MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals

Between George Conover, *Complainant-Respondent,* and Guarantee Trust Company et al., *Defendants-Appellants.*	On Appeal of Guarantee Trust Company.

Appellant's Brief.

STATEMENT.

The conclusions of the learned Vice-Chancellor fully and accurately set forth the substantial and material facts and the objects of the bill. In a word, the appellant is trustee under an agreement to which it, Ventnor Syndicate and West Jersey Mortgage Company are parties, and in pursuance of which Ventnor Syndicate issued its collateral bonds which were to be secured by mortgages to be deposited with appellant as Trustee. Complainant holds two of those bonds of the denomination of $1,000 each, and he seeks to have the appellant removed as Trustee and to hold it liable for claimed

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losses. The bill charges bad faith on the part of the Trustee, and such actions as not only justify, but require, its removal. Upon these phases the Vice-Chancellor ruled against the claim or claims of the complainant and found as a fact that there was no bad faith and no justification for its removal as Trustee. He did, however, find that the Trustee transcended its power in accepting for the trust fund mortgages made directly from the Ventnor Syndicate to it rather than mortgages by way of an assignment which was held as plainly required by the terms of the trust agreement. In view of this finding the decree requires the appellant to make good any loss that may flow by reason of realizing less on the mortgages than their face. From this part of the decree the Guarantee Trust Company promptly appealed, and since that appeal, and while the papers were in the hands of the printer, the complainant has appealed because of the refusal of the Vice-Chancellor to find that the appellant should be removed. The testimony is somewhat voluminous, and we feel there is neither justification nor value in undertaking to set it out in detail here, or to elaborate an argument that that Vice-Chancellor was right in this regard. When this Court comes to read the testimony it will find that a very delicate situation confronted the trustee. Indubitably the insolvency of the Ventnor Syndicate and West Jersey Mortgage Company were caused primarily by the very serious destruction of the unimproved property of the Ventnor Syndicate, which destruction had been caused by violent storms on the Atlantic coast. The washing away of the land and the inability to market it caused heavy inroads on both companies, and they were finally compelled to surrender. Just what was to be done in the then situation became a matter of the exercise of judgment and discretion, and while others may now, looking backward, think that the Trustee ought to have done differently, certainly it cannot be said that the failure to do differently was an act of bad faith on the part of the Trustee for which it must now

be held. To so hold would, as it seems to us, make it impossible to have any reputable company accept a trusteeship. There were untoward events which taxed human ingenuity, and the course to be pursued in the light of the then circumstances was a matter for individual judgment. Whichever way the directors of the Trust Company might look, trouble could be seen. It cannot be said with any degree of certainty or definiteness that inaction was not as wise and prudent as to proceed to sell with the almost absolute certainty that it would become the owner of the property. The learned Vice-Chancellor had the benefit of the presence of witnesses, and took ample time to read and analyze the proof. While his findings of fact are not final, as is the case with a jury's findings, this Court does not lightly disturb such findings, and we are confident that giving the most favorable view to anything that may be said by counsel for the complainant, it is by no means plain that the Vice-Chancellor was in error.

LAW.

The Learned Vice-Chancellor was in Error in Holding that the Failure to Accept Assigned Mortgages Made the Appellant Liable for Loss.

We maintain that the Vice-Chancellor overstressed the reference in the agreement to assigned mortgages, and in reaching his conclusions has sacrificed substance to form, which by elementary law a court of equity should not do. A reading and consideration of the entire agreement make it obvious that all the parties to the agreement were looking to the mortgaged lands for the security, and not to the maker of the bonds. They placed a contemporaneous construction upon the agreement. That construction opposes the one given by the learned Court.

Section 8 is a pertinent part of the agreement. It reads:

"That all bonds and mortgages assigned and transferred by the Company to the Trustee as hereinbefore provided shall be accompanied by a policy or policies issued by the West Jersey Title & Guaranty Company, or some other corporation organized under the laws of the State of New Jersey for the purpose of insuring the titles to real estate, guaranteeing that the said mortgages are a valid and prior lien upon the premises covered thereby. All bonds and mortages assigned and transferred by the Company to the Trustee to constitute the Trust Fund herein provided shall be accompanied by a written appraisal of value to be made and certified to by the guarantor, and this value so appraised shall be accepted by said Trustee as a basis for certification of bonds as provided in Paragraph 4, and such securities shall be entered in the Schedule as of such value; provided that the Guarantor may at any time re-appraise such bonds and mortgages, and certify the same to the Trustee, and thereafter such last appraisal shall be considered the value to be given such bonds and mortgages in carrying out the provisions of this agreement. It shall be no part of the duties of the Trustee to make investigation concerning nor shall it be responsible for the validity, nature or actual value of the bonds and mortgages so assigned to it, nor shall it be answerable except for the due certification as aforesaid of the Company's bonds issued hereunder and for the custody and disposition of the Trust Fund.

It will be noted that the Trustee's liability or responsibility is discharged when it accepts bonds and mortgages accompanied by written appraisal of value to be made and certified by the guarantor (meaning the West Jersey Mortgage Company). Reference is then made to the re-appraisal of such bonds and mortages. All

the bonds and mortgages accepted by the Trustee were appraised and certified by the guarantor. It seems plain that it was the land value which was in the minds of the parties and their actions following closely upon the heels of the making of the agreement clearly show that it was the value of the mortgaged land they were all the while considering. There is nothing referable to the value of the bonds as such nor any language which could possibly raise an implication that the bonds were to have value disassociated from the mortgages. This construction of the section is, we think, further justified by the immunity clause which reads:

> "It shall be no part of the duties of the Trustee to make investigation concerning nor shall it be responsible for the validity, nature or actual value of the bonds and mortgages so assigned to it, nor shall it be answerable except for the due certification as aforesaid of the Company's bonds issued hereunder and for the custody and disposition of the Trust Fund."

The language "validity, nature or actual value" is broad, and would seem to cover every conceivable case. For this reason we insist that the learned Vice Chancellor places entirely too narrow a meaning on the words. Then, again, a reading of the section makes it manifest that the one primarily interested in the question of the character of the mortgages was the guarantor. The West Jersey Mortgage Company as a party to the agreement guaranteed the payment of the collateral bonds, and was, therefore, interested in the character of the mortgages which should constitute the trust fund in order that it might not incur serious liability. Section 8 was incorporated to protect it, for it will be observed that the section says:

> "All bonds and mortgages assigned and transferred by the company to the trustee to constitute the trust fund herein provided shall be accompanied by a written appraisal of value to be made and certified to by the guarantor."

Or, in other words, if the mortgages tendered by the Ventnor Syndicate to the trustee were satisfactory to the guarantor, the trustee's liability came to an end. Every purchaser of a collateral bond of the Ventnor Syndicate took it subject to the agreement. He could rise no higher than the agreement. He therefore purchased his bonds subject to the certification by the West Jersey Mortgage Company, guarantor, that the mortgages making up the trust fund were of sufficient value to secure the payment of the collateral bonds. In a word, the agreement does not concern itself in a substantial sense whether the bonds and mortgages come to the trustee by assignment or directly so long as their value is appraised and is satisfactory to the guarantor.

That all the parties to the agreement so interpreted it is demonstrated by the fact that accompanying and made a part of the agreement is a schedule of the very bonds and mortgages that are challenged by the bill of complaint. The caption is "Schedule of Mortgages Deposited under Trust Agreement Between Ventnor Syndicate and Guarantee Trust Company, Trustee, dated September 1, 1911."

And it should not be overlooked because of its tremendous significance that the collateral bonds say:

> "To secure the payment of this bond and all other bonds which constitute this series, together with interest thereon, there have been assigned to and deposited with the said Guarantee Trust Company as Trustee, bonds and first mortgages of a par value of not less," &c.

The only bonds and mortgages ever deposited were those that are named in said schedule which accompanied the agreement and was made a part thereof. The complainant, therefore, as a holder of the bonds took with notice the character of the bonds and mortgages which made up the trust fund.

Again, paragraph or section 2 of the agreement reads:

> "That Ventnor Syndicate, a corporation of the State of New Jersey, party of the first part,

> has granted, bargained, sold, assigned and set over, and by these presents doth grant, bargain, sell, assign and set over unto the Guarantee Trust Company, also a corporation of the State of New Jersey, party hereto of the second part, all the bonds and first mortgages set forth and described in the schedule hereto annexed and which forms a part of this instrument and bears even date herewith."

No schedule other than the one to which reference has been made, was ever made, and it follows that the parties knew at the time of the making of the agreement what bonds and mortgages were to constitute the trust fund. The collateral bond which the complainant holds makes special reference to the trust agreement, and of course makes the agreement binding upon him. He therefore became the possessor of his two bonds with full knowledge, actual or constructive, of all the terms of the agreement and of the character of the bonds and mortgages which then and since constitute the trust fund. In the light of these indisputable facts, what equity has he to complain that some other bonds and mortgages should have constituted the trust fund? He is now estopped from complaining. This feature of the case was passed over in silence by the learned Vice-Chancellor notwithstanding the earnestness with which it was pressed before him.

The Vice-Chancellor says:

> "I have searched in vain throughout the instrument of trust to find some provision from which an implied power of the trustee to accept such mortgages (referring to the mortgages in question) for the trust might be reasonably inferred."

Could there be any stronger implication than the fact that all the parties to the agreement agreed to accept the bonds and mortgages as security for the trust fund?

The West Jersey Mortgage Company was a party to the agreement, and certified to the value of the bonds

and mortgages in question, and yet the decree would make the Trust Company answer to it for any loss it may sustain as the holder of some of the collateral bonds. We can conceive of nothing more inequitable than this. Certainly as to the bonds held by it there must be a reversal of the decree.

It will be observed that the bonds and mortgages were accepted in 1911, at a time when proof demonstrates the value of the land was well in excess of the amount of the mortgages. This was the time for the holders of the collateral bonds to complain in order that the trustee might have saved itself from loss by requiring both the Ventnor Syndicate and West Jersey Mortgage Company to comply with the terms of the agreement such as are now insisted upon by the complainant. Both companies were then solvent, and the Ventnor Syndicate was well able to provide a satisfactory trust fund. Having failed to speak at a time when it should have spoken, this Court ought now to deny complainant relief. It is not without significance that the complainant of all the bondholders is heard to complain; notwithstanding all other bondholders are made parties to the bill, none answered and none appeared by counsel except the Receiver of the West Jersey Mortgage Company. Moreover, it is open to this Court to find that the complainant actually saw and read the trust agreement and the schedule of bonds and mortgages before buying his bonds. He so testified on cross-examination, page —. Later, on re-direct, he sought to qualify his answer, but we insist that a reading of his entire testimony will show that he sought to extricate himself from what he then conceived to be a very embarrassing situation.

Turning now to the authorities cited and the principles invoked by the Vice-Chancellor which seemed to impel him to the conclusion reached. He finds that the securities accepted were different in character from those provided in the trust agreement. We think this is not so. In *Limmerman* v. *Fraley* cited by the Vice-

Chancellor, the trustee purchased land while he was authorized to invest in landed securities. There the security was entirely different from that authorized. In *Quick's Ex'rs* v. *Fisher,* the testator created a trust fund and the trustee without any authority converted the personal property creating the fund into real estate. *Melick* v. *Voorhees* is a case where the Trustee sold property in the face of plain terms of a trust deed and under conditions which justified the court in finding fraud. The cases and principles cited and quoted by the Vice-Chancellor are not authority applicable to the case in hand. In the English case, *Pride* v. *Fooks,* the trustee was directed to invest in consols, instead he invested in a mortgage on real estate. Quite a different thing. In the case in hand the Trustee was to accept bonds and mortgages on real estate. This is what it did accept. The value of the bonds and mortgages were to be appraised and certified by the guarantor. This was done. But the Vice-Chancellor holds that the case is parallel to one of investing in mortgages on real estate when the trust directs investments in consols because forsooth the mortgages are taken directly from the Ventnor Syndicate to the Trustee rather than by way of assignments. It seems to us that this is highly technical and excessively narrow. We insist that the Vice-Chancellor was wrong in saying that the powers of the Trustee had been transcended and that it was not a case of the exercise of judgment. We maintain that apart from the question of estoppel and the other features therein discussed, that it was a case of judgment and that the judgment was not improperly exercised.

In *Tuttle* against *Gilmore* cited by the learned Vice-Chancellor, this court through Justice Magie said at page 623:

> "Since the consideration to be received and the securities o be taken were mortgages, his duty was to examine the land mortgaged and

> to ascertain by proper inquiries that the value thereof was reasonably sufficient to make them good, on which he was to pass his judgment."

The syllabus of the case, among other things, says:

> "A strict rule of construction will be applied as against such limitation and such liability and the construction must be consistent with the object and purpose of the trust."

In the case *sub judice* the object and purpose of the trust was to have mortgages of sufficient value to insure the payment of the bonds; that they were such at the time of their deposit and were certified to by the guarantor in acordance with the terms of the trust.

So long as the complainant was receiving the interest on his collateral bonds, the bonds and mortgages in question which created the trust fund, were entirely satisfactory to him, but after an untoward event beyond human power to prevent which reduced the value of the securities and made it impossible for the Ventnor Syndicate to pay its bonds, he now asserts the Trustee had no right to accept those bonds and mortgages and asks that it make good not only his loss, but that of every other bondholder who has not been heard to complain. To say this, does not sound like equity.

So much of the decree as refuses to remove the Trustee should be affirmed, and that which holds that it transcended its power in accepting the bonds and mortgages as part of the trust fund should be reversed.

Respectfully submitted,

C. L. Cole,

Solicitor and of Counsel with Appellant,

Guarantee Trust Company.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

BETWEEN
GEORGE CONOVER,
Complainant-Respondent,
AND
GUARANTEE TRUST COMPANY AND OTHERS,
Defendants-Appellants.
} On Bill, &c.

Brief for Complainant.

On September 1st, 1911, the Ventnor Syndicate entered into an agreement with the Guarantee Trust Company and the West Jersey Mortgage Company providing for an issue of $200,000 of three-year 6% gold *collateral* bonds.

The Ventnor Syndicate was to deliver to the Guarantee Trust Company, as Trustee, by assignment, certain *ordinary* three-year bonds and mortgages which it held upon real estate.

The West Jersey Mortgage Company was to guarantee the payment of the principal and interest due on the *collateral* bonds as issued and certified by the Trustee.

The Guarantee Trust Company was to act as Trustee and certify to the issue of *collateral* bonds.

This method of financing is only resorted to when no other feasible method presents itself, and has for its principal object the reaching of the small and inexperienced investor. The failure of the attempt is clearly seen in the proof that but $77,000 of the bonds were actually purchased.

There was a default in the payment of both the principal and the interest on the bonds issued, both on the part of the guarantor and of the issuing Company, and the complainant, who holds $2,000 of the issue, filed the bill in this case for the purpose of removing the Trustee and compelling an accounting.

In addition to the above the said West Jersey Mortgage Company issued its policy of insurance guaranteeing the payment of principal, interest, taxes, and foreclosure costs on each of the *ordinary* mortgages deposited as collateral. (*Case*, 136, 155, 156.)

It is well that each clause of the agreement be stated tersely, according to its legal effect, as it will no doubt serve a useful purpose in considering the facts in the case.

§1. Definition of "bond", "bondholder", "trust fund" and "value".

§2. Assignment to the Trustee of the bonds and mortgages owned by the Ventnor Syndicate.

§3. Provision for the issue of bonds by the Ventnor Syndicate as bonds and mortgages are assigned to the Trustee.

Provision for the recording of the trust agreement and the assignments of the bonds and mortgages upon default or upon request.

Provision that all bonds and mortgages shall be held for the equal pro rata benefit and security of all without preference.

§4. Provision for the certification by the Trustee of the bonds issued by the Ventnor Syndicate.

§5. If the Ventnor Syndicate desires to foreclose any of the mortgages it may substitute others in lieu thereof.

If taxes or interest is in default, Trustee must foreclose.

Before foreclosure Trustee must give notice to Ventnor Syndicate.

Bonds and mortgages to be substituted for property bought in at sale.

Cash in hands of the Trustee may be exchanged for bonds and mortgages.

Default under the agreement to deprive Ventnor Syndicate of the income.

§6. Provision for investment of moneys received on bonds and mortgages.

§7. Provision for substitution of securities.

§8. All bonds and mortgages to be insured by West Jersey Title and Guaranty Company.

Bonds and mortgages to be accompanied by written appraisal of the value.

Provision for re-appraisement.

Liability of Trustee.

§9. Default in interest to mature all the bonds.

§10. Default in bonds to permit sale of securities upon request of 25% of the bondholders upon indemnification.

Liability of Trustee.

§11. Assignment of bonds and mortgages upon delivery of bonds.

§12. Trust fund at all times to consist of bonds and mortgages to the par value of the bonds outstanding.

§13. Liability of the Trustee.

§14. Resignation of Trustee and appointment of new Trustee.

§15. Provision for subrogation.

§16. Provision for further instruments.

§17. Provision that the Trustee will do everything which may be reasonably necessary to carry out all of the provisions of the agreement and to effectuate the rights of the Ventnor Syndicate and of the bondholders.

The only fault we find with the decree of the Court of Chancery is its failure to remove the Trustee, and, as the facts making it necessary and proper this should have been done are highly important as a reason why that Court held the Trustee responsible to the Complainant and others, this Court's attention is invited to a careful examination of these references to the testimony.

I.

Should the Trustee Be Removed?

The facts proven at the trial establishing the legal necessity for the removal of the Trustee are many.

(*a*) The agreement of September 1st, 1911, provides in Paragraph 2 that the Ventnor Syndicate shall *assign* bonds and mortgages on real estate to the Trustee for the protection of the bondholders; Paragraph 3 provides for the record of the assignment; Paragraph 5 provides for the foreclosure of the mortgages by the Ventnor Syndicate, and other paragraphs provide for the substitution of other bonds and mortgages. There is not a single sentence or paragraph in the entire agreement which contemplates anything other than an "assigned" bond and mortgage.

How could the Ventnor Syndicate foreclose against itself?

It is impossible to reasonably construe the agreement as permitting the making of a bond and mortgage by the Ventnor Syndicate directly to the Trustee. Had

bondholders known they were loaning money on the bond of the Ventnor Syndicate, unsecured in any other way than by the guaranty of the West Jersey Mortgage Company, they would never have purchased the bonds. If it had been possible to have marketed the bonds and mortgages of the Ventnor Syndicate on the land mortgaged it would not have been necessary for it to have gone to the expense of paying for the services of a Trustee and printing the collateral bonds issued under the terms of the agreement. What the parties to the agreement intended is clearly to be seen by a reading of it, and that is, that the purchasers of the bond should have a four-fold security:

1st. The obligation of the Ventnor Syndicate.

2d. The security of the real estate mortgaged.

3d. The bond of the maker of the real estate mortgage.

4th. The guaranty of the Mortgage Company.

By the dereliction of the Trustee, the bondholders were deprived of the security of the mortgage bond. By the schedule attached to the agreement it will be seen that of all the mortgages taken there were only three in the list that were assigned mortgages (*Case,* 135 and second Supplement). Unfortunately the only third party bond accompanying these three was the single bond of the Roebling Realty Corporation, a Godfrey corporation. While it is without responsibility, the importance of the argument may be seen when it is considered the proofs show the mortgage on Block 108A, Lot 14; Block 108B, Lot 7, and Block 108B, Lot 14, were owned by the Chelsea Brick Company and William F. Shaw, who, as the record shows, required no money to be advanced by the Mortgage Company for interest, and who are only two years in arrear for taxes (*Ex. C. 36, Case, 303 et seq.*). Had the terms of the agreement been carried out as it was written, the bondholders would have had the responsibility such as would attach to

their bonds. Even the Trust Officer, in his letter of April 21, 1915, said the bonds and mortgages had been assigned. (*Case,* 286.)

It is important to note at this point that the Trustee must have had some doubt about its right to ignore the plain terms of the agreement, because notwithstanding the bonds issued and certified by it each bore the written guaranty of the West Jersey Mortgage Company, it took pains to have such bond and mortgage deposited with it also guaranteed by the West Jersey Mortgage Company as to payment of principal sum, interest and taxes. It also knew it was costing the Ventnor Syndicate 5 per cent. to secure its money on these mortgages (*Case, 110*). If there had not been a lurking doubt of some kind in the mind of the Trustee, either as to the right to accept direct mortgages or as to the impossibility of the Ventnor Syndicate performing its contract, I can conceive of no reason for these single policies. The evil in the thing is so apparent as to cause wonder as to why the proposition should be doubted. The bondholders didn't get an honest bond, nor they didn't get a bond and mortgage based upon an honest sale of real estate, but they got a bond of the company which was *pretending* it was giving another security, and a mortgage upon real estate in some cases in excess of the assessed value. In my judgment it was nothing more or less than a fraud.

The Trust Officer in admitting there was no sale for this real estate made this significant remark:

> "I didn't say market for the property, I said market for the securities." (*Case 109.*)

It was the paper promises they were trying to sell, not secured security.

(*b*) Immediately after the issue of these bonds, running from October 11th, 1911, to December 21st, 1912, taxes began to accumulate. (*Ex. C 21 and 22; Case, 270 and 271.*) It is the law of this State that taxes are due and payable on December 20th of each year,

and yet in eleven of the mortgages held by this Trustee we find the taxes for the year 1912 were unpaid, and in the case of Guaranty A764 and A500 the Trustee was so careless as to accept securities with the tax for that year then due and unpaid. The carelessness and neglect exhibited in this particular instance is so gross as to warrant it being given serious consideration. The agreement offered in evidence shows that on December 21st, 1912, two of the three mortgages which were assigned to the Company under the terms of the agreement, amounting to $10,000, were deposited with the Company and bonds issued thereupon. These mortgages were insured by the Mortgage Company under Guaranties A500 and A764, and the taxes from 1912, which were due and payable before the mortgages were assigned were not then paid, nor have they since been paid, either by the Trustee, the Ventnor Syndicate or the Mortgage Company. (*Ibid.*) The question of taxes which have accrued since 1912 to date is a serious one, but I cannot conceive how a Trustee can be excused from taking property subject to unpaid taxes. There is due to Margate City $2,169.31, without interest or costs, and to Ventnor City $4,074.49, without interest and costs, making a total of $6,243.80, without interest and costs. In both of these municipalities unpaid taxes bear interest at 12 per cent. prior to 1915, and 8 per cent. after 1915. (*Ibid.*)

The lawyer who drafted the answer of the Trustee saw the importance of alleging such steps at paragraph 9, but the proofs fell short of the allegation. In fact, the Trust Officer of the Trustee positively, boldly and deliberately admits the failure of the Company to do its duty, and gave absolutely no excuse excepting that its best judgment indicated nothing should be done (*Case*, 130). Its judgment permitted mortgaged lands to be sold for nonpayment of taxes and unpaid taxes to accumulate at the rate of 12 per cent. per year so far as this fund is concerned, *but not so far as is concerned*

its own mortgages. In the meantime, the poofs show that in Margate City during the years 1912, 1913 and 1914 the lots mortgaged for $5,000 had only a value of from $4,500 to $6,000, and those mortgaged for $2,000 but a value of $1,500. In 1915 the $5,000 lots had depreciated from $1,200 to $1,600, and the $2,000 lots to $1,000. In 1916 the $5,000 mortgage lots had gone from $960 to $1,280 per lot and the $2,000 mortgage lots to $800 per lot. In Ventnor City the $2,000 mortgage lots were valued at $2,300 and the $5,000 mortgage lots from $4,800 to $6,500, where they still remain. (*Case,* 170 *and* 171.)

In the face of this the record shows no act on the part of the Trustee, or its officers, to help or even communicate with the bondholders until December 6th, 1916 (*Case,* 160); these bondholders never were advised the taxes were unpaid (*Case,* 126), or that some of the mortgaged land had been sold for taxes (*Case,* 130). In the meantime lots of the same character were selling at foreclosure sales for 25 per cent. to 40 per cent. of the mortgage debt. (*Case,* 170, 171, 243, 244 and 245.)

The Trust Officer of the Guarantee Trust Company, Mr. Sypherd, says he didn't know the taxes were in arrear until after March 1st, 1915, but why did he resign as Assistant Secretary of the Mortgage Company on August 19th, 1914? He was a director and a member of the Executive Committee of the West Jersey Mortgage Company up to January, 1915, and Assistant Secretary up to August, 1914. (*Case,* 97, 98, 105 and 267.) The Executive Committee ran the business of that Company, and the last loose-leaf note of minutes shows he acted as late as January 13th, 1915. (*Case,* 268.) He said it was the duty of that Company to attend to the taxes (*Case,* 116), so that he, as Trust Officer of the Guarantee Trust Company, did nothing, but the testimony, the books and the minutes show that as Executive Committeeman, in active charge

of the affairs of the West Jersey Mortgage Company, he permitted the Mortgage Company to pay out $115,-439.65 for defaulted interest on mortgages of the same character as those involved in this case when the taxes were in arrear (*Case,* 55, 180, 181, 182, *and C* 36, at *page* 314). I say a man of his mind and training knew the taxes were unpaid. If he didn't know, he was incompetent; if he did, he is untruthful. The testimony establishes he knew. Jeffries swears it was discussed before the Board of Directors. (*Case,* 84.) The Trust Officer says he knew it generally. (*Case,* 117.) He refused to permit the accuracy of his recollection to be tested. (*Case,* 163 *and* 164.) At the Meeting of **May 26th, 1913,** as Secretary of the West Jersey Mortgage Company, he recorded the following:

> "Upon motion, the Secretary was directed to notify the Ventnor Syndicate and the Margate Company that unless the 1911 taxes and the overdue interest on mortgages guaranteed and owned by this Company be paid within 30 days from the date of notice that foreclosure proceedings will be instituted." (*Case,* 262.)

At the meeting of **June 10th, 1913,** as Secretary of the same Company, he recorded the approval of the above. (*Case,* 263.)

At the meeting of **July 8th, 1913,** as Secretary of the same Company, he recorded the following:

> Upon motion, the Treasurer was authorized $4,000 1st mortgage bonds of Ventnor Syndicate secured by mortgage on land Montpelier Avenue and Beach on account of interest due the Company on $150,000 bonds of Margate Company." (*Case,* 264.)

At the meeting of **December 18th, 1913,** as Secretary of the same Company, he recorded authority to foreclose 15 mortgages for nonpayment of interest of which that covered by policy A500 was held by the Guarantee Trust Company as Trustee in this cause. He also recorded:

"Upon motion, the officers were authorized to purchase from the Margate Company two mortgages of $5,000 each covering lots Nos. in Block , the proceeds of said sale to be applied on account of guaranty premiums and interest due the Company." (*Case*, 264.)

At the meeting of **March 14th, 1914,** as Secretary of the same Company, he recorded:

"The financial condition of the Company was discussed very thoroughly, and it was decided to insist upon the payment of certain obligations to the Company." (*Case*, 265.)

At the meeting of **July 20th, 1914,** as Secretary of the same Company, he recorded:

"Upon motion, the Treasurer was instructed the when mortgages were called on properties of Ventnor Syndicate and Margate Company, they be not foreclosed until further orders." (*Case*, 265.)

The Vice-Chancellor says:

"Some doubt exists in my mind whether the inactivity of the Trustee to the matters here complained of may not have been measurably occasioned by reason of the presence of conflicting interests of certain managing officers common to the three corporations," (*Case*, 335.)

How could there be doubt in the face of this evidence?

(*c*) The Trustee was equally careless and neglectful in its collection of the interest due on the mortgages. The proofs show it made no effort to collect the interest due on the mortgages. From the proofs it is easy to be calculated that up to date of the hearing $6,081.67 of interest was advanced on these mortgages by the Mortgage Company, and $11,910.00 of interest is still due and unpaid. The carelessness and neglect of this Trus-

tee has caused the accumulation of upwards of $25,000 of taxes and interest, or about one-third of the entire issue of bonds. The Trust Officer knew the interest on these mortgages were not being paid because as Executive Committeeman of the Mortgage Company, acting up to January 13th, 1915, he was authorizing that Company to pay out $115,439.65 for that purpose. (*Case,* 264, 265, 270 and 314.)

Bear in mind that this was not interest which the Mortgage Company owed on its debt, but interest which the Ventnor Syndicate owed, and which the Mortgage Company guaranteed. In many instances the Ventnor Syndicate never paid a dollar of interest from the date of the mortgage, and the clear inference from the facts in the case is that all these men of all these companies knew it. (*Ibid.*)

(*d*) The bonds issued under the terms of the trust agreement were due and payable on September 1st, 1914, and the payment of the principal sum thereof and of most of the ordinary bonds and mortgages were guaranteed by the Mortgage Company and paid on September 1st, 1914, and others in March and August of 1915. Notwithstanding the default in taxes, the default in interest and the default in principal, this Trustee asserts it made no effort to collect the principal sum due on the bonds and mortgages or the bonds. In the meantime, the complainant in this case, as soon as he learned of the desperate condition of the securities which had been wished upon him, while the Trust Officer of the Trustee was sitting at his desk using his best judgment that nothing should be done, was able by using ordinary business judgment to collect $3,000 of the $5,000 of bonds held by him. (*Case, 199.*)

(*e*) The book of the Trustee offered in evidence shows on September 1st, 1914, it had in its possession $750. (*Case, 146 and 148*); and that on September 20th, 1915, it had $510 (*Case, 148*) and the sum last

mentioned, according to the proofs, is still in its possession. (*Ex. C 29.*) Paragraph 7 of the agreement provides that it shall be the duty of the Trustee to foreclose the mortgages held by it for non-payment of interest and taxes, but the proofs show that no such step was taken or contemplated. As early as April 14th, 1915 (*Ex. C 31; Case, 282*), complainant's counsel was seeking information, and as early as August 30th, 1915 (*Case, 287*), he had called upon the Trustee to foreclose the mortgages, but the proofs show it not only then refused, but has refrained from so doing to this date. The only excuses in addition to "its judgment" given by the defendant for its failure was that it had no funds, and that under paragraph 10 of the agreement it must be secured and twenty-five per cent. of the bondholders must require the foreclosure (*Case, 131*), but a careful reading of the agreement will disclose the absolute nonsense of the proposition. Paragraph 10 of the agreement provides for the sale of the bonds and mortgages upon a default in the payment of the principal sum or interest of the bonds issued under the agreement and has nothing to do with the foreclosure of the mortgages held to secure the bonds. Paragraph 1 defines "Company's bonds" and supports this argument. There were twenty-two of these bonds and mortgages, and most of them are on land still owned by the Ventnor Syndicate (*Case, 271*). All such mortgages could very readily have been combined in one bill. The Trustee was reasonably in funds which could legally have been used for this purpose, and was derelict in its failure so to do. (*Case, 146 and 148*). In addition to this, undoubtedly foreclosures against such men as William F. Shaw, Edgar S. Hill and Dr. Emery Marvel would have brought about some sort of a settlement which would have secured funds enough to have prosecuted all foreclosures. Seven bills would have covered every mortgage. It is not legally necessary to file one bill for each mortgage.

(*f*) The most vicious and deliberate piece of favoritism ever conceived by a Trustee against the interests of its *cestui que trustents* I think is exhibited by the proofs in this case in the matter of the collection of $54,000 from the West Jersey Mortgage Company. The proofs show beyond question that the West Jersey Mortgage Company owed $54,000 to the Guarantee Trust Company, and that the Guarantee Trust Company, according to its contention, held as collateral therefor $42,000 of Young-McShea Amusement Company bonds (*Case, 43 and 99*); $4,000 of Ventnor Syndicate bonds; $8,000 of West Jersey Mortgage Company bonds and mortgages, and $30,000 of Ventnor Syndicate bonds and mortgages. The Trust Officer said it had $44,000 of these bonds and mortgages.

It is frankly admitted, as I read the testimony, that the bonds and mortgages held as collateral were of the same or similar character of those involved in this trusteeship. (*Case, 82, 129, 130 and 179.*) The books of the West Jersey Mortgage Company substantiate the statement of the defendant as to the collateral and the character thereof excepting that according to the Mortgage Company records there was but $33,000 of the Young-McShea Amusement Company bonds. (*Case, 42.*) The proofs show that the West Jersey Mortgage Company had its bank account with the Guarantee Trust Company. (*Case, 46.*) The proofs show that on March 4th, 1915, all of the $54,000 of notes were overdue and unrenewed (*Case, 110*), one for as short a period as five days, and the others for as long a period as one month and twenty-five days. With the exception of two of these notes, all were overdue for a period of more than two weeks. The proof is that the account of the West Jersey Mortgage Company in the Guarantee Trust Company on March 5th, 1915, was also overdrawn $1,600. (*Case, 48 and 49*). With this condition staring the Trustee in the face, the character of good judgment which it exercised for its *cestui que trustents* indicated:

1. That it should not foreclose mortgages for non-payment of taxes. (*Case, 116, 120.*)
2. That it should not foreclose mortgages for non-payment of interest. (*Case, 116, 120.*)
3. That it should not foreclose mortgages for non-payment of principal. (*Case, 120.*)
4. That it should not make efforts to collect the bonds held by the bondholders. (*Case, 178.*)
5. That no steps should be taken to protect the bondholders, but that matters should drift. (*Case, 178.*)
6. That the non-payment of taxes, interest, principal and conditions down the beach should not be brought to the attention of the bondholders. (*Case, 126, 130 and 160.*)
7. That the bonds and mortgages should not be revalued and that the real estate should not be appraised. (*Case,* 137 *and* 138.)

While with regard to its own personal transaction with the same party it was exercising what its Trust Officer characterized as "good judgment and good banknig" (*Case,* 85, 101, 103, 107, 161, 162 *and* 194) and that was:

1. Gradually weeding out all of the Ventnor Syndicate and West Jersey Mrotgage Company bonds and mortgages which it had in its possession. (*Case,* 76, 77, 90, 101, 103, 107, 161, 180, 194, 195 *and* 251.)

2. Disposing of $42,000 of collateral of the same character as that held by it as trustee. (*Case,* 101.)

3. Purchasing from the West Jersey Mortgage Company its principal asset (*Case,* 50 *to* 54, 100, 245, 246), consisting of $58,000 of Young-McShea Amusement Company bonds for sufficient to pay to it its $54,000 of overdue notes and over-draft in its institution.

4. Starting foreclosure proceedings on its own $100,000 mortgage. (*Case,* 120, 121 *and* 160.)

The language of the purchasing resolution, dated March 4th, 1915, is:

> "To produce a sum sufficient to pay off the notes of the West Jersey Mortgage Company, amounting to $54,000 now held by this company, &c." (*Case,* 66.)

The Trustee was not interested in anything beyond its own individual protection. (*Case,* 83, 107 *and* 178.) The Trust Officer says he considered no interest other than the Guarantee Trust Company. (*Case,* 107.) It gave up its collateral, such as is held for this complainant, and took all it could find in the possession of the Mortgage Company of a superior quality, (*Case,* 105 *and* 106.)

It saved itself at the expense of the bondholders in this cause. It is not a question of poor judgment viewed from to-day that governs the testimony taken in the case, but it is rather the conduct of speculators in a commodity that was unsafe and was known to be unsafe.

The Vice-Chancellor says the Trustee "exercised an honest and reasonably sound judgment in their inaction * * * ." We hope this court will not agree with this conclusion.

The by-laws and minutes of the Mortgage Company show there was no authority for the sale so far as it concerned that Company. (*Case,* 30, 31 *and* 170.) Mr. Godfrey and Mr. Faunce testify there was such an authority, but a careful reading of the testimony will develop at best it was a mere telephone meeting. There was a meeting of the Executive Committee without year date. That memoranda reads as follows:

"Mar. 5.

Meeting of
Execu. Com. of
Mtg. Co.
Hackney—Faunce
Adams
Godfrey
Read
agree to sign agreement
agreement with
change in regard
Williams mortgage
S. Va. Ave."

It was never written up. It seems to cover the telephone meeting in question, and no such transaction is recorded. (*Case, 227, 228 and 268.*)

The importance of this deal was quite apparent to the Court and to counsel for the defense during the trial, and in order to smooth a way for the explanation given by the Trust Officer of the defendant, the statement was made and sworn to repeatedly by him that he knew nothing about the condition of the West Jersey Mortgage Company, and that there had been no default in its business transactions until March 1st, 1915, four days before this transaction was consummated. (*Case,* 123, 124.) His anxiety to meet the situation evidently made him overlook the importance of an investigation, because we find that the mortgage on Block 88A, Lot 7, was made on August 21st, 1912, payable three years after date, and therefore was due as to principal on August 21st, 1915, and the proof shows there was interest due theeron from August 21st, 1914. In this particular case there was a default in principal *seven months* before the transaction, in interest *eleven days* before the transaction, and in taxes *three years* before the transaction. It is also to be noted that in at least five instances there was a default in interest on *February 28th, 1915.* He was almost willing to swear Mr.

Godfrey, the President of the West Jersey Mortgage Company and Secretary and Treasurer of the Ventnor Syndicate, didn't know it had failed to pay its obligations. (*Case,* 168 *and* 169.) As early as March 14th, 1914, he was recording the financial condition of the Mortgage Company (*Case,* 265) and resigning as assistant secretary August 19th, 1914. (*Case,* 267.)

It is folly to contend the defendant was without knowledge as to the conditions making action important to properly protect these bondholders. According to the defendant the depreciation in value commenced shortly after the storm in the **Fall of 1913,** but its concern is shown by its minutes. On July 23d, 1913, the Committee on Examination of the Board of Directors of the Guarantee Trust Company reported as follows:

> "In the case of the West Jersey Mortgage Company it is very important that this Board should know what mortgages on land in Margate and Ventnor have been guaranteed as to principal and interest by the West Jersey Mortgage Company." (*Case, 68.*)
>
> "As to the West Jersey Securities Company and the Atlantic Title Company, it is important for your Board to know how much of their assets is confined to land or mortgages on land in Margate and Ventnor. These three Companies are heavy borrowers from the bank, and it is the duty of the Board to investigate as to the securities of these Companies." (*Case,* 69.)
>
> "We hold four notes given by the West Jersey Mortgage Company aggregating $30,000, secured by Ventnor Syndicate mortgages. The Committee feel that the aggregate of these four notes should be reduced at least one-half by satisfactory monthly payments, so that the said reduction will cause the aggregate of these notes not to exceed $15,000 by January 1st, 1914." (*Case,* 69.)

