. I paid one equal part; there were nine men and I paid one-ninth.

Q. Do you recall whether the amount paid by you was \$373.13? A. It was in that neighborhood; I have a record of the exact amount home.

30 Q. Have you a record in your pocket? A. No.

The Court: To whom did you pay that amount?

The Witness: I think I gave it to Mr. Brown, the cashier of the First National Bank; I gave him a check for it.

The Court: Did he succeed Mr. Walsh?

The Witness: Yes.

Q. Why did you ask for payment of Walsh of the \$3600; why was he pressed just at that time?

40 A. For my part, I considered that the St. James

Frank C. Manley—Direct

loan was lost, and inasmuch as he had said a number of times that he would see that we would not lose a dollar, we demanded the money; the payments had stopped and the note was due and we wanted the money.

Q. When the payment of \$1200 was made, was there anything said that that was the last payment the St. James people would make; did Mr. Walsh make any such report to you? A. I don't know; my recollection is that the note was sold.

10

Q. Sold by whom? A. By Mr. Walsh.

Q. Did the bank ever sell this note? A. No; we never—

Q. Did you consider that the bank ever held this note? A. No, it wasn't a bank transaction.

Q. There is some reference to the bank having sold the note, in the minutes. A. It is pretty hard to say what is going to happen two or three years afterwards, and the minutes may not have been transcribed to take care of a thing of this kind, but that note was not a bank transaction.

20

Q. Did Walsh ever ask you not to prosecute him because of making this loan? A. I won't say that he asked us not to prosecute him; he begged for time that we wouldn't force him to pay this loan.

30

By the Court: Q. Did you understand that he was financially responsible and able to make good the loss, if he had to? A. I thought he was, yes. In fact, I think I have seen a statement that he was financially responsible for that amount.

Q. You considered him then financially able to take up the St. James transaction at any time from the time it was made to the time of settlement? A. I did, yes, and I thought he was sim-

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ply handing us out these things, thinking we would bite, but we wanted something that was bona fide; we didn't want any Nappa Improvement Company or anything of the sort; we wanted something that was bona fide.

10 Q. When did Hanna come upon the scene relative to this transaction? A. I think at the next examination which he made.

Q. When was that in regard to November, 1914? A. I think that was in the new year; it must have been some time in 1915, but I cannot say when he came.

Q. At that time Walsh was still carrying the note among the bank's securities, was he not? A. He was.

20 Q. Why didn't you people insist on taking it out? A. The note was being rapidly reduced, and we were assured at every meeting that the note would be paid, and that no one would lose any money by it; Mr. Walsh said time and time again that the bank would never lose a dollar and the note was left in there.

30 Q. You as a director of the bank knew the situation as it was—the note reported by the cashier; you didn't approve of it; the cashier was instructed to take that note out; what would you do to get him to take it out? A. If I had it to do over again, I would simply insist on his taking it out, and it would have to come out.

Q. You did insist, did you not? A. We did insist on him taking it out, but it didn't come out, just the same.

Q. What would you do to-day?

40 The Court: Is that material? That does not make much difference.

Frank C. Manley—Direct

Q. When the bank examiner Hanna came along, what did he say about that note? A. He said it was an illegal note.

Q. Why was it illegal? A. It was based on a real estate transaction, and for that reason in a national bank it was illegal. That was the understanding he gave us. 10

Q. The minutes have been referred to showing the report from the comptroller after Hanna's visit. The minutes do not disclose any reference to the St. James Building note; do you know whether Hanna, the bank examiner, reported this note to the comptroller, or whether he gave you an opportunity to get that note out of the bank first? A. I think that Hanna took the stand that it was a matter to be settled by the directors as individuals and not by the bank. 20

Q. Did he give you any time to settle it before he made his report of the incident to Washington? A. I don't know.

Q. Do you know what became of the original St. James note, the paper itself? A. No.

Q. Did you ever see it? A. No.

Q. Was the paper itself ever before the board of directors? A. No.

Q. Was Walsh asked to resign at any time? A. If he wasn't— 30

The Court: Was he asked to resign?

The Witness: I don't remember.

Q. Did Walsh resign voluntarily after the closing of this transaction? A. No, he didn't resign voluntarily.

Q. What do you mean by that answer, then?
A. We made it so plain to him, that he must get out, that there was nothing left for him to do, but 40

Frank C. Manley—Direct

to get out, and to save his reputation we allowed him to resign.

Q. What do you mean "we made it so plain to him"? A. He knew he had to get out.

10 Q. How do you know he knew it? A. I don't know whether I told him in so many words, or whether anyone else did, but things were too hot for him.

Q. How were things made too hot for him? He didn't resign until after he gave the note and assignment of the Palmer mortgage. He resigned in December; he gave the note and Palmer mortgage in November. What was being made hot for him after you had accepted the the settlement with him? A. There were other matters in the
20 bank at that time which, to my way of thinking, were of a great deal more importance than this Palmer matter.

Q. This was only one of some matters, then, between the bank and Mr. Walsh? A. Yes. I think Mr. Leavitt will remember very well that I made a special trip—Mr. Hanna would call me up on the 'phone—I don't know why he kept nailing me, but he called me up at the house at least half a dozen times, and he told me that Mr. Walsh must
30 get out of there, and it was up to me to use every effort to see that he did get out of there, and I said to Mr. Hanna, "I will do what I can, but I think you should talk to some of the other men"; men who were officers; I was a director; there were officers of the bank, and Hanna talked to me that way four or five times on the telephone.

Q. There were other notes on the part of Walsh that he objected to and criticized besides this?
40 A. Yes, and finally I went to Mr. Leavitt's office

Frank C. Manley—Cross

alone and had a long talk with Mr. Leavitt and told him—

Q. Was Walsh ever held to account for any other acts?

The Court: Is that material to this inquiry?

10

CROSS-EXAMINATION by Mr. Goodell:

Q. You were a member of the examining committee of this bank? A. Yes.

Q. And as such you examined the bank? A. Yes.

Q. And it is a part of your duty as a member of that examining committee in examining the bank, to see the securities they hold? A. Yes.

Q. Did you never examine the bank while that security was part of the assets of the bank? A. Yes.

20

Q. Yet you still say you never saw it? A. Yes, sir.

Q. How did that happen? A. There were five men on that committee, and some of the men—the work was divided and I seldom examined the notes; I would examine the cash, another man examined the notes, and someone else would look after the ledgers, and the work was divided; most of my work was done—we would start in at four o'clock in the afternoon and get the cash out of the way and then we would work on the ledgers.

30

Q. The only reason why you never saw it was because you never took the least trouble to look at it? A. I never tried to hunt it up.

Q. You never asked the cashier to show it to you; you simply didn't care to see it? A. I knew the note was there.

40

Frank C. Manley—Cross

Q. Then there is no point in the fact that you never happened to see it, is there? A. It depends on whether you want to make a point of it, but I never saw it.

10 Q. If you never saw it, it was your own fault, wasn't it? A. I knew it was there; I knew the rest of the men were doing the business, were doing it well.

Q. You have an idea what the purpose of keeping the minutes of a board of directors is, haven't you? A. The minutes of the board of directors, yes.

Q. You understand that the minutes of the board of directors should correctly show all actions taken by the board as such, shouldn't they? A. Yes.

20 Q. And in regard to discounting and accepting paper, it should show correctly what security the bank holds for the paper? A. Yes.

Q. You never objected to the minutes of the meeting of March 25, 1913, as being not correct, did you? A. I don't remember that I did.

Q. So far as you were concerned, they were accepted as full, were they not? A. The minutes were accepted.

30 Q. As a full statement of what the board did at that meeting in its capacity as a board? A. As well as I can remember, yes.

Q. That has always been your understanding? A. Yes.

Q. What do you mean when you said that it was pretty hard to fix the minutes so they would be right two or three years afterwards? A. I didn't say that.

40 Q. What was it you said? A. I thought that the minutes were wrong, but they were not scrut-

Frank C. Manley—Cross

inized carefully to see what might occur two or three years afterwards; you will very often write something and it will look pretty near right to you; there might be some little thing out of the way.

Q. They show every corporate act, do they not? A. Yes. 10

Q. And those minutes do, don't they, as a matter of fact? A. We hope so; I am not sure; we try to have them so.

Q. And you believe they do? A. I don't—

Q. When you say you can fix them so they will be right two or three years after— A. I didn't say that; we are not fixing up the minutes of this book for any other purpose but to be honest; you cannot accuse me of fixing a book of any kind. 20

Q. I didn't mean to imply that, but whatever statement you made, I want to give you a chance to explain; what did you mean when you said it? A. I didn't say "fix"; the man has got it, but I didn't say the books were fixed.

The Court: Is it of enough importance to pursue it; I didn't understand that he meant fix it in preparation for the case.

Q. When was it that Mr. Hanna, the National Bank Examiner, was calling you up and insisting that you should make Mr. Walsh resign; was it before or after Mr. Palmer made his assignment? A. I presume it was both, because he called me up any number of times. 30

Q. The assignment didn't make any difference one way or the other, as far as you were concerned, with getting Mr. Walsh to resign? A. It had a considerable part to do with it.

Q. In what way? A. That was one matter of the several others. 40

Frank C. Manley—Cross

Q. What? A. This St. James loan.

Q. I don't mean that; I mean Mr. Palmer's giving this mortgage to the bank didn't affect your desire to have Mr. Walsh resign one way or the other, did it? A. I don't think Mr. Walsh—
10 Palmer gave this assignment to the bank.

Q. To you, then? A. He gave it to us; the bank was out of it, and Mr. Hanna had nothing more to do with it.

Q. And his giving that mortgage to whomever he gave it didn't affect your wish to have Mr. Walsh resign as cashier? A. No, but the transaction that backed the assignment did.

Q. When did Mr. Hanna, the examiner, first call your attention to the fact that this note or investment was illegal? A. At the first meeting
20 which we had after he had made the examination.

Q. After he had made what examination? A. His semi-annual examination.

Q. How did he call it to your attention? A. He called a meeting of the board and brought the matter up to the board and told us it was an *ultra vires* act and that it was illegal.

Q. You have no idea what date that was? A. No, but the minutes will show when he was there, I think; that is a matter of record, isn't it, when
30 he came?

The Court: If he transacted the matter before the board, it should appear there.

Q. The minutes show that a communication was received from him on September 25, 1913, page 241. A. Yes, there was a communication received at that meeting.

Q. Have you that communication with you? A.
40 No.

Frank C. Manley—Cross

Mr. Goodell: I subpoenaed the cashier to bring it.

Mr. Leavitt: The cashier says he couldn't find it.

The Court: There is no occasion to call all the directors on the same line, it seems to me now. 10

Mr. Leavitt: I would like to call the cashier to show how the original \$8000 was loaned, by the records in the bank. I have them in my hand.

Is it disputed that these nine gentlemen paid their pro rata share to make up the \$3600?

Mr. Goodell: I have no knowledge whatever; I have no reason to doubt their statement. 20

Mr. Leavitt: All the directors paid their share.

Mr. Goodell: I am satisfied with that statement in that connection; it would seem as though Mr. Walsh's part in that should be shown.