"We also find two notes, one of $2,500 and one of $1,500 of the Ventnor Syndicate, secured by a mortgage of the Wilmac Realty Company to the Ventnor Syndicate, and we are advised that the $2,500 note is to be paid at once. If said note of $2,500 is paid at once we are willing to pass a $1,500 on the same collateral." (*Case*, 70.)

"On motion, the officers were ordered to carry out the recommendation of the report as near as they possibly could." (*Case*, 70.)

As early as 1913 the Trust Company was deeply concerned not only in what was due to it, but as to the character of the business being done by the Mortgage Company. On November 28th, 1913, the matter was again before the Board of the defendant on this report:

"Regarding the *inter-relations* between the several companies mentioned in the last report, we find we have loaned to the West Jersey Mortgage Company $43,000 upon collateral consisting of $32,000 in the bonds of the Young-McShea Amusement Company; $31,000 mortgages on Ventnor Syndicate property, and $4,000 in Ventnor Syndicate bonds, appraised in all, $52,500. Total collateral, $67,000; total loans, $52,500." (*Case*, 67.)

But evidently the Godfrey interest was too strong, because

"action on the report of November 28th, 1913, was deferred until December 1st, when the report was ordered upon the minutes and the Committee discharged."

On September 30th, 1915, the Board of the defendant took this very important step in its own interest:

"On motion, it was decided that where stocks of the West Jersey Mortgage Company, West Jersey Securities Company, and Ventnor Syndicate are held as collateral in this Company, other

securities or satisfactory endorsements be furnished." (*Case*, 71.)

In addition to the above, as early as July 10th, 1913, the Trust Company was obliged to loan the Mortgage Company $5,000 to take up the $6,250 ten-day note given in settlement of the Bartlett litigation, and its books and the books of the Mortgage Company show no payments were made on account of the $54,000 of loans after April 11th, 1914. (*Case*, 190.) In other words, the notes were renewed from time to time from April 11th, 1914, to March 5th, 1915, without payment. (*Case*, 167.)

The minutes, however, are utterly silent as to any action relating to the administration of the trust imposed upon the defendant by the agreement of September 1st, 1911. (*Case*, 71.) There were no reports by the Trust Officer. (*Case*, 72.) There were no reports of defaults in interest or taxes. (*Case*, 72.) There was, according to Mr. Jeffries, a verbal statement to the Board that the property mortgaged was in a precarious condition and had been seriously impaired in value by reason of a storm, but no action was taken. (*Case*, 72, 73, 76, 79 and 109.) Despite Mr. Sypherd's efforts to make Mr. Jeffries change his testimony, I think it still reads that Godfrey and Sypherd stated to the Board its position was legally correct and there was no need for it to do anything. (*Case*, 76, 77, 78 and 83.) The testimony shows parts of the agreement were read before the Board on two occasions. The Trustee never took any action to protect its *cestui que trustents* either before or after it had learned the real estate mortgages were a precarious security. (*Case*, 82, 84, 85, 102, 108, 118 and 119.) In fact Sypherd says the Company was not obliged to act. (*Case*, 117 and 185.)

With Carlton Godfrey, Clement J. Adams, Herman M. Sypherd, Frederick C. Robbins, John W. Hackney, William A. Faunce and Howard G. Harris (see *Case*,

88 and 89) running the three corporations, you could expect nothing except action in their interest. Mr. Sypherd's reply to the Court's question as to why the Ventnor Syndicate was not called upon to substitute other collateral is typical of the men:

> "They couldn't have done it. *And under our judgment, even if we had seen fit to have exercised the powers given to us under one clause of the trust agreement, we did not deem it advisable at the time to take any action.*" (*Case*, 117.)

The Vice-Chancellor says the purchase of the $16,000 Young-McShea bonds in addition to the $36,000 which it claimed to own, and the surrender of the $44,000 of bonds and mortgages was practically an even exchange and that there is

> "no power upon the part of the Trustee to enforce at that time against the guarantors of the bonds any default existing * * ."

This is not an exact statement of the facts and of the terms of the contract.

He overlooked the low assessed value of the mortgages for purposes of taxation; the sale of mortgaged land of like character at public sale from 25% to 40% less than the amount of the mortgages; the accumulation of at least three years taxes at that time; the inability to sell the securities; and the weeding out of these bonds and mortgages on the part of the Trustee in its individual transactions.

He also overlooked that this purchase and preference was made on March 5th, 1915, at a time when eleven of the bonds and mortgages had been due and collectible for nonpayment of taxes since one year and ninety days after December 20th, 1912; that one of these bonds and mortgages had been due and collectible for nonpayment of interest since February 21st, 1915; that five of these bonds and mortgages had been due and payable for nonpayment of interest since February 28th, 1915, and ten of them since March 1st, 1915.

He also overlooked that all of the collateral bonds were due and collectible as to principal since March 1st, 1914, and collectible from the West Jersey Mortgage Company since March 1st, 1915, as to principal with interest thereon from September 1st, 1914.

(*g*) The schedule attached to the agreement of September 1st, 1911, disclosed that on October 16th, 1914, a $2,000 mortgage made by the Ventnor Syndicate to the Guarantee Trust Company, Trustee, dated March 1st, 1912, and covering lot 2 in Block 82B on the map of Ventnor Syndicate property in Ventnor City, was withdrawn. On November 6th, 1915, the defendant stated that the Ventnor Syndicate paid to it $2,000 in cash for the mortgage in question, and then presented $2,000 of its bonds and received the cash in lieu thereof. When the Company was informed on November 22d, 1915, that the books of the Ventnor Syndicate do not show the cash payment in question on November 24th, 1915, it stated that on October 6th, 1914, it received a letter from the Ventnor Syndicate enclosing it $2,000 of its bonds, and asking that it assign the said mortgage to Christiana Krumm, and, accordingly, it delivered the said mortgage and canceled the bond. Paragraph 5 of the agreement provides as follows:

> "Whenever and as often as there shall be in the hands of the Trustee cash belonging to the trust fund, the Company shall have the right to have such cash paid to it upon transferring and assigning to the Trustee bonds and first mortgages equal in value to the amount of such case."
>
> "So long as the Company shall not be in default under any provision of this agreement, it shall be entitled to receive from the Trustee if and when collected all income from the bonds and mortgages comprising the trust estate."

Paragraph 7 of the agreement provides:

> "That the Company may, if it so elect, from time to time withdraw any of the bonds and

mortgages belonging to the trust fund, provided that upon such withdrawal it shall deliver to the Trustee either cash equal in amount to the bonds and mortgages so withdrawn, or other bonds and first mortgages of an equal value."

Paragraph 11 provides, among other things:

"If at any time the Company shall pay or retire any of the bonds secured by this instrument and shall surrender the same to the Trustee for cancellation, the Company shall be entitled to withdraw from the trust fund any bonds and mortgages of a value equal to the company's bonds so surrendered by it."

Paragraph 3 of the agreement, among other things, provides:

"The Trustee shall have and hold such bonds and mortgages upon the trust hereby created, namely, for the equal pro rata benefit and security of the bondholders, without preference or priority of any one bond over another by reason of priority in time of issue or negotiation thereof, or otherwise * * *"

It will be noticed that the certificate of the Ventnor Syndicate, dated October 16th, 1914, does not state that the bonds delivered to the Trustee had been paid and canceled, and there is no proof in the case showing their payment and cancellation. Viewed from the point of a Trustee, it has failed to bring itself within the provision of even the paragraphs above quoted, but irrespective of this point, it is the contention of the complainant that the defendant was without power under any clause of the agreement to deliver up the security in question, because on the date of the delivery, October 16th, 1914, there was a default in all of the mortgages for nonpayment of taxes and in payment of the principal sum due thereon, and in the greater number of the mortgages the Ventnor Syndicate had for a long time defaulted in its payment of interest, and the Trust

Company was depending upon the interest income from the West Jersey Mortgage, which had guaranteed the payment of the principal and interest of the mortgages. With these defaults within the knowledge of the defendant, I contend that the act of the Trust Company resulted in an unequal distribution of the security, and, accordingly, the Company is responsible for its mistake. (See *Case,* 149, 150 *and* 151.)

Counsel's suggestion that the complainant saw the agreement of Sept. 1, 1911, and the schedule thereto attached is without support in the testimony. A careful reading of Mr. Conover's entire testimony shows clearly he was talking about the bonds at all times and not about the agreement. There was no occasion to see the agreement. The transaction was with Ingersoll and Buzby, in the presence of Sypherd, but not with the Guarantee Trust Company. If the testimony is capable of such construction as is suggested by the appellant, it is just as clear that the complainant was fraudulently told the Guarantee Trust Company guaranteed the bonds being purchased. It can well be argued that the Guarantee Trust Company was vitally interested in getting the bonds out of its custody, as Ingersoll had them pledged with it as collateral to a loan, and the showing of the agreement may have been a part of the scheme. (*Case,* 99 *to* 212.) They were very choice of this agreement. The Ventnor Syndicate had no copy. (*Case,* 15.) The West Jersey Mortgage Company had no copy. (*Case,* 20.) It was never recorded. (*Case,* 284.)

In considering all of the facts in this case it must be borne in mind that Carlton Godfrey, one of the witnesses, was President, Director and Attorney for the Guarantee Trust Company; President, Director and Attorney for the West Jersey Mortgage Company; Secretary, Treasurer, Director and Attorney of the Ventnor Syndicate; that Clement J. Adams was a Director of the Guarantee Trust Company, a Director and

mortgage appraiser of the West Jersey Mortgage Company, President of the Ventnor Syndicate; that Herman M. Sypherd, another witness in this case, was Director, Vice-President and Trust Officer of the Guarantee Trust Company, Assistant Secretary, Director and Executive Committeeman of the West Jersey Mortgage Company, stockholder in the Ventnor Syndicate; that Frederick C. Robbins was a Director in the Guarantee Trust Company, Assistant Treasurer, Director and mortgage appraiser in the West Jersey Mortgage Company; that John W. Hackney was a Director in the Guarantee Trust Company, Director in the West Jersey Mortgage Company; that H. Starr Giddings was Attorney for the Guarantee Trust Company, Attorney for the West Jersey Mortgage Company, and Attorney for the Ventnor Syndicate; that William F. Wahl, another witness in this case, was a Director of the Guarantee Trust Company, and Director and heavy stockholder in the Ventnor Syndicate; that W. A. Faunce, another witness in this case, was a Director in the Guarantee Trust Company, and a Director in the West Jersey Mortgage Company.

With this combination of men in office it was absolutely impossible for any of those Companies to have independent action, and the proofs show it. Section 2 of the By-Laws of the Ventnor Syndicate disclose that it was so drawn as to permit the Company to be operated by three members of the Board, of whom the President and Secretary should be two.

An individual who had been guilty of the foregoing acts would be removed without doubt. Why should this corporation, an intangible thing, without mind and without individuality, shown by its own records and its own officers to have been unfaithful to its trusts, be treated differently? A corporation is no better than an individual; its standing in the community marks it for no more consideration than the individual, and it should not escape punishment because it has been so

unfortunate as to select officers without a keen sense of the legal, equitable and moral rights of those with whom it dealt.

II.

For What Should the Trustee Account.

The Trustee being removed for failure to perform its duty as outlined above, it necessarily follows that it must account to the bondholders through their new Trustee for that which it is legally liable. In addition to the general rule governing acts of trustees, paragraph 17 of the agreement expressly provides there was a duty upon this Trustee to do everything that was reasonably necessary to carry out all of the provisions of the agreement and to effectuate the rights of the Company and the bondholders. This provision is entirely separate and distinct from the usual provision contained in paragraph 16 for the delivery of other instruments, so that when the Trustee endorsed its certificate on the bond issued to the bondholders in this case that the bonds were ones described in the agreement mentioned in the body of the bond, and the body of the bond provided:

> *"There has been assigned to and deposited with the Guarantee Trust Company, as Trustee bonds and mortgages of a par value of not less than the par value of the bonds in this series outstanding and certified by the said Trustee.*
> * * *"

it certified to an untruth for which it is legally and equitably liable. (*Case,* 165.)

The cases bearing on the above facts and sustaining the complainant's position are as follows:

> "It is the duty of a mortgage trustee to protect the security he has taken for the bondholders to the utmost of his ability. It is hardly consistent that such trustee should at the same time

occupy the position of construction agent of the Company. It is at any rate fraudulent for such trustee to confederate with the Company in disposing of a large amount of iron rails bought by the Company for its use and embraced in the mortgage as after acquired property. * * *"

Jones Corp. Bonds, Par. 289.

"A trustee must use the same care for the safety of the trust fund and for the interests of the *cestui que* trust that he uses for his own property and interest, and is responsible for any loss that occurs to the trust fund."

Wyman v. *Herord,* 5 *Okl.* 35; 59 *Pac.* 1009.

Read *Beam* v. *Patterson Safe Deposit and Trust Co.,* 81 *N. J. Eq.* (11 *Buch.*) 195.

"Where a trustee is wanting in common prudence in the management of the trust fund, and a loss results, he will be surcharged."

In re Hart's Estate, 203 *Pa.* 480; 53 *Atl.* 364.

"A trustee who is exempted by the terms of the deed of trust from liability for anything except wilful and intentional breaches of trust is nevertheless responsible for loss caused by making investments without making proper inquiries and exercising reasonable judgment concerning the value of securities taken, and by investing in second mortgages."

Tuttle v. *Gilmore,* 32 *N. J. Eq.* (5 *Stew.*) 611; 36 *N. J. Eq.* (9 *Stew.*) 617.

"Where the terms of the trust mortgage require the mortgagor to deposit a certain amount of cash with the trustee to secure a prior lien on the mortgaged property but the mortgagor fails to make the deposit, the trustee is justified in retaining sufficient bonds to cover the required deposit. *If the trustee does otherwise it is a fraud upon the purchasers of the other bonds for which the trustee would be liable."*

Jones Corp. Bonds, Par. 287a.

"A trustee has no power to change the character of a trust fund, except with the sanction of a court of equity, and if he does so it is at his own risk and is liable for the loss."

Quick v. *Fisher,* 9 *N. J. Eq.* (1 *Stock.*) 802.

"Among the implied duties of the mortgage trustee one of the most imperative is to use the requisite diligence to protect the security he has taken for the bondholders. A trustee of this character is held to an active and strict performance of his duties * * * One bondholder has the same rights as ninety-nine * * * It not only is not a dead dry trust but is one of the most active and momentous responsibility."

3 *Thompson on Corp.* (2d *Ed.*) *Pars.* 2590, 2591, 2595, 2597; *Sturges* v. *Knapp,* 31 *Vt.* 1; *Hollister* v. *Stewart,* 111 *N. Y.* 644.

Read *Speakman* v. *Tatem,* 48 *N. J. Eq.* (3 *Dick.*) 137; 50 *N. J. Eq.* (5 *Dick.*) 484.

"If a mortgage trustee, without *proper certificate,* authenticate and issue bonds that by the terms of the trust are issuable only on a certificate to the trustee by the mortgagor that their amount has been expended on the mortgaged premises, when in fact, such amount has not been so expended, a court of equity should decree that the trustee put the holder of such bonds in as good a *position as if a certificate proper in form and true in fact had been given.*"

Polhemus v. *Trust Co.,* 61 *N. J. Eq.* (16 *Dick.*) 654.

"A lunatic's father devised to him an estate in fee simple and a lease hold estate and appointed a trustee for the care of the lunatic who renewed the lease for the benefit of himself and not for the lunatic; and he was afterwards appointed *committee* of his estate. Hard-

wick, Lord Chancellor, declared that if these facts were true, which he referred to the master to inquire, it was such a breach of trust, though before he was appointed *committee,* that he ought to be discharged and another appointed."

Ex parte Phelps, 9 *Mod.* 357.

"In administering a trust the trustee must act for the beneficiaries and not for himself in antagonism to the interests of the beneficiaries; he is prohibited from using the advantage of his position to gain any benefit for himself at the expense of the *cestui que trustent."*

39 *Cyc.* 296 *and cases cited.*

"The trustees have no right without the consent of the bondholders to waive a default. * * * The mortgage might authorize the trustees to waive a default, or it might provide that they should foreclose only upon the request of the holders of a certain proportion of the bonds secured. *Such a power will not be extended beyond its strict terms."*

See Hollister v. *Stewart, supra.*

The case of *Ashmlot Railroad Company* v. *Elliott* 57 *N. H.* 397, 435, illustrates how jealous the courts are of the rights of those represented by a trustee. In this case the Court would not permit the trustee to reap the profit he had made by individually purchasing his company's bonds in the open market. The principle is the same in the case now before the Court. Read also the case of *Thelman* v. *Cannon,* 24 *N. J. Eq.* (9 *C. E. Gr.*) 127, and *Hamburg* v. *Edsall,* 12 *N. J. Eq.* (1 *Beas.*) 392.

"The Court will remove *receivers* who abuse their trust by using it to advance their own interests in other corporations, *although they have the support of a majority in interest of the mortgage bondholders.* The majority of the bondholders very likely may support the doings of

the receivers, because they also are interested in the same corporations. The Court will not retain as its officers receivers who are scheming to benefit a portion of the bondholders, though this portion be the majority, * * * or by using their powers *in any way* to injure the railroad they should protect, or to deprive a portion of the bondholders, though only a minority, of the equal rights secured to all the bondholders."

Jones Corp. Bonds., Par. 530.

"Where a demand is due to a trustee personally, and another is due to him as trustee, both from the same person, and he has obtained satisfaction of his personal demand, it is his duty to apply the satisfaction received to both demands pro rata."

Bryant v. *Russell,* 23 *Pick.* (*Mass.*) 508; *Scott* v. *Ray,* 18 *Pick.* (*Mass.*) 360.

"A trustee will not be allowed to so act as to obtain the security or satisfaction of his own claim to the detriment of his cestui que trust."

Orr v. *Pickett,* 3 *J. J. Marsh* (*Ky.*) 269; *Phillips* v. *Leclede Company,* 76 *Mo.* 68; *Irwin* v. *Harris,* 41 *N. C.* 215.

III.

If this Court is of the opinion this corporation should not be removed as trustee, we urge that the facts and the law abundantly support the opinion filed by the Vice-Chancellor and that the decree below should be affirmed.

Respectfully submitted, June 18th, 1918.

WILLIAM M. CLEVENGER,
Solicitor for and of Counsel
With George Conover.

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NEW JERSEY

Court of Errors and Appeals

IN CHANCERY OF NEW JERSEY.

BETWEEN

GEORGE CONOVER,
Complainant,
AND
GUARANTEE TRUST CO. ET AL.,
Defendants.

} On Bill, &c.

BILL OF COMPLAINT.

(*Filed December 6, 1915.*)

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

The complainant, George Conover, of the village of Bridgeboro, in the County of Burlington, and State of New Jersey, respectfully shows:

1. That on September 1st, 1911, the Ventnor Syndicate, the Guarantee Trust Company and the West Jersey Mortgage Company, all corporations of the State of New Jersey, entered into a collateral trust agreement to secure bonds in the sum of two hundred thousand dollars, issued or to be issued by the Ventnor

Syndicate, guaranteed by the West Jersey Mortgage Company and secured by the deposit with the Guarantee Trust Company of assigned bonds and mortgages a first lien on real estate, a copy of which agreement is attached hereto and made a part of this bill as schedule A.

2. That on October 1st, 1915, the West Jersey Mortgage Company, by virtue of an order of the Court of Chancery of the State of New Jersey, was declared to be an insolvent corporation and John G. Horner was appointed receiver thereof, has qualified and is now acting as such officer, and by an order dated December 3d, 1915, complainant was given leave to make the receiver a party to this bill.

3. That on October 4th, 1915, the Ventnor Syndicate, by virtue of an order of the Court of Chancery of the State of New Jersey, was declared to be an insolvent corporation and Clifton C. Shinn was appointed receiver thereof, has qualified and is now acting as such officer, and by an order dated November 29th, 1915, complainant was given leave to make the receiver a party to this bill.

4. That to secure the bonds issued by the Ventnor Syndicate under the agreement of September 1st, 1911, it was agreed there should be assigned to and deposited with the Guarantee Trust Company bonds and first mortgages equal to the amount of bonds issued.

5. That there was $79,000 of bonds issued by the Ventnor Syndicate, guaranteed by the West Jersey Mortgage Company and certified by the Gurantee Trust Company, that there are $77,000 thereof now outstanding and unpaid, and a list of the names of the holders thereof is attached hereto and made a part of this bill as schedule B.

6. That complainant is the holder of bonds 6 and 7, each in the sum of $1,000 issued by the Ventnor Syndicate, guaranteed by the West Jersey Mortgage Company and certified by the Guarantee Trust Company under the agreement of September 1st, 1911.

7. That complainant's bonds as to form of the promise, guarntee and certification are as set forth in said agreement of September 1st, 1911, and there is due the complainant thereon the sum of $2,000, with interest, at six per centum per annum, from March 1st, 1915, no part of which has been paid.

8. That the Guarantee Trust Company, as trustee under the agreement aforesaid holds at this time bonds and first mortgages upon real estate footing $77,000, a list of which is attached hereto and made a part of this bill as schedule C.

9. That on September 11th, 1915, complainant through his counsel was advised by the Guarantee Trust Company interest was due on the $5,000 mortgage covering lot 9, in block 9, from September 1st, 1914; on the $5,000 mortgage covering lot 7, in block 100A, from September 1st, 1914; on the $5,000 mortgage covering lot 14, in block 108B, from March 1st, 1915; on the $2,000 mortgage covering lot 13, in block 108B, from September 1st, 1914; on the three mortgages of $2,000 each covering lots 11, 15 and 5, in block 108B, from September 1st, 1914; on the $5,000 mortgage covering lot 7, in block 108B, from March 1st, 1915; on the $2,000 mortgage covering lot 6, in block 108B, from September 1st, 1914; on the $2,000 mortgage covering lot 4, in block 108B, from September 1st, 1914; on the four mortgages of $5,000 each, on lots 8, in block 12, lot 16 in block 11, lot 16 in block 11 and lot 7, in block 86A, from September 1st, 1914; on the $2,000 mortgage covering lot 13, in block 88A, from February 28th, 1915; on the $2,000 mortgage covering lot 13, in block 88B*m*, from February 28th, 1915; on the $2,000 mortgage covering lot 12, in block 88A, from February 28th, 1915; on the $2,000 mortgage covering lot 5, in block 88A, from February 28th, 1915; on the $2,000 mortgage covering lot 11, in block 88A, from February 28th, 1915; on the $5,000 mortgage covering lot 14, in block

71A from November 12th, 1914; on the $5,000 mortgage covering lot 7, in block 88A, from August 21st, 1914, and that the interest on the $5,000 mortgage covering lot 14, in block 108A, was then paid up in full. Complainant was also likewise advised at the same time the taxes on all of the lots covered by all of the mortgages had not been paid for the years 1913 and 1914, and that it did not know the amount due upon the various lots.

10. That on November 24th, 1915, complainant was likewise advised there was some $600 and upwards of interest in the possession of the said trustee and that the said trustee had never delivered any of interest to the Ventnor Syndicate.

11. That the Guarantee Trust Company has permitted the interest on the mortgages made directly to it as such trustee, and interest on the mortgages assigned to it as such trustee, to become and remain in arrear for one year and upwards without causing the same to be foreclosed, or otherwise endeavoring to protect the bondholders.

12. That the Guarantee Trust Company has permitted the taxes on the properties mortgaged directly to it as such trustee, and on mortgages assigned to it as such trustee, to become and remain in arrear for three years and upward without causing the same to be foreclosed or otherwise endeavoring to protect the bondholders.

13. That the Guarantee Trust Company, trustee as aforesaid, has permitted the principal sums due on the said mortgages, made directly to it as such trustee, and on the mortgages assigned to it as such trustee, to remain overdue for one year and upward without causing the same to be foreclosed or otherwise endeavoring to protect the bondholders.

14. That on March 5th, 1915, the Guarantee Trust Company, trustee as aforesaid, knowing the West Jersey Mortgage Company, the guarantor of the said

bonds secured by the agreement attached to this bill, was in dire financial difficulties, took from the said West Jersey Mortgage Company, before the appointment of the receiver herein mentioned, the most valuable asset held by the said West Jersey Mortgage Company, to the end that the proceeds thereof might be and were used by the West Jersey Mortgage Company for the purpose of paying to the said Guarantee Trust Company the sum of $54,000, which the said West Jersey Mortgage Company owed to the said Guarantee Trust Company. That this act of preference was consummated and permitted at a time when the taxes, principal sums and overdue interest had accumulated and were accumulating on the mortgages made directly to it as such trustee and assigned to it as such trustee, and without effort on the part of the said trustee to protect the bondholders, notwithstanding the fund in its hands was ample for that purpose.

15. That Carlton Godfrey was the secretary of the Ventnor Syndicate and West Jersey Mortgage Company, and by reason of his holdings of stock in both companies and business association with others was able to and did exert a considerable if not complete control over the affairs of the two companies; that the said Carlton Godfrey is the president of the Guarantee Trust Company; that other officers and employees of the Guarantee Trust Company have held office in or were stockholders in the said Ventnor Syndicate and West Jersey Mortgage Company, and because of this interest have been derelict in enforcing the rights which the bondholders had in case of default in the payment of principal, interest and taxes on the mortgages made directly to it as trustee and assigned to it as trustee.

16. That the Guarantee Trust Company certified to $67,000 of the bonds issued under the agreement of September 1st, 1911, with full knowledge of the fact that it only held in its possession $10,000 of bonds secured by first mortgages on real estate duly assigned to it under the terms of the said agreement.

17. That the Guarantee Trust Company, in violation of the terms of the said agreement of September 1st, 1911, received $67,000 of bonds secured by first mortgages on real estate made by the Ventnor Syndicate directly to it as trustee.

18. That the Guarantee Trust Company neglected to notify or require the Ventnor Syndicate to deposit other securities to take the place of the unlawful securities so held by it as aforesaid, or to take the place of those upon which there had been a default in interest, taxes or principal or where the land had depreciated in value so as to make the mortgage an unsafe investment.

19. That the said Guarantee Trust Company neglected and refused to foreclose the defaulted mortgages held by it as trustee as required by section 5 of the agreement of September 1st, 1911, notwithstanding it has in its possession $600 and upwards of interest money collected by it which could have been used for that purpose.

20. That the said Guarantee Trust Company, on October 16th, 1914, permitted the Ventnor Syndicate to withdraw a $2,000 mortgage deposited with it under the said agreement of September 1st, 1911, at a time when there was a default on all of said mortgages, either as to payment of taxes or payment of interest, or both.

21. That the said Guarantee Trust Company has neglected and still neglects to record in the Clerk's Office the said agreement of September 1st, 1911, as required by section 3 of said agreement.

22. That the said Guarantee Trust Company has neglected and failed to collect all of the interest due or to grow due upon the mortgages deposited with it under the agreement aforestid, and by reason thereof and of the withdrawal of the $2,000 mortgage aforesaid has permitted the unequal application of a portion of the said collateral held by it in violation of section 3 of the said agreement of September 1st, 1911.

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

(a) That Guarantee Trust Company, Clifton C. Sinnn, receiver, of Ventnor Syndicate; John G. Horner, receiver of West Jersey Mortgage Company, Cumberland National Bank of Bridgeton, John W. Ingersoll, West Jersey Title and Guaranty Company, Apollonia Schneider, Christopher Schneider, John W. Hudson, Mary R. Lippincott, Sarah N. Lippincott, Kate T. Bower, Georgia F. Neumayer, Grace K. Weatherby, Alice B. Longworth, Margaret Cooke, Martha M. McKee, William G. Saalmann, Pauline Rupprecht, Lizzie Quigg, Joseph Lavina, Benjamin G. Carll, Stephen Oberst, Emily Minerd, Lena E. Deppe, Henry D. Grant, Frederick Thoms, Alice Nuskey, William T. Weeks, Victoria Realty and Mortgage Company, Hannah L. Andrews, Gertrude Hollick, George L. Gillingham and Myrtle R. Moyer, Henry D. Grout, who are the defendants in this suit, may answer this bill of complaint without oath and each statement therein made;

(b) That an account may be taken of the transactions covering the manner in which the said Guarantee Trust Company has administered its trust under the agreement of September 1st, 1911;

(c) That the Guarantee Trust Company may be removed as trustee under said agreement of September 1st, 1911, and a new trustee appointed in its room;

(d) That whatever amount may be found to be due from the said Guarantee Trust Company be decreed to be paid to such trustee appointed in its room;

(e) That complainant have such other and further relief as may be equitable and just;

(f) That a writ of subpœna 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.

WM. M. CLEVENGER,
Solicitor for and of counsel with complainant.

ANSWER.

(Filed January 25, 1918.)

IN CHANCERY OF NEW JERSEY.

The answer of the defendant, Guarantee Trust Company:

This defendant, Gurantee Trust Company, aswering to bill of complaint, says that—

1. Admits that on September 1, 1911, this defendant agreed to act as trustee under an agreement in writing made to secure an issue of bonds of Ventnor Syndicate guaranteed by the West Jersey Mortgage Company and that Schedule "A," attached to the bill of complaint, is substantially a true copy of said agreement, but for the exact purport and meaning of said agreement, this defendant refers to the original thereof and offers to produce same.

2. Paragraph 2 and 3, inclusive, are admitted.

3. Deny that the true interpretation of the written agreement was to require mortgages to be assigned to the trustee, and says that all that was required was that the trustee should hold, either by assignment, or as original mortgagee, bonds and mortgages equal in face value to the amount of bonds issued.

4. Paragraph 5 is admitted, except that the list of bondholders and amounts named in Schedule "B" is not correct at this time, several changes of ownership having taken place since the list of furnished to complainant.

5. Admits that complainant appears on its records as the registered holder of bonds 6 and 7 for $1,000 each, issued under the agreement of September 1, 1911, but says it has no knowledge or information sufficient to form a belief as to whether complainant was the owner of said bonds at the commencement of this suit.

6. Paragraphs 7 and 8 are admitted.

7. So much of paragraph 9 as deals with the interest due on the mortgages deposited with the trustee as collateral is admitted. This defendant denies that complainant was advised by it that the taxes on all of the lands covered by all of the mortgages had not been paid for the years 1913 and 1914, and alleges that complainant's solicitor was told that the Gurantee Trust Company had no exact record of what taxes were paid and what were not.

8. Denies paragraph 10, except admits that it had $510 of interest which it had collected on the deposited mortgages.

9. Denies paragraphs 11, 12 and 13, except it admits that interest on certain of the collateral mortgaes is unpaid, despite the efforts of this defendant to collect the same, and that taxes on certain of the properties covered by the collateral mortgages remain unpaid despite the demands of the trustee that same be paid, and that the principal of said bonds, or some of them, likewise remain unpaid.

10. Denies paragraph 14, except that it admits that on or about March 5, 1915, it purchased from the West Jersey Mortgage Company certain bonds of the Young-McShea Amusement Company of the face value of $58,000, owned by the West Jersey Mortgage Company, $42,000 of these bonds, together with other securities, having been deposited with this defendant for some time previous as collateral security for a loan of $55,000.

A proposition was presented by the West Jersey Mortgage Company and accepted by this defendant for the sale, to this company, of said $58,000 of bonds, at a price equal to or in excess of their then market value. Said proposition was accepted, the sale consummated in good faith and the loan of $55,000 paid off and the remaining collateral returned to the West Jersey Mortgage Company.

11. Denies paragraph 15, except admits that Carlton Godfrey was Secretary of Ventnor Syndicate and also President of the Guarantee Trust Company.

12. Denies paragraphs 16 and 17, and says that the bonds and mortgages made directly to the Trust Company were, in fact, assigned to and deposited with it within the meaning of the agreement of September 1, 1911.

13. Denies paragraphs 18 and 19, except it admits that no foreclosure proceedings have been commenced by it.

14. Admits the withdrawal of a $2,000 mortgage on October 16, 1914, but says that same was withdrawn in accordance with the provisions of said collateral agreement.

15. Denies that it was under any obligation to record the agreement of September 1, 1911, or that the recording of the same would have been of any benefit to the bondholders.

16. Denies paragraph 22, except it admits that it has been unable to collect all of the interest due upon the mortgages deposited with it.

17. The collateral agreement provided (Section 10) that: "The Trustee shall have full discretion as to the time and manner in which it shall proceed for the collection of the amount secured by the trust fund or the sale of any bonds and mortgages therein, and said Trustee shall not be liable, either to the company or to the bondholders, for anything except lack of good faith or of ordinary care therein." The Trustee, in good faith, decided that it was not the proper time to attempt to collect said collateral by a foreclosure sale and accordingly devoted its energies to trying to collect the interest on the bonds without foreclosure or sale, and practically all the bondholders acquiesced in and approved this decision of the Trustee.

No demand was ever made by any bondholder to foreclose any mortgage deposited as collateral, except a

demand made by the solicitor of complainant shortly before the commencement of this suit. This demand was made on behalf of only 2/77ths of the outstanding bonds and no offer was made to indemnify the Trustee against costs and expenses as required by the trust agreement.

GODFREY, GIDDINGS & READ,
Solicitors of Defendant
Guarantee Trust Company.

REPLICATION.

The complainant joins issue on the answer of the Gurantee Trust Company.

WM. M. CLEVENGER,
Solicitor for and of Counsel
with the Complainant.

IN CHANCERY OF NEW JERSEY.

BETWEEN
GEORGE CONOVER,
Complainant,
AND
GUARANTEE TRUST COMPANY ET ALS.,
Defendants.
} On Bill, &c Final Hearing.

Before his Honor E. B. Leaming, Vice-Chancellor, at the Chancery Chambers, Camden, New Jersey, on Thursday, January 18th, 1917.

Appearances—William M. Clevenger, Esq., for complainant; Hon. Clarence L. Cole, for Guarantee Trust Company, one of the defendants.

Mr. Carr—If the Court please, in the pending matter, Conover *v.* the Guarantee Trust Company, Judge

Horner, Receiver of the West Jersey Mortgage Company, asks the privilege of filing a short answer, and would like the decree *pro confesso* against him opened for that purpose. I might say we wrote to Mr. Clevenger some time ago asking him for such privilege, but for some reason he did not care to grant it. The West Jersey Mortgage Company has an interest here. We would like the privilege of participating in the proceedings, and, unless there is some very good reason why it should be denied, we would like to have that privilege.

The Vice-Chancellor—What is the objection to having the receiver of the West Jersey Mortgage Company answer?

Mr. Clevenger—As I read the answer, if your Honor please, it was not in accordance with the facts, and I did not feel that I should consent to an answer being filed that did not correctly state the facts. There are certain allegations in my bill concerning the West Jersey Mortgage Company, and those facts are open and notorious, and yet the answer simply says that the receiver has no knowledge of the transactions and neither admits nor denies, and it seems to me that where there is no question about facts existing that in good pleading it is the duty of the party pleading to so state, either to admit or deny. Now, there isn't any question about the situation, because I am going to prove those very facts from the receiver's books this morning.

Mr. Carr—The answer was drafted a long while ago and at a time when the receiver did not have any knowledge except as informed by the bill. The answer is very short. It reads: "Answer of John G. Horner, Receiver of the West Jersey Mortgage Company, one of the defendants in the above-stated cause, to the bill of complaint therein exhibited against him. That said defendant has no knowledge, information or belief regarding the matters and things set forth in paragraphs 1 to 22, inclusive, of said bill, except in so far as infor-

mation is conveyed to him by said bill itself, and this defendant, therefore, neither admits nor denies the truth of the allegations of said bill; that if said allegations be true and the complainant is entitled to the relief prayed for, such relief will be beneficial to this answering defendant, who, accordingly, joins in the complainant's prayer for relief as set forth in said bill." It is rather a little bit more than we can properly do, I think, to say that we admit allegations in the bill; from the later information that we have it is our belief that they are true, but we do not see that this answer hurts Mr. Clevenger in any way.

The Vice-Chancellor—Are they the same averments that it is necessary for you to sustain, Mr. Clevenger, in order to get the relief sought by the bill?

Mr. Clevenger—I think so.

Mr. Carr—We have put all of the records at Mr. Clevenger's disposal.

Mr. Clevenger—I think every fact I have alleged in my bill is supported by my examination of the books of the West Jersey Mortgage Company.

The Vice-Chancellor—I will permit the answer to be filed.

Mr. Cole—Is the Guarantee Trust Company affected in any way by the filing of this answer; the Guarantee Trust Company is the real defendant here?

Mr. Carr—No. We say we neither admit nor deny, &c.

Mr. Cole—Are you filing this answer with a view of assisting the complainant?

Mr. Horner—No; not assisting anybody, just preserving our status; not assisting anybody or hurting anybody.

The Vice-Chancellor—I have my doubts about the sufficiency of the pleading in that form. If you want a cross-bill I guess you will have to file it.

Mr. Carr—We do not want a cross-bill.

The Vice-Chancellor—I am fearful that this pleading may be designed as a cross-bill. You ask for no affirmative relief?

Mr. Carr—No; only as it may be awarded in the original bill. It is a bill filed by Mr. Conover for himself and for the benefit of all other bondholders of the same class.

The Vice-Chancellor—Relief would naturally flow to you then. Let it be filed.

Mr. Carr—We are not asking for any special relief different from what Mr. Conover is asking for under the general prayer. We may, of course, enter an order vacating the decree pro con against us?

The Vice-Chancellor—Yes.

Henry S. Stockwell, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says.

By Mr. Clevenger.

Q. Mr. Stockwell, you are the trustee for the Ventnor Syndicate?

A. Yes, sir.

Q. Appointed when?

A. The last of 1915, or early in 1916.

Q. And as such have the custody of the minute book of that corporation?

A. I have.

The Vice-Chancellor—He is receiver of the Ventnor Syndicate under the Federal Court, is he not?

Mr. Clevenger—Yes, sir.

Q. You succeeded Judge Shinn, who was the receiver of the Court of Chancery?

A. Correct.

Q. Have you in your possession as trustee of the Ventnor Syndicate the original agreement of September 1st, 1910, set forth in the bill of complaint in this cause?

A. I have not.

Q. Did such an agreement ever come into your possession?

A. I fail to locate any such agreement. I have a copy which I received from the hands of some other person since.

Q. Have you in your possession the minute book of the Ventnor Syndicate?

A. Yes.

Q. Does that contain the by-laws of the Ventnor Syndicate?

A. Yes.

Q. Is this a correct copy of the by-laws (exhibiting to witness)?

A. Yes; I had that made in the office and compared.

Mr. Clevenger—I would like to offer that in evidence, so as not to require the presence of the book.

The Vice-Chancellor—Let it be marked.

(Said by-laws marked *Exhibit C 1.*)

Q. Can you turn to the minutes of the meeting authorizing the execution of the agreement of September 1st, 1910?

A. You asked me that question this morning and I have been going over the minutes to try to locate some such resolution, but I fail to find in the minutes of the corporation, at least prior to the date of that agreement, any reference to such an agreement, only such reference as made in this minute of February 9th, 1911, page 137 of the minutes.

Q. What is that reference?

A. Where it is stated "On motion the officers of the company were authorized to pay to the West Jersey Mortgage Company a commission of two per cent. on the purchase by that company of $41,000 of bonds of this company, secured by its trust mortgage, and also a commission of two per cent. on the principal," and so on.

By Mr. Cole.

Q. What date was that?

A. That is February 9th, 1911, several months before the date of the agreement, the agreement was September, 1911.

By Mr. Clevenger.

Q. Turn to the minutes, Mr. Stockwell, and tell me who were the directors—

By Mr. Carr.

Q. Do you mind stating the page of the minute book, Mr. Stockwell, that appears on?

A. Page 137.

By Mr. Clevenger.

Q. Who were the directors of the Ventnor Syndicate for the year 1910?

A. The election is shown on page 115 of the minute book, meeting of September 21st, 1910. Clement J. Adams, Clarence M. Brown, Charles C. Carman, Howard A. Davis, Charles A. Daniels, Carlton Godfrey, P. G. Hannum, Ashley P. Hunter, Howard G. Harris, John A. Ireland, Lewis T. Imlay, Louis Kuehnle, A. M. Langfeld, John McGlinn, John J. McGuirk, Daniel W. Myers, Phillip Marvel, J. Byron Rogers, C. Henry Stinson, Richard B. Stites, J. Davis Sisler, William F. Wahl, M. D. Youngman.

Q. Who were the officers?

A. Elected September 21st, 1910, page 117 of the minutes: President, Howard G. Harris; Vice-President, Clement J. Adams; Secretary and Treasurer, Carlton Godfrey.

Q. Who were the directors for 1911?

A. Elected September 20th, 1911, page 159 of the minute book: Clement J. Adams, Clarence M. Brown, Charles C. Carman, Howard A. Davis, Charles A. Daniel, Carlton Godfrey, P. G. Hannum, Ashley P. Hunter, Howard G. Harris, John A. Ireland, Lewis T.

Imlay, Louis Kuehnle, A. M. Langfeld, John McGlinn, John J. McGuirk, Daniel W. Myers, Phillip Marvel, J. Byron Rogers, C. Henry Stinson, Richard B. Stites, J. Davis Sisler, Charles F. Wahl, William F. Wahl, M. D. Youngman.

Q. Did you name Howard G. Harris?

A. Yes.

Q. Who were the officers?

A. As shown by minute book, page 162, meeting September 20th, 1911: President, Howard G. Harris; Vice-President, Clement J. Adams; Secretary and Treasurer, Carlton Godfrey.

Q. Who were the directors for 1912?

A. Elected at the meeting September 18th, 1912, minute book page 179, &c.: Clement J. Adams, Clarence M. Brown, Charles C. Carman, Charles A. Daniels, Howard A. Davis, Carlton Godfrey, Phillip G. Hannum, Howard C. Harris, Ashley P. Hunter, Lewis T. Imlay, John A. Ireland, Louis Kuehnle, A. M. Langfeld, John McGlinn, John J. McGuirk, Phillip Marvel, Daniel W. Myers, J. Byron Rogers, J. Davis Sisler, C. Henry Stinson, Richard B. Stites, Charles F. Wahl, William F. Wahl, M. D. Youngman, Thompson Irvin, S. Bartram Richards.

Q. Who were the officers?

A. I might say there is a pencil memorandum opposite the name of J. Davis Sisler on this minute to the effect that he died prior to June, 1913, and also a pencil memorandum opposite the name S. Bartram Richards "Sold stock." September 18th, 1912, minute, page 183, the officers elected were President, Howard G. Harris; Vice-President, Clement J. Adams; Secretary and Treasurer, Carlton Godfrey.

Q. Who were the directors in 1913?

A. Elected September 17th, 1913, minutes, page 231: Clement J. Adams, Carlton Godfrey, Phillip G. Hannum, Howard G. Harris, Ashley P. Hunter, John A. Ireland, Thompson Irvin, Louis Kuehnle, A. M.

Langfeld, John McGinn, Phillip Marvel, Daniel W. Myers, J. Byron Rogers, C. Henry Stinson, Richard B. Stites, Charles F. Wahl, William F. Wahl, M. D. Youngman.

Q. Who were the officers?

A. Elected September 17th, 1913, minute, 234: President, Howard G. Harris; Vice-President, Clement J. Adams; Scretary and Treasurer, Carlton Godfrey.

Q. Who were the directors for 1914?

A. Minute of September 16th, 1914, page 249, &c. Clement J. Adams, Carlton Godfrey, Phillip G. Hannum, Howard G. Harris, Thompson Irvin, Louis Kuehnle, A. M. Langfeld, John McGlinn, Phillip Marvel, Daniel W. Myers, J. Byron Rogers, Richard B. Stites, Charles F. Wahl, William F. Wahl, M. D. Youngman.

Q. Who were the officers?

A. Elected September 16th, 1914, minute book page 254: President, Howard G. Harris; Vice-President, C. J. Adams; Secretary and Treasurer, Carlton Godfrey.

Q. Who were the directors for 1915?

A. Elected September 15th, 1915, page 266, and so on: Clement J. Adams, Carlton Godfrey, Phillip G. Hannum, Howard G. Harris, Thompson Irvin, Louis Kuehnle, A. M. Langfeld, John McGlinn, Phillip Marvel, Richard B. Stites, M. D. Youngman.

Q. Who were the officers?

A. They did not seem to think it necessary to have any officers, I guess; there is no minute.

By the Vice-Chancellor.

Q. What year is that?

A. That is 1915.

By Mr. Clevenger.

Q. There is no minute of officers?

A. No, there appears to be none.

Mr. Clevenger—I desire to offer the minute book in evidence.

(Said book marked *Exhibit C 2.*)

No cross-examination.

John G. Horner, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Clevenger.

Q. Judge, are you the receiver by appointment of the Court of Chancery of New Jersey of the West Jersey Mortgage Company?

A. I am.

Q. About when were you appointed?

A. October 1st, 1915.

Q. Have you the books of the West Jersey Mortgage Company in court?

A. I have some of them.

Q. Will you tell me what you have?

A. I have a minute book, which appears to be a minute book of the directors and stockholders meetings, this being a calf-bound book; I have another book here which is a minute book of the executive committee's meetings, and that extends down to June, 1911, and another book of the executive committee's meeting, and then I have the journal, ledger and two cash-books, cash-book number 1 and cash-book number 2, and one of the many check books or stub books.

Q. Now, did you also bring the original check 8057?

A. That check is here. Mr. Mead has it.

Q. And did you bring all of the notes that were discounted by the West Jersey Mortgage Company at the Guarantee Trust Company?

A. So far as we were able to locate them.

Q. And as named in this agreement?

A. Yes, sir; as far as we were able to locate them.

Q. Now, have you the original agreement of September 1st, 1910, between the West Jersey Mortgage

Company, the Ventnor Syndicate and the Guarantee Trust Company, trustee?

A. I haven't.

Q. Did you find it when you took charge?

A. I did not; I have never seen the original agreement to my knowledge; we have a copy.

Q. That was furnished to you by whom?

A. My recollection is that was furnished by Mr. Sypherd, of the Guarantee Trust Company.

Q. It was not an original duplicate?

A. No, no; it is a typewritten carbon copy.

Q. Now, turn to the minutes showing the by-laws of the West Jersey Mortgage Company, Judge?

A. In the first book referred to, being the calf-bound book, on page 9 there is what purports to be the by-laws of the West Jersey Mortgage Company, adopted at a meeting held in Atlantic City on November 4th, 1904.

Mr. Clevenger—Now, Judge Cole, are you willing that Judge Horner shall have a copy of those by-laws made and consider them as having been offered in evidence, without taking the time to read them?

Mr. Cole—Yes.

Q. Do you want to do that, Judge, and send them to me with bill for the services of the stenographer?

A. Yes. Now, on these by-laws, Mr. Clevenger, there were some amendments, it is pretty hard—

Q. Will you copy the amendments also?

A. I was going to say it is pretty hard to figure out just where those amendments are, they really don't amount to very much, as I understand it, changing the date of meetings, &c.

Q. Will you make a complete copy of the original by-laws as they are and the amendments as they are?

A. All right, sir; that will be done.

Mr. Clevenger—That copy of by-laws will be marked as *C 3*.

The Vice-Chancellor—Yes; let it be marked when produced.

Q. Now, Judge, who were the directors of the West Jersey Mortgage Company in 1910?

A. Who were the directors for 1910 or those elected in 1910?

Q. Those elected in 1910.

A. At the meeting held December 14th, 1910, as appears on page 118 and following of the minutes, the following were elected as directors: Clement J. Adams; Israel G. Adams; William B. Bell; William S. Casselman; George P. Eldredge; William A. Faunce; Thomas E. French; H. Starr Giddings; Carlton Godfrey; John W. Hackney; Louis Kuehnle; J. Willard Morgan; Frederick C. Robins; J. Byron Rogers; Lewis Starr; Charles R. Stevenson; Richard B. Stites; Herman M. Sypherd; John H. Tunstall, and Arthur Wright.

Q. Who were the officers?

A. According to the minute book, minutes as recorded on page 122 of that book, the directors elected on December 14th, 1910, the following officers: President, Carlton Godfrey; treasurer, John W. Hackney; secretary, William B. Bell; assistant treasurer, Frederick C. Robins; assistant secretary, Herman M. Sypherd.

By the Vice-Chancellor.

Q. Who was the president?

A. Carlton Godfrey.

By Mr. Clevenger.

Q. Who were the directors elected for the year 1911?

A. According to the minutes, as recorded on page 136 of the book referred to, at a meeting held on December 13th, 1911, the following-named gentlemen were elected as directors: Clement J. Adams, Israel G. Adams, William B. Bell, William S. Casselman, George P. Eldredge, William A. Faunce, Thomas E. French, H. Starr Giddings, Carlton Godfrey, John W. Hack-

ney, Louis Kuehnle, J. Willard Morgan, Frederick C. Robins, J. Byron Rogers, Lewis Starr, Charles R. Stevenson, Richard B. Stites, Herman M. Sypherd, John H. Tunstall and Arthur Wright.

Q. Who were the officers?

A. According to the minutes as appear on page 140 of the book the directors elected on December 13th, 1911, the following officers: President, Carlton Godfrey; treasurer, John W. Hackney; assistant treasurer, Frederick C. Robins; assistant secretary, Herman M. Sypherd.

Q. Now, Judge, I wish you would go back to 1909, and see who were elected for 1910?

A. According to the minutes as recorded in book, page 106 of the book referred to, at a meeting held on December 8th, 1909, the following-named gentlemen were elected as directors: Clement J. Adams, Israel G. Adams, William B. Bell, William S. Casselman, George P. Eldredge, William A. Faunce, Thomas E. French, H. Starr Giddings, Carlton Godfrey, John W. Hackney, Louis Kuehnle, J. Willard Morgan, Frederick C. Robins, J. Byron Rogers, Lewis Starr, Charles R. Stevenson, Richard B. Stites, Herman M. Sypherd, John H. Tunstall and Arthur Wright.

Q. And who were the officers for that year?

A. According to the minutes as found on page 110 of the book, I find that at a meeting held on December 8th, 1909, the directors elected the following officers: President, Carlton Godfrey; treasurer, John W. Hackney; secretary, William B. Bell; assistant treasurer, Frederick C. Robins; assistant secretary, Herman M. Sypherd.

Q. Now, go forward to the directors for the year 1913.

A. According to the minute book, as found on page 155 of the minutes, the day apparently fixed by the by-laws for the holding of the annual meeting in the year 1912 was December 11th, 1912. The entry as appears

in the minutes is as follows: "The regular annual meeting of the stockholders of the West Jersey Mortgage Company was adjourned from this day to January 15th, 1913, at eleven o'clock A. M., as per notice heretofore given to the stockholders." Purported to be signed "H. M. Sypherd, Assistant Secretary." On page 158 of the minute book I find what purports to be the record of a stockholder's meeting, at which the following-named gentlemen appear to have been elected directors: Clement J. Adams, Israel G. Adams, William B. Bell, William S. Casselman, George P. Eldredge, William A. Faunce, H. Starr Giddings, Carlton Godfrey, John W. Hackney, Louis Kuehnle, Frederick C. Robins, J. Byron Rogers, Lewis Starr, Charles R. Stevenson, Richard B. Stites, Herman M. Sypherd, John H. Tunstall and Arthur Wright.

Q. Who were the officers?

A. According to the minutes, as recorded on page 160 of the minutes, the directors at a meeting held January 15th, 1913, elected President, Carlton Godfrey; secretary and treasurer, John W. Hackney; assistant secretary, Herman M. Sypherd; assistant treasurer, Frederick C. Robins.

Q. Who were the directors elected for the year 1914?

A. According to the minute book, by an entry appearing on page 163 of the minutes, the stockholders' meeting was held on January 21st, 1914, at which the following-named gentlemen were elected as directors: Clement J. Adams, William B. Bell, William S. Casselman, George P. Eldredge, William A. Faunce, H. Starr Giddings, Carlton Godfrey, John W. Hackney, Frederick C. Robins, J. Byron Rogers, Charles R. Stevenson, Richard B. Stites, Herman M. Sypherd, John H. Tunstall and Arthur Wright.

Q. Do you find I. G. Adams there?

A. No, sir.

Q. Do you find Louis Kuehnle there?

A. Do you mean those elected—

Q. For the year 1914.

A. January 21st, 1914?

Q. Yes.

A. No, sir.

Q. Do you find Judge Starr there?

A. I do not. On a sheet which is now, and was when I received the book, pinned to the book there is a typewritten copy or carbon of something—it looks like a minute that has been written in rough on the typewriter and not recorded, under date of October 18th, 1913. It says, "The resignation of Lewis Starr as a director of the company was received and accepted."

Q. Now, who were the officers?

A. At a meeting held February 6th, 1914, according to the minutes as recorded on page 165, the officers elected were: President, Carlton Godfrey; secretary and Treasurer, John W. Hackney; assistant secretary, Herman M. Sypherd.

Q. Any assistant treasurer?

A. No. There is a minute which says: "Mr. F. C. Robins having sold his stock in the company, no one was elected to fill the office of assistant treasurer, and the duties heretofore performed by him were transferred to the treasurer's office and an additional compensation of $200 directed to be paid to the treasurer."

Q. Who were the directors elected to serve for the year 1915?

A. According to the minutes as recorded on page 167 of the minute book, at a meeting held on February 5th, 1915, the following were elected as directors: Clement J. Adams, William B. Bell, William S. Casselman; George P. Eldredge, William A. Faunce, H. Starr Giddings, Carlton Godfrey, John W. Hackney, Raymond F. Read, J. Byron Rogers, Richard B. Stites, John H. Tunstall and Arthur Wright.

Q. Who were the officers?

A. There is no record in this book of the election of officers following the annual meeting of the stockhold-

ers of February 5th, 1915. I thought there was some record somewhere, but I can't put my hand on it at the present time.

Q. Now, Judge, will you turn to the minute book of the board of directors and stockholders and tell me the date of the last minute?

A. The last entered minute here is February 5th, 1915.

Q. By whom as secretary?

A. Raymond P. Read.

Q. Are there any loose leaves, showing minutes not entered?

A. Preceding that; yes.

Q. No; subsequent to that?

A. I can't find any here. I don't recall there being any.

Q. Have you been able to find in that minute book of the board of directors any authority for the payment of the $54,000 of notes due by the company to the Guarantee Trust Company?

Mr. Cole—I object to that testimony on the ground that there is nothing in the bill that makes that testimony relevant or competent under the terms of the trust agreement.

The Vice-Chancellor—I think it may be received and its force determined hereafter.

A. I have not.

Q. Now, you have other minute books here?

A. I have minute books here of what is known as the executive committee.

Q. The last minute book runs from what date to what date?

A. According to the endorsement on page 1, from June 5th, 1911, to blank.

Q. What is the date of the last recorded minute in the executive committee book?

A. August 19th, 1914.

Q. Signed by whom?

A. Signed by H. M. Sypher, Assistant Secretary.

Q. Now, are there any resignations noted in that minute.

A. Yes, sir.

Q. Who resigned?

A. Shall I read the minute or give you my idea of who resigned?

Q. It doesn't make any difference.

A. Mr. John W. Hackney resigned as secretary and treasurer, and Mr. Raymond P. Read was elected as secretary and treasurer, with the same salary now paid Mr. Hackney, with the understanding that he was to furnish an office for the company and pay the clerk now employed by Mr. Hackney from his compensation. Mr. Herman Sypherd resigned as assistant secretary.

Q. Who composed the executive committee at that meeting?

A. Those present were Messrs. Godfrey, Faunce, Adams, Hackney and Sypherd. That is the meeting of August 19th, 1914.

Q. Who formed the executive committee at the previous meetings?

A. The meeting was July 20th, 1914. Messrs. Godfrey, Adams, Hackney and Sypherd.

Q. Now, in that book have you any loose-leaf minutes other than those recorded?

A. Yes, sir.

Q. How many?

A. Well, I have here two.

Q. What are their dates?

A. One is under date of January 13th, 1915, and I have one here which is merely a pencil memoranda, and the date is Mar. 5, without indicating what year. I can only assume that it is March 5th, 1915.

Q. Do either of these minutes relate to the transsaction by which the Guarantee Trust Company was paid

the $54,000 of notes due by the West Jersey Mortgage Company to it?

A. No, sir.

Q. Have you been able to find in the executive committee minute book any authority for the sale of the Young-McShea Amusement Company bonds and the payment of the notes due to the Guarantee Trust Company?

A. I think not. I don't recall it.

Q. Were you able to find in the minute book of the board of directors, referred to in your testimony a few moments ago, anything authorizing the sale of the Young-McShea Amusement Company bonds?

A. No, sir.

Q. To the Guarantee Trust Company?

A. No, sir.

Q. Is there anything in the books of the company which you have been able to find showing any authority for the transaction involving the sale of those Young-McShea Amusement Company bonds to the Guarantee Trust Company and the payment of $54,000 notes excepting the entries that are made in the books of account?

A. That is the only entries I find—except the returned notes, if they be authority.

Q. But no authority to consummate the transaction was given, so far as you know?

A. Not so far as I recall from looking over the books, except I saw the notes of this company, which were apparently held by the Guarantee Trust Company, which were apparently due, some of them are due now anyhow, long since due.

Q. Now, you were able to find no other minute book except those you have given or the loose slips?

A. No, sir.

Q. Now, Judge, whom did you employ to go over your books?

A. When I took charge of the West Jersey Mortgage Company affairs, in accordance with the orders of this court, I found that the account books of the company had not been written up for nearly, if not quite, possibly over a year; I wouldn't like to say an exact date. The accounts were in the main, if not entirely, upon a lot of loose sheets, which, together with the check book and the stub book, seemed to constitute the books of the company for the period. I found a young man as a clerk in the employ of the company at Atlantic City, and I secured his services for a time, under the control and supervision of Mr. Frederick L. Mead, a certified accountant, and the books were brought up to date, that is, up to the date of the receivership, the entries being made in a different color ink, and then Mr. Mead has examined the books of the company generally, not in detail but specifically in detail as to different matters to which we have directed his attention.

Q. And he is the most familiar man—

A. Oh, yes.

Q. —with the books?

A. He is the man that is familiar.

Q. Now, are you willing that I shall use him to get the information I desire from the books?

A. Perfectly, if he has it—anything in the books. I have no desire to conceal anything.

Mr. Clevenger—Judge Cole, are you willing I should use him?

Mr. Cole—Certainly.

Cross-examination, by Mr. Cole.

Q. Do the books of the West Jersey Mortgage Company show that there was an indebtedness from that company to the Guarantee Trust Company of $54,000?

A. I say substantially the answer is yes; I wouldn't exactly say the figures were right, Judge Cole.

Q. And how was that indebtedness evidenced?

A. That is a long story, and Mr. Mead has the story, has the whole story worked out.

Q. I know, but I want to ask you.

A. I can get the papers and the work of Mr. Mead. It is something that ran through several years; I wouldn't attempt—

Q. Is there evidence in the books of such indebtedness?

A. There is evidence of an indebtedness, yes, sir.

Q. And do the books show how it was satisfied? 10

A. It shows a payment; yes, sir.

Q. Does it show in what way it was paid?

A. Judge, I really—Mr. Mead went over that two or three times with me, but not in the last day or two. I have forgotten the details. I think it shows that a check was given and then by closing the accounts.

Q. Did the Guarantee Trust Company hold collateral for that obligation?

A. According to the information which we have, yes, sir. 20

Q. And what was your information about it?

A. Collateral note which came into my possession as receiver.

Q. How?

A. A collateral note which came into my possession as receiver.

Q. What was the collateral called for?

A. I will have to look at the note. By reference to the notes I find that the indebtedness of the West Jersey Mortgage Company was evidenced, according to 30 our theory, by several collateral notes, and they are what may be called the usual customary form of collateral notes, and in some of them the blank left for the insertion of collateral is still blank and in others there are entries. The one I have before me now, for instance, dated December 14th, 1914, for $3,000, pledges as collateral four $1,000 First Mortgage Gold Bonds, Ventnor Syndicate, six per cent., due 5/19/14, and

three $1,000 bonds Young & McShea Amusement Company, six per cent., due 3/1/22. Did you want me to go on with each one of these, Judge.

Q. Oh, no; I thought you had it condensed in some way.

A. It is in a tabulation which I didn't work up.

Q. I only wanted to see whether you knew.

A. I know some of the things.

Q. Well, now, do you know what the aggregate of the indebtedness was?

A. I can by looking about when it was paid. At the time of the statement which I have it was $54,000.

Q. Now, do you know with what it was paid?

A. $54,831.50 was paid by a check of the West Jersey Mortgage Company to the order of Guarantee Trust Company, under date of March 4th, 1915.

Q. Well, now, do the books of the West Jersey Mortgage Compny show where it got that $54,000 to pay this obligation?

A. They show a sale of the bonds, of the Young-McShea Amusement Company bonds, coincident almost with the issuance of this check and the receipt of the proceeds of those bonds.

Q. And what was the proceeds of the sale of the bonds?

A. $55,100.

Q. Now, will you read, please, into the minutes the powers of the executive committee of this company, as shown by its by-laws?

A. Article 4. Section 1.

By the Vice-Chancellor.

Q. What by-laws?

A. Of the by-laws as recorded on page 14 of the minute book. They read as follows: "There may be an executive committee consisting of the president, treasurer, secretary, and four members of the board of directors. They shall hold office until others are

chosen in their stead. All vacancies in said committee shall be filled by a majority vote of the committee. The executive committee shall meet at such times as shall be fixed by the committee, and shall also meet at the call of the president. The executive committee shall exercise all of the powers of the board of directors when the latter is not in session."

By Mr. Cole.

Q. Read the powers of the board of directors, please?

By Mr. Clevenger.

Q. Is there any notation showing a change of that?

A. No, sir; I didn't notice any change there. The original by-laws, as I find them recorded on page 11 of the minute book, section 3, article 2, reads as follows: "All the corporate powers shall be and are hereby vested ni and shall be exercised by the board of directors. Express power and authority are hereby conferred upon the board of directors from time to time to borrow on the credit and responsibility of the corporation such sums of money as they may deem necessary or proper for the purposes and interest of the company, in such form and for such time as they may deem proper, and to pledge or mortgage any or all the stocks, bonds, securities or other estate, real or personal, belonging to the company as security for the payment of such loans and advances."

By Mr. Cole.

Q. Was there an amendment to that?

A. Yes, sir. Under date of November 21st, 1904, I find a minute recorded on page 22 of the minute book which adds a new section to the article, but it relates to board of directors and reads as follows: "Any and all vacancies which may from time to time occur in the membership of the board of directors may be filled by

the board, and the terms of members so chosen shall expire at the next annual meeting of the stockholders."

Q. No other amendment so far as powers are concerned?

A. None that I have been able to locate, Judge.

Frederick L. Mead, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Clevenger.

Q. Where do you live, Mr. Mead?

A. Merchantville, N. J.

Q. And your business.

A. 30 North Third street, Camden.

Q. What is your business?

A. Certified public accountant.

Q. How long have you been such?

A. Twenty years.

Q. Authorized to act by the State of New Jersey?

A. Yes, sir.

Q. Were you employed by Judge Horner to go over the books of the West Jersey Mortgage Company?

A. Yes, sir.

Q. Have you done so?

A. I have.

Q. You are very familiar with the contents of the books?

A. I think so.

Q. Now, first, while we are on the subject of notes, Mr. Mead, take up package No. 4.

A. Yes.

Q. Give me the amount of that note?

A. $8,000.

Q. The date of it?

Mr. Cole—I want to make the same objection to the testimony that is about to be offered by this witness.

The Vice-Chancellor—I will let the testimony be received. You may have the benefit of the objection. Can't all this be tabulated? Are you going through a whole list of notes?

Mr. Clevenger—Yes, sir.

The Vice-Chancellor—Can't you tabulate it?

Mr. Clevenger—I do not believe I can, the way I want it, if your Honor please. If you will let me finish my examination on the books, I will try to get it as clear as I can and tabulate in concise form.

A. No. 4, $8,000.

Q. The term?

A. Two months.

Q. Any collateral stated in it?

A. No, sir.

The Vice-Chancellor—This, I understand, was a note from the Mortgage Company to the Guarantee Trust Company?

Mr. Clevenger—Yes, sir.

Q. When was that note due?

A. November 23d, at two months.

By Mr. Cole.

Q. The year? You didn't give the year?

A. 1914.

By Mr. Clevenger.

Q. When was it paid?

A. March 6th, 1915. It was due in January.

Q. It was over-due when paid?

A. Yes, sir.

Q. Now, who made the note?

A. The West Jersey Mortgage Company, Raymond P. Read, treasurer.

Q. In whose favor was it?

A. Gurantee Trust Company.

Q. Is there any collateral named in that note?

A. None mentioned.

Q. Is it a collateral form?

A. Yes, sir.

Q. That note was given in renewal of what?

A. In renewal of the original sum of $14,000.

Q. Was that a collateral note?

A. Yes, sir.

Q. Where is it?

A. I don't have it. All of these renewals aren't here.

Q. Then you don't know whether that original note had collateral in it or not?

A. No; I don't.

Q. I notice you have pinned to the note two plain notes?

A. Yes.

Q. Give me the amounts and the dates of those and when due?

A. The first one, July 20th, 1914, $8,000, due in two months, which would make it September 21st. September 21st, 1914, $8,000, in two months, due November 23d.

Mr. Clevenger—I desire to offer those in evidence, if your Honor please.

Mr. Cole—Same objection, for the same reason.

The Vice-Chancellor—Objection overruled. Let them be marked.

(Said package marked Exhibit C 4.)

Q. Now, take No. 10. The amount?

A. $3,000.

Q. The date?

A. December 14th, 1914.

Q. The term?

A. Two months.

Q. Any collateral named in it?

A. Yes, sir.

Q. What is the collateral?

A. Four $1,000 First Mortgage Gold Bonds, Ventnor Syndicate, six per cent., due 5/19/14; three $1,000 bonds, Young-McShea Amusement Company, six per cent., due 3/1/22.

Q. Who was the maker of that note?

A. West Jersey Mortgage Company.

Q. Payee?

A. Guarantee Trust Company.

Q. When was it paid?

A. March 5th, 1915.

Q. Was it overdue then?

A. Yes, sir.

Q. That note was given in renewal of what?

A. In renewal of $12,000, originally.

Q. Have you that note there?

A. No.

Q. Have you any other notes there relating to that transaction?

A. Yes, have several, but not the entire sequence.

Q. How many of them were collateral?

A. All.

Q. How many of them have collateral named in them?

A. All which I have have collateral named in them.

Q. Do they name the same collateral?

A. Yes.

Mr. Clevenger—I offer that package in evidence.

(Said package marked *Exhibit C 5.*)

Q. Package No. 11. Amount?

A. $9,000.

Q. The date?

A. November 9th, 1914.

Q. The term?

A. Two months.

Q. Any collateral mentioned?

A. Yes; three mortgages for $5,000 each, dated 2/21, the year is left blank, at three years, given by

Ventnor Syndicate to West Jersey Mortgage Company, on lots in Margate City.

Q. When was the note paid—stampted paid?
A. March 5th.
Q. Was it overdue?
A. It was.
Q. Is that note given in renewal of another note?
A. Yes.
Q. Have you the note there?
A. No, I don't have it.
Q. Have you any other notes there?
A. Yes, two of them.
Q. Relating to the transaction?
A. Two others.
Q. Do they state any collateral?
A. Yes.
Q. The same collateral?
A. Just the same.

Mr. Clevenger—I desire to offer that in evidence.

(Said package marked *Exhibit C 6.*)

Q. Package No. 12. The amount?
A. $4,000.
Q. The date?
A. December 28th, 1914.
Q. The term?
A. Two months.
Q. Any collaterals mentioned?
A. None mentioned.
Q. Is the note stamped paid?
A. Yes.
Q. As of what date?
A. March 5th, 1915.
Q. Was it overdue when paid?
A. Yes.
Q. Now, was that given in renewal of any other note?
A. Yes, in renewal of a $10,000 note.
Q. Have you that note here?

A. No, sir.

Q. Have you any other notes there relating to the transactions?

A. Three, all of the same amount.

Q. All collateral notes?

A. Yes.

Q. Do they mention the collateral?

A. One of them.

Q. Which one?

A. Two of them. One dated June 24th, 1914— 10

Q. Mentions what collateral?

A. Two mortgages given by Ventnor Syndicate to West Jersey Mortgage Company, aggregating $4,000, covering lots 5, 6, block 86 A; three $1,000 bonds, Young & McShea Amusement Company, six per cent., due 3/1/22.

Q. The next one was dated what date?

A. July 18th, 1914.

Q. Payable when?

A. Two months. 20

Q. And covered what collateral?

A. Mortgage, Ventnor Syndicate to West Jersey Mortgage Company, for $5,000, covering lot 7, block 88 B., Margate City, N. J.; three $1,000 bonds, Young-McShea Amusement Company, six per cent., due 3/1/22.

Q. In the note paid there is no collateral mentioned at all?

A. None at all. 80

Mr. Clevenger—I offer that in evidence.

(Said package marked *Exhibit C 7.*)

Q. Package No. 13.

A. Yes.

Q. Amount?

A. $10,000.

Q. Date?

A. November 16th, 1914.

Q. Term?

A. Two months.

Q. Any collateral mentioned in it?

A. In the original, yes.

Q. No, in this one?

A. No.

Q. When was that stamped paid?

A. March 5th, 1915.

Q. Was it overdue at the time of payment?

A. It was.

Q. Was that given in renewal of another note?

A. Yes, sir.

Q. Have you the note?

A. Yes, I have three of them.

Q. Is collateral mentioned in any of the notes given in renewal?

A. Yes, in two of them.

Q. Which two were they?

A. The first two that I have.

Q. Give me the dates and the collateral mentioned?

A. Dated July 13th, 1914, $10,000, at two months, two mortgages, Ventnor Syndicate to West Jersey Mortgage Company, aggregating $10,000, covering property in Margate City, lots 7, 14, 86 B.; six $1,000 bonds, Young & McShea Amusement Company, six per cent., due 3/1/22.

Q. Same collateral in the renewal of that note?

A. It doesn't describe the same lots, it does the six bonds.

Q. Now, what lot does the renewal describe?

A. Two mortgages, Ventnor Syndicate to West Jersey Mortgage Company, for $5,000 each, covering lot 14, 88 A., and lot 14, 88 B., Margate City, N. J.

Q. Now, the next renewal mentions no collateral?

A. No collaterals, and the last note paid mentions no collaterals.

Mr. Clevenger—I offer that package in evidence.

(Said package marked *Exhibit C 8.*)

Q. Package 15. Amount?
A. $5,000.
Q. Date?
A. December 7th, 1914.
Q. Term?
A. Two months.
Q. Any collateral mentioned?
A. Yes, sir.
Q. What is it?
A. $8,000 bonds, Young-McShea Amusement Company, 5 twenty-year gold bonds, six per cent., due 3/1/22.
Q. When was that note paid?
A. March 5th, 1915.
Q. Was it overdue when paid?
A. Yes, sir; it was overdue.
Q. Now, was that note given in renewal of others?
A. Yes, sir.
Q. Have you those renewals there?
A. I have.
Q. Do any of them mention collateral?
A. All of them.
Q. What collateral?
A. $8,000 bonds, Young-McShea Amusement Company, 5 twenty-year gold bonds, six per cent., due 3/1/22, the same thing.

Mr. Clevenger—I offer that package in evidence.

(Said package marked *Exhibit C 9.*)

Q. Package 16. Amount?
A. $5,000.
Q. The date?
A. November 9th, 1914.
Q. Term?
A. Two months.
Q. Any collateral mentioned?
A. Yes, sir.
Q. What?

A. Six $1,000 bonds, Young-McShea Amusement Company, six per cent., due 3/1/22.

Q. When was that paid?

A. March 5th, 1915.

Q. Was it overdue when payment was made?

A. It was.

Q. Was that given in renewal of other notes?

A. It was, yes, sir.

Q. Do they mention the same collateral?

A. The same collateral, yes, sir.

Mr. Clevenger—I offer that pacakage in evidence.

(Said package marked *Exhibit C 10.*)

Q. Package 17. The amount?

A. $5,000.

Q. Date?

A. December 21st, 1914.

Q. Term?

A. Two months.

Q. Any collateral mentioned?

A. Six $1,000 bonds, Young & McShea Amusement Company, six per cent., due 3/1/22.

Q. When is that stamped paid?

A. March 5th, 1915.

Q. Was it overdue when payment was made?

A. It was overdue.

Q. Any renewals there?

A. Yes, sir.

Q. What collaterals do they mention?

A. The same collateral.

Mr. Clevenger—I offer that pacakage in evidence.

(Said package marked *Exhibit C 11.*)

Q. Package No. 18. The amount?

A. $5,000.

Q. The date?

A. November 16th, 1914.

Q. Term?

A. Two months.

Q. Any collateral?

A. Yes, sir.

Q. How much?

A. Ten $1,000 Young & McShea Amusement Company bonds, six per cent., due 3/1/22.

Q. Marked paid when?

A. March 5th, 1915.

Q. Overdue when paid?

A. It was overdue.

Q. Have you any renewals there?

A. Yes, sir; the same collateral.

Mr. Clevenger—I offer that in evidence.

(Said package marked *Exhibit C 12.*)

Q. Now, according to the records, Mr. Mead, none of these notes were renewed when they came due, but they laid in the bank unpaid, did they not?

A. That is what appears.

Q. And all of those notes are signed by the West Jersey Mortgage Company, by Raymond P. Read, Treasurer?

A. Yes, sir.

Q. And they are all drawn to the order of the Guarantee Trust Company?

A. Yes, sir.

Q. And they are all, with the exception of package No. 4, of the regulation collateral note form used by the Guarantee Trust Company?

A. Yes.

Q. Now, the record also shows, does it not, that all of these notes when they came due, previous to the last note in the series, had been renewed regularly?

A. Yes.

Q. None of those notes were protested for non-payment, according to the records, were they?

A. No, sir.

Q. Now, Mr. Mead, will you turn to your ledger account?

Mr. Cole—May I ask him a question right now, before I forget it?

Mr. Clevenger—Certainly.

By Mr. Cole.

Q. You were asked whether they were protested. Have any of them an endorser?

A. I didn't notice.

Q. Other than the payee?

A. No, I don't think so. I haven't noticed any endorser on any of them.

By the Vice-Chancellor.

Q. Can you give me, Mr. Mead, the aggregate amount of the notes that appear to have been paid on that day and the aggregate amount of the ollateral?

A. Yes.

Mr. Clevenger—I was going to come to that.

By Mr. Clevenger.

Q. Now, Mr. Mead, the total of those notes that were paid on March 5th, 1915, is what?

A. $54,000.

Q. Now, how much par value of Young & McShea Amusement Company bonds were there with the notes as named in the notes?

A. These that were paid?

Q. Yes, sir.

A. I will have to count it up.

Q. I am speaking, Mr. Mead, of those that were paid, mentioned in those that were paid, the last note paid.

A. $33,000.

Q. Aren't you mistaken in that?

A. No; $33,000.

Q. Now, how many of the Young & McShea bonds, par value, is there mentioned in the notes coming due

prior to these that were paid and that were not carried forward in the notes that were paid?

The Vice-Chancellor—That is, in which the collateral is not carried forward?

Mr. Clevenger—Yes, sir.

A. $9,000.

By the Vice-Chancellor.

Q. That is in addition to those that are—

A. Yes, the $33,000.

Q. Repledged?

A. Yes.

By Mr. Clevenger.

Q. So that the greatest number of these bonds, par value, that could have been claimed under the notes which you have there, assuming that it was intended that they should all be with the company as collateral, would be $42,000?

A. $42,000.

By the Vice-Chancellor.

Q. Weren't there some prior notes that you did not have?

A. Yes, some renewals of which these are the result.

Q. They may have contained still further additional collateral, may they not?

A. Yes, it is possible.

Q. And each note pledges its collateral for all future renewals, does it not?

A. Yes.

By Mr. Clevenger.

Q. But, Mr. Mead, there are no other notes that were paid or due from the West Jersey Mortgage Company to the Guarantee Trust Company other than those there?

A. No others, no, sir.

Q. Now, will you turn to your ledger account, Young & McShea Amusement Company.

The Vice-Chancellor—But am I right, Mr. Clevenger, in saying that some of these notes are renewals and contain no listed collaterals?

Mr. Clevenger—Yes, sir.

The Vice-Chancellor—And am I right in saying that some of the notes which they renewed may have contained listed collaterals of which we have no account?

Mr. Clevenger—I don't know.

The Vice-Chancellor—Well, have you the data to show that that is not so?

Mr. Clevenger—Not yet, no, sir. I may have.