Mr. Leavitt: I think there were nine directors who paid besides Mr. Walsh; Mr. Walsh paid \$400 and he reduced it from \$3600 to \$3200, and the other directors paid the rest. Each director and Mr. West, who was a former director, paid \$373.13 in addition to the \$400 paid by Mr. Walsh. 30

J. Ashley Brown—Direct

J. ASHLEY BROWN, sworn for complainant,

Direct-examination by Mr. Leavitt:

10 Q. I show you check on the First National Bank of Roselle, dated March 19, 1913, for \$8,000, payable to E. S. Hamilton, Trustee, signed by J. M. Walsh, cashier. A. That check is drawn on the Chatham and Phoenix Bank of New York, but is the check of the First National Bank of Roselle, signed J. M. Walsh, Cashier.

Offered in evidence and marked Exhibit C-10.

Q. When was this check issued? A. March 19, 1913.

20 Q. When was it paid by your bank? A. By the Chatham & Phoenix Bank, March 19, 1913, the same day.

Q. When was the note of the St. James Building, Incorporated, put into the First National Bank of Roselle? A. March 24, 1913.

Q. So for five days prior to the note coming into the bank, \$8,000 of the bank's money had been in the possession of E. S. Hamilton, Trustee? A. According to that check it had.

30 Q. What was the date of the note of the St. James Company? A. The note was dated the 20th of March, 1913.

Q. When did this note come into the possession of the bank? A. According to the records, on the 24th of March, 1913.

The Court: What record are you referring to?

The Witness: The discount register where notes are recorded.

The Court: Is that kept in the handwriting of Mr. Walsh?

40 The Witness: I cannot recall.

J. Ashley Brown—Direct

The Court: It was a regular register of the bank?

The Witness: Yes.

Q. Is it customary to pay for a note before it comes into the possession of the bank?

The Court: Don't waste any time on that; I cannot imagine it being customary anywhere. 10

Q. How long have you been cashier of the bank?

A. Since February 1, 1915.

Q. Have you the record to show when those payments were made? A. Yes.

Q. Will you read the record?

Mr. Goodell: That isn't the original record?

The Witness: That is a transcript; that is what you asked for.

Mr. Goodell: A transcript of the original record? 20

The Witness: Yes.

A. March 24, 1913, a note was discounted, \$8,000; April 20, 1913, paid on account \$800; May 21, 1913, paid on account \$800; June 23, 1913, paid on account \$800; July 22, 1913, paid on account \$800; October 16, 1914, to balance of the note paid by the directors \$4800; on November 25, 1914, paid on account of the directors note by the St. James Building \$1200. 30

Mr. Goodell: Does that record of the payment of the \$1200 of the directors appear on the records of the bank?

The Witness: That payment was made on account of the note that the directors put in the bank; yes, sir, it appears on the records.

Q. At that time the directors had given their note? A. On October 16, and this payment was November 25. 40

J. Ashley Brown—Direct

Q. So this payment was a payment on account of the directors' note? A. Yes, by the St. James people.

The Court: The directors, in other words, paid the balance of the \$4800 due on the St. James loan by giving their note to the bank and signed
10 by themselves and endorsed in that manner?

The Witness: Yes.

The Court: And had the proceeds credited to the bank?

The Witness: The proceeds of that loan are for the \$4800 loan that already existed.

The Court: The directors individual note was substituted for the St. James note?

The Witness: Yes, sir.

20 Q. Do you know what became of the St. James note? A. I found a letter in the files.

Q. Is that the letter you refer to? A. Yes.

Mr. Goodell: That letter wasn't received while you were there?

The Witness: No, sir.

Q. Have you any personal knowledge to what participation certificate it refers? A. There was one in the bank, and this is evidently that one.

Mr. Goodell: Did you have any knowl-
30 edge?

The Witness: No, only what the letter states.

Q. Will you read this letter?

Mr. Goodell: I object; I don't see that it proves anything.

The Court: You may read it.

A. (Reading)

J. Ashley Brown—Cross

May 5, 1914.

John M. Walsh, Esq., Cashier,
First National Bank of Roselle,
Roselle, N. J.

My dear Mr. Walsh:

I beg to acknowledge receipt of your favor of 10
April 21st, enclosing participation certificate in
the loan made to the St. James Building, Incor-
porated.

Very truly yours,
WALTER W. IRWIN.

Offered in evidence and marked Exhibit
C-11.

Q. Have you looked through the records of the 20
bank to see if the original St. James note was in
the possession of the bank? A. No.

Q. Have you looked? A. The record states so,
that is all.

Q. States that it is? A. That it is.

The Court: That the original note is still there?

The Witness: That wasn't the question.

Q. Is the original note still there? A. I have
never been able to find it.

The Court: Then it is not there, so far as you
know? 30

The Witness: No.

CROSS-EXAMINATION by Mr. Goodell:

Q. Who is Walter Irwin, do you know? A. No.

Q. You don't know what the note was sent to
him for? A. No, sir.

Q. You don't know whether it came back to the
bank from him? A. No.

Q. You don't know that he was the attorney of 40
the bank and the note was sent to him by direction
of the board? A. No.

Clarence H. Crane—Direct

Q. You were asked to produce here the communication from the National Bank Examiner which is referred to in the minutes of the meeting of September 25, 1913, were you not? A. Yes, sir.

10 Q. Did you produce them? A. No, sir, I couldn't find them.

Q. Will you state to the court whether you were unable to produce it? A. It was a physical impossibility; I don't think the letter is in the bank.

By the Court: Q. You made a search? A. Yes, for about an hour and a half.

By the Court: Q. Where did you search? A. In the files.

20 Q. When? A. Last Friday after I got the subpoena.

Q. You searched in good faith and tried to find it? A. Yes, sir.

CLARENCE H. CRANE, sworn for complainant:

30 Direct-examination by Mr. Leavitt:

Q. You are at present the President of the First National Bank of Roselle? A. Yes.

Q. And at the time of the St. James transaction you were a director? A. Yes.

Q. You have been a director ever since the bank was incorporated? A. Yes.

Q. That was when? A. 1907, January first.

40 Q. Do you recall a letter being received from the comptroller? A. I received several letters.

Clarence H. Crane—Direct

Q. Did some authority in Washington direct the directors to ask Mr. Walsh to resign? A. Yes, sir.

Mr. Goodell: I object to giving contents of letters without producing the letters.

The Court: I think the objection is well taken. 10

Q. To whom was that letter addressed, do you recall? A. The directors of the First National Bank of Roselle.

Q. Who called it to your attention? A. Mr. Walsh.

Q. Had he received it? A. Mr. Walsh had received it.

Q. As cashier of the bank did he receive all mail addressed to the bank? A. Yes. 20

Q. Did you ever see the St. James note? A. No, sir.

Q. Did you hear of this note prior to March 25, 1913? A. The first time I heard of that note was at the directors meeting.

Q. And at that time what did Walsh say about it? A. I hardly remember the whole conversation in regard to that; he said it was a good note and knew all about it; right away the discount committee objected to it; after finding out that the note had been taken, the directors had to acquiesce in the thing and take it; that is about the size of it. 30

Q. Did the directors ever acquiesce and take that note? You just said the directors had to acquiesce? A. The money had been spent, and it would have thrown it onto Mr. Walsh.

Q. Did the board of directors of the First National Bank ever approve or accept that St. 40

Clarence H. Crane—Direct

James note? A. Not regularly so, I should not say, no, sir.

Q. What do you mean by "not regularly so"?

A. Because the action of the discount committee which acted upon it at their regular meetings, at the meeting of the directors—all those notes discounted are brought before the directors, and as they did not acquiesce—that is, I mean to say that the discount committee didn't approve of this thing, consequently it was brought to the directors' attention in the evening.

Q. Did the directors approve of the loan? A. As I say, the directors did and did not; there were objections.

Q. Did you consider this loan a loan made by the First National Bank of Roselle?

The Court: What he did was this, I think; it is quite apparent these gentlemen were confronted that night with the fact that the cashier took \$8,000 of the bank's money to meet a loan that they didn't sanction; there was nothing to do but to take the paper that was there and try to make the best of it with Mr. Walsh, which they started at that time to keep, until November when they took the note and mortgage. That is the way the situation strikes me. They accepted it in one sense. It appears upon the record. What else could they do? It represented \$8,000 of the bank's money; they had to take it in that form until they got something else to take its place.

Clarence H. Crane—Cross

CROSS-EXAMINATION by Mr. Goodell:

Q. When was your attention called to this communication from the comptroller of the currency?

A. I should say that was in December, 1914; I cannot give you the exact date.

Q. That was after the note had been taken out of the bank? A. I cannot say about that.

10

Q. December, 1914, was after the note was taken out of the bank? A. I cannot say whether the directors had assumed that note or not; I cannot say.

Complainant rests.

Mr. Leavitt: I will admit that the Development Realty Company, one of the defendants, was a corporation organized and owned by Mr. Palmer, and that he owns all the stock, and the corporation was organized for the purpose of holding his property; that it executed the bond and mortgage for \$7500 in question to Mr. Palmer, covering property in Westfield, New Jersey.

20

Mr. Goodell: I offer to prove that the Realty Development Company issued this mortgage to Mr. Palmer, not for value received from Mr. Palmer, but to enable Mr. Palmer to raise money on it with the State Trust Company, the money to be used for the benefit of the property owned by the corporation.

30

Mr. Leavitt: I object to any such testimony.

The Court: And no such purpose is expressed in either the bond or the mortgage,

40

Francis J. Palmer—Direct

and was not disclosed by Mr. Palmer either to the State Trust Company or to the complainant, as trustee, at the time of either or both assignments?

Mr. Goodell: I believe not.

10

The Court: I will sustain the objection. There is a decree *pro confesso* in the case?

Mr. Leavitt: There was, and after that we consented to have it opened and file an answer.

FRANCIS J. PALMER, sworn for defendants:

20

Direct-examination by Mr. Goodell:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. You remember the making of this assignment from yourself to Mr. Krouse, Trustee? A. Yes, sir.

Q. Which has been put in evidence here? A. Yes.

Q. Will you state the circumstances which led up to and induced you to make that assignment?

30

A. A mutual friend of Mr. Walsh and myself called upon me one afternoon and gave me the impression that Mr. Walsh was in trouble with his bank, and wanted to know if I and two others, myself included, making three, would put up some stock of some sort to protect a note that—

Q. Did they specify what kind of trouble? A. No, it wasn't specified what kind of trouble, nor

40

wasn't asked, but I told them that I had been in

Francis J. Palmer—Direct

court for several years, and was not in shape to do anything of that sort, but that I could obtain two shares of the Development Realty Company, if that would answer, and that was accepted at a later date by Mr. Walsh, and I was told by two others also furnishing stock, that it had been taken to the bank and the bank examiner had turned them down, and my stock was returned to me that I had handed to them, and I understood the other was returned to the other two parties, and before we separated that day it was announced by me that if this thing went wrong, we were to each spend one-third, no matter what we put up as security. That was attended to. Later on the securities were returned, as I say, and Mr. Walsh asked me if I would assign the equity in the mortgage.

Q. Did he state what mortgage? A. Yes; he being an officer of the bank at the time, I think he knew about the mortgage, I have no doubt.

Q. Officer of what bank? A. Roselle; I think he knew somewhat of my affairs, or the state of my affairs.

Q. He evidently knew about this mortgage A. Yes, sir. So I, thinking I might aid a fellow friend, went down to the bank on a morning which he suggested, and it was very inconvenient for me to go that morning, because I had a business appointment, but he announced that it would only take about five minutes in Mr. Leavitt's office, and I did sidetrack and get off at Elizabeth.

Q. Then was it at the bank or at Mr. Leavitt's office? A. Mr. Leavitt's office, and then I was asked to sign this paper.

The Court: The assignment?