The Vice-Chancellor—Because the renewal would carry with it the old collateral, without being re-specified in the extension note, providing, of course, the collateral was retained.

Mr. Clevenger—I may have that later, but I haven't it now. I cannot show that by this witness.

Q. How many Young & McShea Amusement Company bonds did the West Jersey Mortgage Company own?

A. $62,500.

Q. From whom were they purchased?

A. The first purchase was 6-25-06, they purchased $12,500 of bonds at par and accrued interest.

Q. Turn to Journal C. 21 and see from whom it was purchased, if you haven't the memorandum there.

A. The check was drawn to the order of Godfrey & Godfrey.

Q. From whom was the next purchase made?

A. July 27th, 1906, purchased of John L. Young, $50,000 of bonds.

Q. For how much?

A. For $48,000, that is at 96.

Q. What did they do with the $2,000?

A. Credited it to profit and loss.

Q. How does the account show anything with regard to the disposition of those bonds?

A. It shows they were sold.

Q. When?

A. March 5th, 1915.

Q. To whom?

A. Guarantee Trust Company.

Q. For how much?

A. $55,100.

Q. I would like you to turn to cash-book, page 160, and give me the exact language there.

A. March 5th, 1915. Bonds, Young & McShea Amusement Company, from Guarantee Trust Company, $58,000, at 95, $55,100, interest $38.67.

Q. Now, what was the next sale?

By the Vice-Chancellor.

Q. That is debit cash-book entry, is it?

A. Yes, sir; received from the sale of the bonds.

By Mr. Clevenger.

Q. Now, isn't there a journal entry there, J. 96?

A. Yes.

Q. And May 26th; J. 102?

A. No, I think 96 is the one you want, the next sale.

Q. That is the next sale, is it?

A. Yes.

Q. Let us have that.

A. This was where they transferred these bonds in payment of a mortgage which they were compelled to take up, as I understand, from Thompson & Smathers, attorney.

Q. They being pressed for a mortgage?

A. Yes, and they transferred these bonds at 90.

Q. Now, read that entry.

A. Mortgages debtor to bonds, Young & McShea Amusement Company, $4,050, Thompson & Smathers,

attorneys for Margaret Mehring, $4,500 of Young & McShea Amusement Company bonds, at 90, to be applied on account of purchase of mortgage under guarantee A250, balance due to complete purchase paid in cash. See cash book, page 169.

Q. What was the date of that?

A. May 26th, 1915.

Q. Now, turn to page 102 in the journal and tell me what the entry is under date of September 30th?

A. This is a profit and loss adjustment to balance this loss on these bonds.

Q. And that closed out the account of the Young & McShea Amusement Company?

A. Yes, with a loss of $3,350.

Q. Now, turn to your check book, Mr. Mead, and tell me on what date was deposited the money which was received by the company from the Guarantee Trust Company as the proceeds of the sale of these bonds?

A. March 5th, 1915.

Q. And what was the amount received?

A. $55,138.67.

Q. Now, from the stub of that check book tell me when the check was given to pay the $54,000 of notes and accrued interest?

A. March 4th, 1915.

Q. The day before?

A. The day preceding.

Q. And what was the number of the check?

A. 8057.

Q. And what does the stub show?

A. Guarantee Trust Company, on account of notes payable, principal $54,000, interest $331.50.

By the Vice-Chancellor.

Q. The account was kept in what bank?

A. Guarantee Trust Company.

By Mr. Clevenger.

Q. Is that the return voucher 8057?

A. That is (producing paper).

Q. Read the whole thing right into the record.

A. Read the printed matter, too?

Q. Everything, yes.

A. No. 8057. West Jersey Mortgage Company. Atlantic City, N. J., March 4th, 1915. Pay to the order of Guarantee Trust Company $54,331.50, in figures, and then written fifty-four thousand three hundred and thirty-one and 50/100 dolars. In payment of on account of notes payable to the Guarantee Trust Company, Atlantic City, N. J. Carlton Godfrey, president. Raymond P. Read, Treasurer.

Q. How endorsed?

A. No endorsement.

Q. Stamped what?

A. Stamped paid.

Q. What date?

A. 3/5/15.

Q. Now, turn to the ledger, Mr. Read, bils payable account?

A. Yes, sir.

Q. What was the balance due to the Guarantee Trust Company, according to the bills payable account, on January 1st, 1915?

A. $54,000.

Q. And that account was balanced by this check?

A. Yes, sir.

The Vice-Chancellor—Well, the substance of this transaction, as I understand it, is that the collateral were either sold to some one else or taken over by the Guarantee Trust Company at a little in excess of the debt—is that right?

Mr. Clevenger—No, sir, you are too broad in your assertion.

The Vice-Chancellor—Well, I want to be corrected. I did not mean to be.

Mr. Clevenger—You will recollect that the company had $62,500 of these bonds, and the greatest amount, according to those notes, that the company could have was either $33,000 or $42,000. You see, the notes expressly name $33,000 of these bonds as collateral, by inference you could add $9,000 more, making the total $42,000, but under no circumstances did they ever have the balance of the $62,500.

The Vice-Chancellor—Well, that may be, but can't we find it out very easily? I understand that some of these notes, of which the later ones are renewals, cannot be found. They may have listed other collaterals. The Guarantee Trust Company books would show in a moment what collateral they had.

Mr. Clevenger—I will have the books of the Guarantee Trust Company at the adjourned hearing in Atlantic City.

Q. Now, Mr. Read, what was the condition of the bank account of the West Jersey Mortgage Company immediately before the deposit of this Guarantee Trust Company check of $55,138.67?

A. It was overdrawn.

Q. How much?

A. About $1,600, with the qualification, if the checks were issued as they were dated.

Q. Just say that again.

A. Qualifying that statement, if the checks were issued as dated it was overdrawn, they were drawn up by the book.

By Mr. Cole.

Q. Issued and delivered, I suppose you mean?

A. Yes.

By Mr. Clevenger.

Q. By that you mean that there are checks noted on the stubs and entered in the cash book as paid that might not have been delivered at that particular time?

A. Yes, on that day.

Q. But assuming that the paid checks noted in the cash book and canceled and returned by the bank were paid and issued on that day they were overdrawn $1,600?

A. Yes.

Q. Referring to the bills payable account, was there any discount by the Guarantee Trust Company in favor of the West Jersey Mortgage Company between January 1st and March 5th of 1915 covering a new loan?

A. A new loan to the West Jersey Mortgage Company?

Q. Yes.

A. No, sir.

Q. What was the date of the last new loan?

A. March 12th, 1914, but I am not clear that that is from the Gurantee Trust Company.

Q. What is the amount of it?

A. Cash book 110. Yes. March 12th, 1914, borrowed of Guarantee Trust Company on our note at two months, $5,000.

Q. Now, turn to the cash book No. 2, under date of March 4th, 1916, and give me the exact language of the entry of the check paying the $54,000 notes?

A. 1915?

Q. 1915; yes, sir.

A. Notes payable. Paid Guarantee Trust Company account notes payable, in full, $54,000. Interest, ditto, —that is, paid Guarantee Trust Company, ditto, interest on above notes, $331.50.

Q. Now, Mr. Read, give me the list of assets which the receiver had in his possession when he took charge?

A. Well, this was the list of assets as prepared by me from the books of the company.

Mr. Cole—I want to offer an objection to this question as not being relevant to any issue made by the bill or anything to do with the Trust Company.

Mr. Clevenger—I think it goes to the issue of the bill. I say that this company, while it was acting as trustee, took for its own benefit from this company, the West Jersey Mortgage Company, its principal asset. Now, I do not think that is the act of a conscientious trustee in protecting the interests of its *cestui que* trust.

The Vice-Chancellor—I will let you make your proofs.

Q. Answer the question, Mr. Mead.

A. West Jersey Mortgage Company, statement of assets and liabilities, September 30th.

Q. What was the date this relates to?

A. September 30th, 1915.

Q. The date of the receivership?

A. Yes.

Q. Six months later than the transaction in question?

A. Yes. Assets, bonds, Margate Company, $140,750; bonds, Ventnor Syndicate, $2,000; bonds, Young's Pier & Hotel Company, $84,000. Those are bracketed and set forth in Schedule A. Collections account, Schedule B, $115,439.65. Mortgages receivable, Schedule C, $136,275. Notes receivable, Schedule D, $21,515.58. Accrued interest receivable, Schedule E, $60,298.86. Real estate, parcel No. 1, $3,664.73. Real estate, parcel No. 5, $11,000. Real estate, parcel No. 7, $14,262.46. Real estate, parcel No. 8, $3,392.72. Those four are bracketed and become Schedule F. Accrued rents receivable, $187.50. Mutual Building and Loan Association, $311. Office furniture and fixtures, $328. Cash to receiver, $658.03. Total, $594,083.53.

Q. Now, can you say, Mr. Mead, if that statement had been materially changed between January 1st, 1915, and the time the receiver took charge, excepting by the sale of the Young & McShea Amusement Company bonds that you have just been testifying about?

A. Well, that would be hard for me to state offhanded, there were certainly a number of changes.

Q. Well, had there been any material assets taken from the company other than the $62,500 of bonds of the Young McShea Amusement Company?

A. I couldn't state that, Mr. Clevenger.

Q. Your examination has not gone to that phase of the case?

A. No.

Q. Do you know of any assets that were sold other than the Young & McShea Amusement Company bonds between January 1st, 1915, and the date the receiver took charge?

A. No; I don't.

Q. You haven't found anything?

A. No.

Q. Now, the collection accounts, Schedule B, $115,439.65, consists of moneys which the company had advanced for interest on mortgages under its guarantee?

A. That is right.

Q. Now, the mortgages receivable, of $136,275, consisted of what?

A. Mortgages owned by the company.

Q. Of which one is $75,000—

A. Yes.

Q.—the Ventnor Syndicate, on the Montpelier avenue property?

A. That is right.

Q. And that has since been wiped out by foreclosure, hasn't it?

A. I believe so.

The Vice-Chancellor—Do you mean by a foreclosure of a prior mortgage?

Mr. Clevenger—Foreclosure of that mortgage.

Q. And how much realized, Mr. Mead?

A. Why, I will have to ask the receiver. That happened very recently and I haven't seen the entry for it yet. Very little.

Q. Very little, you say?

A. I am afraid so.

Mr. Horner—We will state the figure, if the court wants it.

The Vice-Chancellor—I suppose counsel are willing that Judge Horner shall state?

Mr. Cole—I haven't any objection who states it. I object to it all; I do not think it is competent.

The Vice-Chancellor—You may state, Judge Horner.

Mr. Horner—This mortgage when I was appointed receiver was under foreclosure at the suit of the West Jersey Mortgage Company. Subsequently, at the sheriff's sale I, as receiver, acquired title to the property, and since then as receiver have sold the property and the sale has been confirmed by this court and we expect settlement in a day or two. $12,250.

The Vice-Chancellor—That was the amount realized?

Mr. Horner—Yes, sir.

Mr. Clevenger—While you are on your feet, the $140,000 mortgage on Margate is now under process of foreclosure also?

Mr. Horner—No; the mortgage preceding, some of them. That isn't a mortgage, that is a bond.

Mr. Clevenger—A second mortgage bond?

Mr. Horner—Yes, sir. Part of it has been foreclosed.

Mr. Clevenger—And $200,000 of first mortgage is now being foreclosed and you are a party to the proceeding?

Mr. Horner—Yes, sir.

Mr. Clevenger—And covers land in Margate City?

Mr. Horner—Yes, sir.

Mr. Clevenger—Now, Judge, can you tell me how much mortgage is ahead of the $84,000 of Young's Pier & Hotel Company bonds which you hold?

Mr. Horner—I think about $900,000, I think that is about it, $900,000.

Mr. Clevenger—Now, have you been able to get any of these advances, these collection accounts of $115,000?

Mr. Horner—A great many of the mortgages have been foreclosed, in which the receiver has been made a party defendant, setting up his claim, subsequent, of course, to the claim of the holders of the mortgage, and I think in only about two or three instances, out of the foreclosure of probably a hundred or hundred and fifty mortgages, have we been able to receive anything.

Mr. Clevenger—Have you realized anything, and, if so, how much, from the sale of the real estate?

The Vice-Chancellor—Well, I did not suppose we were going to switch and make Judge Horner a witness. Hadn't you better reserve this until you finish with the witness on the stand?

Mr. Clevenger—That was the last question I had.

The Vice-Chancellor—Very well, then; Judge, answer that queston, if you can.

Mr. Horner—Not over $3,000. It was sold at different times and I received part payment and then final payment, but without going through the books I should say not over $3,000.

Mr. Cole—Just a moment. I want to ask Judge Horner whether he undertakes to apply or express any reason for the loss of the West Jersey Mortgage Company on these mortgages?

Mr. Horner—You are speaking about real estate now?

Mr. Cole—Yes, real estate, any of these properties. You said nothing had been realized, that is, substantially nothing. Do you undertake to give any reason for that?

Mr. Horner—I know that when the property is offered for sale we do not seem to be able to get bidders to buy it.

By Mr. Clevenger.

Q. Mr. Mead, will the books of the company show if the West Jersey Mortgage Company advanced the interest to the Guarantee Trust Company to pay the collateral bonds under the agreement of September 1st, 1911, under the terms of its guaranty?

A. I haven't noticed any such items under that heading.

Q. Do the books show that they advanced any money to pay the principal of those bonds?

A. No, sir.

Q. Do you know if the books show as a fact that the West Jersey Mortgage Company ever paid any of the interest due on those bonds directly to the holders of the bonds?

A. I don't think they do.

Q. Do you know whether they did or not?

The Vice-Chancellor—They did, as a matter of fact, didn't they?

A. I am not qualified to answer that. That would require an analysis of the interest account, all the payments on account of interest; it might not show in the entry, just state interest paid.

The Vice-Chancellor—I think I recollect testimony of some of the holders of the mortgages in some other litigation that we have had to the effect that they received their interest from either the Guarantee Trust Company, after the

Ventnor Syndicate had defaulted, or else from the West Jersey Mortgage Company, I cannot recollect now which; at any rate, after there had been a default by the mortgagor the interest continued to be paid by somebody in a number of instances that I recall.

Cross-examination, by Mr. Cole.

Q. Wasn't there a little interest paid by the West Jersey Mortgage Company? Don't your books show it?

A. Yes, sir.

Q. On account of these—

A. On the guarantees alone.

Q. Now, how much money, approximately?

A. Well, they have advanced interest here, as I have just stated, $115,000.

Q. You gave those figures, did you?

A. Yes.

By Mr. Clevenger.

Q. You mean the guarantee of the mortgages?

A. Yes.

Q. Not the guarantee of the bonds?

A. No.

The Vice-Chancellor—I had reference to the guarantee of the mortgages.

Mr. Clevenger—That is a little different situation—a different situation entirely. These are the bonds. I will go into that a little more in detail at the next hearing, when I will have the books of the Guarantee Trust Company to show where they got the interest to pay on these bonds; they will show absolutely whether it came from the West Jersey Mortgage Company or not.

The Vice-Chancellor—Yes; I know nothing about what was done toward making good their guarantee of bonds.

By Mr. Cole.

Q. Am I right in thinking that the transfer of the bonds of the Young & McShea Amusement Company to Thompson & Smathers and those that were sold to the Guarantee Trust Company comprised all the bonds which the West Jersey Mortgage Company held of the Young & McShea Amusement Company?

Mr. Clevenger—You used the word "sold" to the Guarantee Trust Company.

A. Yes, that is right.

Q. Now, you say of those that went to the Guarantee Trust Company the par value was $58,000?

A. Yes.

Q. And what per cent. is that of the par value of the bonds? Have you figured that out?

A. Why, they sold them at 95.

Q. 95?

A. Yes.

Q. Now, do you undertake to say how many of the bonds of the Young & McShea Amusement Company the Guarantee Trust Company held as collateral for loans?

A. Yes.

Q. Eh?

A. Yes.

Q. Well, I mean—you have reference, of course, to the notes?

A. No. You asked me about collateral, didn't you?

Q. Yes.

A. I have a memorandum of the collateral.

Q. Well, will you read it into the record?

A. $42,000 Young & McShea bonds; $30,000 mortgages of the Ventnor Syndicate; $4,000 bonds of the Ventnor Syndicate, and $8,000 of mortgages of the West Jersey Mortgage Company; I am not quite certain what mortgages they were.

Q. Where did you get that memorandum which you just read? Is that from the books of the Mortgage Company?

A. No, that was made from a memoranda and information from Mr. Smith, who kept the books, which we confirmed, I think.

Q. Kept what books, do you mean?

A. These books.

Q. So that when you say that the Guarantee Trust Company had $42,000 of bonds of the Young-McShea Amusement Company as collateral you are stating what you understand the books show?

A. Yes.

Q. There may have been more bonds handed by the company to the Guarantee Trust Company that were not down on the books, may there not?

A. There may have been; yes, sir.

Q. So that your testimony regarding the $42,000 is based upon what the books show?

A. Surely.

Q. And when you said that this company hadn't any right to have more than $33,000 or $42,000—I have forgotten which—of the bonds of this company to pay the obligations you were simply testifying to the condition of the books, is that right?

A. Yes.

By Mr. Clevenger.

Q. And when you say now that they had $42,000 of the bonds you are giving the Guarantee Trust Company the benefit of the doubt as to the $9,000?

A. Yes.

Mr. Clevenger—All the minute books and notes and ledger and journal are offered in evidence, and all other books brought into Court and described in the testimony are offered.

(Said exhibits, in addition to those already marked, marked as follows:

Directors' minute book, W. J. Mtg. Co., *C.* 13.

Two Exec. Comm. minute books, same company, *C* 14 and *C* 15, respectively.

Journal, same company, *C* 16.
Ledger, same company, *C* 17.
Cash book No. 1, same company, *C* 18.
Cash Book No. 2, same company, *C* 19.
Stub of check book, same company, *C* 20.)

Mr. Clevenger—And, Mr. Mead, will you let the stenographer have one of those notes to copy at the bottom of the testimony so as to get the form?

Mr. Mead—Yes.

Adjourned until Monday, February 5th, 1917, at Atlantic City, N. J.

Resumed, before his Honor, E. B. Leaming, Vice-Chancellor, at the Chancery Chambers, Atlantic City, New Jersey, on Monday, February 5th, 1917.

Appearances: William M. Clevenger, Esq., for complainant; Hon. Clarence L. Cole, for Guarantee Trust Company, one of the defendants; Harvey F. Carr, Esq., for John G. Horner, Receiver of the West Jersey Mortgage Company, one of the defendants.

James G. Scull, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says.

By Mr. Clevenger.

Q. Mr. Scull, where do you live?

A. Ventnor.

Q. What public position do you hold?

A. Tax Collector.

Q. Have you inspected the books of your office relative to the unpaid taxes on certain lot numbers that I gave you?

A. I have; yes, sir.

Mr. Clevenger—I might add, if your Honor pleases, that we have agreed with counsel that

rather than have the duplicates brought here, Mr. Scull, who has made an examination of the books and has made notes, may testify from his notes.

Q. Will you produce your notes, Mr. Scull?

A. (Witness complies.)

Q. Referring to block 108 B, will you tell me the taxes for each year, commencing with 1912, covering lot 4, which are unpaid?

A. Taxes 1916, unpaid.

Q. The amount?

Mr. Cole—I want to have noted my former objection to all this testimony, that it is irrelevant to the issue.

The Vice-Chancellor—Yes.

A. $62.45.

Q. How about 1915?

A. 1915 are unpaid.

Q. How much?

A. $56.47.

Q. How about 1914?

A. 1914 were sold to Karl Schaffer.

Q. What was the taxes?

A. The amount paid by Schaffer was $76.09.

Q. How about 1913?

A. 1913 they were also sold to Schaffer.

Q. How much?

A. Schaffer paid $70.65.

Q. How much?

A. $70.65.

Q. 1912 paid?

A. 1912 was paid.

Q. Now, take lot 5 in the same block: Was 1916 paid? If not, how much is due?

A. $62.45.

Q. How much?

A. $62.45.

Q. Was it paid?

A. That was unpaid.
Q. 1915?
Q. $56.47.
Q. Paid?
A. Unpaid.
Q. 1914?
A. Sold to Karl Schaffer.
Q. Taxes?
A. He paid $76.09.
Q. 1913?
A. Sold to Karl Schaffer; he paid $70.65.
Q. Was 1912 paid?
A. 1912 was paid.
Q. Now, for lot 6 in the same block?
A. 1916, unpaid.
Q. The amount?
A. $62.45.
Q. 1915?
A. 1915 was unpaid.
Q. The amount?
A. $56.47.
Q. 1914?
A. 1914 was sold to Karl Schaffer.
Q. Unpaid?
A. Schaffer paid Ventnor $76.09.
Q. 1913?
A. It was also sold to Karl Schaffer.
Q. How much paid?
A. $70.65.
Q. Take lot 7?
A. 1916 taxes unpaid.
Q. The amount?
A. $30.32.
Q. 1915?
A. $117.84.
Q. Unpaid?
A. Unpaid.
Q. Now were the taxes for 1912, 1913 and 1914 on that lot paid, Mr. Scull?

A. Yes, sir.

Q. Now, take lot 11, in that same block, starting it with 1916?

A. 1916 taxes, lot 11, $62.45.

Q. Paid?

A. It is unpaid.

Q. 1915?

A. $56.47.

Q. Paid?

A. It is unpaid.

Q. 1914?

A. 1914 taxes was sold to Karl Schaffer.

The Vice-Chancellor—It is now time for adjournment. Cannot counsel agree that the witness make a written statement and submit it, so that the stenographer can copy it, and save the necessity of his coming back?

Mr. Cole—I guess so.

Cross examination, by Mr. Cole.

Q. Mr. Scull, these bills that you have before you, from which you were testifying, were made from the books of Ventnor?

A. Yes, sir.

Q. And they are correct?

A. They are correct.

Q. As showing the taxes unpaid on these lots about which Mr. Clevenger has asked you?

A. Yes, sir.

Q. Correct?

A. Yes, sir.

The Vice-Chancellor—Now, will you consent that he give the balance of his testimony in a written statement that Mr. Clevenger can hand in this afternoon and the stenographer copy in the record?

Mr. Cole—Yes, that is satisfactory.

Mr. Clevenger—Yes, and I want each lot that has been sold to Karl Schaffer or anybody else indicated as having been sold.

By Mr. Clevenger.

Q. Mr. Scull, what is the rate that is paid by delinquent tax owners?

A. Penalties?

Q. Penalties, yes.

A. Prior to 1915 it was twelve per cent.

Q. Right straight through—either before or after sale?

A. Yes, sir, before or after sale.

Q. Now, after that date what was the rate?

A. 1915 and 1916 is eight per cent.

Q. Before or after sale?

A. That was before and after the sale, eight per cent.

Q. Eight per cent. up to the sale and eight per cent. after the sale since 1915?

A. Yes, sir.

Q. Now, are all of these properties unimproved properties?

A. Yes, sir.

Q. That is, vacant lots?

A. Vacant lots.

At this point a recess was taken until two o'clock P. M.

Hearing resumed after recess, in the presence of the respective counsel heretofore noted.

Mr. Clevenger—If your Honor please, the tax collector of Ventnor left with me tax bills for the years 1912, 1913, 1914, 1915 and 1916, which I would like to offer in evidence in lieu of the books, and I will tabulate them a little later on.

(Said package of bills marked *Exhibit C 21.*)

A. Gertzen, a witness produced in behalf of the complainant, being duly sworn according to law. on his oath says:

By Mr. Clevenger.

Q. Mr. Gertzen, where do you live?

A. Margate City.

Q. What is your official position?

A. Why, tax collector.

Q. Now, Mr. Gertzen, have you made a search of your records showing the unpaid taxes against lot 9 in block 9, lot 16 in block 11, lots 8 and 16 in block 12, lot 7 in 86 A, lots 5, 7, 11, 12 and 13 in 88 A?

A. That is right.

Q. And 13 in 88 B?

A. That is correct.

Q. From 1912 down to and including 1916?

A. Why, these block numbers are all for 1912 as you call them off, but 1914 and 1915 they changed the block numbers and changed all the names.

Q. But it covered the same land?

A. It covered the same land.

Q. Have you made a schedule there?

A. I have got them all on paper here.

Mr. Clevenger—I would like to off this in evidence, if your Honor please, in lieu of the books.

The Vice-Chancellor—That is satisfactory, is it, Judge Cole?

Mr. Cole—I think so.

The Witness—This is an exact copy of the tax books.

Q. Now, Mr. Gertzen, what rate do taxes bear in Margate when they are unpaid—what rate per cent.?

A. Sir?

Q. What rate per cent. do taxes bear in Margate when they are unpaid?

A. Why, twelve per cent. up to 1915, and 1915 it is eight per cent., 1916 it is eight per cent., plus interest.

Q. Have any of these properties been sold for taxes?

A. None of them, not to my knowledge.

Q. And none of these taxes have been paid which you have in your hand?

A. Yes, some of them are on here.

Q. They are not paid as shown on this schedule, are they?

A. Yes, some of them are paid, block 9,—

The Vice-Chancellor——Does your list show which are paid and which are not?

Q. Does your schedule show whether they are paid or unpaid?

A. Yes, sir; there are only three of them on here paid.

Cross-examination, by Mr. Cole.

Q. In those cases where the taxes have been paid on the lots that list will show it?

A. This will show it here,; yes, sir. I took this right off the books.

Q. Now, does that show the assessed value of the lots?

A. I got the assessed values on all of them.

Q. They are on here, too?

A. Yes, sir; I have got the size of the lots and everything, only the size differs some years from others, I don't know what is the reason for that.

Q. In other words, whatever is on the papers you have in your hand is correctly copied from the books of the collector?

A. Yes; I did that last night.

Q. You did the work yourself?

A. Oh, yes; I wouldn't let anybody else do that.

(Said paper marked exhibit C 22.)

Charles H. Jeffries, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says.

By Mr. Clevenger.

Q. Mr. Jeffries, where do you live?

A. Atlantic City.

Q. Are you connected with the Guarantee Trust Company?

A. Yes, sir.
Q. How long have you been connected with it?
A. Ever since they were organized.
Q. And that goes back how many years?
A. Since 1900
Q. What position have you held since that time?
A. Secretary and treasurer.
Q. Now, have you the minute books of the company?
A. I have some of the books.
Q. And have you the minute books of 1910 down to date?
A. Yes, sir.
Q. Will you please turn to the 1910 minutes.
A. (Witness complies.)
Q. I want the names of the directors who served for the year 1910.
A. Shall I read them?
Q. Yes.

The Vice-Chancellor—This is of which company?

Mr. Clevenger—Of the Guarantee Trust Company.

Q. Have you made a schedule from the minutes, Mr. Jeffries, of the directors elected to serve for the Guarantee Trust Company for the years 1910, 1911, 1912, 1913, 1914, 1915 and 1916?
A. 1915.
Q. And 1916?
A. 1915.
Q. Including 1915?
A. Yes, sir.
Q. And have you that there?
A. Yes, sir.
Q. Is that a correct copy from the minutes?
A. Yes, sir.
Q. Now, have you noted on there the officers for those respective years?

New Jersey State Library

A. Yes, sir; and date of election.

Q. And the date of their election?

A. Yes, sir.

Q. And is that a correct copy from the minutes?

A. Yes, sir.

Mr. Clevenger—I would like to offer that in place of taking the time to read them.

(Said schedule marked exhibit C 23.)

Q. Now, Mr. Jeffries, have you culled out from your minutes everything that relates to the purchase of the Young-McShea Amusement Company bonds from the West Jersey Mortgage Company?

A. I have; I have the records here.

Q. Will you produce them and read the records.

A. Do you want the whole minute?

Q. Commence at the earliest and read the whole record, that is, the whole record relating to the Young-McShea Amusement Company transaction.

A. Under date of March 4th, 1915, a motion was made and adopted as follows: "On motion, the officers, in conjunction with the present examining committee, were authorized to offer to purchase from the West Jersey Mortgage Company a sufficient amount of Young-McShea Amusement Company bonds, due 1922, at 95, to produce a sum sufficient to pay off the notes of the West Jersey Mortgage Company, amounting to $54,000, now held by this company." The following meeting of March 8th,—

By Mr. Cole.

Q. What date was that?

A. March 4th, 1915. The following meeting on March 8th, 1915, a motion was made and adopted as follows: "The officers reported that they had, under the authorization given under date of March 4th, purchased $58,000 of the Young-McShea Amusement Company bonds, due 1922, at 95, from the proceeds of which the notes of the West Jersey Mortgage Company, amounting to $54,000, were paid in full."

By Mr. Clevenger:

Q. Now, have you any other record in the minutes of your company relating to the purchase of these bonds?

A. No, sir.

Q. They are the only two minutes that appear?

A. Yes, sir.

Q. Now, have you any minutes relating to the indebtedness of the West Jersey Mortgage Company to the Guarantee Trust Company?

A. I have a couple of committee reports which are engrossed—examining committee reports which are engrossed in the minutes, and in those reports the amount of the West Jersey Mortgage Company paper and the amount of collateral is specified.

Q. Will you tell me what those reports are, with regard to the West Jersey Mortgage Company only?

A. Under date of November 28th, a committee report dated November 24th—

Q. What year?

A. November 28th, 1913, a committee report dated November 24th, 1913, was read and adopted, and in that report this mention is made: "Regarding the inter-relations between the several companies mentioned in the last report, we find that we have loaned to the West Jersey Mortgage Company $43,000 upon collateral consisting of $32,000 in bonds of the Young-McShea Amusement Company, $31,000 mortgages on Ventnor Syndicate property, and $4,000 in Ventnor Syndicate bonds, appraised in all $52,500; total collaterals $67,000, total loans, $52,500."

Q. Now, there is a reference there, Mr. Jeffries, to the—using the word "inter-relations."

A. Inter-relations.

Q. What does that refer to?

Mr. Cole—If you know, Mr. Jeffries. If you do not know do not undertake to say. It is not your report, is it?

A. No, sir.

Mr. Clevenger—No, but it refers to something which has occurred in the report itself. I don't want to delve into the whole report, but want to know what that refers to. I want as much from the report as will show what it refers to.

The Vice-Chancellor—It refers to a previous report, I think.

Mr. Cole—I have no objection to Mr. Jeffries reading whatever is there, but I do not want Mr. Jeffries to put his interpretation upon the language somebody else has used.

The Vice-Chancellor—Well, as he read it I thought it referred to the minutes of a previous meeting.

Q. Just read that again.

A. It says, "Regarding the inter-relations between the several companies mentioned in the last report."

Q. Now, turn to the last report, Mr. Jeffries.

A. That report is as of July 23d, 1913.

Q. What is the mention there with regard to the West Jersey Mortgage Company, the Ventnor Syndicate or the Guarantee Trust Company, that has a bearing upon this report that you just read?

A. Pertaining to the West Jersey Mortgage Company it states, "In the case of the West Jersey Mortgage Company, it is very important that this board should know what mortgages on land in Margate and Ventnor have been guaranteed as to principal and interest by the West Jersey Mortgage Company," Do you want me to read on?

By Mr. Cole.

Q. Anything else that has reference to that?

A. It don't pertain to the West Jersey Mortgage Company, only mentions one or two other companies.

By Mr. Clevenger.

Q. What are the names of the other companies?

A. "As to the West Jersey Securities Company and the Atlantic Title Company, it is important for your board to know how much of their assets is confined to land or mortgages on land in Margate and Ventnor. These three companies are heavy borrowers from the bank, and it is the duty of the board to investigate as to the securities of these companies."

Q. Now, is there anything there relative to the Ventnor Syndicate?

A. Here is further mention concerning the West Jersey Mortgage Company loans: "We hold four notes given by the West Jersey Mortgage Company aggregating $30,000, secured by Ventnor Syndicate mortgages. The committee feel that the aggregate of these four notes should be reduced at least one-half by satisfactory monthly payments, so that the said reduction will cause the aggregate of these notes not to exceed $15,000 by January 1st, 1914."

By the Vice-Chancellor.

Q. This is a report of what committee?

A. Report of our committee on examination, quarterly report.

By Mr. Clevenger.

Q. What date was that?

A. July 23d, 1913.

Q. Does it say how much collateral was with those $30,000 of notes and what it was?

A. Not in this report, apparently.

Q. Does the schedule attached there show it?

A. Not on this report.

Q. On a subsequent report?

A. The one I—

Q. I mean at that meeting.

A. I do not see any further reference to the West Jersey Mortgage Company.

Q. Now, have you seen anything in there relative to the Ventnor Syndicate?

A. It mentions a certain loan to the Ventnor Syndicate.

Q. What does it say?

A. "We also find two notes, one of $2,500 and one of $1,500, of the Ventnor Syndicate, secured by a mortgage of the Willamac Realty Company to the Ventnor Syndicate, and we are advised that the $2,500 note is to be paid at once. If said note of $2,500 is paid at once we are willing to pass a $1,500 note on the same collateral."

Q. Does it say what the collateral is?

A. On the same collaterals.

Q. Now, what action did the board take at that meeting on that report with regard to the West Jersey Mortgage Company?

A. A motion was made as follows: "On motion the officers were ordered to carry out the recommendations of the report as near as they possibly could."

Q. Now, what action was taken on the report of November 28th, 1913?

A. Action upon the same was deferred until the next regular meeting, which was as of December 1st, and then the report of the committee on examination for the third quarter was again read, and, on motion, the same was ordered received, spread upon the minutes and the committee's services discontinued.

Q. Any further action taken relative to the West Jersey Mortgage Company loan?

A. Not shown in here.

Q. Now, have you been able to find any other entries there, Mr. Jefferies, relative to West Jersey Mortgage Company or Ventnor Syndicate matters?

A. Only to the effect that the officers were instructed to ask that where collateral consisted of the stocks of the Ventnor Syndicate, West Jersey Mortgage, West Jersey Securities, &c., that other collateral be substituted.

Q. Now, refer to that and give me the dates.

A. September 30th, 1915.

Q. What is the minute?

A. "On motion it was decided that where stocks of the West Jersey Mortgage Company, West Jersey Securities Company and Ventnor Syndicate are held as collateral in this company other securities or satisfactory endorsements be furnished."

Q. Is that the first entry of that kind in the books?

A. Yes, sir.

Q. And following that?

A. Not concerning that; no, sir.

Q. That is, you mean not concerning—

A. The substitution.

Q. The substitution?

A. Yes, sir.

Q. Are there other minutes relative to the companies?

A.Mr. Clevenger, I just don't know what you mean by that.

Q. Have you any other minutes there that relate to the West Jersey Mortgage Company or the Ventnor Syndicate, in any way, shape or form? If so, give me the date.

A. A motion relative to delivery of certain mortgages to John G. Horner, Receiver of the West Jersey Mortgage Company.

Q. What date?

A. April 20th, 1916.

Q. No, I don't want that. Prior to that date, Mr. Jeffries?

A. I don't know of any.

Q. Now, have you any minutes on your records that in any way relate to the administration of the trust imposed upon the Guarantee Trust Company by virtue of the agreement of September 1st, 1911, executed between the Guarantee Trust Company, the Ventnor Syndicate and the West Jersey Mortgage Company?

A. None that I can find.

Q. Do your minutes show that your Trust Officer or any other officer of the company made a report to the board concerning the administration of that trust?

A. I don't find any, Mr. Clevenger.

Q. Do the minutes of the board show that it was ever reported to the board that the mortgages held under that agreement of trust were in default for interest?

A. The minutes do not so show.

The Vice-Chancellor—There will be some acceptance of the trust, probably, on the face of the instrument, won't there?

Mr. Clevenger—Well, its execution and acceptance is admitted by the pleadings, if your Honor please.

Mr. Cole—These questions concern the administration of it.

Q. Do they show that any report was made to you relative to the taxes being in arrear for the land covered by the mortgages held under that agreement of trust?

A. I think not.

Q. Was there any report of any kind or character ever made to the board by any person or corporation or individual concerning the administration of that trust or the securities held by it?

A. I think there were several.

Q. Now, when were they?

A. I couldn't tell you.

Q. Well, do they appear on the records?

A. No, they do not appear here.

Q. Then the reports were verbal and not recorded?

A. Reports were offered by Mr. Sypherd, our Trust Officer, who is in charge of the trust business.

Q. But not made a part of the minutes?

A. No, not that I can find.

Q. Were they in writing?

A. I don't know, Mr. Clevenger.

Q. Weren't you present?

A. Yes.

Q. Well, how were they made to the board when you were present, verbally?

A. Verbally.

Q. No reference to them in the minutes at all?

A. Sir?

Q. No reference to them in the minutes at all?

A. None that I find.

Q. Do you know when they were made?

A. No.

Q. Don't remember the dates?

A. No.

Q. Do you know what action the board took upon them?

A. I think Mr. Sypherd had better tell you, or Mr. Godfrey.

Q. No, I am asking you, Mr. Jeffries.

A. No, I can't tell you.

By the Vice-Chancellor.

Q. These reports that you have in mind were of what nature?

A. They were reports concerning the handling of the matters by the Trust Officer.

Q. Yes, but covering what feature of the trust? What were the reports about? Defaulted interest, or anything of that kind that you can remember specifically?

A. Concerning mostly the condition of the properties.

By Mr. Clevenger.

Q. What did you say, condition of the properties, Mr. Jeffries?

A. Yes, which the mortgages were supposed to cover.

Q. What do you mean by "the condition of the properties?"

A. Condition of the real estate that the mortgages covered.

Q. That is, you mean that the real estate was depreciating in value?

A. So reported because of the washouts and so on.

Q. That is, the real estate was depreciating in value because of the washouts—so reported to you?

A. So I understood.

Q. How early did that report come in to you?

A. I can't give you the date.

Q. Was it in 1910?

A. I couldn't say just the time. It was about the time of this big storm we had here.

Q. You don't remember when that storm was?

A. No.

Q. Now, what action did the board take upon that report?

A. I don't know what action was taken, but whatever was taken was with the object of re-arranging the collateral.

Q. What collateral?

A. The collateral we had, collateral mortgages.

Q. Well, re-arranging with whom?

A. Re-arranging with—you have reference to the collateral held on the side, now?

Q. I never knew of any collateral on the side.

A. I mean the collateral—you are talking about the West Jersey Mortgage loans, Mr. Clevenger?

Q. I am talking about the agreement of September 1st, 1911; that was the trust agreement upon which the Ventnor Syndicate bonds were issued.

A. I couldn't tell you as to the details of the agreement.

Q. Well, I asked you what action the board took upon that report that the property was rapidly depreciating?

A. At the time I made the answer I had in mind the collateral of the West Jersey Mortgage Company, con-

sisting of mortgages, as to what we had as a part of the collateral against which the bonds were issued I know nothing about it.

Q. Well, now, do you mean that there is a report as to the condition of the mortgages held as collateral by the Guarantee Trust Company for the loan of $54,000 to the West Jersey Mortgage Company?

A. I mean to say that there was various—at various times the collateral that we held was discussed and—

Q. Whose collateral?

A. The collateral that we held in connection with the West Jersey Mortgage Company loans.

Q. Now, have you been talking about the loans of the West Jersey Mortgage Company or have you been talking about reports concerning the collateral held with the trust agreement of September 1st, 1911?

A. I was talking concerning the loans of the West Jersey Mortgage Company.

Q. When you said that there was a report made to your board that the land had depreciated in value because of the washouts caused by the storm, did you refer to the collaterals held by the Guarantee Trust Company with the West Jersey Mortgage Company loans?

A. Held by the Guarantee Trust Company with the West Jersey Mortgage Company loans.

Q. Yes; now, when was that?

A. That was shortly after the tides washed away the beach.

Q. I want the date of that.

A. I don't know that I can give you the date of it.

Q. Wasn't that the minute of July 1st, 1913?

A. Do you mean July 21st?

Q. You had a minute there where they directed a reduction from $30,000 to $15,000. I want to know if you had reference to the collateral with that loan?

A. It must refer to that, Mr. Clevenger.

Q. Then the washout down the beach was as early as 1913, is that right?

A. About that time, I should judge.

Q. As early as 1913, the Guarantee Trust Company, by its minutes, was deeply concerned about the mortgages which it held as collateral on the land down there, is that right?

A. If that was around the date of the storm, yes.

Q. In other words, your interest in those securities commenced with that storm?

A. Shortly afterwards.

Q. And you felt then that there had been a depreciation in land values and mortgage values there?

A. The board of directors did.

Q. And you were a member of the board of directors?

A. No, sir.

Q. Now, Mr. Jeffries, you say that Mr. Sypherd reported verbally to the board two or three times concerning the administration of the trust agreement of September 1st, 1911. Why didn't you enter his report on the minutes?

A. If I remember it correctly, the matters were always discussed by Mr. Sypherd and Mr. Godfrey in general, their opinions asked for, and they considered that the trust agreement was legally drawn and would take care of itself.

Q. But that don't explain why you did not make a minute of what took place?

A. If there had been any motions made, Mr. Clevenger, they would have been in my minutes.

Q. Well, do I understand that no motion was made based upon those verbal reports?

A. Not that I can find a record of.

Q. Then do I understand that no action was taken by the board based upon those verbal reports?

A. There was a general discussion as a rule, and after the opinion of our attorney was given there was no need of any action.

Q. (Question repeated.)

A. Only, as I say, the report of the attorneys, their opinion.

Q. Who was the attorney?

A. Messrs. Godfrey, Giddings & Read. Mr. Godfrey was our legal adviser.

Q. And was Mr. Godfrey giving the opinion then to the board?

A. I think they considered it his opinion.

Q. Then do I understand that there was no action taken upon those verbal reports?

A. So far as I can find in the minutes.

Q. Well, I want to know, Mr. Jeffries, if there was any action taken, not if any action appears by the minutes, but whether there was any action taken upon the reports?

A. None other than what I have explained.

Q. Well, what have you explained?

A. Only the custom of—

By the Vice-Chancellor.

Q. What are these reports, now, you are speaking of that were made orally? Are you dependent upon your memory about it?

A. If questions were asked by any of our directors of either Mr. Sypherd or Mr. Godfrey, the Trust Officer and President, they would explain concerning it, the trust agreement, whatever referred to it.

By Mr. Clevenger.

Q. Now, Mr. Jeffries, going back again, I would like to know what reports were made to the board by word of mouth concerning the administration of the agreement of September 1st, 1911?

A. I can't recall.

Q. Now, I want to know what action was taken upon those reports that were made to the board by word of mouth?

A. I can't recall.

Q. Now, I would like to know what recommendations Mr. Sypherd and Mr. Godfrey made to the board by word of mouth relative to the administration of the trust agreement of September 1st, 1911?

A. Questions were put to these officers.

Q. What questions?

A. Certain questions were put to them as to our position.

Q. Well, what questions?

A. I can't recall them.

Q. Well, what answers were made by Mr. Sypherd and Mr. Godfrey to the board?

A. I can recall on one or two instances that the trust agreement was read before the board, parts of it.

Q. Now, I ask you again, what answers were made to the board by Godfrey and Mr. Sypherd?

A. I can't recall those, Mr. Clevenger.

Q. Then all that you remember about these verbal reports which were made to the board about the trust agreement of September 1st, 1911, is that on two occasions the trust agreement was read to the board?

A. I won't say fully read, I think parts of it were discussed and read.

Q. On how many occasions—one or two?

A. I can't say the number.

Q. You don't remember?

A. No

Q Now, on what dates was this trust agreement read to the board?

A. I can't give you that.

Q. About when?

A. I can't recall, Mr. Clevenger.

Q. Was it before or after the wash-out?

A. Oh, it is after.

Q. It was the time when you had become concerned about valuations down there, was it not?

A. I should imagine so.

Q. Well, aren't you sure it was?

A. Yes; I am positive.

Q. Now, you mentioned a while ago, Mr. Jeffries, about some collateral on the side concerning this agreement of September 1st, 1911. What do you mean by that?

A. I only mean that—whatever securities were held under the trust agreement.

Q. Other than the minutes which you have read to me have you any minute of any report or action taken upon the Young-McShea Amusement Company collateral held for the loans of the West Jersey Mortgage Company?

A. No.

Q. Other than the minutes which you read to me have you any minutes of the company calling the loans of the Ventnor Syndicate or the West Jersey Mortgage Company because of the depreciating condition of the collateral?

A. No.

Q. Now, can you give me any reason, Mr. Jefferies, why you made no minute of the report of Mr. Godfrey and Mr. Sypherd concerning the administration of the trust under the agreement of September 1st, 1911?

A. I think there was no action taken, no motion made.

Q. Were there ever any committee reports to the board relative to the administration of the trust of September 1st, 1911?

A. Not that I recall.

Q. Do you have an executive committee in your bank?

A. I don't know that you would term it an executive committee.

Q. Have you anything similar to an executive committee?

A. Not for past years.

Q. Have you had any such committee since 1910, or anything that savors of an executive committee since 1910?

A. Not that I know of.

Q. Why did you say, "I don't know that you would call it an executive committee"? What did you mean by that? What have you other than the board that attends to the affairs of the bank?

A. Your officers.

Q. Was all of the affairs of the bank taken care of by the board of directors exclusively?

A. It depends on just what you mean by that.

(Question repeated.)

A. Yes, sir.

Q. Is there no particular member of the board or any officer of the bank authorized to take action during the vacation of the board—that is, between meetings?

A. Well, in a general way, yes.

Q. Who?

A. The officers.

Q. And who are the officers?

A. At the present time?

Q. No, what officers do you mean?

Q. Well, who are all the officers?

A. All of the officers.

A. President, vice-president, trust officer and treasurer.

Q. They are the only four?

A. Yes.

Q. Now, do they act individually or as a body?

A. In some cases they might act individually.

Q. Do they keep minutes of what they do?

A. Not that I know of.

Q. Have you any other minutes other than the minutes of the board of directors which you produced here?

A. No, sir.

Q. The two books I find have below "Minute book" "No. 2" and "No. 3"—is that right?

A. There is 1, 3 and 4.

Q. Where is minute book No. 2?

A. It is in the vault.

Q. Tell me the period of time covered by minute book 1?

A. November 8th, 1899.

Q. To when?

A. October 20th, 1904.

Q. Now, what is No. 3?

A. No. 3, June 10th, 1909, February 27th, 1913.

Q. 4?

A. March 3d, 1913, to date.

Q. What period of time does No. 2 cover, Mr. Jeffries?

A. It would commence after October 20th, 1904, up to June 10th, 1909.

Q. And there would be nothing in that minute book concerning affairs in the bank after June 10th, 1909?

A. No.

Q. Now, are the by-laws of the Guarantee Trust Company in your minute book, Mr. Jefferies?

A. Yes, sir.

Mr. Clevenger—Judge Cole, may he make me a copy of those by-laws, which I will offer in evidence, rather than to take the time to read them in?

Mr. Cole—Yes.

Q. Do that, Mr. Jefferies—make me a copy of the by-laws.

A. Yes.

(Said by-laws considered marked *Exhibit C 24.*)

By Mr. Carr.

Q. Mr. Jeffries, did your company take any action whatever with regard to protecting the interests of the bondholders under the agreement of the first day of September, 1911, after they had learned that there was a large depreciation of value in real estate at Ventnor and Margate?

A. These matters are practically managed by our trust officer and do not come under my jurisdiction.

Q. You are present at all meetings of the board of directors?

A. Nearly all.

Q. And record the minutes of the board, do you not?

A. Yes, sir.

Q. I now ask you whether at any meeting of the board of directors of the Guarantee Trust Company any action was taken whatever for or toward the protection of the bondholders under the agreement of September 1st, 1911, after your company had learned that real estate was a precarious security in Margate and Ventnor?

A. None that I know of.

Q. And you were present at practically every meeting of the board, were you not?

A. I won't say every one.

Q. I say, at practically every meeting?

A. Yes.

Q. And was any definite report or recommendation made by any officer of the Guarantee Trust Company having for its object the protection of the rights of the bondholders under the agreement of September 1st, 1911?

A. None that I know of.

Q. And the report of the examining committee deals with the securities of the same class, namely, bonds at Margate, but bonds which had been pledged with the Guarantee Trust Company as security for loans made by it to the West Jersey Mortgage Company or the Ventnor Syndicate, isn't that right?

A. The committee is presumed to examine the trust department as well as the banking department.

Q. Did they do so?

A. They always have.

Q. Did they make any report whatever with regard to the securities which you were holding in trust under this agreement of September 1st, 1911?

A. None that I can find.

Q. Well, regardless of what you can find, do you know of any report that they made affecting the trust securities under the agreement of September 1st, 1911?

A. I do not.

Q. Their report was confined solely to securities that were pledged to the Guarantee Trust Company for loans made by the Guarantee Trust Company to the West Jersey Mortgage Company and other companies; isn't that true?

A. According to the reports—minutes, yes.

Q. And the discussion that related to the agreement of September 1st, 1911, and not recorded by you, related to the legal questions involved under the agreement of September 1st, 1911, rather than to the security of the bondholders, isn't that true?

A. As near as I can recall.

Q. And they received the opinion of Mr. Godfrey that the Guarantee Trust Company's position was safe under the agreement, is that true?

A. Well, parts of the trust were read and explained to the board by Mr. Godfrey or Mr. Sypherd, I don't know which, to make the members be familiar with the trust and our duties under the trust.

Q. And then it was reported by Mr. Godfrey or Mr. Sypherd that the company's position was safe?

A. They answered such questions as were asked.

Q. Can you answer my question, please? (Repeated.) And then was it reported by Mr. Godfrey or Mr. Sypherd that the company's position was safe? That is, the Guarantee Trust Company.

A. Either by Mr. Godfrey or Mr. Sypherd.

Q. Was any report whatever made by either Mr. Godfrey or Mr. Sypherd, or any one else, that the position of the bondholders was safe?

A. I don't recall.

Q. Was there discussed any measures whatever for the protection of the bondholders under this agreement after it became known that the securities were hazardous?

A. Not to my knowledge.

Q. Was the question of calling upon the Ventnor Syndicate to substitute other securities ever discussed by the board?

A. I don't know.

Q. Was the question of requesting the Ventnor Syndicate to pay the taxes in arrears for the years 1913, 1914, and 1915, or any of them, ever discussed before the board?

A. I don't know.

Q. I didn't hear that.

A. I don't know.

Q. Well, you were there, weren't you?

A. I wasn't always there.

Q. Well, at any meeting at which you were present—

A. No, sir, not that I know of.

Q. There was no such discussion, was there?

A. There was discussion concerning the arrearage of taxes, but as to whether it was covering the properties that these mortgages covered I can't say.

Q. Let me ask you this one question: Do you recall any proposition or motion or discussion before your board that had for its object the requirement that the Ventnor Syndicate pay the taxes in arrears on these properties?

A. I can't recall.

Q. You mean you can recall none such?

A. None such.

Q. Was there any discussion having for its object a request that the Ventnor Syndicate furnish additional collateral security after the security held had become impaired by reason of the storm? I mean the securities held under the trust agreement?

A. I don't recall.

Q. Do you mean that you can recall none such?

A. I recall none such.

Q. I ask you, now, whether you can recall any measure, either adopted or discussed, which had for its object the protection of the interests of the bondholders after the storm of 1913?

A. I don't recall any.

Q. Do you mean that you can recall none such?

A. Yes, sir.

By Mr. Clevenger.

Q. Did you attend to the payment of the $54,000 of notes of the West Jersey Mortgage Company and the purchase of the collateral or Mr. Sypherd?

A. I issued a treasurer's check to the West Jersey Mortgage Company, received the securities, attended to the payment of the notes, with the assistance of my note clerk.

Q. Now. when you did that that got rid of every obligation that the West Jersey Company owed the Guarantee Trust Company, didn't it?

A. That is, with their note, yes, sir.

Q. And that was good business, was it not, Mr. Jeffries?

A. I think the board of directors thought so.

Q. And you thought it was a good thing, too, didn't you?

A. Yes.

Q. The bank would have been derelict in its duty to its stockholders if it hadn't done it, wouldn't it?

Mr. Cole—I object to that. It is for the Court to determine. This witness has testified to facts. He is only the treasurer of the company, he is not a director.

The Vice-Chancellor—I do not think it is competent.

Q. Mr. Jeffries, did you ever draw a stockholder's check to the order of the Ventnor Syndicate?

The Vice-Chancellor—What kind of a check?

Q. I mean a treasurer's check to the order of the Ventnor Syndicate, covering the mortgages made directly to the Guarantee Trust Company and attached to the schedule forming a part of the agreement of September 1st, 1911? Have you that original agreement, Mr. Sypherd? (Paper handed to counsel.) The mortgages in question are attached to the original agreement just produced by Mr. Sypherd, the Trust Officer of the company.

A. I don't recall giving a check.

Q. Do you mean by that that you never paid out the money to the Ventnor Syndicate secured by those mortgages?

A. I don't recall.

Q. Well, do you say that you never did do it?

A. I say I can't recall.

By the Vice-Chancellor.

Q. Well, when you say that, are you referring now to what you personally did or what your institution did? You don't doubt the money was paid to the Ventnor Syndicate, do you?

Mr. Clevenger—Oh, no, I don't think it ever was. There is no dispute about that.

The Vice-Chancellor—Well, bonds were sold, weren't they?

Mr. Clevenger—Oh, the bonds were sold, yes, sir, but I am speaking about the mortgages deposited as collateral. You see, there were mortgages made directly by the Ventnor Syndicate to the Guarantee Trust Company as trustee.

The Vice-Chancellor—The mortgages were executed by the Ventnor Syndicate before the bonds were issued.

Mr. Clevenger—Exactly so.

The Vice-Chancellor—But the money reached the Ventnor Syndicate when the bonds were sold, didn't it?

Mr. Clevenger—No, not from our point of view—the money reached the Ventnor Syndicate from the sale of the bonds, probably yes, but what I am speaking about is whether the Guarantee Trust Company ever advanced any money on the mortgages made directly to it as trustee.

The Vice-Chancellor—I do not suppose it was intended they should.

Mr. Clevenger—You see, there were two classes of mortgages, there were mortgages assigned to the Guarantee Trust Company and mortgages made directly to them.

The Vice-Chancellor—I understood a few were made direct.

Mr. Clevenger—All but two were made direct.

The Vice-Chancellor—It is not a matter of dispute, is it?

Mr. Clevenger—I don't think so, but I want it clearly on the record. It is admitted by the defendants that the Guarantee Trust Company did not give its check or money to the Ventnor Syndicate in return for the bonds and mortgages made directly to the Guarantee Trust Company as trustee and noted in the schedule attached to the agreement of September 1st, 1911.

The Vice-Chancellor—Nor did it give money, I suppose, for the two mortgages that were assigned?

Mr. Clevenger—I am willing that that should be stipulated also.

The Vice-Chancellor—That is so, isn't it?

Mr. Clevenger—Yes.

Mr. Cole—There is no question about those mortgages all going to the Guarantee Trust Company in trust.

The Vice-Chancellor—They were not the Guarantee Trust Company mortgages, they were the Ventnor Syndicate mortgages, they were simply a trust.

Mr. Clevenger—Mr. Sypherd, did you attend to the collection and disbursement of the trust moneys?

Mr. Sypherd—Yes.

Cross-examination, by Mr. Cole.

Q. Mr. Jeffries, give me the names of the directors of the company who were present at the meeting of March 4th, 1915?

A. Messrs. Godfrey, Somers, Wahl, Parker, Pollard, Morse, Adams, Beyer, Tietjen, Bartlett, Sypherd, Hallman and Scull.

Q. Those who were present at the meeting of March 8th, 1915?

A. Messrs. Sypherd, Faunce, Somers, Parker, Pollard, Morse, Tietjen, Beyer, Bartlett, Hallman, Mathis and Scull.

Q. Those who were present November 28th, 1913?

A. Messrs. Godfrey, Faunce, Somers, Parker, Pollard, Morse, Adams, Beyer, C. D. White, Robins, Tietjen, Bartlett and Sypherd.

Q. July 23d, 1913?

A. July 23d or 21st?

Q. 21st, then.

A. Messrs. Godfrey, Eldredge, Somers, Wahl, Parker, Pollard, White, Beyer, White, Robins, Bartlett and Sypherd.

Q. You mentioned two Whites, one C. D. and the other D. S.?

A. Yes, sir.

Q. Now, those present September 30th, 1915?

A. September 30th?

Q. Yes.

A. Messrs. Godfrey, Eldredge, Wahl, Parker, Pollard, Beyer, Tietjen, Hallman, Mathis and Scull.

Q. Now, Mr. Jeffries, in answer to Mr. Clevenger's question, I think you said that in a general way the officers attended to some affairs of the trust company. Just what do you mean by that?

A. The officers purchased paper between meetings, which was reported to the board of directors and their action confirmed.

Q. Well, what else, in a general way, do they do that you had in mind in answer to Mr. Clevenger's question?

A. Well, they attend to most everything that an officer is required to attend to.

Q. Well, what? What would they do?

A. Execute papers of every kind.

Q. You mean agreements between the Trust Company and somebody else?

A. Releases of mortgages, assignments of mortgages.

Q. Do they do that without authority of the board of directors?

A. I think that authority has been given by the board of directors.

Q. Eh?

A. I think that authority has been given by the board of directors.

Q. Well, what else, in a general way, are the officers authorized to do that you can think of?

A. Attend to details of most every kind.

Q. Is their work that you speak of in a general way merely details or is it the substantial part of the business of the Trust Company?

A. It is the substantial part.

Q. Do you mean that, Mr. Jeffries—that the officers attend to the substantial part of the business of the Trust Company?

A. Attend to that which is required between board meetings.

Q. Do these officers do anything either without the authority of the directors in the first instance or their ratification afterwards?

A. No, sir.

Q. Is there any committee of any sort in the Guarantee Trust Company that has any authority to bind the board of directors by what they do without their authority?

A. No, sir.

Q. Now, is there any reason why you did not produce minute book No. 2?

A. No, sir, excepting that I did not find a thing there pertaining to the questions Mr. Clevenger had written me about.

Q. How many bonds of the Young-McShea Amusement Company had the Guarantee Trust Company as security for the West Jersey Mortgage Company loan on March 4th, 1915?

A. I do not believe I have got a record here that will show how many we had.

Q. Do you know without regard to the record the aggregate amount of bonds that the Trust Company held?

A. As of March 4th?

Q. Yes, the time of this settlement.

A. No, sir; I have no record here.

Q. You don't know personally how much they were?

A. No, sir.

Q. Now, at a previous hearing in this cause the Receiver produced certain notes that were collateral in form, made by the West Jersey Mortgage Company, but in the body there was no collateral named. Can you explain how that was, what that means?

A. I know that the board of directors was trying to get the West Jersey Mortgage Company to substitute other collateral, and in their efforts in trying to get that they held up such renewals as were offered, the West Jersey Mortgage Company offering their check in pay-

ment of the interest in some cases, if I remember correctly, but the notes were all held up, as we were anxious to get additional security or other security.

Q. Well, is that the reason that these notes did not show the collateral that was given at the time?

A. Yes.

Q. Now, at the time of this settlement on March 4th, 1915, when these bonds of the Young-McShea Amusement Company were purchased, what other collateral had the bank beside these bonds?

A. There were some mortgages?

Q. What became of those?

A. They were handed back to the officers of the West Jersey Mortgage Company.

Q. Anything else that they held that was surrendered?

A. All that was held was surrendered at the time that the settlement took place.

By the Vice-Chancellor.

Q. Except the bonds that were taken over?

A. Except the bonds, they were purchased and treasurer's check issued.

By Mr. Clevenger.

Q. Have you the list of everything that was held?

Mr. Sypherd—I have a list of everything that was held.

By Mr. Cole.

Q. Now, Mr. Jeffries, did you yourself record the minutes of the Guarantee Trust Company?

A. Yes.

Q. How did you write them down—in longhand or shorthand?

A. Longhand.

Q. At the time the directors were meeting?

A. Yes, sir.

Q. And afterwards recorded them in the book?

A. Yes, sir.

Q. Well, now, in these opinions that you have expressed in answer to Mr. Clevenger's questions and Mr. Carr's questions, when nothing appears on the minutes, are you expressing your own opinion and your own recollection or are you expressing the opinion of the board of directors?

A. I am expressing my own opinion.

Q. Had there ever been, so far as you can recall, any question about the value of the mortgages and other securities of the West Jersey Mortgage Company or the Ventnor Syndicate before this big storm to which you referred?

A. No, sir.

By Mr. Carr.

Q. Mr. Jeffries, when I asked you as to the proceedings of the board of directors other than those recorded in the minute books I was asking you for your recollection and not your opinion. Did you so understand it?

A. My recollection?

Q. Yes, your recollection, and not your opinion?

A. Recollection, yes.

Q. And your answers were as to the best of your recollection, isn't that true?

A. Yes, sir.

Mr. Clevenger—I want to offer those minute books in evidence, if your Honor please.

(Said books marked C 25, C 26 and C 27, respectively, in the order of number.)

(By agreement of counsel the next witness was called out of turn.)

William H. Carroll, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says.

By Mr. Cole.

Q. Mr. Carroll, where do you live?

A. Ventnor.

Q. What is your business?

A. Real estate.

Q. How long have you been engaged in that business?

A. About fifteen years.

Q. Do you know the property at Chelsea avenue and the beach, at one time referred to as the Fishblatt property?

A. Yes, sir.

Q. Did you negotiate with Mr. Godfrey for the purchase of that property?

A. Yes, sir.

Q. About when was that?

A. That was last summer a year ago.

Q. Did you make him an offer for the property?

A. Yes, sir.

Q. How much did you offer him for it?

Mr. Clevenger—I object to that; that is not evidence, if your Honor please.

The Vice-Chancellor—I have forgotten what the testimony was on this subject now.

Mr. Cole—Why, the West Jersey Mortgage Company had a second mortgage on the Fishblatt property. The first mortgage was foreclosed, and the West Jersey Mortgage Company, as I remember it, bought it in. They afterwards sold it at a public sale, this property, and realized a certain sum of money. All that was testified to, and the receiver was allowed to testify how much he realized net to himself. Now, I objected to the testimony because it was not within the issue, but it went in, and the only inference that I could draw from it was that they proposed to argue that the West Jersey Mortgage Company had in some way lost a lot

of money by reason of owning this mortgage on the property. Now, I propose to show by this witness that he offered Mr. Godfrey, at that time the president of the Ventnor Syndicate the owner of the property, $225,000 for it, and that Mr. Godfrey refused, saying he considered the property worth $275,000, and that subsequently this very property, within less than two years, sold for the amount the testimony already shows.

The Vice-Chancellor—Well, let it go in, then.

Q. (Repeated)—How much did you offer him for it?

A. $225,000.

Q. Did he accept it or refuse it?

A. Refused it.

Q. On what grounds?

A. Said the property was worth at least $275,000.

Q. Now, do you know about the recent sale?

A. Yes, sir.

Cross-examination, by Mr. Carr.

Q. When was that offer, Mr. Carroll?

A. That was in the summer of 1914—this last summer a year ago.

Q. Is the property worth more or less to-day?

A. It is worth a whole lot less to-day.

Q. How much less?

A. Well, I think what we bought it for is all it is worth.

Q. You bought it, did you?

A. Yes, sir.

Q. What did you buy it for?

A. $12,250 above the fixed charges and $100,000 mortgage.

By the Vice-Chancellor.

Q. That would make a total of how much?

A. About $151,000.

Q. And the amount that you offered was how much, did you say?

A. $225,000.

By Mr. Carr.

Q. Did you buy it in at receiver's sale?

A. I represented a client, yes, sir.

Q. Mr. Wanamaker?

A. Well, I don't know as I want to say who I represented.

By Mr. Cole.

Q. You have said that it is worth much less to-day. What is the reason for that?

A. General conditions.

Q. Do you mean general dull real estate conditions?

A. Yes, sir.

Q. The real estate market has been going down for some years?

A. Yes, sir.

Q. When did that begin, about?

A. Three years ago.

Q. That is the only reason?

A. Well, a piece of property like that is very hard to handle, it takes considerable money.

Q. But the truth is there has been a general going backward of real estate all over this island, hasn't there, in the last three years?

A. Yes, sir.

Q. That takes in Ventnor and Margate?

A. All over.

By the Vice-Chancellor.

Q. And this part of the city, up here, too?

A. I would say so.

Q. What did you say?

A. I would say so; of course things have been much better in the last six months than they have been in the last three years.

Q. Did you say you would say so or wouldn't say so?
A. I will say so.

By Mr. Cole.

Q. Perhaps you might tell us, Mr. Carroll, whether you think there has been a greater depreciation down below than up above here?

A. Well, Ventnor and Margate have all been washed down; all the people that owned property on the south side of Atlantic avenue have lost, mortgages have been called.

Q. And hasn't there been a great deal of unimproved property that could not be digested down there? Isn't that one of the reasons?

A. Yes, sir.

Q. Too much land unimproved?

A. A great deal of it.

Q. And that had something to do with the depreciation?

A. A great deal.

Q. There has been no market for it?

A. No.

By Mr. Carr.

Q. Wasn't there more undigested property down there in 1913 than there is now?

A. Quite a lot of it there.

Q. How?

A. Quite a lot of them now too.

Q. Well, there was more then than now?

A. Well, I guess there is a lot more now than there was then.

Herman M. Sypherd, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Clevenger.

Q. Mr. Sypherd, where do you live?

A. Atlantic City.

Q. Are you a member of the bar of New Jersey?

A. Yes.

Q. How long have you been such?

A. Fifteen years.

Q. What office do you hold in the Guarantee Trust Company?

A. Vice-President and Trust Officer.

Q. How long have you been Trust Officer?

A. Since 1903, I think.

Q. How long have you been Vice-President?

A. Since 1913.

Q. You presently hold those offices?

A. Yes.

Q. Are you a member of the board of directors?

A. Yes, sir.

Q. How long have you been a member of the board of directors?

A. Since 1913.

Q. And of course you are a stockholder in the institution?

A. Yes.

Q. Were you a stockholder in the Ventnor Syndicate?

A. Yes, in a limited way.

Q. Member of its board?

A. No.

Q. Were you a stockholder in the West Jersey Mortgage Company?

A. Yes.

Q. Member of its board?

A. Yes.

Q. What office did you hold in the West Jersey Mortgage Company?

A. Assistant secretary.

Q. Were you on the executive committee?

A. Yes.

Q. How long were you on the executive committee?

A. My recollection is from the time of the organization.

Q. How long did you continue on that committee?

A. I continued on the committee as long as I was a member of the board.

Q. How long did you continue on the board?

A. Until—I think it was—January, 1915, according to my recollection.

Q. How long did you continue as assistant secretary?

A. Until September, 1914.

Q. You resigned then, didn't you?

A. Yes, sir.

Q. Didn't you, as a matter of fact, resign as assistant secretary on August 19th, 1914?

A. I probably did, it was in August or September, along there somewhere, I don't recall the exact date.

Q. And at the same time that you went out as assistant secretary you went out of the executive committee and then the board?

A. Well, I don't recall whether I continued to serve on the board or no; I think I just simply stayed in until the next election in January, I am not positive about that, I think my resignation came in in time for the annual meeting.

Q. Of January, 1915?

A. Of January, 1915. That is purely from recollection, I haven't looked it up to see, but I think so.

Q. Now, have you the trust agreement between the Guarantee Trust Company and the Ventnor Syndicate and the West Jersey Mortgage Company, dated September 1st, 1911?

A. I have (producing paper).

Q. Is that the original copy?

A. That is the original copy.

Q. Has that annexed to it the schedule of collateral?

A. Mortgages, yes, it has.

Q. Was that ever recorded at Mays Landing?

A. No.

By the Vice-Chancellor.

Q. What is this paper?

A. The collateral agreement securing the bonds issued.

Mr. Clevenger—I offer that in evidence, including the schedule and everything.

(Said paper marked *Exhibit C 28.*)

By Mr. Clevenger.

Q. Now, with regard to the West Jersey Mortgage Company, Mr. Sypherd, during the time you were on that executive committee, who were the members?

A. Mr. Faunce, Mr. Godfrey, Mr. Hackney, Mr. Adams.

Q. That is C. J. Adams?

A. C. J. Adams. I guess that is all.

Q. That makes five including yourself?

A. Five.

Q. How many were a quorum?

A. Three.

Q. Could the majority do business?

A. Could the majority do business?

Q. Yes, a majority of the quorum?

A. Yes, I assume so; now, I don't know whether the by-laws cover that or not.

Q. Now, Mr. Sypherd, taking up first the $54,000 of indebtedness from the West Jersey Mortgage Company to the Guarantee Trust Company, what collateral did the Guarantee Trust Company hold for the payment of that $54,000 in notes?

A. We had $42,000 of the bonds of the Young & McShea Amusement Company, due 1922.

By the Vice-Chancellor.

Q. How many?

A. $42,000.

Q. The same amount as the loan?

A. No, the loan was $54,000. We held $4,000 first mortgage bonds of the Ventnor Syndicate, a part of the trust mortgage, or part of the bonds secured by the trust mortgage on the Fishblatt property which has just been in question. We held $44,000 of first mortgage bonds of the Ventnor Syndicate. That makes a total collateral of $90,000.

Q. Which were your last bonds? What kind of bonds?

A. First mortgage bonds of the Ventnor Syndicate, —first mortgages, not first mortgage bonds.

By Mr. Clevenger.

Q. First mortgages?

A. First mortgages; the $4,000 were first mortgage bonds.

Q. Then when the records of the West Jersey Mortgage Company show that you only had $38,000 of first mortgages of the Ventnor Syndicate it states what is not correct?

A. I can't say, I only have this list that was furnished to me by the note clerk showing the mortgages that he had in his possession. I was under the impression until a few days ago that the amount of the mortgage was $31,000, but evidently we had more than I thought.

Q. Was there among the first mortgages $8,000 of the West Jersey Mortgage Company's bonds and mortgages?

A. They never had any bonds and mortgages so far as I know.

Q. Now, when you purchased from the West Jersey Mortgage Company the bonds of the Young-McShea Amusement Company you purchased $58,000, did you, instead of $42,000?

A. We did.

Q. The $16,000 difference was not held by you as collateral?

A. No.

Q. Now, at the same time did you deliver up to the West Jersey Mortgage Company the four Ventnor Syndicate bonds and the $44,000 first mortgages?

A. We did, we delivered all the collateral that we held, except, of course, the $42,000 of Young & McShea bonds which we already had.

Q. Well, why did you surrender the $44,000 first mortgage bonds and mortgages and the $4,000 of Ventnor Syndicate bonds for the $16,000 of Young & McShea Amusement Company bonds?

A. Well, we had been endeavoring to have the West Jersey Mortgage Company substitute satisfactory collateral for the loans that we had; we were not satisfied with the mortgages as being proper collateral for us to hold in connection with their loan, and we insisted upon their making some change, and, as Mr. Jeffries, the treasurer, has explained, a number of their notes were in what we call our hold-over account, because we were not satisfied to accept the renewals based upon the same class of collateral that we formerly held, and we agreed to purchase from them the additional amount of these bonds so that they would be in funds to pay off all our loans and put us in a condition where we had no loans whatever and no question about the class of the collaterals.

Q. And you deemed that an advisable thing to do?

A. We did.

Q. And you included?

A. Yes, sir.

Q. Good judgment?

A. Yes, sir; it was absolute good judgment in our judgment, yes.

Q. And in your judgment?

A. In my judgment, yes.

Q. Now, what was the matter, Mr. Sypherd, with that $48,000 worth of Ventnor Syndicate bonds and mortgages?

A. The matter with those bonds was simply this: That that land had been injured down the beach by storms and the value of the land had been somewhat deteriorated. Probably the mortgages were ample to secure us, I assume they were, but they weren't just the kind of collateral we wanted and we got something else.

Q. In other words, you had the power to get something else and you were going to get it?

A. Whenever we find a loan that we do not think is amply secured we take what measures we deem proper to get proper collateral.

(Question repeated.)

A. You have the answer.

(Question repeated.)

Mr. Clevenger—I assume that can be answered yes or no.

Mr. Cole—Except Mr. Clevenger interjects into the question that he has the power.

The Vice-Chancellor—I think it is a question of a nature that entitles him to answer it with an explanation.

Mr. Clevenger—I think he can answer it yes or no and make the explanation then, if he chooses.

Mr. Cole—Then I ask that the question be reframed, it is not proper to say "you had the power."

The Vice-Chancellor—Answer in your own way, if you cannot answer it yes or no.

Q. What is your answer, Mr. Sypherd?

A. You have my answer to the question.

Q. You have no other answer to that?

A. No.

Q. Now, Mr. Sypherd, the $48,000 worth of bonds and mortgages and Ventnor Syndicate bonds, were they worth more than the $16,000 of Young & McShea Amusement Company bonds?

A. I don't know.

Q. What do you think about it?

A. I don't think. We preferred the other collateral.

Q. Why did you get rid of the $48,000 worth of bonds and mortgages for—

A. We preferred to buy bonds.

By the Vice-Chancellor.

Q. You said you preferred other collateral. Didn't you buy the bonds?

A. I was wrong, Vice-Chancellor. We preferred to buy the bonds in, have those as assets, rather than to have the loan in the condition in which it was.

By Mr. Clevenger.

Q. And that was good banking business, was it?

A. Absolutely.

Q. Now, what prompted you, Mr. Sypherd, to call those loans of the West Jersey Mortgage Company?

A. I have explained that to you in my previous answers. I told you that we did not feel that these mortgages were quite as good a form of collateral as we ought to have with the note.

Q. Didn't the financial situation of the West Jersey Mortgage Company enter into it in any way?

A. It had nothing to do with the security we had, the West Jersey Mortgage Company might not be worth a cent, we had ample collateral for our loan, we had been secured.

Q. You were a member of the board of the West Jersey Mortgage Company?

A. I was—not at that date I wasn't.

Q. But you had been?

A. I had been, yes.

Q. And you knew the West Jersey Mortgage Company was in a desperate financial condition, didn't you?

A. No, I did not.

Q. Didn't you think it was—

A. No.

Q. —when you got out of the institution?

A. No.

Q. Why did you get out?

A. Well, I had several reasons for it.

Q. What were they?

A. In view of the fact that there was considerable criticism of the mortgages down the beach and the guarantees that were outstanding, and my connection with the bank was such that I felt that my interests were more largely centered in the bank than they were in the Mortgage Company, I felt it a duty on my part to divorce myself from anything that might cause any reflection whatever upon the bank or my connection with it.

Q. Is that the only reason?

A. That is all.

Q. Did you tell the West Jersey Mortgage Company that reason at the time?

A. I think so. I think I told Mr. Godfrey that, as president.

Q. And that is the only reason you had for resigning?

A. Yes.

By the Vice-Chancellor.

Q. Your resigning from the West Jersey Mortgage Company was when with reference to the time these bonds were taken over?

A. Before, I was not a member of the board when the bonds were taken over.

By Mr. Clevenger.

Q. Now, at the time you resigned, Mr. Sypherd, you were the assistant secretary, weren't you?

A. Yes, sir.

Q. And you wrote the minutes of the company, didn't you?

A. At that time, yes.

Q. Now, if that was the only reason why you resigned why did you say in the minutes, "Mr. Herman M. Sypherd then stated that he did not feel that the business of the company required his services as assistant secretary and he thereupon tendered his resignation to take effect September 1st, 1914"?

A. Well, I don't recall the circumstances, but in the first place that was true.

Q. Which?

A. The statement there is true, that the company did not need my services as assistant secretary, because a secretary was there, one secretary was ample and sufficient to take care of all its business.

Q. And was the other statement true, too?

A. Absolutely.

Q. Why didn't you put it in the minutes?

A. Oh, I don't know why I didn't put it in the minutes; it wasn't necessary; I could have reason without putting it on the minutes.

Q. That is the only explanation you have on that?

A. That is all.

Q. Now, did you think it was important, Mr. Sypherd, for the Guarantee Trust Company to get rid of those mortgages which you held as collateral for that $42,000 due from the West Jersey Mortgage Company?

A. I always think it is important for the Guarantee Trust Company to strengthen its collateral if it feels that the collateral with the loan needs strengthening.

(Question repeated.)

The Vice-Chancellor—Can you answer that yes or no? Did you think it important?

A. I thought it important to have other collateral substituted. I don't think that, from the standpoint of the Guarantee Trust Company, however, that they would have had a loss on the amount which was due them from the West Jersey Mortgage Company over

and above the collateral, consisting of the $42,000 Young-McShea Amusement Company bonds and the $4,000 first mortgage bonds of the Ventnor Syndicate, but despite that it is sometimes better to change your collateral, strengthen it despite that, so that your collateral would show a class of securities that were subject to no criticism whatever, regardless of whether the criticism was a justifiable one or not.