Francis J. Palmer—Direct

The Witness: Yes, and I read over the paper hastily in the usual form and kept more to anything that was specified, and I saw the words "Henry Krouse, Trustee", and I asked who he was trustee for, and he said the directors.

10 The Court: Mr. Walsh?

The Witness: Mr. Leavitt, and I think Mr. Walsh also, and I said, well, then, that ought to say that he was not selling; "If you feel that way, we will put it in"; and my impression is—my very strong impression—that it said "for the directors," which don't correspond exactly to the copy that we have here. However, that was signed, and I started to go, and he said, "We are not through yet", and they gave me a letter to
20 sign to the State Trust Company, which said in substance that the mortgage that they held and the note that was given was not to be cancelled, that the bank should have the first opportunity—

Q. That is the letter that has been offered in evidence this morning? A. I think so; so I did that.

EXAMINATION by the Court:

Q. Why did you make that assignment to Mr.
30 Krouse as trustee? A. Well, the real reason was the feeling in here (indicating his heart) that I was keeping Mr. Walsh out of trouble.

Q. Did he explain to you about the St. James transaction at the time or at some time? A. Not all.

Q. But so you had some knowledge of it? A. Yes.

Q. When he asked for the assignment? A. I
40 did not know all the particulars, but have learned since.

Francis J. Palmer—Direct

Q. Did you know that the assignment was given as security for any part of the St. James loan, or did you understand so? A. I think I did.

Q. Was the amount mentioned? A. The amount was mentioned, yes, sir; there were two amounts mentioned, and changed before the assignment was executed. 10

Q. Were the amounts like \$4800 and \$3600? A. I think it slumped from \$4800 to \$3600, but the original talk was \$4800.

Q. What kind of trouble did you contemplate you were keeping him out of, criminal prosecution? A. I don't know that I had it clear in my mind.

Q. But some trouble? A. Yes, some trouble.

Q. Anything said about helping him retain his position as cashier also? A. No, I don't think there was any remarks, Judge, about that; I guess I gleaned all I did glean from our mutual friend, the present Mayor of Westfield. 20

Further DIRECT by Mr. Goodell:

Q. Was it understood by you that he owed the bank money? A. Yes, that was my impression that he owed the bank money.

Q. That was what was said to you? A. Yes. 30

Q. This conversation was in one conversation or several? A. Several; I think it was three different Sundays at my house.

Q. Your understanding was that this assignment was made to secure an indebtedness which Mr. Walsh owed the First National Bank of Roselle? A. Yes.

Court: Had anything been said to you about the 40

Francis J. Palmer—Cross

directors of the bank taking up any part of the St. James loan?

Witness: No, sir.

Q. When did you first find out that it was not the bank, but the directors of the bank personally?

10 A. One month later, when I received a letter from Mr. Walsh.

Q. Have you that letter? A. I think it is in the files.

Q. Is that the letter dated December 24, 1914?

A. Yes.

Letter offered in evidence and marked Exhibit D-1.

Court: Did you ever get the bonds of the Nappa Company?

20 Witness: Yes, sir.

Q. Did you try to realize on those bonds? A. Yes.

Q. With what success? A. I found that the company had gone out of existence sometime two years before.

EXAMINATION by the Court:

Q. Had Mr. Walsh promised you any security for your mortgage at the time he induced you to
30 assign the mortgage? A. I don't think that was done prior; no, sir, it was done afterwards.

Q. Did you ask for security? A. I told him I thought he ought to do something; that I was stretching a point to such an extent, owing to my financial condition; that there ought to be something done, and I think that the Nappa business came along afterwards.

40 Q. When you found that the Nappa business

Francis J. Palmer—Cross

couldn't be realized on, as you say? A. I never told Mr. Walsh that.

Q. Did you ever get any other security from him? A. No, sir.

Q. Why didn't you inform him of the fact that the bonds were no good? A. I was sensitive—I am 10
sensitive about those things, giving people extra
pain or trouble, and I wrote to California—I
will tell you how I discovered it; I made a loan,
putting up one of the bonds as collateral, and in
the meantime I got word from California that the
bonds were no good for two years before, and so
I immediately went down and told the bank, down
in the country, that they were not any good, and
my security was void, but the notes would be paid,
which were paid, and returned the bonds to me, 20
but I never made any mention to him that I knew
they were no good.

Q. Did he ever make any mention to you about the securities you held? A. No, sir.

Further DIRECT by Mr. Goodell:

Q. Did you have any lawyer when you went to Mr. Leavitt's office? A. No, sir.

Q. This letter they asked you to sign was prepared before hand, was it? A. Yes, sir. 30

CROSS-EXAMINATION by Mr. Leavitt:

Q. When did the Nappa Improvement Company go out of business? A. I am sorry I didn't bring that letter.

Court: He said he understood about two years before he got the bonds.

Q. Two years before you got the bonds from Walsh the company had gone out of business? A. I don't say that. 40

Francis J. Palmer—Cross

Court: That was the information he had.

Witness: Yes, sir; it was round about, because I didn't get at the company.

Q. At the time you signed the papers in my office you stated that you asked me for whom Mr. Krouse was trustee, and that I told you that he was trustee for the directors? A. Yes.

Q. Then why did you need the information a month later from Mr. Walsh to the same effect? A. As what?

Q. That Krouse was holding this as trustee for the directors? A. I didn't.

Q. You said that a month later was the first information that you had that Krouse was holding it for the directors? A. Yes.

20 Court: As individuals.

Witness: And that is what the letter says.

Q. Didn't I tell you that he was holding the mortgage for himself and the other individual directors? A. No, sir.

Court: What difference would it have made to you if you had been told that thing?

Witness: I don't know as it makes any difference.

30 Q. Would it have made any difference in your mind about your—— A. No, I was aiding him in view of his position in the bank, and the result was I didn't.

Q. You assigned that mortgage to help Walsh, did you not? A. I did, sir.

Q. You understood Walsh was in trouble? A. That was what our mutual friend intimated.

Q. And in addition to your friendship for Walsh, you asked for and received securities? A. 40 No, I did not.

John M. Walsh—Direct

Q. Didn't you receive the Nappa Improvement bonds? A. Yes, sir, some two or three months later.

Q. After the execution of the assignment? A. Yes, I think it was in March.

Q. At the time you signed the assignment you had been promised these securities? A. No, promised nothing. 10

Q. Then why did you sign the assignment? A. I told you why I assigned it—to help a man in trouble.

Q. To get Walsh out of trouble? A. What I supposed was trouble.

Q. Didn't Walsh tell you at the time that he had been guilty of an illegal transaction, using the bank's money in this St. James transaction? A. No, sir. 20

Q. What reference did he make to the St. James transaction? A. I think he made the statement in regard to the loan, the participations; most of it came out, I think, what I am telling you, at a later date; I didn't know the whole story in the beginning, and I cannot piece it consecutively as I learned it, what I am telling you.

Court: Did you ever disclose to Mr. Leavitt or to any of the gentlemen constituting the directors of the bank, that you had no right to pledge this mortgage? 30

Witness: No, I thought I had.

JOHN M. WALSH, sworn for defendants;

Direct-Examination by Mr. Goodell:

40

John M. Walsh—Direct

Q. You were the cashier of the First National Bank of Roselle in 1913 and 1914? A. I was.

Q. You have been subpoenaed to appear here by both sides, haven't you? A. I have.

Q. Will you state what the fact was in regard
10 to the purchase of the participation certificate or note which has been testified to here, of the St. James, Incorporated? A. I don't know just how to start on that.

Q. State whether you bought the note, when you bought it, what authority you had for buying it and all about it. A. The matter was called to my attention by the president of the City Bank of Bavonne, Mr. Emmett S. Hamilton.

Q. Is that a national bank? A. No, a state bank.
20 When it was called to my attention I took it up with Mr. Polhemus, Mr. Krouse and the chairman of the executive committee, Mr. Roland D. Crocker, and I went across to the store of Mr. Crane and spoke to him about it.

Q. Those were the directors of the First National Bank of Roselle? A. Yes. And Mr. Crocker controlled the stock of the bank at that time; Mr. Crocker approved of it, Mr. Polhemus approved of it, Mr. Krouse approved of it, and Mr. Crane was
30 not a member of the executive committee, and did not say whether he approved or disapproved.

Q. Was that before you bought it? A. Yes. Then we made the purchase and it was brought up this way—not at an executive committee meeting; it was between the executive committee meetings; our meetings were Tuesdays and Fri-
40 days.

John M. Walsh—Direct

Q. This conversation? A. Yes, this conversation; the matter was brought up at a meeting of the board, the next meeting preceding which I think was the 25th of March, according to the record; there was no objection, as far as I know, to that loan.

10

Q. You know; you were there? A. I was there; I know there was not. The statement has been made that I was ordered to take the note out; that is absolutely untrue; no such statement and no such order has ever been made. The matter was approved and went on to the payments; there were four payments of \$800, each with interest, and when the payments ceased, when the company had gone bad, then I made a statement to the board that I would personally guarantee the balance of that participation certificate.

20

Court: Why did you do that at that time?

Witness: Simply as a matter of pride.

Q. When; is it the date disclosed by the minutes that were read this morning? A. No, I don't think it was; I don't think there is any record made in the minutes of that statement, but it was practically five months or six months after this issue of that certificate, after the purchase of it. The first four months they made their payments, and when I reported to the board that the payment had not been made, then the question was raised as to the value of the certificate, and somebody expressed the possibility of a loss, and at that time I stated that I believed it was perfectly good, and I was willing to guarantee it.

30

Q. Was that the first time you stated to the board that you would guarantee it? A. Absolutely.

40

John M. Walsh—Direct

Q. It was pointed out that following the report of the finance committee at the meeting of March 25, 1913, the minutes did not show that the action of the finance committee in taking all this string of paper was approved; do you remember why
 10 that was so? A. Whether it doesn't state that it was not approved—the minutes were approved; the actions of the executive committee were approved, and if it doesn't say it, it is simply a technical error on the part of the stenographer who kept the minutes, because the usual form went in all those for the first part of all meetings.

Q. It appears from the minutes that at the subsequent meeting and at meetings after this finance committee made the report, the entry follows that
 20 it was ordered spread upon the minutes, and the action of the finance committee approved. Was the action taken at the subsequent meetings precisely the same as the action at this meeting? A. Absolutely, all the same.

Q. Then why were the minutes different? A. It is a question of a clerical error, because the first part—in getting up the minutes to hand to the stenographer, I never copied the first part of the minutes at all, they followed along; it was a
 30 form that was used; you will see it all through the book I only copied the resolutions that went through the usual form.

Q. You simply relied on the stenographer to follow that form? A. Absolutely.

Court: Why not let him continue with his testimony?

A. (Continuing) The matter ran on without payments, and there were references made to this
 40 loan in the minutes read here today, and I was

John M. Walsh—Direct

directed by the president of the bank to accept from Julius Wolf a payment of \$1200 and certain notes, I think amounting to \$3600, bringing the matter up to \$4800, which was then the balance, and the participation certificate was sent to Walter Irwin, a lawyer in New York, to make collection of the notes and the \$1200. 10

Q. That is the gentleman who wrote the letter marked in evidence? A. Yes. He did not succeed in making the collection and the participation certificate was returned to the bank. Later Mr. Wolf made an offer, through an indemnity company in New York, to pay twenty-five cents on the dollar, and that was accepted. However, in the meantime, the directors had been instructed by the bank examiner that they were personally liable on this note, and they took the matter up; ten or eleven men signed the note for the bank—myself with the others—and it was taken up with another note. 20

Court: That is the note for \$4800?

Witness: Yes.

A. (Continuing) Later, Mr. Lillibridge, a member of the board, went with me and collected the \$1200 and applied it on that note of \$4800.

Q. He went with you and did it? A. Yes. 30

Q. And delivered the participation certificate?

A. Endorsed the certificate and turned it over to the trustee, to Mr. Hamilton as trustee, and received a check of \$1200.

Q. That is the check that was paid into the bank on account of the directors note? A. Yes.

Q. Go on. A. The rest of it follows by getting Mr. Palmer to secure the balance of that note \$3600. 40

John M. Walsh—Direct

Court: Why did you do that?

Witness: Because to make good my word.

Court: That you would make good the loss, if any?

Witness: Yes.

10 Court: Did you explain that to Mr. Palmer?

Witness: I did.

Court: What did you say to him?

Witness: As I remember it, I told him that story of the St. James Building, and told him that I had made myself personally responsible anyway and I wanted to make good.

Court: Had you paid the \$400 on account of the \$3600 at that stage, or did you do that later?

Witness: No, that was a subsequent payment.

20 Court: Was that paid at the time of the assignment of the mortgage by Palmer?

Witness: No.

Court: Or after that?

Witness: After.

Q. What did you receive from the bank for making that promise to make it good? A. Nothing.

Court: Was there any threat to you to prosecute you?

Witness: Not at all.

30 Q. Any demand for your resignation? A. No.

Q. Or that it was desired? A. Not at all, not in any way.

Q. Where did Mr. Palmer get the impression that you were in trouble and that induced him to execute this assignment? A. I spoke about this; I asked the Mayor, Mr. Evans, of Westfield, to help me out on this thing, and he went to Mr.

40 Palmer; I don't know what he said to Mr. Palmer

John M. Walsh—Direct

so he could get that impression, because I explained to Mr. Evals.

Q. That you were in no danger of any trouble?
A. Absolutely.

Q. Had you known that your action had been criticized by the bank examiner? A. No. 10

Q. Or your resignation suggestion? A. No, I did not. The loan was never criticised by the bank examiner or anybody else until the payments had stopped; if the payments had continued the bank examiner would not have considered it an *ultra vires* act. As soon as the payments stopped, then the directors and the examiner—then it was wrong; of course, I don't blame them in a way.

Q. They have shown here that a check put up for this participation certificate was dated March 18, and cashed March 18, but the note was not dated until March 20, and was not put on the files of the bank until March 24; have you anything to say about that? A. The books will show that there was the charge or an entry made of a temporary loan by E. S. Hamilton, Trustee, pending the issuance of this certificate. 20

Q. A temporary note? A. Yes.

Q. And that was put on the books when? A. The date the check was issued, on the 19th. 30

Court: Why was it necessary to make that temporary loan five days before the permanent loan?

Witness: The permanent loan was made on the 20th.

Court: Why was the delay until the 24th putting it on the books?

Witness: Delay in getting it through the mail.

Witness: Why didn't you wait until the 20th to make the permanent loan instead of making the temporary? 40

John M. Walsh—Direct

Witness: The money had to be paid over in order to get the certificate.

Q. What was this participation certificate? A. A certificate of \$65,000, secured by rents of the St. James Building in New York; the St. James Building was owned by the St. James Building, Incorporated.

Q. Was that certificate made to some trustee? A. Made to E. S. Hamilton, Trustee, to represent the purchasers of this participation certificate; his own bank was a purchaser for \$20,000.

Q. And what you took over, then, as security for this note, or what the bank took over, was an assignment of a participation in those rents to the amount of \$8,000 to cover your note? A. Yes. the whole amount was \$65,000 and was to be paid in ten payments.

Q. Was this all taken by banks? A. No, there were four banks in it and the rest were individuals.

Court: I wouldn't go into that any more in detail; I think the whole question is what was said and done about assuming individual liability and Mr. Palmer's assignment of the mortgage; that is the main thing before me.

Q. On the 25th of September, 1913, reference is made to a communication from the National Bank Examiner, Mr. Hanna; do you remember that communication? A. I do remember it.

Q. You heard Mr. Brown state that it couldn't be found? A. I did.

Q. Do you know where it is? A. As I remember the thing, that letter was turned over to

John M. Walsh—Cross

Mr. West; he took it and wrote the reply. I copied the reply and sent it on, but I don't think the original letter was ever returned to the bank.

Q. Up to that time did Mr. Hanna make any objection to this St. James certificate? A. Mr. Hanna made objection to it when the payments ceased; I don't know how long before this letter was written that occurred. 10

Q. I call your attention to a memorandum used by Mr. Brown and brought here by him, purporting to give the payments made on account of the St. James Building, Incorporated, and ask you what you mean by the time when they fell down or stopped their payments, what date? A. The last payment was July 22, 1913, and at the next examination, which would probably be in September, the examiner objected to that loan, because the payments were past due. 20

Q. Had he examined the bank in the meantime? A. I don't think so.

Q. How many of the members of the finance committee did you talk with about this purchase before you actually made it? A. Three.

Q. And they were, once more? A. Mr. Crocker, Mr. Polhemus and Mr. Krouse.

Q. And as you talked to them did any of them make any objection? A. No. 30

CROSS-EXAMINATION by Mr. Leavitt:

Q. You spoke to Crocker, Polhemus and Henry Krouse? A. Yes.

Q. Where is Mr. Crocker now? A. I don't know.

Q. Is he the man who disappeared? A. He is.

Q. You say that Hanna did not object to this 40

Henry Krouse—Direct

loan until after payment ceased July 26, 1913?

A. That is the only recollection I have.

Q. Don't you know as a fact that Hanna told you, in the presence of the discount committee, that this loan was an illegal transaction? A. I do not know any such thing.

10 Q. Before you came to the First National Bank of Roselle, you were cashier of what bank? A. The People's National Bank of Westfield.

Q. How long were you cashier of that bank? A. Two and one-half years.

Q. Didn't you know at the time you made this transaction that it was a real estate transaction, contrary to the banking laws? A. I did not.

20 Q. And yet you had been cashier for several years prior to that? A. I submitted that loan or that proposition to the president and vice-president of the Coal and Iron National Bank; they didn't so state to me; I also submitted it to the attorney of the Title Guaranty & Trust Company; they approved of it and said that a National Bank could make the loan.

30 HENRY KROUSE, sworn in rebuttal for complainant:

Direct-examination by Leavitt:

Q. You are the complainant in this case? A. Yes, sir.

Q. And a director of the First National Bank of Roselle? A. Yes, sir.

40 Q. And have been since it was incorporated? A. No, two years.

Henry Krouse—Direct

Q. Mr. Walsh has stated that he submitted the St. James loan prior to the time it was purchased, to you; did he? A. He did not.

Q. When did you first hear of the St. James transaction? A. One morning he said that he had bought a note from the St. James Building Company and wanted us to O. K. it. 10

Q. Who was "us?" A. Mr. Polhemus and Mr. Chambers and myself; Mr. Crane was also in the room.

Q. Was Mr. Crocker at that time present? A. No, sir.

Q. Was Mr. Crocker present at the meeting of the board of directors held the same night, if you recall? A. I cannot recall that; I doubt it, though; the record would show. 20

The Court: You need not take the time now; you have the minutes in evidence.

Q. The minutes show that there were present Messrs. Chambers, Crane, Manley, Walsh, Pohle-Pohlemus, Lillibridge? A. That is all.

Q. Mr. Crocker was not present? A. No, sir.

Q. When Mr. Walsh told you and Mr. Polhemus and, you think, Mr. Crane, that the note had been purchased and asked you to approve it? A. Yes.

Q. And you refused? A. Refused. 30

Court: Had the bank examiner intimated to you that you ought to ask for Mr. Walsh's resignation?

Witness: Yes, sir.

Q. Had you said anything to Mr. Walsh about that? A. Mr. Walsh said to me one morning—I endorsed a note for Mr. Walsh and the note came due, and he said "Mr. Krouse, don't push this case of mine; if you do, I will never be able to get another job; I will make it good." 40

Exhibit C-6

Q. What case was he referring to? A. The St. James case.

Q. Had you gentlemen constituting the board of directors at that time agreed to assume the liability for that note? A. We had taken it up
10 some time before that.

Q. The balance of \$4800? A. Yes, sir.

Q. On which subsequently there was \$1200 paid and then Mr. Walsh paid \$400 more? A. Yes, sir.

Agreement as to Exhibit C-1 to C-5 inclusive

20 By agreement between the parties the abstracts of Exhibits C-1 through C-5 as printed in the minutes on page 26 are accepted in lieu of printing the same in full.

Exhibit C-6

30 Elizabeth, N. J., Nov. 24, 1914.
\$3600

Three months after date I promise to pay to the order of Henry Krouse Trustee
Thirty-six hundred Dollars.
at the UNION COUNTY TRUST COMPANY, ELIZABETH, N. J. for value received.

J. M. WALSH.

Exhibit C-7

NEW JERSEY SUPREME COURT

HENRY KROUSE, Trustee,	}	Action at law, by Default N. R. Leavitt, Attorney. 10
vs		
JOHN M. WALSH.		

Judgment entered this nineteenth day of August, A. D. nineteen hundred and sixteen, for the sum of three thousand three hundred and fifty-seven dollars and thirty-three cents damages and thirty-seven dollars and four cents costs.

WM. S. GUMMERE, C. J.

20

Exhibit C-8

Letter signed F. J. Palmer dated November 23, 1914, printed in the minutes, page 27.

Exhibit C-9

30

\$4800 Roselle, N. J., Sept. 8th, 1914.

Two months after date, for value received, the undersigned promises to pay to the order of THE FIRST NATIONAL BANK OF ROSELLE, at its Banking Office, Roselle, N. J. Forty-eight hundred Dollars, with interest at the rate of per cent. in United States gold coin or its equivalent, having deposited

40

Exhibit C-9

with the said Bank as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Bank, due or to become
10 due, whether now existing or hereafter arising, the following property, *viz*: Bonds No. 192, 191, 193, 194, 195, 197, 196, 198, 279, 273, 276 & 383 Nappa Improvement Company Bond \$500 each of a market value estimated by the undersigned at \$. ; and the undersigned agree to deliver to the said Bank additional securities to its satisfaction, should the market value of the said securities, as a whole, suffer and decline, and also hereby
20 give to the said Bank a lien for the amount of all the said liabilities upon all the property or securities given unto or left in possession of the said Bank by the undersigned, and also upon any balance of the deposit account of the undersigned with the said bank.

On the non-performance of this promise, or upon the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forthwith, with or without notice, to furnish satisfactory additional securities in case of decline, as
30 aforesaid, or in the case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Bank, to sell, assign, and deliver the whole of the said securities, or any part thereof,
40 or any substitutes therefor, or any additions thereto, or any other securities or property given

Exhibit C-9

unto or left in the possession of the said Bank, by the undersigned, for safekeeping or otherwise, at any broker's board, or at public or private sale at the option of the said Bank or of its Officers, without either demand, advertisement or notice of any kind, which are hereby expressly waived. 10
At any such sale, the said Bank may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Bank may apply the residue of the proceeds of the sale or sales so made to pay one or more or all the said liabilities to the said Bank, as it or its Officers shall deem 20
proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said Bank for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Bank, at its option, at any time to appropriate and apply to the payment and extinguishment of any of the 30
above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Bank, on deposit or otherwise, to the credit of or belonging to the undersigned, whether the said obligations or liabilities are then due or not due.