Q. Then your judgment is that the $4,000 of Ventnor Syndicate bonds and the $42,000 of Young-McShea bonds was equivalent to the amount of money loaned?

A. No, I didn't say that.

Q. Yes, you did.

A. I think you are wrong; I didn't say that at all, because that would not have been sufficient to have even,—at least, the par value of those securities wouldn't have been near as much as the amount of our loan.

Q. In your answer, did you also intend to include the $44,000 of first mortgages?

A. I don't see the purport of your question. What do you mean by it?

By the Vice-Chancellor.

Q. In naming the securities, the collateral, which you had, you omitted the $44,000 mortgages.

A. I said this, at least I intended to say it: That I do not believe that the Guarantee Trust Company would have sustained a loss if it had retained and relied upon just exactly the collateral that it had at the time the loan was paid off.

By Mr. Clevenger.

Q. It is what you didn't say before.

A. That is what I intended to say.

By the Vice-Chancellor.

Q. In naming them you did not enumerate all the collateral.

A. I beg your pardon. I thought I did.

By Mr. Clevenger.

Q. Now, you said in that answer that you did think it important to change that collateral. Important to the Guarantee Trust Company or to whom?

A. Yes, that was the only interest that I was considering.

Q. And that was good banking and good business to do what you did do?

A. In my judgment, yes.

Q. And in the judgment of the board? 10

A. Absolutely.

Q. Then, do I understand that when you gave up the Ventnor Syndicate first mortgages and the Ventnor Syndicate bonds that you thought they were worth par?

A. I didn't state so.

Q. What did you think they were worth?

A. I didn't have any idea of the value, I never attempted to value them.

Q. Did you think they were worth par?

A. I never attempted to value them. 20

Q. Had the examining committee of the bank gone over them and valued them?

A. Not so far as I recall, no.

Q. Then you had no thought upon the matter at all as to the value?

A. I only had this thought in mind, as I have told you, that—

Q. Read the question.

(Question repeated.)

A. That the class of collateral was not what we 30 thought we ought to have, and we took the measures that were offered to change or to get rid of the loans.

Q. Well, why did you think that the collateral was not the class of collateral you should have?

A. Because that class of mortgages in the hands of a financial institution, after conditions arose as they did down the beach and defaults occurred, were not just the highest type, and while we might have been—probably

might have been safe in the long run, yet they were not just the type of securities that we would voluntarily hold or voluntarily take as collateral for a new loan.

Q. Now, what were the conditions down the beach, Mr. Sypherd?

A. Conditions down the beach are these: That, as I believe, at the time these mortgages were placed they were well secured, they had a ready market, and so continued until the properties covered by the mortgages were either in themselves injured or adjoining properties injured, so that the confidence of the investing public was somewhat impaired, and that naturally lessened the standing of the collateral.

Q. Well, now, what were the defaults that you say happened down there? What were the defaults?

A. Defaults?

Q. Yes.

A. Well, in certain cases there was a default in the payment of taxes; there was a default in the payment of interest.

Q. And default in what else? All these mortgages were guaranteed by the West Jersey Mortgage Company, weren't they?

A. They were guaranteed by the West Jersey Mortgage Company.

Q. And the West Jersey Mortgage Company defaulted in the payment of interest under their guarantee, didn't they?

A. After a certain date, yes.

Q. So that it was the destruction of the land and the bulkheads, the default in interest on the mortgages and the default of the West Jersey Mortgage Company in carrying out its guarantee that prompted you to think that that was undesirable collateral, was it not?

A. A combination of all those circumstances and the fact that they were mortgages on unimproved land that was not marketable—all had its influence in causing me to reach that determination.

Q. When a business man or a banking institution finds that its collateral is in bad shape by reason of the depreciation in value of the land, the failure to pay interest on the mortgage, the failure of the guaranteeing company to make good the loss in interest and the failure of the party who owns the land to pay the taxes, it is good business judgment, is it not, to substitute other collateral for that?

A. Yes.

Q. And if they cannot substitute the collateral, it is good business judgment to collect the loan, isn't it?

A. As a rule.

Q. And in this particular case, yes?

A. Yes.

Q. Now, you say, Mr. Sypherd, there was a ready market for this property down there?

A. There was years ago. I didn't say market for the property, I said market for the securities.

Q. Your companies helped to create that market, did they not?

A. What?

Q. I say, your companies helped to create that market, did they not?

A. What companies do you mean?

Q. The West Jersey Mortgage Company, the Ventnor Syndicate?

A. I had no connection with the Ventnor Syndicate.

Q. Weren't you a stockholder?

A. I was a stockholder to the extent of 11 shares. I wouldn't call it my company. Just because I might own a share of stock in the United States Steel Corporation it wouldn't be my company.

Q. You took an interest in it?

A. Sure, I took an interest in it.

Q. And, as I say, the companies tried to create a market?

A. The Ventnor Syndicate, the owners of the land, naturally would; the Guarantee Trust Company took no part in it.

Q. These mortgages that were given on that land wouldn't pass muster, would they, without the guarantee of the West Jersey Mortgage Company?

A. I couldn't say.

Q. They didn't, did they?

A. They never attempted, as far as I know, to dispose of any mortgages that did not have the guarantee of the West Jersey Mortgage Company.

Q. Do you know the commission they paid agents for selling the mortgages?

A I have no absolute knowledge. My recollection is, though, that they paid five per cent.

Q. Do you know what commission they paid for selling their real estate?

A. No.

Q. Do you know what the total cost of the percentages was in marketing the land?

A. I have no idea.

Q. Don't you know it was fifteen per cent.?

A. I haven't any idea, never did know anything about it.

Q. Who advised the purchase of the bonds of the Young-McShea Amusement Company, Mr. Sypherd?

A. The board of directors.

Q. What officers of the bank made the report to the board of directors that ultimately resulted in that action being taken by it?

A. I can't recall, Mr. Clevenger. I think that the report came in through the chairman of the current examining committee, and probably myself, I don't know.

Q. You personally advocated it, did you not?

A. Absolutely did.

Q. Now, Mr. Sypherd, how long had these notes been overdue?

A. $5,000, January 11th; $5,000, January 18th; $9,000, January 11th; $10,000, January 18th; $8,000, January 25th; $5,000, February 8th; $3,000, February 15th; $5,000, February 23d; $4,000, March 1st.

Q. Every one of them, then, was overdue at the time they were settled?

A. They were.

Q. And most of them had been overdue for more than a month?

A. Yes.

Q. And the matter of the indebtedness of the West Jersey Mortgage Company had concerned the bank since 1913, had it not?

A. I don't recall the year. There may have been some criticism of their loans during 1913, I can't say. It may have been that the loans during that current year were deemed too large in proportion to their balances. There are a number of things that influence a bank in the matter of criticising or asking for reductions in loans; it is not always questions of the security.

Q. The obligation bothered them, did it not?

A. I can't say that it did.

Q. They were anxious to get it out of the road, were they not?

A. They were anxious either to—you mean in 1915?

Q. Yes.

A. They were anxious then either to have the proper collateral substituted or the loan paid off.

Q. In other words, they were concerned about that obligation, were they not?

A. Concerned as I have explained to you.

Q. And in 1915 the condition of the West Jersey Mortgage Company was desperate, wasn't it?

A. I can't say that it was.

Well, it went into the hands of a receiver in September, 1915?

A. It did; in October, 1915, it did.

Q. The defaults had been gradual, hadn't they?

A. They had, so far as I know, met most of their obligations up to that time; I don't recall any specific instances of defaults up to March, 1915.

Q. Well, how would you know if you had left them early in August of the previous year?

A. Well, I might have known about it, I might have heard it, I probably would have heard of it if there had been defaults in their contracts of guarantee.

Q. Why would you have heard it?

A. Oh, in a general business way, like you would hear things if you were around people who were connected with the company.

Q. Well, how did you hear of it in this particular instance?

A. This particular instance?

Q. That you are speaking about?

A. I haven't spoken of any particular instance.

Q. Well, was there any particular instance in which you heard of it

A. No; I don't think of any now.

Q. Well, then, how do you know?

A. That there had been defaults?

Q. Yes.

A. Oh, I don't know when I learned, I heard that they had begun to default in connection with the payment of the principal of the mortgages. That, in my judgment, is probably what was the cause of their immediate downfall, their inability to meet calls for payment of principal of mortgages guaranteed.

Q. When did you first know that they had defaulted in the payment of principal?

A. I don't recollect.

Q. Didn't you have any of those guaranteed mortgages in your possession?

A. I can't say, we probably did, but we had never had them default so far as our calling upon them to pay a guaranteed mortgage when due.

Q. Well, don't you know wheher you had any guaranteed mortgages in the possession of the bank or not?

A. Oh, we did, yes, as collateral; I don't know as we owned any, so far as I know.

Q. Don't you know whether the principal on those collateral mortgages was paid by the West Jersey Mortgage Company or not?

A. I don't think that they were paid.

Q. Did you know there was a default?

A. Oh, well, there might have been a technical default; so far as we were concerned we had never called upon them to pay the principal of any mortgage on which they had defaulted.

Q. Why not?

A. Because we didn't ask them to do it.

Q. Why didn't you do so?

A. Why, just suppose we hold a $5,000 mortgage on your house, for instance, and it comes due in the year 1915, the chances are nine times out of ten, that we would never ask you to pay that mortgage; just because a mortgage comes due that doesn't mean that we consider you have defaulted in paying it.

Q. When did you first know that they had defaulted in the payments of taxes on the mortgages?

A. I don't recall, I can't recall.

Q. Don't you keep a record of taxes paid on the mortgages?

A. We keep a record of all taxes in connection with all mortgages owned by us, with these guaranteed mortgages we did not, because the company was obligated to see that that was done, and we didn't keep a record of the payment or nonpayment of the taxes in connection with the guaranteed mortgages.

Q. In all the mortgages held by the bank as collateral for loans out of your institution you keep a record of the taxes?

A. No, we don't always, we do in all cases—yes, we do where we hold the mortgages as collateral.

Q. Now, in all cases where the mortgages are held by the bank outright do you keep a record of the taxes?

A. We do, except, as I explained to you, in those cases where the mortgages are guaranteed.

Q. Now, the Guarantee Trust Company is trustee and executor and administrator of estates, are they not?

A. Yes, sir.

Q. And as such they have in their possession mortgages belonging to the estate, do they not?

A. Yes.

Q. Do you keep a record of the taxes upon those mortgages?

A. We do.

Q. And follow them up?

A. Yes, follow them up.

Q. Then the only instance in which the Guarantee Trust Company does not and did not keep a record is of mortgages deposited with this collateral agreement of September 1st, 1911?

A. That is true. I would say this, that a number of years ago there were some cases where the matter of taxes was not followed up like we now do with our present system, but this has been in force a number of years and we do keep a very close record, watch the payment of the taxes on mortgages.

Q. It is good business to do that, isn't it, Mr. Sypherd?

A. It is good business, yes.

Q. Good banking also?

A. Yes, good banking.

Q. It is the duty of the bank to do it where it is acting as executor or administrator?

A. Yes.

Q. Now, coming, Mr. Sypherd, to the agreement of September 1st, 1911, you have said you kept no record of the taxes on the mortgages assigned as collateral in this agreement?

A. No.

Q. What inquiry, if any, did you make concerning the taxes that were accumulating on the property?

A. No inquiry was made until after a default took place in the payment of the interest to us as it came due on the various mortgages.

Q. And when was that?

A. The earliest default was on the interest due March the first, 1915.

Q. Then you did begin to make inquiry?

A. Yes.

Q. What did you ascertain?

A. We learned that the taxes on practically all the mortgages were unpaid.

Q. Is that the first time you knew it?

A. Yes.

Q. For how many years had they been unpaid?

A. Well, they varied in nearly all cases.

Q. Some as early as 1912, weren't there?

A. Yes, there were a few in 1912.

Q. Some in 1913?

A. There were. Now, wait a minute, I will tell you what they were. There were eleven mortgages out of the twenty-two or twenty-three, I think it was, in which the taxes were due for 1912, according to this record furnished me by the Collector of Margate. In 1913 the same. In fact, the same number of taxes, with one exception, appears to be due for each of the years beginning with 1912 on those lots that are located within the boundaries of Margate City.

Q. How about those in Ventnor?

A. In Ventnor, there was one lot in Ventnor on which the 1912 taxes were unpaid, and in all other cases they were paid.

Q. How about 1913, in both places?

A. In 1913 nearly all of the taxes were unpaid, with the exception, I think, of about two lots.

Q. How about 1914?

A. Well, the same condition followed right through.

Q. 1915 and 1916?

A. Yes, this year.

Q. And they have all been due for more than ninety days, haven't they?

A. Yes.

Q. Now, how about the interest? When did that first begin to default, Mr. Sypherd?

A. The first interest default was the interest that was due on March 1st, 1915, which I just stated.

Q. Now, is the interest paid up on any of those mortgages?

A. In full?

Q. Yes?

A. No.

Q. They are all in default?

A. They are all in default.

Q. All in default for more than thirty days?

A. Yes.

Q. Now, Mr. Sypherd, did the Guarantee Trust Company after they had ascertained that there had been defaults in taxes and interest proceed with the foreclosure of the mortgages under section 5 of the agreement?

A. It did not.

Q. Why did you make no record of the unpaid taxes in this particular case, Mr. Sypherd? Referring, now, to the mortgages held under the agreement of September 1st, 1911.

A. I have explained to you that in no case where the mortgages were guaranteed by the Mortgage Company did we have a record of the unpaid taxes, not only in this case but in any other case where we happened to have them.

Q. How did you first come to make the inquiry concerning the unpaid taxes?

A. I don't recall. A letter received from you in April, 1915, was the first inquiry we had from any one on the subject, and I went into the matter after that, got statements showing just what arrearages there were..

Q. Now, prior to that time you had knowledge, however, that there was defaulting interest, had you not?

A. We had knowledge on March 1st, and we had the first communication from you on April 14th, shortly thereafter.

Q. And you had no knowledge of the nonpayment of taxes prior to my letter?

A. No specific knowledge; generally speaking, we knew that in many cases the taxes down there were unpaid.

Q. Now, when you ascertained that the taxes were unpaid and that the interest was unpaid on the mortgages did you call upon the Ventnor Syndicate or the West Jersey Mortgage Company to substitute new collateral?

A. No.

Q. Why not?

A. In the first place, we were not required to, the second was that if we had they couldn't have done it.

By the Vice-Chancellor.

Q. What?

A. They couldn't have done it. And, under our judgment, even if we had seen fit to have exercised the powers given to us under one clause of the trust agreement, we did not deem it advisable at the time to take any action.

By Mr. Clevenger.

Q. Then as early as March or April of 1915 you knew that the Ventnor Syndicate and the West Jersey Mortgage Company were unable to give new collateral?

A. The question of the ability of the West Jersey Mortgage Company to give new collateral did not enter into it. These were bonds given by the Ventnor Syndicate.

(Question repeated.)

A. You have the answer to that.

Q. Repeat the question again.

(Question repeated.)

Mr. Clevenger—If your Honor please, I ask for an answer to that question.

A. Pardon me. Didn't my answer cover it?

The Vice-Chancellor—Why, I think his answer covered it, Mr. Clevenger, and I thought it

covered it pretty well. Unless I am mistaken, I do not see how the West Jersey Mortgage Company was called upon to give any new collateral.

Mr. Clevenger—Well, I will separate the question.

Q. Mr. Sypherd, as early as March or April, 1915, you knew the Ventnor Syndicate was unable to produce any new collateral, didn't you?

A. It is my general recollection that that would have been the case if they had been called upon to produce it, except in securities of the same type.

Q. And you knew as early as March or April of 1915 that the West Jersey Mortgage Company could not make good on its guarantee, didn't you?

A. I knew that they had defaulted on March 1st, 1915, in paying interest due on certain guarantees held by us in connection with this agreement.

Q. I ask the question to be repeated.

(Question repeated.)

By the Vice-Chancellor.

Q. I do not think you have answered the question.

A. I think that is an answer.

Q. It doesn't seem to me the answer goes to the question. He wants to know whether you knew they couldn't make good. Do you know anything more than the mere fact that they had defaulted?

A. I can answer that no, I didn't know that they couldn't make good at that time.

By Mr. Clevenger.

Q. Representing the bondholders, did the Guarantee Trust Company make a demand on the West Jersey Mortgage Company under the terms of the guarantee which they had made of the mortgages deposited with you by the Ventnor Syndicate?

A. No.

Q. Why not?

A. As I explained before, it is not our practice to insist upon payment of the principal of mortgages the day they come due.

The Vice-Chancellor—I thought he had reference to guaranteed interest that was defaulted.

The Witness—Did you say interest or principal?

Mr. Clevenger—I meant principal.

The Vice-Chancellor—I thought the question had reference to the default in interest.

Q. Now, when there came a default in the interest on those mortgages, did you make a demand upon the West Jersey Mortgage Company for the interest?

A. No.

Q. Why not?

A. Because—I don't know whether I can answer that exactly, because I don't know whether I recall, but my recollection is that at the time this default took place I assumed that the West Jersey Mortgage Company did not have the funds to pay the interest, because I knew that if they had it we would have received it regardless of any demand, it wasn't necessary to make any demand.

Q. Now, how early was that?

A. That was when the default was discovered, March 1st, 1915.

Q. And you knew as early as March 1st, 1915, that the West Jersey Mortgage Company was unable to pay its guarantee, didn't you?

A. I so assumed.

Q. Well, didn't you know it?

A. I had no positive means of knowing it, except we didn't get the money.

Q. Now, Mr. Sypherd, why didn't the Guarantee Trust Company proceed and foreclose the mortgages held by it, under clause 5?

A. Because in the judgment of the board of directors

of the Guarantee Trust Company it was not deemed advisable.

Q. Now, what were the facts that led the Guarantee Trust Company to assume that it was not advisable to foreclose?

A. Well, there were several things that caused us to reach that conclusion. In the first place, at that time there was absolutely no market for the land, and a foreclosure of those mortgages would have resulted, in so far as we could see, in our buying the property in as trustees, which would have meant no gain whatever to the bondholders, and we felt that the bondholders were just as well off to await development and see whether there wasn't some plan that could be worked out by which the conditions down there would be improved. In fact, there was a movement on foot, started by certain of the interested parties, to endeavor to secure the rebuilding of the bulkheads, and we felt that if that plan could have been worked out and became a success that a part, if not all, of the original values of land would be restored and that eventually the bondholders would be able to get out their money.

Q. Now, that was your judgment in what year?

A. That was our judgment in 1915.

Q. What is your judgment in 1916?

A. Absolutely the same.

Q. Why is the Guarantee Trust Company, then, foreclosing these mortgages against Margate City?

A. As to the reason that the Guarantee Trust Company is foreclosing its mortgages, I do not think that that has any bearing whatever on this case, I can't see it in this particular—the land that is involved in those cases has no relation to this land.

Q. Some of this land is located in Margate City, isn't it?

A. It is.

Q. And the Trust Company owns a mortgage on the whole of Margate, doesn't it?

A. No.

Q. Practically the whole, isn't it—the better part of it?

A. I can't say to what extent that mortgage goes.

Q. Well, they hold a mortgage for upwards of $150,000 on Margate City, don't they?

A. No.

Q. Well, of a hundred thousand dollars and upwards?

A. I think it is less than a hundred thousand dollars.

Q. And accrued interest?

A. Yes, probably might have been over a hundred thousand dollars.

Q. They are foreclosing that mortgage, aren't they?

A. Yes, they are.

Q. When did they file the bill?

A. I don't know the date.

Q. This year?

A. No.

Q. Last year?

A. Sometimes in the fall.

Q. Well, now, if it was the judgment of the Guarantee Trust Company that they should foreclose its own mortgage why wasn't it their judgment that they foreclose these mortgages held under this agreement?

A. The judgment of the Guarantee Trust Company as to what it should do with a mortgage owned by it on land in one part of Atlantic City and what it should do in a representative capacity, as trustee under a trust agreement, with mortgages on land in another part of Atlantic City has no relation one to the other; we exercised our judgment in each individual case, one has no bearing on the other case.

Q. The mortgage on the land in Margate City that is held by the Guarantee Trust Company as an institution is on unimproved land, isn't it?

A. It is on unimproved land, yes.

Q. And the land covered by the mortgages that are attached to and as collateral for this agreement of September 1st, 1911, is all unimproved land, isn't it?

A. Oh, it is on—

Q. Isn't it?

A. Yes, but it is on an entirely different class of land.

Q. It is right back of the bulkhead, isn't it?

A. A small quantity of it is.

Q. The greater part of it is, isn't it?

A. No.

Q. All on the south side of Atlantic avenue, isn't it?

A. No, absolutely not, only a small portion of it.

Q. Now, is that the only reason that you have for not wanting to foreclose the mortgages under section 5?

A. Our only reason is that in our judgment it was not advisable for us to proceed and exercise the powers, not the duties, but the powers, given us in section 5.

Q. Then the reasons that moved you, and the only reasons, are those which you just name?

A. That it was contrary to our judgment, and that it wouldn't have been for the best interest of the bondholders to have foreclosed those mortgages under the conditions that existed.

Q. That is not what I asked you.

A. What did you ask me? Repeat it, Mr. Clevenger, please.

Q. (Repeated.) Then the reasons that moved you, and the only reasons, are those which you just named?

A. Yes.

Q. Now, Mr. Sypherd, if you had foreclosed the mortgages and the property had been bought in for the benefit of the bondholders, and the taxes had been paid by the bondholders, they would be saving six per cent. interest up to 1915, would they not, and two per cent. interest since 1915?

A. Yes, they could, if they had paid us the money necessary to have foreclosed the mortgages and paid the

taxes. We had no funds in our hands to be used for such a purpose.

Q. Even foreclosure of the mortgages is to be preferred to permitting the mortgages to lay there drawing twelve per cent. on taxes up to 1915 and eight per cent. since?

A. We have considered, so far as our duties under section number 5 of this trust agreement are concerned, in view of all the circumstances surrounding the case that such is the case.

Q. (Question repeated.)

A. It is true that in our judgment it was preferable to allow these mortgages to be in their present condition rather than to take the initiative on our own responsibility, without authority from the requisite number of bondholders, to have proceeded to foreclose these mortgages.

Q. Is there anything under section 5 that requires you to have the consent or the requirement of the bondholders to foreclose the mortgages?

A. There is no provision of section number 5 requiring us to have the consent of any bondholders.

By the Vice-Chancellor.

Q. Let me interrupt to ask again: When you took over those securities in satisfaction of your loan, when you purchased those bonds in satisfaction of the loan of your bank, of those notes due to your bank, what was the date?

A. March 5th, 1915.

Q. That was just before the interest defaulted, was it not?

A. After.

Q. What was the date of the interest default?

A. March 1st.

Q. I mean the interest default on these mortgages?

A. Well, that was the first default.

Q. On these guarantees of mortgages?

A. March 1st.

Q. Well, then, your bank knew at that time of the default, of course?

A. Yes, we knew, at least the—

Q. I mean the default, now, under the guaranty?

A. Well, I can't say that the directors knew of the default in those few days, our records would have shown it, but I don't think that it was specifically called to their attention, nor do I think—in all probability—
10 that any of them knew anything about the default having occurred on March 1st.

By Mr. Clevenger.

Q. You knew it?

A. I probably knew it.

Q. Mr. Godfrey knew it?

A. But the matter of a default in the payment of interest for three days is not such a serious matter that it would be called to your attention specifically, and would
20 not be, as a rule. We don't get disturbed if a man is three days late paying his interest. If he is two weeks late he gets a second notice, and if he is thirty days he generally gets something more severe. But a three or four-day default has practically no attention.

Q. Mr. Godfrey knew it, didn't he?

A. I don't know that Mr. Godfrey did, I can't say.

Q. Mr. Jeffries knew it?

A. I don't suppose Mr. Jeffries knew anything about it; no, I am positive he did not; Mr. Jeffries has noth-
30 ing to do with that end of the business.

Q. What notice did the Guarantee Trust Company ever give the bondholders—

By the Vice-Chancellor.

Q. Let me ask this—the record already shows, I guess, but I don't know—how many of the directors of the Guarantee Trust Company were directors of the West Jersey Mortgage Company?

A. About four.

Q. At the time of this settlement between the Guarantee Trust Company and the West Jersey Mortgage Company?

A. I can answer that, I think, if you want it. I will answer it right now.

Q. Can you tell?

A. Yes, there were four, I think. I will just tell you who they were. There was Mr. Faunce, William A. Faunce, C. J. Adams, George P. Eldridge; I guess that is all.

Q. Three?

A. Mr. Godfrey wasn't a director March 1st, 1915—yes, he was, too, Mr. Godfrey.

Q. Four?

A. Carlton Godfrey.

Q. Then there were four that were on each board?

A. Let me see whether Mr. Hackney was at that time,—and John W. Hackney, that is five out of twenty directors.

Q. Who would there have been in the West Jersey Mortgage Company on whom would have fallen the duties to actually pay this interest? What men, I mean, would have been the ones who would necessarily have known of the default in the West Jersey Mortgage Company?

A. The treasurer.

Q. That was who?

A. That was Mr. Hackney.

Q. Well, Mr. Hackney would have had to have gotten the money from somebody. Who else?

A. Well, he would have gotten the money from the owner of the property, if ever it had been collected, and, of course, if it hadn't been collected he would simply on his own initiative have paid the guarantees as they fell due.

Q. Now, that leads, then, to the next inquiry: What common directors were there in the Ventnor Syndicate who would have had to raise this money,—and in the—

A. Guarantee Trust Company.

Q. Guarantee Trust Company?

A. There were only two directors in the Ventnor Syndicate that were also members of the Guarantee Trust Company board, and they were Mr. Godfrey and Mr. Wahl, I think they were the only two.

Q. And what position did Mr. Godfrey hold in each?

A. Mr. Godfrey was secretary of the Ventnor Syndicate.

Q. Who was treasurer, do you know?

A. I don't know; I don't know whether Mr. Godfrey was treasurer or not, I can't say whether he was secretary and treasurer both, I am not sure; I don't think he was. I had better not try to answer that for I don't know.

By Mr. Clevenger.

Q. Clement J. Adams was a member of the board of the Ventnor Syndicate—

A. Was he?

Q.—the West Jersey Mortgage Company and the Guarantee Trust Company, was he not?

A. He was of the Mortgage Company, I don't know whether he was of the Ventnor Syndicate or not.

By the Vice-Chancellor.

Q. Was Mr. Godfrey present, do you recall, at the meeting where the Guarantee Trust Company closed out its accounts with the West Jersey Mortgage Company?

A. I think he was.

Mr. Clevenger—Judge Cole showed that.

By Mr. Clevenger.

Q. Now, did the Guarantee Trust Company, Mr. Sypherd, ever send notice to the bondholders under the agreement of September 1st, 1911, that there had been a default in taxes or interest or principal?

A. No.

Q. Why not?

A. The nonreceipt of interest by the bondholders showed that, and we received a number of letters from them and we replied and told them the conditions, told them that the interest had not been paid and as soon as it was paid that it would be forwarded to them.

Q. Well, why didn't you give them notice of the nonpayment of the taxes?

A. Because—I don't know as there was any particular reason for it, Mr. Clevenger, except that we were not obliged to do it, and I saw—at least, I did not believe anything could be gained by such action.

Q. Didn't you think they were entitled to that notice?

A. I didn't consider it.

Q. You think that was giving them fair treatment to keep from them that the taxes hadn't been paid in some cases since 1912?

A. Whether a question is fair or unfair is one for other men to decide. I can answer that in a general way: That we consider that our course in all these matters in connection with the handling of these mortgages has been justified.

Q. And do you also consider that you were exercising a like business judgment with regard to your trust as you did when you were collecting the $54,000 from the West Jersey Mortgage Company?

A. I do not think that is a fair question,—a totally different proposition.

Q. That is the only answer you have to that?

A. What might influence you in one case would have no bearing upon another, Mr. Clevenger. We consider that we exercised good judgment in this particular case, and we exercised good judgment in the other case in buying the bonds and having the notes paid off.

Q. How do they differ, Mr. Sypherd? I would like to have your idea on that.

A. Well, Mr. Clevenger, it is a very different situation. You can follow these things out and reason them

to your heart's content. Take a case where a trust company is trustee under an agreement of this character, and in this particular case, of course, there were only about, I suppose, thirty bondholders, but suppose that you have a case where there are five hundred bondholders. You would not think it was the duty of a trustee after every default that occurred in connection with the mortgages—

Q. Now, confine yourself to this case, Mr. Sypherd.

A. I am just explaining to you, you want to know how I reason out these things—you would not expect a trustee to notify each individual of everything that happened in connection with the handling of that trusteeship. The trust agreement under which these bonds were issued provided a method, and unless the default in the payment of a tax was considered so vital that the interest of the bondholders were suffering so terribly that they were in danger of losing their principal, I personally do not feel that it was the duty of a trustee to go as far as that, to notify every single bondholder of a default in the payment of taxes. If that were the case our company, for one, would never accept a trusteeship, if we had to do some of the things that some people would regard as the duty of a trustee for the very small compensation which you receive.

Q. Now, tell me how the two cases differ?

A. Well, under the trust agreement the trustee is only compelled to act when he is requested to by the bondholders; in the other case it is a matter of your own individual business that you are handling, and we exercised our judgment in both cases and acted accordingly.

Q. You put your acts entirely upon your obligation under the agreement of September 1st, 1911?

A. Not altogether.

Q. Well, in what respects do you depart from the obligation imposed upon you in that agreement?

A. In what respect?

Q. Yes.

A. Well, I can only answer that by saying that in our judgment it would not have been a good business move to have foreclosed those mortgages. Here is the difference. You speak about the case where we took over the bonds. There was a case where nothing was done, no foreclosure proceeding was instituted, no expense was incurred, no money was required to be put up by anybody, nor was hardship worked in any way, it was simply a case of substitution in a way and the purchase of securities by a banking institution which enabled a borrower to pay off his loans. That is a very different proposition from starting out to foreclose 22 mortgages of a character of these and covering land that was in a condition this land was in.

Q. You took from the West Jersey Mortgage Company in that case its most valuable asset, didn't you?

A. I can't say, if we did we paid them for its full worth.

Q. And you got your claim ahead of other creditors?

A. Certainly, yes, we were paid so that we had no claim, we weren't a creditor of the West Jersey Mortgage Company at the time of the receivership.

Q. You had a claim of $4,000 against them, didn't you?

A. No, not a cent, they owed us nothing at the time of the receivership.

Q. Didn't they owe you $4,000 March 1st?

A. They did.

Q. Didn't the Guarantee Trust get its money ahead of other creditors of the West Jersey Mortgage?

A. They got the money, yes, but they weren't a creditor. You say "other creditors." We weren't a creditor, and we already had in our possession, as you well knew, $42,000 of those bonds and we also had $4,000 of bonds that were just as good.

Q. And $40,000 of the same character of bonds attached to your agreement?

A. Mortgages?

Q. Mortgages, yes.

A. Yes, not considered as good as the others.

Q. And you wanted to get rid of them, didn't you?

A. We wanted to get better security for our loan, yes.

Q. Now, what notices to pay the taxes did you give to the owners of the land after you found out that they were in default?

A. None.

Q. Why not?

A. Because we knew that the condition of the owners of the land was such, combined with their default in paying interest and letting their property go, that it would have been a useless expenditure of time and money.

Q. Did you ascertain, Mr. Sypherd, that some of the land in Ventnor had been sold at tax sale and bought in by a man named Schaffer?

A. Yes.

Q. Did you bring that to the attention of the bondholders?

A. No.

Q. Why not?

A. For the same reason that I have stated in answer to other questions of similar character.

Q. Don't you know under the tax laws of the State that the purchaser has a right to take possession of the property?

A. Yes, and I know you have a right to redeem.

Q. And don't you know that the tax sale cuts out a mortgage interest?

A. Not absolutely, no; the interest of these mortgages is not cut out.

Q. And with that knowledge before you you brought that not to the attention of the bondholders?

A. No, I did not.

Q. And you thought it was not your duty to do so?

A. Correct.

Q. And you thought it was not your duty to foreclose under section 5 of the agreement?

A. We did.

Q. Now, Mr. Sypherd, will you refer to the agreement of September 1st, 1911, and point out to me any section in that agreement that has to do with the foreclosure of mortgages for non-payment of interest or taxes other than that of section 5?

The Vice-Chancellor—Unless you think it is there, do not waste any time in reading it over.

A. I think there is a provision here that we are not required to take any action. Section 10. "That if default shall be made in the payment of any part of the principal or interest of the Company's bonds and payment thereof shall have been demanded at the office of the Trustee in Atlantic City, New Jersey, and in case the said default shall continue for thirty days after said demand, then and in that case, upon a requisition in writing signed by the holder or holders of the Company's Bonds to an aggregate amount equal to twenty-five per cent. in value of the Company's Bonds in this series then outstanding, or upon requisition of the Guarantor, and upon proper indemnification of the Trustee for the costs and expenses to be incurred by it, it shall be the duty of the Trustee, upon thirty days' notice in writing to the Company, to realize so far as possible by the foreclosure or sale or other collection of the bonds and mortgages which shall then constitute the Trust Fund, the amount secured thereby and to apply the amounts so collected to the payment of the principal and interest then due upon the Company's Bonds equally pro rata, and if the amounts so realized are not sufficient to pay the full amount then due for principal and interest upon the Company's Bonds, then outstanding in said series, the Trustee shall, upon further reasonable indemnification, take proceedings to collect from the Company said deficiency. The Trustee shall have full

discretion as to the time and manner in which it shall proceed for the collection of the amounts secured by the Trust Fund, or the sale of any bonds and mortgages therein, and said Trustee shall not be liable either to the Company or to the bondholders for anything except lack of good faith or of ordinary care therein. And the Company hereby agrees that it will, upon demand, pay to the Trustee any and all reasonable expenses which it may, as provided in this instrument, incur for the payment of which it may become liable in the performance of any of its duties as such Trustee."

Q. Do you claim that that is the authority to foreclose for nonpayment of interest and taxes so far as the collateral is concerned?

A. If we had a notice served upon us by 25 per cent. in value of the holders of the bonds, we then would be required to foreclose.

Q. Isn't the authority in section 10 predicated only upon a default in the payment of the bonds issued under the provisions of the agreement and not upon a default under the mortgage?

A. No, it is a default in the payment of any part of the principal or interest of the company's bonds.

Q. Of the company's bonds?

A. Yes.

By the Vice-Chancellor.

Q. Section 5 has reference to default in taxes, I think?

A. Yes, it covers that.

By Mr. Clevenger.

Q. Section 1 provides what a bond is, doesn't it?

A. Yes.

Q. That confines it absolutely to the bond issued under the terms of the agreement, doesn't it, and not to the bond that accompanied the mortgage?

A. Yes, it refers to the bonds issued under the agreement.

Q. Well, then, doesn't section 5 govern the foreclosure of the collateral mortgages and section 10 the proceedings in case of default on the bonds?

A. Yes.

Adjourned until Tuesday, February 6th, 1917, at Atlantic City, N. J.

Resumed, before his Honor, E. B. Leaming, Vice-Chancellor, at the Chancery Chambers, Atlantic City, New Jersey, on Tuesday, February 6th, 1917.

Appearances—William M. Clevenger, Esq., for complainant; Hon. Clarence L. Cole, for Guarantee Trust Company, one of the defendants; Harvey F. Carr, Esq., for John G. Horner, Receiver of the West Jersey Mortgage Company, one of the defendants.

Herman M. Sypherd, recalled.

By Mr. Clevenger.

Q. Now, Mr. Sypherd, annexed to the agreement of September 1st, 1911, there is a list of securities. Have you those securities in court?

A. Yes.

Q. Does the schedule show the name of the mortgagor, the name of the mortgagee, the date, the lot, the block number and the city in which it is located, together with the amount?

The Vice-Chancellor—This is a schedule annexed to the bill?

Mr. Clevenger—Annexed to the agreement of September 1st, 1911.

A. It does.

The Vice-Chancellor—It is not annexed to the bill, is it?

Mr. Clevenger—It is also annexed to the bill; yes, sir.

Q. Were all of those mortgages drawn for the same period of time?

A. Yes, I think so, Mr. Clevenger. I would have to examine each one to absolutely verify that.

Q. I wish you would examine each one and give me the date of the mortgage and the due date.

A. All right. I will start with number 1.

Q. And rate of interest?

A. $5,000, dated August 10th, 1911, due August 10th, 1914.

Q. Six per cent.?

A. Six per cent., covering—do you want the lot and block number?

Q. Just the due date; I have all the rest in the schedule.

A. $5,000, dated September 1st, 1911, due September 1st, 1914. $5,000, dated September 1st, 1911, due September 1st, 1914. $5,000, September 1st, 1911, due September 1st, 1914. $5,000, September 1st, 1911, due September 1st, 1914. $2,000, dated September 1st, 1911, due September 1st, 1914. $2,000, September 1st, 1911, due September 1st, 1914. $2,000, September 1st, 1911, due September 1st, 1914. $2,000, September 1st, 1911, due September 1st, 1914. $2,000, September 1st, 1911, due September 1st, 1914. $2,000, September 1st, 1911, due September 1st, 1914. $5,000, dated March 1st, 1912, due March 1st, 1915. $5,000, dated March 1st, 1912, due March 1st, 1915. $5,000, September 1st, 1911, due September 1st, 1914.

Q. Is that one dated September 1st?

A. September 1st, 1911. $5,000, dated March 1st, 1912, due March 1st, 1915. $2,000, dated August 31st, 1912, due August 31st, 1915. $2,000, dated August 31st, 1912, due August 31st, 1915. $2,000, August 31st, 1912, due August 31st, 1915. $2,000, dated August 31st, 1912, due August 31st, 1915. $2,000, August 31st, 1912, due August 31st, 1915. $5,000, August 21st, 1912, due August 21st, 1915. $5,000, dated November 12th, 1912, due November 12th, 1915. That is all.