J. M. WALSH.

Exhibit C-10

THE FIRST NATIONAL BANK
of Roselle

No. 564. Roselle, N. J., March, 19, 1917.

10 Pay to the order of E. B. Hamilton, Trustee,
\$8000.00 Eight Thousand Dollars.

THE CHATHAM AND PHENIX NATIONAL BANK,
NEW YORK.

J. M. WALSH,
Cashier.

Exhibit C-11

20 Letter from Walter Irwin to John M. Walsh,
Cashier dated November 25, 1914, printed in full
in the minutes, page 75.

Exhibit D-1

No. 8483

30 THE FIRST NATIONAL BANK OF ROSELLE
ROSELLE, N. J.

William T. West, President,
C. E. Chambers, Vice President,
C. H. Crane, Vice President,
John M. Walsh, Vice Pres. & Cashiers,
Lewis S. Vossler, Asst. Cashier.

December, 24th, 1914.

Mr. Francis J. Palmer,
Fanwood, N. J.

40

Exhibit D-1

Dear Mr. Palmer:—

Referring to the transaction in the office of N. R. Leavitt at Elizabeth on November 24th., I beg to state that the following is the status of the matter:

Q. You hold a first mortgage of \$7,500 on the property in Westfield owned by the Realty & Development Company, which mortgage was assigned by you to The State Trust Company of Plainfield, N. J. as security for a loan of \$3,000 and on the date above referred to you assigned the equity in the mortgage to Henry Krouse, Trustee for the directors (as individuals) of The First National Bank of Roselle, to secure the guaranty of a payment of the mine amounting to \$3,600, for which I gave Mr. Leavitt on that day and in your presence a three months note. 10 20

You will also remember that you signed a letter addressed to the State Trust Company, directing that the mortgage not be cancelled by them in case their obligation was paid, but to turn same over to said Krouse as trustee.

I am holding for you as security for your guaranty on my note 12 7% First Mortgage Bonds of \$500 each (total \$6,000) of the Nappa Improvement Company of San Francisco, California, which bonds are subject to your order. 30

I am using every effort to clear up this obligation before maturing with a good prospect of success and I assure you that I will keep at it until it is wiped out.

Trusting that this letter is what you desired when I last saw you, and with best regards and compliments of the season, I am,

Sincerely yours,
J. M. WALSH. 40

Opinion

The established facts relating to this inquiry are that complainant and others, for whom he holds the mortgage as trustee, are, or were, directors of the First National Bank of Roselle, and that John M. Walsh was the Cashier of the bank. Sometime in March, 1913, Walsh, as Cashier, without the authority or knowledge of the bank directors, invested \$8,000 of the bank's funds in the purchase of participating certificates in the notes of the St. James Company, Inc. The principal and interest of these notes were secured by, and were to be paid in certain installments from rentals received from the St. James Building owned by the Company in New York City. When the bank directors and the Executive Committee learned of this investment which Walsh had made, they refused to ratify it; censured him for making it, and demanded that he reimburse the bank for the amount of the investment or furnish satisfactory security for the same. Walsh, at the time, was unable to do what the directors demanded. While negotiations looking to a settlement with him were pending, the Company paid in installments \$3200 on the notes and defaulted on the remainder. The matter finally came to the attention of the Bank Examiner and the Controller of the Currency, and as a result of their criticism, that the investment was illegal, the directors personally paid the balance due the bank, and did so at the request and on the promise of Walsh that he would secure them and the bank against loss. This he attempted to do by giving his personal note secured by bonds of the Nappa Company of California. The directors refused to accept these bonds as collateral and thereupon

Opinion

Walsh and his friends induced the defendant Palmer to assign the mortgage in question to complainant as Trustee for the directors.

10 The liability which the directors assumed at Walsh's request was originally \$4800. This was later reduced to \$3600, by a payment of \$1200, made by the company, and again reduced to the amount now claimed of \$3200, by a payment of \$400 made by Walsh. Before the directors settled with the bank and while the investment was under criticism, intimation of criminal prosecutions against Walsh, or of his discharge as cashier, were made by one or more of the directors, and Walsh in order to repay what the directors claimed he owed the bank, and to prevent his discharge, 20 which he claimed would prevent him from obtaining another position, promised in effect that if the directors would act to relieve the bank from any possible loss arising from the investment, and himself from the consequence of making the unauthorized use of the bank's money, he would repay them and furnish them with security for any such liability they assumed. Thereupon, Palmer, a friend of Walsh, was approached by Walsh and his friends about the matter and in- 30 formed of the situation; and in order, as he states, to help Walsh out of the trouble with the bank, Palmer assigned the mortgage in question to complainant as trustee, to secure him and his co-directors for any money they paid in settling the bank's claim against Walsh.

40 Palmer now claims this was not his intention when he made the assignment; that he understood Walsh was in some trouble with the bank and was called upon to pay or secure the payment of the

Opinion

money which he owed the bank, and that he intended by the assignment to secure the bank, and not the directors, for the money owing by Walsh. Palmer claims he had only the most vague idea of the trouble between Walsh and the directors of the bank. He was suspicious that Walsh might be prosecuted or might be discharged from his position as cashier, and was anxious to help him out of his trouble. 10

It appears, however, that when Palmer executed the assignment to complainant, he asked for whom Krouse was acting as trustee, and was told that he was acting for himself and other directors of the bank, and he knew that he was giving security for \$3600 due on the St. James loan, I am satisfied, although he does not now recall the matter, that he was fully acquainted with the situation when he made the assignment. To secure Palmer in the matter, Walsh assigned to him the Nappa Company bonds, and two years later Palmer found they were worthless. On the same day Palmer assigned the mortgage to complainant, Walsh also gave complainant, as trustee, his note for \$3600, payable in three months, and at or about this time the directors paid the balance due the bank. 20

Summarized, the situation presented by these facts is, that Walsh acknowledged he had made an improper and unwarranted use of the bank's funds, and in consequence was obliged to save the bank from loss; that he was personally unable to do so and requested complainant and his co-directors to do it for him, promising to secure them against loss, and to repay them what they had paid on his account; that Palmer, with full 30 40

Opinion

knowledge of the situation, furnished this security at Walsh's request and for Walsh's accommodation and benefit and delivered it to complainant as the promised security for the money paid by him and his co-directors at Walsh's request and for his benefit.

10 In view of Palmer's knowledge of the facts when he executed the assignment of the mortgage, and of the debt owing by Walsh to the directors at the time, for the liability they had assumed and the money they paid at his request, to keep him out of trouble, I am satisfied there was an actual valuable consideration for the assignment of the mortgage by Palmer to complainant, although the consideration did not move directly from complainant to Palmer or to the mortgagor, and it was not necessary that it should. *Perkins vs. Fidelity Realty Company*, 69 Eq., 723; *Affirmed* 71 Eq. 304.

The decree asked for will be advised.

Final Decree

John M. Walsh to complainant on that date for \$3600.00 and that the assignment was made for a good and valuable consideration and that the prayer of the said Development Realty Company as contained in its Counterclaim should not be granted but it appearing that the said Francis J. Palmer had full right and authority to make said assignment and it further appearing that certain sums have been paid on account of said note and a renewal note was given therefor on October 25, 1915 for the sum of \$3200.00, the amount at that time due thereon, and that later the said Henry Krouse, Trustee, brought suit thereon and recovered a judgment against John M. Walsh, the maker of said note, in the New Jersey Supreme Court on August 19, 1916 for \$3357.33 and \$37.04 costs, or \$3394.37 in all; and it appearing that no part of said judgment has been paid but that interest is due thereon from the date thereof; and it appearing that the total amount due the complainant on said first assignment to July 9th, 1917 with interest amounted to \$3142.53 and the total amount due on the second assignment given as security for the said Walsh note up to the said 9th day of July, 1917 with interest amounts to \$3575.40 making a total due to complainant on said mortgage on the 9th day of July, 1917 the sum of \$6717.93.

It is on this tenth day of August, 1917 by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey ordered that the complainant is entitled to have the said sum of \$6717.93 with lawful interest thereon to be computed from the 9th day of July, 1917 together with his costs of this suit, raised and paid for out of the mortgaged premises.

Final Decree

And it is accordingly further ordered, adjudged and decreed that so much of the said mortgage premises as will be sufficient to raise and satisfy the said debt, interest and costs be sold; and that a writ of *fieri facias* do issue for that purpose out of this court directed to the Sheriff of the County of Union commanding him to make sale according to law of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he pay the same to the complainant or to his solicitor, and that in case more money should be raised by the sale then shall be sufficient to answer such payment, such surplus money may be brought into this Court, and be deposited with the Clerk, to abide the further order of this Court, unless otherwise previously disposed of by an order of the Court; and the Sheriff is to make return to this Court of his proceedings by virtue of the said writ. 10 20

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

And it is further ordered, adjudged and decreed that the sum of \$150.00 be allowed and paid to the solicitor of the Complainant as his Counsel free and the same be included in the taxed bill of costs.

And it is further ordered that the sum of \$21.00 the amount expended for searches by the Solicitor of the Complainant be included in the taxed 40

Petition of Appeal

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

Dated, September 4th, 1917.

EDWIN B. AND PHILIP GOODELL,
Solicitor of Defendant.

EDWIN B. GOODELL, 10
Counsel.

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

EDWIN B. GOODELL,
Of Counsel with Defendant.

I hereby acknowledge receipt of the within Notice of Appeal.
Sept. 5, 1915.

N. R. LEAVITT,
Solicitor of Complainant. 20

Petition of Appeal

(Filed September 23, 1917)

NEW JERSEY COURT OF ERRORS AND
APPEALS

30

HENRY KROUSE, Trustee,
Complainant and Respondent,

VS

FRANCIS J. PALMER, *et al.*, im-
pleaded,
Defendants and Appellants.

To the Honorable to Court of Errors and Ap- 40
peals in the last resort in all causes: }

Petition of Appeal

The petition of Francis J. Palmer, the appellant in the above stated cause respectfully shows that your petitioner finds himself 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 the tenth day of August in the year Nineteen Hundred and Seventeen, wherein the said Krouse was complainant and the said Francis J. Palmer and The Development Realty Company were defendants, in this respect, *to wit*: that the said decree adjudges that the said complainant is entitled to have the sum of \$6717.93 with lawful interest thereon to be computed from the 9th day of July, 1917, together with his costs of this suit raised and paid for out of the mortgaged premises whereas the same should have decreed that the complainant was entitled to have the sum of \$3142.53 with interest thereon from the 9th day of July, 1917, and no more, together with his costs of suit raised and paid for out of the said mortgaged premises; and your petitioner humbly appeals from that part of the decree which decrees as aforesaid upon the ground that the same is erroneous for that the said decree includes as a part of the sum which the complainant is entitled to have paid out of the said premises the sum of \$3357.33, being the amount of an alleged judgment obtained in the Supreme Court of the State of New Jersey in favor of the said complainant and against one John M. Walsh, and also the sum of \$37.04 alleged to be the costs of said suit, for which the complainant had an assignment of the mortgage mentioned in the bill of complaint which the said decree determined and decreed to be a valid assignment

Petition of Appeal

duly made for a lawful consideration; whereas your petitioner is advised and alleges that the said assignment was obtained by fraud and deceit and was made without any good and valuable consideration and was therefore void and of no effect.

Your petitioner therefore prays that the said decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden or may be amended and reduced as justice and equity may require and that your petitioner shall have such relief in the premises as to this honorable court shall seem meet.

10

EDWIN B. AND PHILIP GOODELL,
Solicitor for Appellant.

Edwin B. Goodell,
Of Counsel with Appellant.

20

Service of the within Petition of Appeal is hereby acknowledged.

Oct. 11, 1917.

N. R. LEAVITT,
Sol. of Compl.,
Henry Krouse, Tr.

New Jersey Court of Errors and Appeals

Between HENRY KROUSE, Trustee, Complainant-Respondent, and FRANCIS J. PALMER, <i>et al.</i> , Defendants-Appellant.	}	On Bill to Foreclose
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APPELLANT'S BRIEF

The sole question to be answered in this cause is whether the supposed consideration for an assignment of mortgage made by the appellant to the respondent was in fact such as, in a Court of equity, ought to sustain the assignment as valid.

It will be seen from the following brief that:

1. Appellant assigned a mortgage to the respondent, having been told and believing:
 - A. That he was securing payment of a *debt* due from one Walsh to a National Bank of which Walsh was then Cashier.
 - B. That, by thus securing the debt he was helping Walsh out of trouble with his bank.
2. Whereas the facts were:
 - A. Walsh did not in fact owe his bank any-

thing at the time, and the alleged debt, now claimed to be due to his co-directors as individuals was not bona fide nor collectible by law.

B. Immediately after they had gotten the assignment from Palmer, Walsh's co-directors proceeded to oust him from his position so that the assignment was of no benefit to the man appellant supposed he was helping.

Facts

The mortgage was made by a corporation known as the Development Realty Company. It was organized by the appellant to hold certain real estate which he owned, and he owned all the stock, though two others had shares standing in their names for the purpose of qualifying them to act as directors. Desiring to use certain money, he had the board of directors make and deliver to him the Company's bond conditioned for the payment of \$7500 and secured by the Company's mortgage upon the real estate in question. He was the mortgagee, and the understanding was that he would use it as collateral for a loan at the State Trust Company at Plainfield. He did so use it, and secured from that Company a loan of \$3000 thereon. This mortgage was subsequently assigned by the State Trust Company to the respondent in this cause and no question is raised here as to its validity, in his hands, for the amount of the money thus borrowed with interest. The question arises upon a subsequent assignment which came about as follows:

Some time in the fall of 1914 the defendant was applied to by one Walsh, at that time the

cashier of the First National Bank of Roselle, to help him out of a difficulty. The appellant was also applied to on behalf of the same Walsh by their mutual friend. The exact nature of Walsh's trouble was not made known, but it was represented to the appellant that if he and two others who were named to him, would put up collateral to protect a note which Walsh owed his bank, it would help Walsh out of it. (Test. of Palmer, p. 80). There were some negotiations by which Palmer and two others were to put up security, but these preliminary negotiations all broke down and the final result was that the appellant, supposing the facts to be as above, assigned the above mentioned mortgage to the respondent as trustee, on November 24, 1914 (Exhibit C-5, p. 26). Before he made this assignment he was told directly by Mr. Walsh that he, Walsh, had made himself "personally responsible" for a debt due to the bank (Test. p. 92, lines 13-16). The Court below seems to have had the impression that Palmer received from Walsh certain collateral to secure him in making this assignment at the time he made it, but I think this is an error, for the collateral which he did get from Walsh, (certain bonds of a "Nappa Improvement Company," which the bank had previously refused) and which turned out to be utterly worthless, was not received nor even promised to appellant until later (Test. p. 84, lines 28-32). This, however, does not seem to be material. At the same interview at which Palmer made the assignment of the mortgage, Walsh made a note to "Henry Krouse, Trustee" for \$3600 payable three months from date (Exhibit C-6, at page 98) and the assignment (which was, of course, subject to the prior assignment to the State Trust Company) recites that it

was made "to secure an indebtedness of \$3600" (Test. p. 26, lines 32-33). We contend the note then given was entirely without consideration.

Palmer understood that this alleged indebtedness was due from Walsh to the bank and, although when he asked for whom Krouse was trustee he was told that he was trustee for the "directors." he did not understand until some time later that this meant the directors *as individuals* and not as representing the bank (Test. of Palmer, p. 84 and Exhibit D-1, p. 103). This exhibit is a letter from Walsh to Palmer dated December 24, 1914, one month after the transaction, which expressly tells him that the assignment was to Krouse as trustee for the directors *as individuals*.

The contention of the appellant is that he was, whether innocently or not does not matter, deceived in two respects. First, that he supposed, and was so told, that he was securing an indebtedness from Walsh to his bank, and was quite ignorant of the fact (which developed later) that these directors as individuals had paid the note to the bank more than a month before. And, second, that he supposed, and was so told, that if Walsh could furnish security *satisfactory to the bank examiners*, it would *help his friend out of his trouble*. Whereas, the fact was that the bank examiner had no longer any interest in the security, the bank having been paid more than a month before the assignment; and moreover, the bank examiner and the directors were determined to drive Walsh out of the bank, and the furnishing of this security made not the slightest difference. They turned him out just the same. The result of this action, if it is successful, is to use this mortgage, not to help Walsh out of trouble, as Palmer supposed, but to enable a number of gentlemen who,

so far as the evidence shows, were complete strangers to the appellant, to make good their loss out of his pocket.

The history of the transactions prior to Nov. 24, 1914, when Walsh gave his note and Palmer his assignment, follows.

On the 25th of March, 1913, the First National Bank of Roselle of which Walsh was cashier purchased paper known as a "participation certificate" made by one E. S. Hamilton, Trustee, and secured by an assignment of the rents of a certain building known as the St. James Building in New York. The entry on the minutes of the bank show this transaction as follows:

"Finance Committee reported the following notes and bills receivable to have been passed upon and discounted since the last regular meeting."

A long list of paper, including the above "participation certificate," follows (Test. p. 42, lines 18-21). There is nothing in the minutes of that date to show any disposition of this paper other than that which all the other paper in the list received (*id.* line 39). The action taken by the board on the report is shown by the following entry at the end of the list,

"Motion duly made and carried that the report of the finance committee be received and spread on the minutes" (Test. p. 43, lines 34-38).

The face of the paper was \$8,000 (p. 42 line 23). It was payable at the rate of ten per cent each month and payments were regularly made for four months, to wit, April 20, 1913, May 21, 1913, June 23, 1913 and July 22,

1913, thus reducing the amount of the note to \$4800 (Test. p. 73, line 24ff). Thereupon payments ceased for more than a year and the paper became the subject of very "bitter discussion" in the board of directors. On October 16, 1914, a little more than a month before they procured this assignment from the appellant, the directors of the bank, as individuals, gave their note to the bank for the balance then due, to wit, \$4800 (Test. of J. Ashley Brown, p. 73, lines 28, 38-40). On November 25, 1914, which was the day after they procured the assignment from the appellant, the bank received \$1200 from the original maker of the St. James note, which amount was credited by the bank *to the directors' note*, thus reducing it to \$3600 (Test. p. 74, lines 1-3). The directors, of whom Walsh was one, subsequently paid the \$3600 note in the following proportions, namely, Walsh paid \$400 and each of the other directors paid \$373.13 (Test. p. 71, at the bottom).

A large amount of testimony was introduced by the complainant to make some kind of basis for making Walsh in some way the legal surety to the bank for the payment of this note. Four directors were examined about it. All agreed that the note met with disapproval from individual members at the first, and it was generally agreed that it had been done by Walsh without any prior authority from the finance committee, although such testimony was in direct contradiction to the minutes of the board. One said that the board let it go through because Walsh told them that it was a perfectly good note and if the makers did not pay it he would, or words to that effect. Another said that the board never approved it at all and that Walsh was ordered to take it out, but that this order was never enforced or followed up

because payments were made regularly for several months. Another said that the board passed the note, but with reluctance, because to do otherwise "would have thrown the note onto Walsh" (Testimony of Clarence H. Crane, p. 77, lines 37 and 38).

But it seems useless to examine this complicated testimony with care, because it seems to me immaterial whether or not Walsh purchased the note without first consulting the members of the finance committee, or whether he first consulted them, as he himself positively states (Test. of Walsh, p. 88). The minutes are conclusive that the note was reported to the board by the finance committee with all the other paper done at that meeting, and *received precisely the same treatment by the board as all the other paper*. There is no writing of any sort, either by way of a memorandum in the minutes or elsewhere, to show that Mr. Walsh promised to pay this debt. The minutes do show that on the 24th of August, 1914 (which was a year after the St. James had failed to pay their ten per cent installment)

"Cashier reported that the St. James Building had not made any payments on the indebtedness to the bank, and he offered personally to substitute his note for \$4200 covering this loan and to give as security \$6000 bonds of the Nappa Improvement Company as collateral" (Test. p. 44, line 39; p. 45, lines 1-9).

The cashier's collateral note to that effect was actually drawn and signed and has been introduced in evidence (Exhibit C-9, p. 99), but it was never accepted, because at the meeting of the board held on Sep-

tember 22, 1914, it is recorded that the minutes of August 24th, were ordered to be corrected so as to read that the offer of Mr. Walsh was to be accepted "if approved by the committee" (Test. p. 55, lines 13-20) and *it further appears that the collateral was not approved and the note was never accepted* (Test. p. 55, lines 33-36). Mr. Walsh says that after the St. James people failed to make their payments he, "as a matter of pride," told the directors he would pay this note and see that the bank never lost anything; but there is no pretense that he received any consideration for such a promise, nor did the board take it seriously, as appears from the fact that *they would not even take his note with collateral, because they did not like the collateral.*

Nor is there anything in the National Bank Act or elsewhere which would make Walsh liable. The National Bank Act, and various other acts of Congress regulating banking, prescribe penalties for violating the provision of the law—but there is no provision in any of them which makes the cashier liable for any unfortunate investment, short of an actual, wilful misappropriation of the funds. Some feeble attempt was made at the trial to insinuate that Walsh was guilty of irregularities; but the assumed irregularities, if they had not been fully explained by him, as they were, did not result in a penny of loss, nor did they amount to anything resembling a misappropriation of funds.

It only remains to show why the directors assumed personal responsibility for this note and paid it. This is material from one point of view because the learned Vice Chancellor seems to have based his decree upon the supposition (which, *if true*, would go far to support the decree) that

they did this *at Mr. Walsh's request and upon his promise to reimburse them*; but I have been unable to find any testimony whatever in the case to support that supposition. No witness says, anywhere, either that Walsh asked them to pay it, or that he made *them*, or either of them, any promise to reimburse them if they did so. As it seems to be very material I will ask leave to call the attention of the Court particularly to the testimony which shows what their motive was in taking up this note.

As early as September, 1913, it seems the National Bank Examiner, a certain Mr. Hanna, objected to this note (Test. of Walsh, p. 94). The report of the National Bank Examiner upon the point was not produced, although I caused a subpoena to be served for it. From the oral testimony it appears that Hanna's objection to the note was that it was illegal.

"It was based on a real estate transaction and for that reason in a National Bank it was illegal. That was the understanding he gave us" (Test. p. 65, lines 5-10).

And again, on the same page, (lines 18-20) the witness says:

"I think that Hanna took the stand that it was a matter to be settled by the directors as individuals and not by the bank."