Q. Now, Mr. Sypherd, take up the last mortgage, covering lot 14, in block 71 A?

A. Yes.

Q. Will you tell me on what street that lot faces?

A. West line of Avalon avenue, 300 feet south of Atlantic.

Q. Now, that mortgage, Mr. Sypherd, was made by the Roebling Realty Company to the Ventnor Syndicate, was it not?

A. Yes.

Q. And by the Ventnor Syndicate assigned to the Guarantee Trust Company?

A. That is correct.

Q. And the previous mortgage for $5,000 was made by the Ventnor Syndicate to the West Jersey Mortgage Company and by the West Jersey Mortgage Company assigned to the Guarantee Trust Company?

A. It was.

Q. All of the other mortgages were made directly by the Ventnor Syndicate to the Guarantee Trust Company, Trustee, were they not?

The Vice-Chancellor—Do you understand that to be the fact?

Mr. Cole—I believe so. I have not examined it to see.

The Vice-Chancellor—I thought he could answer yes and save the time and trouble of going through them now, and later if he finds it is not correct he can make the correction.

A. I find one mortgage, Mr. Clevenger, $5,000, covering lot 14, 108A, made by Ventnor Syndicate to West Jersey Mortgage Company and assigned by the West Jersey Mortgage Company to the Guarantee Trust Company, in addition to the two that you have just referred to; the balance—

Q. What is that? 108A?

A. Yes. The balance of the mortgages are all made from the Ventnor Syndicate to the Guarantee Trust Company, Trustee.

Q. Then that is for lot 14, in block 108A?

A. Yes.

Q. Then the schedule is in error when it states that it was made directly by the Ventnor Syndicate to the Guarantee Trust Company?

A. Yes; if that is the way the schedule states it it is an error. Wait until I find that in the letters. Yes; that was made from the Ventnor Syndicate to West Jersey Mortage Company and assigned to the Guarntee Trust Company, Trustee.

Q. And all of those mortgages bear six per cent. interest?

A. Yes.

Q. Is there a West Jersey Title & Guaranty Company title insurance policy with all of them?

A. Yes, sir.

Q. Is there West Jersey Mortgage Company insurance with all of them?

A. There is.

Q. Give me the guarantee numbers of each one of them, commencing with the first in the schedule?

A. A 564, A 601, A 550, A 546, A 547, A 549, A 545, A 548, A 543, A 544, A 542, A 642, A 644.

Q. That is the $5,000 one now?

A. Yes; A 652, A 662, A 721, A 720, A 761, A 762, A 763, A 764 and A 500.

Q. Now, have you with each of those mortgages a certificate of appraisal?

A. I think so. I have all the certificates of appraisal with the exception of some of the last mortgages on this list which I am unable to find; I don't know where the certificates are; they were filed with the mortgages when deposited with us, but in some manner they have been mislaid, and up to the present time I haven't been able to find them, but I will give you the ones that I have and the rest of them are all of a similar nature and each mortgage is guaranteed by the West Jersey Mortgage Company.

Q. Can you give them to me in the order in which they are quoted on the schedule attached to the agreement of September 1st, 1911?

A. I will see if I can. I have the certificate for mortgage of $5,000 covering 108 A., first, covering lot No. 14.

Q. I want to ask the same question about each one?

A. All right.

Q. Who made the certificate of appraisal 108 A., lot 14?

A. John W. Hackney, Clement J. Adams.

By Mr. Cole.

Q. Can you give the amount?

A. $5,000.

By Mr. Clevenger.

Q. What is the date of it?

A. October 11th, 1911.

Q. Was there ever a re-appraisal of that particular lot?

A. No.

Q. Did you ever call for one?

A. No.

Q. Why not?

A. I have no reason to assign, but we didn't call for it, it wasn't necessary.

Q. Did you ever suggest one?

A. No.

Q. John W. Hackney and C. J. Adams were officers and directors of the Ventnor Syndicate and the West Jersey Mortgage Company, were they not?

A. I can't say. I know that Mr. Hackney was the treasurer of the West Jersey Mortgage Company and member of its board of directors, and that Clement J. Adams was a member of the board of directors of the

West Jersey Mortgage Company, but as to their connection with the Ventnor Syndicate I don't know.

Q. You have no knowledge then that C. J. Adams was an officer of the Ventnor Syndicate?

A. No, I don't; I have knowledge—at least, my information is that he was a director of the Ventnor Syndicate, what official capacity he held, if any, I don't know.

Q. Both of those men were on the board of the Guarantee Trust, weren't they?

A. They were.

Q. Now, take up the second mortgage, block 9, lot 9. What is the date of that appraisal?

A. October 13th, 1911.

Q. Who made it?

A. John W. Hackney, Clement J. Adams.

Q. Was there ever a re-appraisal there?

A. No; I can say now there was a re-appraisement in none of the cases, to save time, if that is satisfactory to you.

Q. And you called for none in any of those cases?

A. No.

Q. And for the same reason you gave before?

A. The same reason.

Q. Now, pass to the lot 7, block 100 A.?

A. Appraisal dated December 27th, 1911, $5,000, that mortgage appraisal blank signed by C. J. Adams and F. C. Robins. The next two mortgages, $5,000 each, on lots 7 and 14, block 108 B., and also six mortgages—

Q. Just wait, you haven't told me—

A. I am going to tell you all in one sentence—six mortgages, $2,000 each, on lots 4, 5, 6, 11, 12 and 13 in block 108 B., appraisal blank signed by C. J. Adams and F. C. Robins.

Q. What is the date?

A. Dated December 27th, 1911.

Q. Take up the next one.

A. The next one, May 16th, 1912, mortgage $5,000, covering lot number 16, block 11, committee, John W. Hackney, C. J. Adams. June 1st, 1912, mortgage $5,000, lot number 8, block 12, signed also by John W. Hackney, C. J. Adams. June 15th, 1912, mortgage $5,000, covering lot number 16, block number 12, signed John W. Hackney, C. J. Adams. July 11th, 1912, $5,000, covering lot number 7, 82 A.,—

Q. 86 A., isn't it?

A. 86 A.

Q. Signed by whom?

A. Signed by John W. Hackney, C. J. Adams.

Q. Have you any more appraisals?

A. I am not sure, just let me see. (After examination.) I find that is where they stop, I think, and I was unable to find the balance of the appraisal blanks—yes, that is the last one.

Q. That is all you have?

A. Yes.

By the Vice-Chancellor.

Q. You are sure the others were made, are you?

A. Oh, absolutely. As each mortgage was presented to us we received this blank signed by members of the Mortgage Company committee and accompanied by the guarantee of the Mortgage Company of the full amount of the mortgage.

By Mr. Clevenger.

Q. In every instance?

A. In every instance. There never was an instance where a mortgage was received without those papers.

Q. Are you sure of that, Mr. Sypherd?

A. Absolutely.

Q. Take the second mortgage in the schedule and see if you did not receive that without your appraisal?

A. The second mortgage in the schedule?

Q. Yes.

A. Lot 9, block 9?

Q. Yes.

A. I think not; I think that was included here. Lot 9, block 9, is accompanied by the written appraisal.

Q. On what date?

A. October 13th, 1911.

Q. When was your mortgage deposited?

A. The mortgage was deposited October 13th, 1911, the same day.

Q. Doesn't your schedule say October 12th?

A. It does not.

Q. Now, all of this land covered by those mortgages, Mr. Sypherd, is unimproved, isn't it?

A. Yes.

Q. All of the land described in the mortgages is located between Atlantic avenue and the ocean?

A. Yes.

Q. And all of the land is what is known as filled land?

A. Well, I can't say about that. No, I wouldn't say that it is, because there may have been certain sections of it that was the natural land as it stood, I don't know about that. I assume that most of it, however, was the land that was filled back of the bulkheads.

Q. You know there are bulkheads in front of all of the blocks in which this land is located, don't you?

A. Yes.

Q. Do you know how many of the bulkheads have been washed out?

A. No, I don't know how many exactly, there have been several of them to my knowledge.

Q. Can you pick out any of the mortgages where the bulkheads have been washed out in front of them?

A. Yes, I think I can, from information that I have; I don't know that I ought to attempt to do that, Mr. Clevenger, accurately, I think I can tell you pretty nearly, though, where the land has been injured by washouts, between what blocks, if you want it.

Q. Suppose you do that?

A. I have a map here that shows it pretty well, I think. The washout as I have it here outlined extends from block 82 B. to block 88 A., that is, from Hamilton Avenue to Mobile. This line (indicating on map), Vice-Chancellor, indicates the probable extent of the washout, that is probably how far back it goes, just a rough idea of the damage.

Q. And that washout occurred in 1913?

A. My recollection is that there were two washouts down there, occurring in 1913 and 1914.

Q. And each of those destroyed some of the land covered by these mortgages?

A. It injured the land, yes.

Q. Was there any washout in block 108?

By the Vice-Chancellor.

Q. Were any of these washouts prior to the execution of the mortgages?

A. No. What is that number.

By Mr. Clevenger.

Q. In block 108?

A. I don't think so.

Q. Any in 71 A.?

A. My recollection about 71 A. is that it was washed but later the bulkhead there was restored.

Q. Any in block A. in Margate?

A. No.

Q. That bulkhead held, didn't it?

A. Those bulkheads all held.

Q. No damage done?

A. None whatever.

Q. To the Margate bulkhead?

A. To the bulkhead or the land either.

Q. Now, Mr. Sypherd, the bonds that were issued based upon these mortgages were guaranteed by the West Jersey Mortgage Company, weren't they?

A. They were.

Q. And those bonds were issued by the Ventnor Syndicate?

A. Yes.

Q. And certified by the Guarantee Trust Company?

A. As trustee, yes.

Q. Why did you have the mortgages which were delivered to you directly by the Ventnor Syndicate also guaranteed by the West Jersey Mortgage Company?

A. We had nothing to do with the question of having a guarantee or not having a guarantee, they were delivered to us with a guarantee attached.

Q. Now, these appraisals, Mr. Sypherd, did not appraise the land on which the mortgages was placed, did they?

A. They did not.

Q. They simply appraised the mortgage?

A. As being worth the face value.

Q. Does it say that?

A. I think so.

Q. Read one of them into the record.

A. "The undersigned are familiar with the property covered by the following mortgages made by Ventnor Syndicate to Guarantee Trust Company, dated September 1st, 1911, namely, mortgage of $5,000 on lot 7, block 100 A., on map entitled 'Map of Property situate in and adjacent to Ventnor City, New Jersey, belonging to Ventnor Syndicate. Scale one inch 80 feet. December 23d, 1910. By W. I. Risley, Civil Engineer and Surveyor. Atlantic City, N. J.' Two mortgages of $5,000 each, on lots 7 and 14, in block 108 B., on the aforesaid plan. Six mortgages of $2000 each, on lots 4, 5, 6, 11, 12 and 13, block 108 B., on the aforesaid plan. And we do hereby appraise said mortgages at the sum of $27,000."

Q. That is the general form of each of those appraisals?

By the Vice-Chancellor.

Q. The amount of the appraisal, of course, is the face value of the mortgage?

A. That is it, yes, sir. The form is just a little different, doesn't go into detail in describing the surveyor's record, &c., but the language of it is the same. I will read another one of them to you a little different. "The undersigned hereby appraise the mortgage made by Ventnor Syndicate to West Jersey Mortgage Company, dated August 10th, 1911, covering lot number 14, block 108 A., on map of Ventnor Syndicate property in and adjacent to Ventnor City, at the sum of $5,000." That is the form of all of them.

By Mr. Clevenger.

Q. Now, Mr. Sypherd, take up the accounts which you have of all moneys received and disbursed as trustee?

A. All right.

Q. I want to know all moneys which you have received as trustees, and the date and from whom and for what?

A. Do you want all this record read off—everything, every item, beginning with the first payment here received by us?

The Vice-Chancellor—Can't it be copied and filed?

Mr. Clevenger—Yes, sir.

The Witness—It will save a lot of time.

Mr. Clevenger—Then it is understood that a copy of this is to be submitted in evidence, if your Honor please?

The Vice-Chancellor—Yes, I should think it would be prudent; it will save a lot of time.

Mr. Clevenger—Yes, sir; I simply want to examine it. I am satisfied with that course.

(Said copy of account considered marked *Exhibit C 29.*)

By the Vice-Chancellor.

Q. You might let the record show the aggregate, if it is added.

A. It is not kept just that way; it wouldn't show it in looking it over.

By Mr. Clevenger.

Q. Now, Mr. Sypherd, this is the page taken out of the book of original entry?

A. It is.

Q. And is as it was made at the time it was placed in the book first?

A. Yes; it is the ledger account taken from the original book of the trust department of the Guarantee Trust Company. The original entry, of course, was the daily entry made in the cash book.

Q. But this record truly copies what was in the cash book?

A. It is a true copy of exactly what appeared in the cash book on each successive day.

Q. Now, these bonds that were issued, Mr. Sypherd, all drew the same rate of interest as the bonds and mortgages deposited?

A. Yes, sir.

Q. And the bonds were issued on September 1st, 1911?

A. They were dated September 1st, 1911, but not all issued at that particular date.

Q. And the interest on all of them was payable semi-annually?

A. Yes.

Q. So that the first instalment of interest was due on March 1st, 1912?

A. That is correct.

Q. From where did you get the money to pay the interest on those bonds on that date?

A. From the West Jersey Mortgage Company.

Q. And from where did you get the money to pay the interest that was due on September 1st, 1912?

A. Do you care for me to say that all the interest received by us as trustee was received from the West Jersey Mortgage Company, the guarantor of the mortgages?

Q. And you never received any interest from the Ventnor Syndicate?

A. No.

Q. Not a single dollar?

A. Now, let me just look at this. I think I am all right on that. (After examination.) No; the records show nothing received from the Ventnor Syndicate; in fact, I am positive it all came through the guarantor: that is the usual method of receipt of interest.

Q. You never received a dollar of principal or interest from the Ventnor Syndicate?

A. No.

Q. You never received a dollar of principal from the West Jersey Mortgage Company, did you?

A. Of principal?

Q. Yes.

A. No.

The Vice-Chancellor—From what?

Mr. Clevenger—From West Jersey Mortgage Company.

Q. Never a dollar of principal from the West Jersey Mortage Company?

A. No.

By the Vice-Chancellor.

Q. Did you receive any principal at all?

A. No principal at all.

By Mr. Clevenger.

Q. When was the last payment of interest received from the West Jersey Mortgage Company?

A. The last interest received was on September 20th, 1915.

Q. How much was that?

A. $150.

Q. What was that on?

A. On a mortgage of $5,000, covering lot number 14, in 108 B.

Q. When was the last payment of interest that you made to the bondholders?

A. September 1st, 1914.

Q. Were all of the bondholders then paid in full up to that date?

A. They were.

Q. Now, Mr. Sypherd, I want you to add the total of receipts and total of disbursements on September 1st, 1914, and tell me if they balance on that date?

A. What do you mean? Do you mean the moneys received by us on September 1st, 1914, and those paid out, or what we had on hand that day?

Q. I want your balance on September 1st, 1914.

A. Our balance on September—let me straighten you out. The balance—

Q. No, I don't want you to straighten me out, I want you to answer my question.

A. All right, then, the balance on September 2d, 1914,—

Q. No; I want September 1st, 1914.

A. Well, all right. On September 1st, 1914,—

Q. I want that accurately.

A. All right. $750. That is correct. $750.

Q. Is your ledger so kept that you can tell me the total of the debit side on that day and the total of the credit side?

A. On that date?

Q. Yes.

A. There were no payments out on that date, it was all on one side.

Q. I mean the total up to that date?

A. Up to that date? You mean prior to September 1st?

Q. I want to know if your ledger is so kept that you can give me the grand total of receipts from the beginning of the trust to September 1st, 1914,—that is, on both the debit and credit side

A. No; it isn't so kept. Of course, it can be computed very easily.

Q. From the copy that you are going to give us?

A. From the copy that I am going to give you.

Q. Now, tell me how much the total is of moneys received after September 1st, 1914?

A. Up to the last receipt, you mean?

Q. Up to and including the very last receipt.

A. All right. Total receipts after September 1st, 1914, were $2,160.

Q. What were the total payments from September 1st, 1914, to date?

A. $2,400.

Q. Did those payments of $2,400 include anything but interest paid out?

A. No.

Q. They included no principal?

A. No.

Q. Included no taxes?

A. No.

Q. And was it interest payable to bondholders?

A. Yes.

Q. Now, did the receipts consist entirely of interest received on mortgages deposited with you?

A. It did.

Q. Was any of the money which was advanced to you by the West Jersey Mortgage Company, under its guarantees for anything else but interest on the mortgages guaranteed by it?

A. No.

Q. They never advanced to you any interest or principal for the bonds, did they?

A. No, only the mortgages.

Q. Did you ever pay back—you or any other person ever pay back to the West Jersey Mortgage Company any part of the money which it advanced?

A. No. Well, now, let me qualify or modify that with something I happened to think of. In our records there is an entry whereby the Mortgage Company did make one payment of $30 through an error, which was put in our books as a payment of an interest on a particular bond, but it was refunded and the two sides of the account were balanced, one offset the other. It was a $30 payment that was—

Q. Only a correction of an error?

A. That was all, nothing else except the correction of an error, but I wanted you straight on it.

Q. Now, did anybody else ever pay the interest on those mortgages held by you excepting the West Jersey Mortgage Company?

A. Not to us.

Q. Are you still receiving interest from the West Jersey Mortgage Company through the hands of its receiver?

A. Oh, yes.

Q. And is the balance which you have in hand now $750?

A. The balance we have in hand now is $510.

Q. Does that account show the moneys that you have received from the West Jersey Mortgage Company as well as from the receiver of the West Jersey Mortgage Company?

A. We have received nothing in this account since September 20th, 1915, and the receiver of the Mortgage Company was not appointed, as I recollect, until October, 1915, so we have received nothing from the receiver of the West Jersey Mortgage Company on this particular account.

Q. Then you wish to correct your previous testimony?

A. You asked if we had received anything. We have received it in other cases, but not in this particular case.

Q. Now, do you remember, Mr. Sypherd, when the Ventnor Syndicate met and agreed to wind up its affairs by delivering land to its stockholders for stock?

A. I do not.

Q. Was it in December of 1912 or 1913?

A. I haven't any idea.

Q. You got some land for your stock, didn't you?

A. Personally?

Q. Yes.

A. Yes.

Q. Can you say whether that was 1912 or 1913?

A. I don't know.

Q. Now, does that account show any payment of any of the bonds that were issued, Mr. Sypherd?

A. Principal?

Q. Yes.

A. It does not.

Q. It was originally intended under the agreement that the bond issue should be $200,000, was it not?

A. $200,000 is the authorized amount of the issue, yes.

Q. What was the greatest amount of bonds that ever were issued?

A. $79,000.

Q. How many are outstanding now?

A. $77,000.

Q. What became of the other $2,000?

A. They were retired, canceled.

Q. How?

A. Under the provisions of section 11 of the trust agreement.

Q. What was the procedure?

A. The procedure was that if at any time the Ventnor Syndicate presented to the trustee any of its bonds for cancellation that the trustee then should re-deliver

or re-convey—re-deliver to the Ventnor Syndicate any of the bonds and mortgages in the trust fund equivalent to the amount of the bonds so presented for cancellation.

Q. And did you get two bonds from the Ventnor Syndicate?

A. We received $2,000 of bonds of the Ventnor Syndicate.

Q. Have you the letter transmitting them?

A. I think so. First, we have this order: "October 6th, 1914. To the Guarantee Trust Company, Trustee. In accordance with the terms of a trust agreement under which an issue of bonds of this company, dated September 1st, 1911, were issued, we hand you herewith bonds of this company dated September 1st, 1911, and due September 1st, 1914, amounting to $2,000, and will ask you to deliver to us bond and mortgage by assignment of Christina Krumm of $2,000 and held by you as a part of said trust fund, dated March 1st, 1912, covering lot number 2, in block 82 B., and recorded in book No. 129 of mortgages, page 16. Ventnor Syndicate, by Carlton Godfrey, Treasurer." Pursuant to that order we delivered the mortgage referred to to the office of the West Jersey Title & Guaranty Company, in accordance with a letter which I have here.

Q. Now, on what date was that delivery made?

A. I will have to refer to the letter. The order was given to us on the 6th of October; I assume that it was about the same date. I thought I had that copy with this file, but evidently it must be in my other file of letters which I haven't brought here, but I am very positive it is the same. I can produce the letter a little later,—a copy of it.

Q. What was the letter, Mr. Sypherd?

A. The letter was simply a statement, "To the West Jersey Title & Guaranty Company. In accordance with instructions from the Ventnor Syndicate we hand you

herewith a certain bond and mortgage to be delivered upon the delivery to you for cancellation of certain bonds of the Ventnor Syndicate aggregating $2,000." That is about what it stated.

Q. I would like to have that letter.

A. You can have the letter. I will get it for you but I don't see it right here now. I saw it yesterday when I was going through the corresepondence.

Q. I would like to offer it in evidence.

A. Yes.

By Mr. Cole.

Q. Why did it go to the West Jersey Title Company?

A. Just because of the fact that the settlement of the mortgage that was being sold was going through their office.

By Mr. Clevenger.

Q. That particular bond and mortgage which you held as trustee was being paid off through a settlement in the West Jersey Title Company?

A. I assume so; that was the purpose of delivering it.

Q. And, as a matter of fact, it was delivered there and it was paid?

A. Yes, that is, the mortgages were delivered to us for cancellation and the mortgage assigned by us, in accordance with instructions from the Ventnor Syndicate.

Q. Now, who signed the authority for cancellation?

By the Vice-Chancellor.

Q. When you said "the mortgages" you meant the bonds were delivered to you for cancellation?

A. The bonds, yes, were delivered. Who signed the authority for cancellation?

By Mr. Clevenger.

Q. Yes, cancellation of the bond and mortgage?

A. I don't know that there was any signed order for cancellation.

Q. But you gave authority to the West Jersey Title & Guaranty Company to cancel it?

A. To cancel what, the mortgage?

Q. The bond and mortgage, yes.

A. Oh, no, we didn't; we simply handed them the mortgage with instructions to deliver that mortgage upon receipt by them of $2,000 of the bonds for cancellation, and we then canceled the bonds in accordance with the trust agreement. They had nothing to do with the cancellation of the bonds.

Q. In other words, that was the transaction rather than the one under section 7? You were proceeding under section 11 in the agreement instead of section 7, is that so?

A. Section 11? I will verify that. Under section 11.

Q. You were not proceeding then under section 7?

A. No.

Q. Now, when you wrote me relevant to that transaction some months ago you thought at first you were proceeding under section 7, did you not?

A. Well, Mr. Clevenger, you know very well from the correspondence I had with you that I corrected that error. It was an absolute error on my part, because I was writing from memory, and when I looked through our records and found what the true situation was that was immediately corrected by a letter to you, which I will read if you want to have it read.

Q. I am going to offer all the correspondence in a minute. You haven't answered my question. (Repeated.) Now, when you wrote me relevant to that transaction some months ago you thought at first you were proceeding under section 7, did you not?

A. I will answer you in this way.

The Vice-Chancellor—What is the importance of this, Mr. Clevenger?

Mr. Clevenger—I think it is quite important, if your Honor please, because under the terms of that agreement, as I read and construe it, they had no right to pay out any moneys or deliver any securities after the default in the payment of the principal of the bonds, which was on September 1st, 1914.

The Vice-Chancellor—That may be true, but what difference does it make to the ultimate result of this case what this witness may have thought at one time or another time?

Mr. Clevenger—Well, I think that is largely for your Honor to determine after you have heard all the testimony.

The Vice-Chancellor—I cannot see that it is a matter for my consideration, what this witness may have thought. The question is, what was done?

Mr. Clevenger—It may be from all the testimony, when I am through, your Honor may conclude it was done under the 7th section instead of under the 11th.

The Vice-Chancellor—Perhaps so, but why will that and to what extent will that be influenced by what this or any other witness may have thought at the time or since? Haven't I necessarily to determine what the powers of the trustee were and whether the trustee has exercised those powers properly?

Mr. Clevenger—Yes, that is true.

The Vice-Chancellor—And will it make a particle of difference whether this witness thought it was under section 7 or 11 at one time or another time?

Mr. Cole—I pointed out to your Honor the first day that there was nothing in this bill to suggest anything more than a breach of trust, having done something they should not have

done or having left undone something they should have done, so what the witness thought, it seems to me, is immaterial.

The Vice-Chancellor—My only aim at this moment is to escape the exhaustion of the time of considering this question of what the witness thought when he first wrote to you and what he thinks now, because I cannot see that it makes any difference.

10 Mr. Clevenger—Well, if your Honor overrules the question I won't press it. It occurred to me that it was important.

The Vice-Chancellor—I do not think it is important.

By Mr. Clevenger.

Q. Now, Mr. Sypherd, under the terms of the bonds issued under this agreement the principal matured on September 1st, 1914, did it not?

20 A. It did.

Q. And the guarantee of the principal by the West Jersey Mortgage Company matured on September 1st, 1915?

A. That is correct.

The Vice-Chancellor—I do not quite understand that last question—the guarantee of the outstanding bonds by the West Jersey Mortgage Company matured, did you say, at a certain time?

30 Mr. Clevenger—Yes.

The Vice-Chancellor—You mean matured by reason of a default in nonpayment, or what do you mean?

Mr. Clevenger—The provision of the West Jersey Mortgage Company's guarantee is that if the principal of the bonds is not paid when it matures that they will pay it one year after that maturity.

The Vice-Chancellor—Oh, that is the language of the provision, is it?

Mr. Clevenger—Yes.

The Vice-Chancellor—What did they guarantee in addition to that? Did they guarantee the bonds also, the bonds issued by the Ventnor Syndicate?

Mr. Clevenger—The West Jersey Mortgage Company guaranteed the bond issue; it guaranteed the principal when it matured, guaranteed the principal as it came due.

The Vice-Chancellor—That is the bonds issued by the Ventnor Syndicate?

Mr. Clevenger—Yes.

The Vice-Chancellor—Not mortgage bonds?

Mr. Clevenger—Yes, they guaranteed mortgagees also.

The Vice-Chancellor—There were two separate guarantees, one accompanying the mortgages which were deposited as collateral?

Mr. Clevenger—Yes.

The Vice-Chancellor—And another accompanying the bond which was issued to the public?

Mr. Clevenger—Yes.

The Vice-Chancellor—Which are you referring to when you say they agreed to pay within one year?

Mr. Clevenger—The collateral bond issued to the public.

The Vice-Chancellor—I did not realize before that they were such short term bonds.

Mr. Clevenger—They were three years; they matured on September 1st, 1914.

The Vice-Chancellor—But that had no reference to the maturity of the mortgages back of the bonds?

Mr. Clevenger—No, sir, that has been shown this morning. All of those have matured.

The Vice-Chancellor—Well, the guarantee of these mortgages was not a guarantee of their payment when they matured?

Mr. Clevenger—Yes, sir.

The Vice-Chancellor—As to principal?

Mr. Clevenger—Yes, sir.

The Vice-Chancellor—Were they?

Mr. Clevenger—Yes, sir. I had better show that, I guess.

By Mr. Clevenger.

Q. Mr. Sypherd, the guarantees of the West Jersey Mortgage Company which accompanied each of the bonds and mortgages to which you have referred this morning guaranteed the payment of the interest as well as the principal, did they not?

A. Yes.

By the Vice-Chancellor.

Q. At maturity of the principal? Guaranteed the payment of the principal at the maturity of the principal?

A. Under the terms of their guarantee they had one year in which to collect the principal of the mortgages after they came due.

By Mr. Clevenger.

Q. I wish you would take one of the bonds and read that language, please, Mr. Sypherd?

A. One of the bonds?

Q. I mean one of the guarantees, not the whole guarantee, just that part.

A. I understand you want that part only?

Q. Yes.

A. Here is what they agree to do: First, payment on the blank days of blank and blank, in each year, at the rate of six per cent. per annum from blank date, out of every instalment of interest falling due on the

bond and mortgage described in schedule A until the principal sum secured thereby shall be paid. Second, payment of the principal sum secured by the said bond and mortgage, and of every instalment thereof, within twelve months after the same shall become due. Is that sufficient?

Q. Yes. Now, did the proceeds of the sale of these bonds come into the hands of the Guarantee Trust Company?

A. It did not.

Q. Did they sell any of the bonds?

A. They sold none of the bonds.

Q. Were the bonds issued as the mortgages were deposited?

A. Yes.

Q. And not until then?

A. Not until then, no.

Q. Have you a list of the owners of the bonds?

A. I have.

Mr. Clevenger—I would like to offer that in evidence.

(Said paper marked *Exhibit C 30.*)

Q. Is that up to date?

A. It is.

Q. And does it show the amount that each person owns?

A. It does.

Q. Have you got letter to the Guarantee Trust Company of April 14th, 1915; April 17th, 1915; April 21st, 1915; August 30th, 1915; October 13th, 1915; October 22d, 1915; October 28th, 1915; October 30th, 1915; November 9th, 1915; November 22d, 1915, and December 3d, 1915?

A. Yes.

Q. Have you copies of letters from you to me of April 10th, 1915; April 21st, 1915; September 11th, 1915; October 21st, 1915; October 29th, 1915; November 6th, 1915; November 24th, 1915, and December 2d, 1915?

A. I have.

Mr. Clevenger—I would like to offer those in evidence.

(Said package of letters and copies of letters marked *Exhibit C 31.*)

The Vice-Chancellor—What is the idea of that, Mr. Clevenger? You cannot make evidence that way that I can see. If you have anything by that correspondence that will modify the testimony of this witness in any way, or that ought to modify it, it ought to be brought to his attention. The correspondence itself is of no value as evidence.

Mr. Clevenger—The principal object of the offer was to show that we were making demands for attention concerning foreclosure of these mortgages, recording of the agreements, &c., which they were obliged to do, as I read the agreement. I think it is competent to that extent.

The Vice-Chancellor—Certainly, your demands of that kind would be competent.

Q. Now, Mr. Sypherd, going back to the schedule attached to the agreement, I would like you to tell me from what date interest is due on each of these mortgages in their order?

A. $5,000, covering lot 14, 71A, November 12th, 1914.

Q. 71 A?

The Vice-Chancellor—This is all tabulated here, Mr. Clevenger.

A. I have it all tabulated here.

Mr. Clevenger—Then I offer the tabulation in evidence.

(Said paper marked *Exhibit C 32.*)

Q. Frederick C. Robins, Mr. Sypherd, is in the employ of the West Jersey Title & Guaranty Company, is he not?

A. Yes.

Q. And he held an office in the West Jersey Mortgage Company, did he not?

A. He did for a certain period of time, yes.

Q. What was the office he held?

A. Assistant treasurer.

Q. And he was at one time on the board of the Guarantee Trust Company, was he not?

A. He was.

Q. When did he resign?

A. I think that he resigned the latter part of 1913. I am not quite positive about that; I think that is the date.

Q. You never recorded this agreement, did you, Mr. Sypherd?

A. No.

Q. Even after I asked that it be done?

A. No.

By the Vice-Chancellor.

Q. Is it a separate document acknowledged so that it might be recorded?

A. If there was any provision in the act which would make it a recordable paper it could be recorded.

Q. But is it acknowledged?

A. It is acknowledged, yes, but I have been advised that that particular paper is not a recordable instrument. At any rate, we did not record it, because we saw no necessity for it, not involving the question of the title to lands in any way.

By Mr. Clevenger.

Q. Have you a copy, Mr. Sypher, of the notice of December 6th, 1916?

A. What notice do you mean?

Q. Which you sent to the bondholders?

A. Yes.

Q. Will you produce it?

A. December 6th, 1916 (producing paper). I will have you a copy of that made, if you want to keep it, because I have made some notations on it, I wouldn't care to have it go out of my possession.

Mr. Clevenger—I desire to offer that in evidence.

(Said paper marked *Exhibit C 33.*)

Q. Other than that notice of December 6th, 1916, Mr. Sypherd, did you ever send any notice of any kind to the bondholders?

A. No.

Q. Under this agreement of September 1st, 1911?

A. No.

Q. Did you ever have any correspondence with the bondholders except to transmit them their interest check?

A. Yes, I did, correspondence and personal interviews.

Q. Did you ever notify the bondholders as a whole of the nonpayment of taxes, interest or principal of the bonds?

A. I did not.

Q. Has the Guarantee Trust Company as a corporation, in its own behalf, under process of foreclosure any mortgages having to do with the Ventnor Syndicate or the Margate Company or the West Jersey Mortgage Company excepting the large mortgage on Margate Park?

A. I think we have one that we hold as collateral with a loan, yes.

Q. And when was that bill filed?

A. I do not recall, Mr. Clevenger, when it was filed; I should imagine, though, it was filed several months ago; I can't really say.

Q. There is more than one mortgage involved in the Margate foreclosure, is there not?

A. Yes.

Q. There is the mortgage which was originally given on the land and subsequent mortgages taken to secure interest, are there not?

A. No.

Q. Do all of the mortgages in the bill represent moneys that were loaned?

A. They represent moneys that were loaned, and then, in addition to the moneys loaned, we have on deposit with us additional mortgages that are further security for the original indebtedness.

Q. And not for the interest?

A. No, sir—well, it is the entire indebtedness, either principal or interest.

Q. And all of those mortgages are included in that one bill?

A. Yes.

Q. Now, all of the mortgages of the character secured by this agreement of September 1st, 1911, which you have had as collateral with loans made to other parties, have been weeded out?

A. To a very large extent.

Q. And other collateral substituted?

A. Other collateral substituted.

Q. And that process of weeding has been going on for how long?

A. I can't say definitely, I suppose—in fact, we have held very few of them for quite a long while; we have a few, did have a few.

Q. Well, you had more in 1912 and 1913 than you had in 1916, didn't you?

A. I would say so, yes, but we didn't have so very many of them then.

Q. And the bulk of them had been weeded out?

A. Yes.

Q. And other collateral substituted?

A. Yes, sir.

Q. Now, that was good banking and good business to do that?

A. We thought so.

Q. And you think so?

A. Yes.

Q. Now, I wish you would tell me again, Mr. Sypherd, why it was that it was your best judgment that these mortgages should not be foreclosed?

A. I do not see, Mr. Vice-Chancellor, why I should repeat all that; that is all in the testimony yesterday; the whole matter was gone into and explained thoroughly, what our position was, and why, in our judgment, it was not regarded as a wise thing to foreclose those mortgages at the time. The evidence speaks for itself. If you have that testimony read it will be my answer to-day, just the same; I don't change it in any way.

Mr. Cole—Is it your object, Mr. Clevenger, to have him repeat it?

Mr. Clevenger—Yes; I do not think he was very clear in what he said yesterday.

A. (Continuing) Well, then, I would request that my testimony on that point be read. Let us clarify it, if it is not clear; we are perfectly willing to clear up anything that you want cleared up; there is nothing we have to conceal in any way, shape or form. But I do not feel like repeating a lot of testimony and having you come in here and say, "yesterday you testified this way and to-day you testify another way," not using the exact words. I do not think it is fair. If there is any point about it you have in mind I should be very happy to answer the question.

Mr. Clevenger—I would like to have the question answered, if your Honor please.

Q. (Repeated)—Now, I wish you would tell me again, Mr. Sypherd, why it was that it was your best judgment that these mortgages should not be foreclosed?

The Vice-Chancellor—What is your purpose, Mr. Clevenger?

Mr. Clevenger—This witness, if your Honor please, is my witness, of course, but he is adverse, he is from the other side, and I think that I have the same right to cross-examine him as I would if he was under cross-examination.

The Vice-Chancellor—Well, you have asked him this question and he says he has answered it as fully as he is able.

Mr. Clevenger—Yes, but he did not answer it clearly yesterday, if your Honor please. He gave as the reason that "it was our judgment," but he never gave any clear statement as to why "it was our judgment."

The Vice-Chancellor—You may answer the question, Mr. Sypherd, if you can answer it any more fully than you have answered it. If you say you cannot I have no way of making you.

A. I do not know of a single instance, Mr. Vice-Chancellor, that I can cite or anything that I can say that will make our position more clear than I endeavored to make it yesterday. If there is any point Mr. Clevenger has in mind that he wants to ask about he certainly has the privilege of doing it.

Mr. Clevenger—I would like to have an answer to my question, Vice-Chancellor.

The Vice-Chancellor—I will not undertake to make him answer a question that he says he cannot answer any more fully than he has.

Mr. Clevenger—He can at least repeat what he said.

The Vice-Chancellor—Well, I will not require him to do so if he says he has answered it as fully as he can. If you suggest any feature of the answer that you want further elucidated you may do that.

Q. Why did you permit the interest to accumulate on these mortgages, Mr. Sypherd?

A. Because in our best judgment it was not a wise thing to take steps to foreclose the mortgages, which was the only way to collect the interest.

Q. What moved you to reach that judgment?

A. The reasons that I stated in my testimony yesterday in full.

Q. I am asking you now what the reasons were?

A. Well, those are the reasons as stated, they are a matter of record, they are in the testimony.

Q. I am asking you now; I ask for an answer to the question.

A. That brings it right back to the previous question, Mr. Vice-Chancellor, as to whether I have got to go to work and repeat everything I said yesterday when I have stated and explained everything as fully as I could in that testimony yesterday. I will leave it to you to instruct me as to what I shall do.

The Vice-Chancellor—I cannot see any utility in going over it the second time. You exhausted the subject yesterday. If you will state any feature in which it is incomplete I will let you examine on that, but I think Mr. Sypherd is quite right in objecting to going over the same ground again.

Q. Why did you leave the taxes unpaid, Mr. Sypherd?

A. For the same reason.

Q. And what is the reason?

A. That in our judgment it would have been unwise to have foreclosed the mortgages for non-payment of taxes.

Q. What moved you to reach that judgment?

A. The same reasons as stated in my testimony yesterday.

Q. And what is that?

A. That is a matter of record and I decline to repeat it.

By the Vice-Chancellor.

Q. You say you cannot give them any more fully than you gave them yesterday?

A. I cannot. I do not know of any other reason, Vice-Chancellor, than I gave yesterday.

Mr. Clevenger—May I have an answer to the question, if your Honor please?

The Vice-Chancellor—No; I think it entirely adequate. If he cannot say any more, what is there more to say?

By Mr. Clevenger.

Q. Mr. Sypherd, at the time you certified to these bonds that were issued under the agreement of September 1st, 1911, you knew, did you not, that only three of them were assigned mortgages, and that all the others were mortgages made directly to the Guarantee Trust Company as trustee?