Hanna's objection continued to be urged for the next thirteen months until finally, in October, 1914, the directors gave their individual note for it. *This is all the testimony I have been able to find disclosing a motive for the directors.* It is singular that none of the letters or reports or criticisms by the Comptroller of the Currency which are re-

ferred to in the minutes and in the testimony could be found, although they were all subpoenaed. But the facts which are disclosed furnish an abundant explanation for the directors' action. The minutes of the meeting of March, 1913 show perfectly clearly that they, as directors, were responsible for taking this paper, and when the bank examiner objected that the note was illegal they, and Walsh *as one of them*, were in an uncomfortable position which would be intolerable unless they made it good, *whether Hanna's contention that the note was illegal was well founded or not*. No National Bank can continue business comfortably without complying with the requirements of the National Bank Department, whether those requirements are reasonable or unreasonable. There does not seem to be any basis for Hanna's objection to this note. Mr. Walsh testifies (p. 96):

“I submitted that loan, or that proposition to the president and vice-president of the Coal and Iron National Bank; they did not so state to me (namely that it was illegal). I also submitted it to the attorney of the Title Guaranty and Trust Company; they approved of it and said that a National Bank could make the loan.”

It is perfectly well settled that a National Bank may make loans on personal security, and the United States Courts have frequently decided that this means the security of personal property as well as the security of personal names. Rents are personal property, as much so as railroad bonds or any other personal security the value of which depends upon the proceeds of real estate. Nevertheless, the fact that the department, or Hanna, had condemned this note and ordered that it be

taken out by the directors as individuals, is ample, and the only, explanation of the action of the directors in so doing. *There is no evidence to be found that they did it at the request of Walsh, nor that he ever made any promise to them before November 24, 1914.*

The argument which appealed to Mr. Palmer and was the inducement held out to him for securing this supposed debt to the bank was that he was helping Mr. Walsh, whom he at that time supposed to be his friend, out of trouble. His own account of it, under oath, is as follows (Test. p. 80):

“A mutual friend of Mr. Walsh and myself called upon me one afternoon and gave me the impression that Mr. Walsh was in trouble with his bank and wanted to know if I and two others, myself included, making three, would put up some stock of some sort to protect a note that—(interrupted)

“No, it was not specified what kind of trouble, nor wasn't asked.”

He offered first two shares of the Development Realty Company

“And that was accepted at a later date by Mr. Walsh, and *I was told by two others also furnishing stock, that it had been taken to the bank and the bank examiner had turned them down.* (It must be remembered that the bank had already been paid) and my stock was returned to me that I had handed to them; and I understood the other was returned to the other two parties, and before we separated that day it was announced by me that if this thing went wrong, we were to each spend one-third, no

matter what we put up as security. That was attended to. Later on the securities were returned, as I say, and Mr. Walsh asked me if I would assign the equity in the mortgage.

“Did he state what mortgage? A. Yes, *he being an officer of the bank at the time*, I think he knew about the mortgage, I have no doubt.

“Q. Officer of what bank? A. Roselle; I think he knew somewhat of my affairs.

“Q. He evidently knew about this mortgage? A. Yes, sir.”

He then relates how he went to Mr. Leavitt's office and says, (p. 81):

“And then I was asked to sign this paper?”

“The Court: The assignment?”

“Witness: Yes, and I read over the paper hastily in the usual form and kept more to anything that was specified, and I saw the words ‘Henry Krouse, Trustee,’ and I asked who he was trustee for, and he said the directors.

“Court: Mr. Walsh?”

“Witness: Mr. Leavitt, and I think Mr. Walsh also, * * * However, that was signed, and I started to go, and he said, ‘We are not through yet,’ and they gave me a letter to sign to the State Trust Company, which said in substance that the mortgage that they held and the note that was given was not to be cancelled, that the bank should have the first opportunity—”

He was then asked by the Court:

“Q. Why did you make that assignment to Mr. Krouse as Trustee? A. Well, the real reason was the feeling in here (indicating his heart) that I was keeping Mr. Walsh out of trouble.

“Q. Did he explain to you about the St. James transaction at the time or at some time? A. Not all.

“Q. But so you had some knowledge of it? A. Yes. Q. When he asked for the assignment I did not know all the particulars, but have learned since.

“Q. Did you know that the assignment was given as *security for any part of the St. James loan, or did you understand so?* A. I think I did” (The St. James loan had been paid).

Again he was asked by the Court:

“What kind of trouble did you contemplate you were keeping him out of, criminal prosecution? A. I don't know that I had it clear in my mind.

“But some trouble? A. Yes, some trouble.”

He was then asked by his counsel:

“Q. Was it understood by you that he owed the bank money? A. Yes, that was my impression that he owed the bank money.

“Q. That was what was said to you? A. Yes.

“Q. This conversation was in one conversation or several? A. Several, I think it was three different Sundays at my house.

“Q. Your understanding was that this

assignment was made to secure an indebtedness which Mr. Walsh owed the First National Bank of Roselle? A. Yes.

“Court: Had anything been said to you about the directors of the bank taking up any part of the St. James loan?”

“Witness: *No, sir.*”

“Q. When did you first find out that it was not the bank, but the directors of the bank personally? A. One month later, when I received a letter from Mr. Walsh.

“Q. Have you that letter? A. I think it is in the files.

“Q. Is that the letter dated December 24, 1914? A. Yes.”

This letter is Exhibit D-1, on page 102. He was further examined by the Court, p. 84, as follows:

“Q. Had Mr. Walsh promised you any security for your mortgage at the time he induced you to assign the mortgage? A. I don't think that was done prior; no, sir, it was done afterwards.

“Q. Did you ask for security? A. I told him I thought he ought to do something; that I was stretching a point to such an extent, owing to my financial condition, that there ought to be something done, and I think that the Nappa business came along afterwards.”

On page 86 appears as follows, on cross-examination:

“Q. You said that a month later was the first information you had that Krouse was holding it (the assignment) for the directors? A. Yes.

“Court: As individuals.

“Witness: And that is what the letter says.

“Q. Didn't I tell you that he was holding the mortgage for himself and the other individual directors? A. No, sir.

“Court: What difference would it have made to you if you had been told that thing?

“Witness: I don't know as it makes any difference.

“Q. Would it have made any difference in your mind about your— A. No, I was aiding him *in view of his position in the bank, and the result was I didn't.*”

Mr. Palmer was without counsel and was dealing with Mr. Walsh and Mr. Krouse, aided by their counsel, and in the latter's office. His main purpose was to help Walsh out of trouble, and, as he pointedly put it, “the result was I didn't.” Walsh's real trouble and his only trouble was, apparently, that he was going to lose his job. In all this Palmer was deceived, for he was not helping Walsh in any respect, neither helping him to pay his debt to the bank, for Walsh owed none, nor was he helping to keep Walsh “out of trouble” of any kind whatsoever. The attitude of the directors toward Walsh was in no whit changed by the transaction and, as will now appear, they forced him out of his position. The evidence is as follows:

Director Polhemus testifies, on page 37, to a conversation which took place shortly prior to November, 1914. His testimony is as follows:

“Q. Do you recall the conversation or parts of it affecting this transaction? A.

Mr. Chambers asked Mr. Walsh why Mr. Palmer did this and Mr. Walsh said Mr. Palmer was a friend of his and did not want him to get into trouble or lose his job.

“Q. Was Walsh’s job threatened at that time? A. Yes.

“Court: Who threatened it?

“Witness: The board.

“Court: What had you said or done about it, or intimated?

“Witness: We had intimated that he had to pay up or get out.

“Court: When was that?

“Witness: At the time just prior to his giving us this note.”

And on page 54, line 28, he says:

“Q. Who made that remark? A. Mr. Chambers and Mr. Manley were the ones that spoke particularly about that; we all backed them up.

“Q. When was that remark made? A. I don’t know the date.

“Q. Approximate date, as near as you can, in connection with this other evidence. A. *At the time Mr. Walsh gave us that note; the giving of the note was the outcome of it.*”

Mr. Manley’s testimony about this resignation is a little different. It will be found on page 65, line 29:

“Q. Was Walsh asked to resign at any time? A. If he wasn’t—

“Court: Was he asked to resign?

“Witness: I don’t remember.

“Q. Did Walsh resign voluntarily after

the closing of this transaction? A. No, he did not resign voluntarily.

“Q. What do you mean by that answer, then? A. We made it so plain to him that he must get out that there was nothing left for him to do but to get out, and to save his reputation we allowed him to resign.

“Q. What do you mean ‘we made it so plain to him’? A. He knew he had to get out.

“Q. How do you know he knew it? A. I don’t know whether I told him in so many words, or whether any one else did, but things were too hot for him.”

The facts which appear from the minutes of the bank are that under date of December 29, 1914:

“Mr. Walsh tendered his resignation as vice president and cashier of this bank, such resignation to take effect at the pleasure of the board” (found in the minutes of that date quoted on page 52).

The minutes further show:

“The resignation was duly accepted, after much regret by Mr. West.”

That is to say, they first induced Mr. Walsh to get his friend Palmer to give this assignment of mortgage in order to “make his word good” and to “prevent his losing his job” and then forced his resignation by making it “too hot for him.” At the very time that these threats and this pressure were being put upon Mr. Walsh “to pay up or get out,” the bank had been paid, or amply secured by the note of the directors. We submit, with great respect, that such a method of recouping their personal losses from an innocent out-

sider, who was quite ignorant of what was going on behind the scene, ought not to receive the sanction of a Court of equity.

Law

FIRST: In the absence of a donative intent on the part of the Mortgagor, a mortgage must be supported by a debt.

Farnum vs. Burnett, 6 C. E. Gr., 87.

Courts of equity, even before our statute of 1878, permitted the consideration of a mortgage to be inquired into to ascertain the amount due. This does not affect the other question whether, as between the parties, a deed may be valid without a consideration.

Shotwell vs. Shotwell, 9 C. E. Gr., 378,
at 385.

It has been stated that a mortgage may be sustained against everybody but existing creditors, *although it was intended merely as a gift.*

Campbell vs. Tompkins, 5 Stew. 170,
at page 173.

Affirmed, 6 Stew., 362.

We do not controvert that statement, although in that case the mortgage was given by a married woman to secure her husband's *debt*. This was undoubtedly a valid consideration, for *there was a bona fide debt.*

But we may concede as a matter of principle that, just as one may make a valid conveyance good as against himself and his heirs, without a consideration, so one may make a conditional conveyance, if he so chooses, without a consideration.

But where the consideration is the *supposed* debt of another, and such debt does not exist, then to sustain the mortgage for that amount, there should be some evidence of an intention on the mortgagor's part to make the supposed creditor a present.

Sweeny vs. Williams, decided in this Court (9 Stew. 627) presents a different aspect of the same matter. That was a mortgage made, like the one here involved, without consideration, but the Court held (p. 631):

“Although the contract, as between the parties, was wholly without consideration, yet if made for assignment, and *if assigned for a consideration*, the latter became the consideration for the original contract.”

In that case the assignment to the bank, the receiver of which the complainant sought to enjoin from foreclosing the mortgage, had taken the bond and mortgage to secure a bona fide debt, due from the mortgagee to it. That assignment stood on the same footing as the assignment to the State Trust Company in this case, which was of course valid.

And the subject was treated lucidly by Garrison, V. C., in *Perkins vs. Trinity Realty Co.*, 3 Rob. 723, affirmed in this Court 1 Buch., 304 where the learned Vice Chancellor reached the conclusion, founded upon authorities already cited, and also upon *Bliss vs. Cronk*, 17 Dick., 496, (Vice Chancellor Pitney), *Baird vs. Baird*, 145 N. Y., 659 and *Jones on Mortgages* (3rd ed.) Sec. 610—that, in the absence of a donative purpose, the mortgage can be foreclosed or rights under it enforced, when, and only when, there is a debt to secure which it was given (*id* p. 726).

SECOND: Adopting the rule of Sweeny vs. Williams (supra) the consideration for the mortgage sought to be foreclosed in this action is the amount paid the State Trust Company for it, with interest, and no more.

We have seen that the mortgage in question was made by the Development Realty Company to Palmer without consideration between the original parties, that Palmer owned the entire stock of the mortgagor, and that he had assigned it to the State Trust Company for a bona fide debt of \$3000. Under the rule established by this Court this sum of \$3000 and interest became the consideration of the original mortgage.

It is not established by *Sweeny vs. Williams*, nor is it contended here, that Palmer might not by another assignment to secure another bona fide debt have bound the land covered by the mortgage to pay that debt also, but we contend that the additional assignment relied on by the complainant was not, as Palmer was told, to secure a bona fide debt, but was obtained from him by the complainant and his lawyer, aided and abetted by Walsh, to enable them to recoup a loss made by their own mismanagement; and that the promise to pay made by Walsh at the time of this assignment *and never before* was trumped up for the occasion and was unenforceable as against Walsh. As we have seen above, Palmer was grossly deceived in supposing that he was helping Walsh at all, and it is impossible to acquit the complainant of responsibility for this deceit, to Palmer. We cannot suppose that Walsh was entirely without intimations that his position was in danger, but we can scarcely believe that he would have

induced, or would have permitted, Palmer to go into this transaction if he had known all that was in the minds of his co-directors. It was inequitable to wheedle this mortgage out of Palmer without disclosing to him the true situation, namely, that the bank was no longer concerned; that the United States Government, as represented by the Bank Examiner, was out of it; that the directors were seeking to recoup from him money which they had paid out; that Walsh was volunteering to pay them without any legal obligation to do so; and that they intended to drive him from his position as soon as they possibly could after they got their security.

. It is of great significance that Walsh learned of this mortgage by being an officer of the bank, and it appears by evidence hitherto quoted in this brief that he had already informed the other directors of this mortgage and indicated that he might be able to get it; but it is perfectly manifest from the evidence, which Palmer has given with the utmost frankness, that he intended to secure the bank, for Walsh's sake and not the nine directors, and that if he had been told the facts as above he would not have made the assignment. He was told that Krouse was trustee for the "directors," but without something more than that neither a layman nor a lawyer would know that it was the directors in their private and not in their official capacity that was meant.

THIRD: No promise on Walsh's part, and no facts or circumstances have been shown raising an implied promise on his part, to repay the Directors what they paid the Bank.

Assuming the truth of all they said in contradiction to the minutes (though no two of them agreed as to what took place) even that state of affairs does not make out a case without either (1) an express promise on the part of Walsh to reimburse them if they paid the bank, or (2) an implied promise growing out of his request that they would pay the bank. As we have seen above, there is no evidence, oral or otherwise, of any such request or of any such promise. The only promise ever made by Walsh to his co-directors so far as appears in this evidence, is that contained in the note made and delivered by him to them at the time they succeeded in getting this assignment from Palmer; and when they sued Walsh on this note a year and a half later they gave Palmer no notice, and Walsh, naturally supposing himself entirely secured, did not consider it worth while to raise a question; or stretching the point to the utmost in his favor, still hoped to make good to the directors, individually, what he had "out of pride" promised the Roselle National Bank.

FOURTH: By the very language of the instrument by which Palmer assigned his remaining interest in this mortgage to the Complainant, the enforcement of it in the hands of the latter is limited to an actual indebtedness.

As correctly stated by complainant's counsel, on page 26, the assignment itself recites that it is made "to secure an indebtedness of \$3600." It does not say who had incurred the indebtedness nor to whom it was due, but the oral evidence shows conclusively that it was intended to secure an indebtedness of Walsh to Krouse and those represented by him. The meaning of the word "indebtedness" is not obscure or doubtful. The word "debt" has been defined in many cases cited in 2 Words and Phrases under that title and it has many shades of meaning according to the circumstances; but an "indebtedness" is always under any circumstances, something "owed," and both those words "as used in legal instruments" *import a legal obligation*. Before the complainant could collect anything, therefore, under or by force of this instrument he must show a legal obligation to support it; and the amount he can recover is dependent upon the amount of the legal obligation, not exceeding \$3600.

But an obligation in this sense is not created by signing and delivering a promissory note. Palmer did not become a guarantor of this note nor of any other, but by his assignment said in effect:

"If Walsh does not pay his *indebtedness*, you may take it out of this mortgage up to \$3600."

FIFTH: The decree should be reversed with costs and a new decree made that the Complainant is entitled to recover \$3142.53 with interest from July 9th, 1917, without costs, and the Defendant should have his costs in the Court below, with a reasonable counsel fee.

EDWIN B. GOODELL,
Of Counsel with Apellant.

Court of Errors and Appeals

ON APPEAL FROM THE COURT OF CHANCERY.

Between

HENRY KROUSE, Trustee,
Complainant-Appellee,

and

FRANCIS J. PALMER, *et al.*,
Defendants-Appellant.

On Bill, etc.

BRIEF FOR COMPLAINANT- APPELLEE.

At the trial of this cause on July 9th, 1917, it was conceded by the defendant that Francis J. Palmer was the sole owner of the stock of the Development Realty Company whose mortgage to Palmer was assigned by him to Henry Krouse, Trustee for the Directors of the First National Bank of Roselle to secure a note of Thirty-six Hundred (\$3600.00) Dollars made by John M. Walsh on November 24th, 1914, and that Palmer was not certain whether he assigned the mortgage to secure the Directors as individuals or the Bank itself. This note was given by Walsh to Henry Krouse as Trustee for the individual Directors to secure them for taking up the balance due on a note given by St. James Building Inc., the original loan to St. James Building Inc. having been made by Walsh the Cashier out of Bank funds without authority.

The First Defense Set Up by Defendant.

As to the validity of this security given by Palmer, he alleges that the mortgage was assigned by him without the consent of the Development Realty Company and fraudulently as against its interest, but it was conceded at the trial that under the rule laid down in the case of *Perkins v. Trinity Realty Company*, 69 N. J. Eq., 723, Affirmed 71 N. J. Eq., 304; that the fiction of a corporation could not save Palmer under such circumstances and that he was estopped to set up fraud as against his own corporation nor could he plead *Ultra Vires*, thus the first defense set up by the appellant has been eliminated.

The Second Defense.

The second defense denies that there was any debt due to the complainant, Henry Krouse, Trustee, at the time the security was given to secure the note of Thirty-six Hundred (\$3600.00) Dollars, dated November 24, 1914.

Point I.

The respondent shows that from the evidence appearing in the State of the Case there is sufficient foundation for the findings of facts contained in the Vice Chancellor's opinion. The Vice Chancellor states in his opinion that the only point at issue in the case is whether there was consideration for the assignment made by Palmer to Henry Krouse, Trustee, on November 24, 1914. The Vice Chancellor then proceeded to find that the Directors, from the moment they discovered that Walsh, Cashier, of the Roselle Bank had made a loan of Eight

Thousand (\$8000.00) Dollars of the Bank's funds to the St. James Company, Incorporated, without authority, held him responsible for any impending loss that might result and that Walsh in order to keep his job as Cashier, readily agreed to assume responsibility for any shortage or loss that might result and that he requested the complainant and his co-directors to reimburse the Bank, promising to secure them against loss and to repay them what they might pay on his account and that Palmer with full knowledge of the situation furnished this security. Palmer now alleges that he did not know the true situation until the trial or some recent date, but it is clear from an examination of Exhibit D-1, page 102 of the Case, which is a letter written by Walsh to Palmer a month after the assignment was made, and apparently written to Palmer by Walsh at Palmer's request, that Palmer knew or must have known pretty thoroughly the purpose for which he gave the security on November 24th, 1914. The note, executed by Walsh on November 24th, 1914, even if it only represented a moral obligation which Walsh voluntarily assumed, nevertheless, would have become legally binding from the minute it was signed. In other words, whether Walsh was legally bound to indemnify the Directors, or whether he was morally bound, the fact is, he signed the note and agreed to pay the "debt or default of another person," the debt or default being that of the St. James Building Company, Incorporated, and therefore, Walsh's note represented a valid debt. The appellee insists that there is sufficient evidence in the case upon which the Vice Chancellor might base his opinion and, therefore, there is no ground upon which the appellant may set the same aside. The Vice Chancellor has found the fact to be that there was consideration and there is no further appeal.

Where the disputed facts are settled by the Court below the finding of facts is not reviewable upon a writ of error. *Person v. Herring*, 63 N. J. L., 599. Where a case involves only questions of fact and the appellate court agrees with the conclusions of the Vice Chancellor the decree should be affirmed. *Hartman v. Hartman*, 74 N. J. E., 851.

Point II.

It is unnecessary to determine whether Walsh signed the note because he was afraid of being discharged or whether he felt a personal responsibility or whether he made a contract with the Directors to make up any loss on the St. James Building Company note, or whether it was to save himself from criminal prosecution; the fact is that there was a debt and that the Directors had paid it and reimbursed the bank to the extent of Thirty-six Hundred (\$3,600.00) Dollars. The debt was actually the debt of the St. James Building Company, Incorporated, and for one consideration or another Walsh signed the note but the Directors refused to accept it until good security might be given. When Palmer consented to assign the mortgage in question the Directors agreed to accept it; they changed their position and assumed an attitude of forbearance toward Walsh and did not press him at that time or bring any action against him. It was unnecessary that the consideration should move directly from Henry Krouse, Trustee, or the individual Directorsto Palmer or to the mortgagor. *Perkins v. Trinity Realty Company*, 69 N. J. Eq., 723, Affirmed 71 N. J. Eq., 304. In this latter case it was held that consideration need not move to the mortgagor under such circumstances or to the assignor and that the debt to secure which the mort-

gage is given or assigned may be the debt of another person. This case further holds that the forbearance extended to the debtor is sufficient consideration for the contract entered into by the person giving the security to whom no benefit directly moves. This principal is upheld in numerous cases. See *Hockenbury v. Meyers*, 34 N. J. L., 346, and cases cited.

SUMMARY.

Point I.

There was sufficient evidence upon which to base the Vice Chancellor's opinion. He held that there was consideration for the assignment. The Court of Errors will not consider an appeal from a finding of facts if there be a foundation upon which the Vice Chancellor could base his findings.

Point II.

By an analysis of the testimony it is clear that the note of Thirty-six Hundred (\$3,600.00) Dollars, signed by Walsh, represented a valid debt for which Palmer assigned the mortgage as security, and the forbearance of the bank Directors or their change of position was sufficient consideration for the assignment.

Respectfully submitted,

N. R. LEAVITT,
Solicitor of Complainant-Appellee.

The first part of the report
 deals with the general
 situation of the country
 and the progress of the
 work during the year.
 It is followed by a
 detailed account of the
 various projects and
 the results obtained.
 The report concludes
 with a summary of the
 work done and the
 conclusions reached.

The second part of the report
 contains a list of the
 names of the persons
 who have been engaged
 in the work during the
 year, and a list of the
 names of the persons
 who have been engaged
 in the work during the
 year.

The third part of the report
 contains a list of the
 names of the persons
 who have been engaged
 in the work during the
 year, and a list of the
 names of the persons
 who have been engaged
 in the work during the
 year.