A. I perhaps knew it, but I didn't pay any attention to that refinement of difference as to whether they were assigned or made direct, as long as the mortgages were in our possession and accompanied by the proper title policies and mortgage guarantees.

Q. You knew the agreement called for assigned mortgages, didn't you?

A. I don't know that I did—no, I know I did not.

Q. And you knew that the bonds called for assigned mortgages, didn't you?

A. No, I didn't know it.

Q. And without knowing it you certified that they were—

A. I didn't certify—we certified that the bonds were issued in accordance with the terms of the trust agreement, and we stand by that certification.

Cross-examination, by Mr. Cole.

Q. Will you give us the history of the notes which were held by the Guarantee Trust Company and which were paid in March, 1915?

A. On March 5th, 1915, these notes aggregated $54,000. Now, do you want me, Judge, to trace those notes back several years?

Q. Back to their source, yes.

A. The inception of these notes was in 1910, when a loan of $10,000 was made to the West Jersey Mortgage Company, December 5th.

Q. And while you are giving us that give us the collateral which you held from time to time, if you know?

A. I can't give you the collateral with each particular loan; I can only give you the collateral that we had in our possession at the time of the payment of all our notes, on March 5th, 1915.

A. All right.

A. On March 6th, 1911, the company paid to us $5,000 on account of its indebtedness, leaving due $5,000. On March 11 we made a loan to them of $5,000, increasing the indebtedness to $10,000. On May 2d they paid us $5,000, reducing it to $5,000. On June 5th a new loan was granted, $14,000; on June 14th, $2,000, and on July 5th, $5,000, making a total loan of $26,000. We loaned them $15,000 on August 10th, 1911, making the total loans $41,000. On September 18th, 1911, they paid us $4,000, reducing the account to $37,000. On October 2d they paid $6,500, reducing it to $30,500. October 5th they paid $4,500, and on October 10 we made them a new loan of $2,000, leaving the net amount $28,000. On November 27th, 1911, we loaned them $12,000, making the loan $40,000. They paid us $5,000 on January 8th, 1912, reducing the indebtedness to $35,000. On June 10th, 1912, we loaned them $10,000, making the indebtedness $45,000, and on September 3d, $15,000, making the total indebtedness $60,000. They then paid us in October two payments, one of $5,000, one of $6,000, reducing the loan to $49,000. On January 6th, 1913, they paid $2,000, leaving the balance $47,000. On March 3d, 1913, we loaned them $2,000, and they

paid—no, they paid $2,000, and we loaned them $20,000, making the loan $65,000. On March 18th they paid us $25,000, reducing it to $40,000. On June 2d they paid us $2,000—or on May 26th, first, we loaned them $5,000, June 2d they paid us $2,000, making the loan $43,000. On June 30th we loaned $5,000; on July 10th, $5,000, and on July 14th they paid $2,000, making the net amount due $51,000. On March 12th, 1914, we loaned them $5,000, making the loan $56,000, and they paid off $2,000 on April 13th, 1914, reducing the line to $54,000, at which point it remained until the final settlement on March 5th, 1915.

Q. At the time of the settlement in March, 1915, was there any interest unpaid on any of these notes?

A. There was. These notes at that time were all in what we call our held-over account. Interest was due on—it is possible, Judge, that they may have deposited—they did, in fact, I think, deposit a check with us for the interest on each of these notes, but the renewals of the notes were not accepted because we had been endeavoring, as I stated yesterday, to have the West Jersey Mortgage Company reduce the amount of the collateral consisting of these first mortgages of the Ventnor Syndicate, we desired other collateral substituted.

Q. That is what I am trying to get at, whether or not there was a default in the payment of the interest or any of these notes?

A. No, there was not. That is my recollection. I don't know that I can testify to that absolutely, but I don't think there was any interest due whatever. I think in each case—in fact, the note clerk informed me that in each case the check for the interest was deposited with him but he did not accept the renewal for the reasons as I have stated.

Q. So that when you say they were held-over they were held-over in the sense you have explained—waiting for the reduction of the note or other collateral?

A. That is it.

Q. What was, in your opinion, the fair market value of the bonds of the Young-McShea Amusement Company at the time of the purchase by the Guarantee Trust Company?

A. Well, I think that 95 was a full market value for the bonds.

Q. Have you any knowledge of any communication to the board of directors of the Guarantee Trust Company before the purchase by them of these bonds that the West Jersey Mortgage Company had defaulted in the interest on March 1st, 1915?

A. No.

By the Vice-Chancellor.

Q. Do you mean by that that at the time you made this settlement whereby you purchased these bonds to close out your account that the members of the board did not know that there had been an interest default?

A. Yes. And I might further amplify or correct a statement that I made yesterday. I said that I personally knew that a default had taken place on March 1st in certain interest that fell due on some of these mortgages in question. When I came to think it over I realized that that in all probability was not true, and I am positive it was not, because in the course—in the ordinary course of handling our business in the collection of interest on mortgages, of which this was simply one of many cases, I would not know that interest was in default if it were only a matter of a few days, I would not know anything about it probably for two or three weeks, our practice being, through the clerical end of the office, to send notices of interest two weeks in advance of the time that the interest falls due, and no attention is paid to it until after the expiration of two weeks from the due date, and then if it is not paid a second notice is sent, and my attention is usually called to the default in payment of interest on any mortgage between those dates, between the period of, say, fifteen

days and thirty days of a default; so that I am positive that I had no knowledge at the time of the settlement of these notes that the West Jersey Mortgage Company had failed to pay the interest which was due on March 1st on a number of these mortgages, and I am positive that the members of the board did not know it.

Q. Mr. Godfrey knew it, didn't he?

A. I don't suppose Mr. Godfrey did, Vice-Chancellor. I can't answer for him. I can answer that—

Mr. Clevenger—I object to him giving testimony unless he knows.

A. (Continuing)—Mr. Godfrey probably could answer that question. As far as I know he did not.

Q. I assume he knew it because he was in both companies.

A. Well, he wouldn't know a detail like that, Vice-Chancellor, because it is something in the ordinary routine of the collection of interest on many, many mortgages that we handle.

Q. No, but I thought he would probably have known. It seems natural that he would have known as treasurer of the Ventnor Syndicate that they were up against a default.

A. Well, that may have been true, and yet the West Jersey Mortgage Company, as it does in many, many cases—it did, at least, when it was running—would advance the interest on the very day it was due, and it might not come in for one or perhaps for two or three days afterwards, sometimes longer than that.

By Mr. Cole.

Q. Mr. Sypherd, my question was addressed to the West Jersey Mortgage Company. The West Jersey Mortgage Company would pay interest up to that time. The question was whether they had defaulted and not the Ventnor Syndicate. Assuming that you did know before the settlement of March—whatever the date was—that the Mortgage Company had defaulted in the pay-

ment of interest due March 1st: Did you communicate that fact to the board of directors?

A. No.

Q. Did you or did the Guarantee Trust Company ever receive a request or demand from the receiver of the West Jersey Mortgage Company touching these bonds that were bought?

A. Yes.

Q. What did the Guarantee Trust Company tell him their attitude was touching these bonds?

A. I can best answer that by reading the correspondence, if you would like to have it read.

Q. Well, read that right into the record, please?

A. This is a letter received from the Receiver of the West Jersey Mortgage Company, under date of February 9th, 1916: "I am advised that notes aggregating the principal sum of $54,000 were paid by the West Jersey Mortgage Company to your company on or about March 4th, 1915, and that there was pledged for the payment of these notes sundry collaterals." That is one letter, but that is not the one, Judge, that I had in mind.

Q. Read the one you had in mind.

A. Yes; here is the letter. "Guarantee Trust Company, Atlantic City, N. J. Attention of Daniel S. White, President. Gentlemen:" This is August 9th, 1916. "On March 5th, 1915, $58,000, par value, of bonds of the Young & McShay Amusement Company were sold to the Guarantee Trust Company at 95, causing a loss of $2,900 and accrued interest. The sale of these bonds at this figure was never authorized, nor was there any reason for any sacrifice of value, the bonds being worth full 100 per cent. As this was a transaction in which the president of the Mortgage Company and the president of the Guarantee Trust Company were one and the same person, and the sale was not lawfully authorized by the Mortgage Company, I am instructed by the Receiver of the West Jer-

sey Mortgage Company to make demand for the immediate payment by your Company to the Receiver of the sum of $2,900 with interest from March 5th, 1915, and also for the accrued interest upon the bonds up to the date of their sale, and in the event that this demand is not promptly complied with, to institute suit against your company. (Signed) Harvey F. Carr, Solicitor for John G. Horner, Receiver of West Jersey Mortgage Company." Under date of August 10th we replied to that letter as follows—

Q. Did that reply go by the action of the board of directors?

A. The letter from Mr. Carr was read to our board, and in accordance with their action the following letter was addressed to Mr. Carr: "Harvey F. Carr, Esq., Solicitor for John G. Horner, Receiver West Jersey Mortgage Company, Camden, N. J. Dear Sir: We are in receipt of your letter of the 9th instant, relative to the purchase by this Company on March 5th, 1915 of Fifty-eight Thousand Dollars, par value, of bonds of the Young-McShea Amusement Company at ninety-five, and note the claim which you make against this Company for the difference between the par value of the bonds and the figure at which they were sold to this Company. Replying, would state that we are advised that the sale of these bonds to us was lawfully authorized by the West Jersey Mortgage Company, and, further, that at that time the price at which we purchased the bonds was considered to be their maximum market value. In fact, we have learned since that at approximately the same time some of these bonds were sold at a lower figure than paid by us. We are willing at this time to sell the bonds to you at the same price paid by us at the time of purchase. In view of these facts, we do not feel that your Company has any claim whatsoever against this Company for any difference in the value of these bonds. Yours, very truly."

Q. Did you ever hear anything more from the receiver?

New Jersey State Library

A. Never.

Q. Was there any reason why you did not record the agreement of September 1st, 1911?

A. None whatever.

Q. Do you know whether Mr. Clevenger had a copy of that agreement or not?

A. At the time he wrote?

Q. Yes.

A. I think he did; I am not positive; I think he did.

Q. Was there ever a demand or request of any kind from any bondholders of the Ventnor Syndicate, other than that which came from Mr. Clevenger, to take any action looking to the foreclosure of any of these mortgages?

A. None whatever.

Q. When did you first hear from Mr. Clevenger?

A. The first communication was dated in April, 1915, asking for a list of the mortgages and certain information relative to the condition of them.

Q. You furnished that information?

A. I did.

Q. When did you next hear from him?

A. Just wait until I get the correspondence together, Judge, and I will answer you. We next heard from him on August 30th, in which he asked certain questions in regard to whether interest had been paid and whether the taxes had been paid, and I furnished him with the information.

Q. Did you furnish him with that information?

A. Yes, with the information in my possession at that time.

Q. Now, did you finally write him a letter in which you undertook to explain to him why action had not been taken by the Guarantee Trust Company?

A. In response to Mr. Clevenger's rather strong request for information as to why he did not do certain things in connection with this trust agreement I called upon him in person on October 15th, 1915, and went

over the whole situation in detail, explained to him to the best of my ability why we had not proceeded to do anything with these mortgages. He evidently was not satisfied with my explanation, because he told me when I had finished that he did not know anything more about the real reason when I got through than before I had started, and he asked me to give him in writing what I had to say, and I did write him a letter.

Q. Under what date? That is in the correspondence he has offered in evidence, isn't it?

A. Yes, it is all in the correspondence here. And then finally, not being satisfied with the answers that I had given him, he had copies of all the correspondence that passed between us prepared and sent a copy to each one of our directors, calling attention to my refusal to furnish him with the information which he desired. That communication was received by the board of directors, and—

Q. All right. Now, was that read at a meeting of the board of directors?

A. It was.

Q. And were you requested to reply?

A. I was.

Q. And did you reply?

A. The reply that I did send was a reply that was read before the board of directors and authorized to be sent to him, under date of November 6th, 1915.

Q. Is that a copy of the letter you have in your hand?

A. Yes, sir.

Q. And you say that letter was read to the board of directors and they authorized it to be sent and you sent it to Mr. Clevenger?

A. Yes.

Q. I wish you would read that letter, please, into the record.

A. "November 6th, 1915. William M. Clevenger, Esq., #615 Guarantee Trust Building, Atlantic City, N. J. Dear Sir: Your communication, addressed to

the board of directors of this company and sent to each member of the board, was given due consideration at a meeting of the board last Thursday, and I was authorized to send you the following answers to your questions: Your question #1: Why did your company neglect to foreclose under paragraph 5 of the agreement of September 1st, 1911? Our reply thereto: Under the terms of article 5 of the trust agreement the trustee is authorized, if it deems it necessary for the security of the bondholders that any of the mortgages should be collected, to proceed to do so by foreclosure or otherwise. This company did not deem it necessary for the security of the bondholders that this action should have been taken and believed that it would not have been to the advantage of the bondholders if such foreclosure had taken place. For this reason no action was taken under the authority vested in the trustee by this article. The fact that ninety-seven per cent. of the bondholders apparently agreed that our position was correct, as shown by the fact that they did not even request the trustee to take any action looking to the foreclosure of these mortgages, is a further confirmation of the wisdom of the position taken by this company. The trust agreement provides that twenty-five per cent. of the bondholders, in case of default, might have requested such foreclosure, but to this date no such action has been taken by the bondholders. Your question #2: Why did your company permit $2,000 of assets to pass from your possession when taxes and interest were in default? Our reply thereto: This company did not permit $2,000 of the assets in this trust to pass from its possession. The facts are that the Ventnor Syndicate paid to this company, as trustee, $2,000 and withdrew a mortgage of like amount, then presented for retirement $2,000 of its bonds and received cash in lieu of the same, thus reducing the amount of mortgages in the trust fund by $2,000 and lowering the bonds outstanding by a like amount, all of which

was done in strict accordance with the trust agreement. The withdrawal of this $2,000 did not affect the remaining bondholders." That is the clause where I made the error, and it was explained immediately in a letter which I will read following this. "Your question #3: Why did you certify you had $77,000 of assigned mortgages when you in fact only held $10,000? Our reply thereto: If this question is intended as a statement of fact it is absolutely untrue. At no time has any bond been certified by this company, as trustees, unless prior to such certification an equal amount of mortgages has first been deposited with it. The books of this company show that at all times there has been an amount of mortgages deposited in the trust fund equal to the bonds certified. There are now $77,000 of mortgages in the fund, a full list of which you have had in your possession since April 16th, 1915. I am directed to say to you that the board of directors has the fullest confidence in its officers as to the course pursued relative to these mortgages and feel that whatever has been done has been in accordance with the terms of the trust agreement and, in the judgment of this company, for the best interest of the bondholders." Now, I immediately corrected that error in the—

Q. Well, I don't care about that. You did correct the error?

A. Yes, I corrected that.

Q. Did Mr. Clevenger, on behalf of his client, ever tender any money to cover the cost and expense incident to a foreclosure?

A. He did not.

Q. Did he ever present a request signed by any of the bondholders?

A. He did not.

Q. Now, did you call a meeting of these bondholders some time in 1916?

A. We did; on December 6th, 1916, we sent out a letter to all the bondholders calling a meeting.

Q. And was there a meeting??

A. There was a meeting, yes.

Q. Where was that held?

A. In our office.

Q. Do you recall who were present?

A. I can tell you in a minute; I have a memorandum here of the whole procedure. I do not see it right here, but I can tell you from memory, I think, just who they were. William A. Logue, representing the Cumberland National Bank, of Bridgeton, N. J.; Joseph R. Embree, a lawyer of Philadelphia, representing Alice Nuskey; a gentleman from the office of Judge Starr, I don't know his name, representing the West Jersey Title & Guaranty Company; Mr. Deppe, I think, of Egg Harbor, and Mr. Harvey F. Carr, representing the Receiver of the West Jersey Mortgage Company. Mr. Weeks, I think, was there, and I think that was all.

Q. What action, if any, was taken?

Mr. Clevenger—Mr. Conover was there also.

A. Mr. Conover was there too. Mr. Clevenger made the statement that while Mr. Conover was present he was taking no part in the proceedings, so I didn't mention his name as being among the bondholders taking action. The bondholders at that meeting authorized the appointment of a committee to consider the advisability of taking some action relative to these mortgages, and that committee was appointed by me, consisting of W. A. Logue, Joseph Kaighn and John O. Wilson. They adjourned at that meeting to meet again on January 3d, but the committee advised me that they had been unable to get together, and for that reason it was inadvisable to send out a call for a meeting. I have had several letters from them since, and just a few days ago I had a letter from two members of the committee stating they were ready to report, but Mr. Wilson evidently was not, the other member of the committee, and he wrote me that he would advise me very shortly when he would be, and it is my purpose as soon as I do hear.

from them to have the meeting of the bondholders called again. Up to this time the Trust Company has had no instructions from these bondholders to take any action.

Q. Was there any reason, as far as you know, why these mortgages came directly to the Guarantee Trust Company as trustee rather than by way of assignment?

A. None whatever. My idea about that, Judge, is, as I interpret the agreement, that we were to have in our possession in proper legal form these mortgages, properly phrased, and accompanied by title policy of the West Jersey Title & Guaranty Company and also the guarantee of the West Jersey Mortgage Company, and I gave no thought whatever to the fact or to the situation as to whether the mortgages were first made, for instance, to John Smith and re-assigned to the Guarantee Trust Company, trustee, or were made directly to the Guarantee Trust Company, trustee.

Q. Was there any special request from any officer of the West Jersey Mortgage Company or any officer of the Ventnor Syndicate that these mortgages be taken direct rather than by way of assignment?

A. None whatever.

Q. Was there any request from any officer of the West Jersey Mortgage Company or the Ventnor Syndicate that this agreement of September 1st, 1911, be withheld from record?

A. None.

Q. Was there ever any request from any officer or director of the West Jersey Mortgage Company or the Ventnor Syndicate that the Guarantee Trust Company refrain from foreclosing any of these mortgages that were deposited?

A. Never. We never had a communication of any kind from any officer.

Q. Was the failure of the Guarantee Trust Company to foreclose any of these mortgages, so far as you know, due to any persuasion or action on the part of

any of the officers of the West Jersey Mortgage or Ventnor Syndicate?

A. Absolutely not.

Q. Was there ever, so far as you know, any discussion to that effect by the directors, as such—that they should not foreclose because of any request on the part of the West Jersey Mortgage Company or Ventnor Syndicate?

A. There never was.

Q. Now, do you know whether, in fact, there was a discussion by the directors of the Guarantee Trust Company, as such, as to whether or not it was wise or unwise to foreclose these mortgages?

A. The board of directors of our company had several discussions concerning the general situation down the beach in reference to all mortgages of this type, whether in the form of collateral or how held, that was not discussed, and it was the general feeling that in view of the conditions that existed it would have been a very unwise thing to have precipitated the foreclosure or started the foreclosure of these mortgages at the time.

Q. Now, in that discussion and in reaching that conclusion was there any suggestion that the West Jersey Mortgage Company, as such, or the Ventnor Syndicate should be helped?

A. No.

Q. Whose interest was being considered by the directors, as you understood it, in the discussion reaching that result?

A. The general interest of the bank as the holder of these securities mainly, and I think that the general situation was taken into consideration. You often do that in forming your judgment as to whether a certain thing should be done, not only in relation to the specific case in hand, but as to the general effect which a certain action might produce.

Q. Did the Guarantee Trust Company have other mortgages covering this property than those that were

deposited with it to secure the bonds of the Ventnor Syndicate?

A. They did; they had several of them, several mortgages of this type, that were deposited with us as collateral in connection with loans.

By the Vice-Chancellor.

Q. In that vicinity, but not on the same property?

A. Not on the same property, but mortgages of an exactly similar type on lands of the Ventnor Syndicate or of the Margate Company on the ocean front, south of Atlantic avenue.

By Mr. Cole.

Q. That is what I mean, mortgages that covered land of the same character?

A. Yes.

By the Vice-Chancellor.

Q. In the same vicinity, too?

A. In the same vicinity.

By Mr. Cole.

Q. Were any of those mortgages foreclosed?

A. No.

The Vice-Chancellor—Any in default?

Q. Any of them in default?

A. Well, we didn't have any means of knowing whether they were in default or not, because we did not collect the interest on those mortgages.

Q. You were holding them as collateral?

A. They were only deposited as collateral.

Q. Now, did the Guarantee Trust Company in acting to rid itself of the mortgages which it held as collateral, that is, the mortgages which the West Jersey Mortgage Company had guaranteed, treat these mortgages the same as it did other mortgages they held of like character?

A. Just exactly.

Q. Why, in a general sense, was the Guarantee Trust Company seeking to have these mortgages weeded out, as Mr. Clevenger puts it?

A. Well, there were two reasons, one was that we felt that we had too much money loaned that was secured by this class of collateral, and we determined to reduce the amount of our outstanding loans based upon such collateral, and we proceeded along those lines.

Q. And was that the general policy of the Trust Company?

A. It was.

By the Vice-Chancellor.

Q. Can you give me no notion of the extent that the knowledge might have been in the possession of the members of the board, or at least some of the members of the board of the Guarantee Trust Company at the time you made this settlement whereby you acquired the Young-McShea Amusement Company bonds, of the fact that either the Ventnor Syndicate or the Mortgage Company was in pecuniary embarrassment or was soon to become pecuniarily embarrassed?

A. I personally don't think that I can, Mr. Vice-Chancellor; I should think, however, that could be learned very readily from members of our board, if they were placed on the witness stand to testify as to what knowledge they had.

Q. Then speak, if you will, in answer to that, as to yourself. What was the extent of your information at that time touching any embarrassment of either the Mortgage Company or the Ventnor Syndicate?

A. So far as the Ventnor Syndicate is concerned, I knew nothing, and, at least, would not have been influenced in any way by the condition of the Ventnor Syndicate, as in this loan to the West Jersey Mortgage Company they did not enter into it because the securities that we held were mortgages on specific pieces of property.

Q. On what?

A. On specific pieces of land and not the obligation of the Ventnor Syndicate, so we didn't look to them in any way.

Q. They were mortgages by individuals?

A. They were made by the Ventnor Syndicate, but we did not consider them as any part of the security; we relied solely upon the value of the mortgages themselves, so that end of it you can eliminate entirely.

Q. But you must have had the bonds of Ventnor Syndicate?

A. Oh, we did. What I mean is this, Mr. Vice-Chancellor: That we considered solely the value of the mortgage itself, irrespective of the bond, whether it had value or not I don't know. I do know that after the storms occurred down there and the bulkheads were destroyed that it was general belief then that the value of the stock of the Ventnor Syndicate was very materially injured, and the subsequent events showed that that was the case and that it practically has no value to-day so far as I can see. As to the West Jersey Mortgage Company, they had always met their obligations up to that time, and in fact they had met their obligations even then with us; they may have had trouble sometimes in always raising the necessary amount of cash that they might require for their business, they had a great deal to take care of, in view of the fact that in the year preceding this transaction they had a great deal of money to raise, I presume in connection with the guarantees that they had outstanding, because many people refused to renew their mortgages in view of the general conditions prevailing down there, down the beach, but so far as their relationship with us was concerned they had always met their obligations in very fair shape, and when these bonds were taken it was with no idea that we did not have ample security for our loans but solely on the grounds that I have stated to you and that we thought their loans were rather large.

Q. Did you know personally at that time—the other directors can speak for themselves if called, but did you know that a considerable amount of the interest that had been paid to your company on these bonds of the Ventnor Syndicate had been paid by the Mortgage Company to make good its guarantee by reason of defaults in the payment of the interest?

A. I assumed that was the case in many instances, although to what extent that existed—

Q. What did you say?

A. I said I assumed that was true in some instances, but to what extent I didn't know; I knew that they had advanced interest in many cases, but just in what individual ones I had no knowledge.

By Mr. Cole.

Q. Mr. Sypherd, right on that point, it appears that the Guarantee Trust Company did not collect the interest except through the West Jersey Mortgage Company.

A. That is correct.

Q. That was true from the beginning?

A. Yes.

Q. And when the interest came from the West Jersey Mortgage Company were you told by any one as to where the money came from?

A. No.

Q. Did you make any inquiry about it?

A. No.

Q. Had you any notice up to March 1st that the West Jersey Mortgage Company had defaulted in paying anything it owed anybody?

A. Not to the best of my recollection.

By the Vice-Chancellor.

Q. And you didn't know how much they had advanced of this guaranteed interest?

A. No, I didn't know.

Q. Were they guarantor on any of the mortgages held by you as collateral?

A. They were guarantor on two mortgages of this type that we held as collateral.

By Mr. Cole.

Q. Now, the question of these overdue taxes and the failure to foreclose for non-payment—I don't know whether I have asked you the specific question or not: Was the failure to act in the way of a foreclosure or any other was due to any solicitation on the part of either the Ventnor Syndicate or the West Jersey Mortgage Company?

A. It was not.

Q. Now, why did the Guarantee Trust begin the foreclosure of what is known as the Margate mortgage or mortgages? It appears that you did begin to foreclose that.

A. Because we felt that we had deferred foreclosure of that mortgage as long as it was advisable, and that nothing further could be gained—so far as any benefit to the owner of the property—by not proceeding, we felt that it was the proper time for us to proceed with the collection of that money.

Q. Do you know whether at the time the bill was filed there had been deficiency judgments entered up against the Margate Company?

A. There had.

Q. Few or many?

A. Quite a number, in my recollection.

Q. So far as you know or represented to the board of directors, was there any prospect of there being a payment of the debt or anything done to avoid a foreclosure of the mortgage?

A. We believed there was not.

At this point a recess was taken until two o'clock P. M.

Hearing of the cause resumed after recess, in the presence of the respective counsel heretofore noted.

Herman M. Sypherd, recalled.

By Mr. Cole.

Q. In his testimony Mr. Jeffries, the treasurer of the Guarantee Trust Company, stated that you and Mr. Godfrey had told the directors that the company's position was safe and left, with me at least, the inference that the conversation that brought that about may have occurred during the discussion of the question of whether or not these mortgages should be foreclosed. Now, what is your recollection about that?

A. My recollection is that any such discussion of the kind referred to by Mr. Jeffries took place after the receipt of a letter from Mr. Clevenger in which he advised us that he proposed to enter a suit against us.

Q. One of the letters here in question?

A. One of the letters in question that is offered in evidence.

Q. And was that read to the board?

A. It was.

Q. And then did somebody in the board ask your opinion and that of Mr. Godfrey as to what the legal position of the company was?

A. The question was discussed as to whether in case he did bring a suit there was a legal liability on which we could be charged.

Q. And that opinion was what?

A. The opinion was that there was no liability.

Q. Now, was there ever any other occasion when you did in fact tell the board that the company's position was safe in relation to this failure to foreclose these mortgages?

A. None whatever, we never discussed that question from a legal standpoint.

Q. Now, did the Guarantee Trust Company have any money in its hands at any time that it could have used

in paying the expenses and the costs incident to a foreclosure of these mortgages?

A. The only funds it had in its hands were moneys derived from the receipt of interest on the mortgages in the trust and it could not have been used for any other purpose except that for which it was paid to us.

By Mr. Clevenger.

Q. That is a legal conclusion, isn't it?

A. That was our legal conclusion; yes.

By Mr. Cole.

Q. And did you act upon that during the execution of this trust?

A. We still maintain that balance just as it existed.

Q. Do you recall whether the Guarantee Trust Company sent bills to the West Jersey Mortgage Company for interest as it fell due?

A. I assume so. That was taken care of by the bookkeeper or the clerk in the office.

Q. Is that custom, at least?

A. It is the custom and I assume it was done in every case.

Q. In a question Mr. Clevenger asked yesterday—I think it was in substance this: Did you keep from the bondholders information about the overdue taxes. Did you, in the sense that you deliberately withheld from them the information?

A. No.

Q. What you meant was that you simply did not advise them of the fact?

A. That is it; we didn't do any overt act to advise them of the unpaid taxes.

Q. Did you intentionally withhold the information from them?

A. No.

Q. For any purpose?

A. No; certainly not.

Q. Have you any information as to whether or not during 1915 the Ventnor Syndicate owed the Guarantee Trust Company any money? If so, how much?

A. I haven't. I know, as a matter of fact, that they owed them a little; my recollection is that they owed them $2,750, I think.

Q. That was in 1915?

A. I think so. It was a very small amount, I know, and that was secured by collateral.

By Mr. Clevenger.

Q. Mr. Sypherd, on March 1st, 1915, you knew that the principal sum of these outstanding bonds had matured on September 1st, 1914, did you not?

A. I did.

Q. On March 1st, 1915, you knew that the principal sum of at least fifty per cent. of the bonds and mortgages assigned as collateral had matured in 1914, did you not?

A. I did.

Q. You knew on March 1st, 1915, that you personally had received a deed for real estate from the Ventnor Syndicate in settlement of your stock in that company, did you not?

A. I did.

Q. You knew on March 1st, 1915, that the Ventnor Syndicate was a failing institution and unable to meet its obligations?

A. I assume that I probably knew it. Let me see. March 1st, 1915, I knew that it was having serious difficulties on account of the storms that had damaged—in fact, almost destroyed that property, a great deal of its property.

Q. You knew it was a failing institution then, did you not?

A. I would so consider it, yes.

By the Vice-Chancellor.

Q. And you had already resigned, I think you said, from the Investment Company?

A. From the Mortgage Company, yes. I was never connected with the Ventnor Syndicate except as a small stockholder.

By Mr. Clevenger.

Q. In August, 1914?

A. August, 1914.

By the Vice-Chancellor.

Q. And then, I think you said, because you thought they were defaulting or going to default on obligations?

A. I felt that they were not—they were having difficulties in meeting their obligations in connection with their guarantees, and the other reasons that I stated to you yesterday.

By Mr. Clevenger.

Q. On March 1st, 1915, at the time the Guarantee Trust Company made the purchase of the Young-McShea Amusement Company bonds, did you make inquiry of the West Jersey Mortgage Company as to what assets they had?

A. I did not.

Q. How did you know they had the $16,000 of additional bonds of the Young-McShea Amusement Company?

A. I do not recall. That information in all probability was communicated to us by some of the officers of the Mortgage Company, although as to that I could not give you any positive testimony; I don't know.

By the Vice-Chancellor.

Q. Do you know where the initiative of that settlement arose?

A. It arose with some of the officers of the Mortgage Company, that is my recollection.

By Mr. Clevenger.

Q. Didn't the Guarantee Trust Company force the collection of its overdue notes?

A. It did not.

Q. Then do I understand that the Guarantee Trust Company did not call upon the West Jersey Mortgage Company to pay that $54,000 of indebtedness?

A. It did not. It insisted, as I testified before, that they should furnish us a different class of collateral satisfactory to us.

Q. Then you didn't call the notes?

A. No.

Q. Well, did they produce the different class of collateral?

A. They made the proposition to us instead of giving the collateral that we buy these bonds that have been referred to from them, sufficient of them to pay off their notes, which we did.

Q. Now, you knew on March 1st, 1915, did you not, Mr. Sypherd, that the West Jersey Mortgage Company was having trouble in meeting its guarantees of interest?

A. I did.

Q. And you knew that they had had that trouble for upwards of two years, didn't you?

A. I cannot recall how long a time; I don't think that it has been any such time as that, I am positive, though, it had not been, at least, that is my recollection; I wouldn't say how long it had been.

By the Vice-Chancellor.

Q. Do you recall whether any suggestion was made that instead of surrendering their collaterals when you made the settlement that you retain those collaterals against the then overdue obligations on the guarantee?

A. No, Vice-Chancellor, no such suggestion was made. At that time, as I say, there were no overdue obligations on the guarantees that we held so far as

interest was concerned, except those concerning which I have testified this morning, and that default was only a very few days old.

Q. But the bonds were due on their face, as I understand it?

A. Oh, yes, the bonds were due on their face, but they could not have been forced to pay those bonds for a period of a year after they did come due, they had a year to make good on their guarantee, so we could not have said there was an actual default on their contract for one year, and that would have been September 1st, 1915.

By Mr. Clevenger.

Q. You knew, Mr. Sypherd, did you not, that in the settlement of the litigation between Bacharach and Bartlett that the West Jersey Mortgage Company gave its note for $6,250 on June 30th, 1913, payable ten days after date?

A. I think I recall that, yes, there was such a note given.

Q. And you know, as a matter of fact, that that note was presented at your institution for payment on July 10th, 1913, do you not?

A. Yes.

Q. And you know that when that note was presented that there was not sufficient funds there to meet it, do you not?

A. My recollection is the note was presented to us on the morning of that date that you refer to, if that is the correct date, I don't carry the dates in my mind, and that at that hour the funds were not there to meet that note. My further recollection is that the note was paid during that day, before the close of business that day.

Q. You paid it within a half hour from the time of its presentation?

A. I can't say; I don't know about that. I know it was paid.

Q. And you know that you discounted the note of $5,000, dated July 10th, 1913, in order that that note might be paid, do you not?

A. I don't have any recollection of it. We may have done it, very likely we did.

Q. Don't your records that you delivered to the court in cross-examination show that you discounted a note of $5,000 on July 10th, 1913?

A. I don't know. I can tell you very soon. It is all here. What is that date?

Q. July 10th, 1913.

A. (After examination of papers)—$5,000, July 10th, 1913, that is correct.

Q. You also know, do you not, Mr. Sypherd, that the West Jersey Mortgage Company failed to pay the Guarantee Trust Company its box rents for 1914, 1915 and 1916?

A. Oh, they might, and I know many others that have failed, but they are perfectly solvent.

Q. Well, it is a fact that they owe for 1914, 1915 and 1916?

A. I don't know whether it is or not. I wouldn't be surprised if they do.

Q. Now, do I understand that you say that the subject matter of the administration of the trust under the agreement of September 1st, 1911, was never discussed before the board of directors of the Guarantee Trust Company from the inception of the trust until the receipt of my letter in April of 1915?

A. Nothing concerning the administration of that trust was specifically discussed except the general policy of the company relative to the foreclosure of mortgages on the tracts of land belonging to the Ventnor Syndicate and the Margate Company in the lower part of the island.

Q. And that discussion had inception in the interest that your company had in not having those mortgages foreclosed, as I understand you?

A. No, I didn't say that at all. I said that we discussed the general policy, whether it was wise to institute foreclosure proceedings upon this class of mortgages, and we decided it was not.

Q. And what was the reason that you decided it was not?

A. That reason has been fully stated in my testimony, as I explained to you this morning.

Mr. Clevenger—I ask for an answer to that question, if your Honor please. We are not talking about the mortgages under this trust agreement now, we are talking about the mortgages that the Trust Company owns of a similar character.

A. (Continuing)—The exact reasons apply to the mortgages of the second type that you are referring to, held by the Trust Company, of a similar type to these mortgages; there is no difference whatever, the same principles apply and the same guiding force that led to our conclusions.

By the Vice-Chancellor.

Q. Mr. Sypherd, Mr. Clevenger is anxious for you to state again, for some reason which he does not disclose, the reasons why your company did not foreclose these Ventnor and Margate mortgages. If the reasons were reasons that you are able to state the board possessed, by any action taken by the board, you may state them as reasons of the board and give your reason for attributing them to the board; otherwise, all you can do is to give your individual reasons so far as you as a member of the board would be concerned. I do not see any reason why you should not state such reasons as were in your mind that influenced you as a member of the board in not taking action, or re-state them, if you choose, or, if the board by any concerted action adopted a concerted policy, you may speak for the board too. I see no reason why you should not answer the question more fully if Mr. Clevenger thinks you can.

A. Well, I would be very glad to answer the question more fully if Mr. Clevenger would indicate to me in any way any further information that I can give him than I have already stated, I am very willing to do it if I only know just what he wants.

Q. Can you in a very few words state, so far as your information goes, so far as you can recall at this time, what impelled you in any action that you took in the matter?

A. Oh, yes; I can state it again if you prefer me to do it. As I stated before, the conditions that surrounded that property down the beach, with the impairment of the bulkheads and the consequent injury to the land, had absolutely destroyed the market that there was for the land.

Q. Let me refresh your memory a little It may be that I am mistaken as to date, but was there not along about that time and shortly after the bulkhead was washed away a movement on foot—perhaps it may have been later, but was there not at that time a movement on foot to re-establish the bulkhead and re-fill those lots?

A. There was, and that was one of the impelling reasons, because we felt that every opportunity should be given if possible to restore the values to that land; we felt that it had value, and the only reason that it was not marketable and its value had been depreciated was the destruction of those bulkheads through the action of the storms, and a movement was on foot and, in fact, I didn't know as to how much money actually had been spent, but I had been advised—

Mr. Clevenger—I object to his being advised.

A. (Continuing.) Or understood—

Mr. Clevenger—Or giving his understanding, let him say what he knows.

A. (Continuing.) I understand that a large sum of money—

Q. What you understand now may not be of any value, but what you understood then might be.

A. Well, then, at that time a part of the bulkheads were re-constructed along the front and a second storm came, my recollection is, and destroyed those bulkheads and that proctically completed the destruction of the marketability of the land and the mortgages, and it was my belief, and I believe the belief of our board as expressed by many members in discussing the question, that it would have been a highly inadvisable thing to have proceeded with the foreclosure of these mortgages in the condition in which the market was and the land itself.

By Mr. Clevenger.

Q. In other words, you feared the foreclosure of the mortgages would start a run in foreclosures?

A. That had something to do with it, yes.

Q. Didn't that materially affect your judgment?

By the Vice-Chancellor.

Q. The movement that I refer to was brought to my attention a long time ago and may have been later than the period to which you refer, but that was, as I recall it, a movement whereby there was to be independent financing of the problem of rebulkheading the entire front, and it was to be done by some concessions to be made by the holders of the mortgages by way of allowing a prior lien to come in to compensate for the improvement, something of that nature.

Mr. Cole—That was after the appaintment of the receiver.

Mr. Clevenger—Long after.

Mr. Cole—Mr. Godfrey took that matter up and tried to consummate it, thought he had it consummated.

By Mr. Clevenger.

Q. Now, Mr. Sypherd, wasn't it the prime idea in your mind at the time that the foreclosure of these mortgages would start a run in foreclosures down there?

A. It wasn't the prime idea, it was one of the ideas.

Q. Well, it was the principal idea, was it not?

A. I wouldn't so state.

Q. Well, it would have figured?

A. I would say that naturally it figured materially in the judgment of any group of men who were running a financial institution.

Q. And that would materially have affected the affairs of the Guarantee Trust Company, would it not?

A. It would have materially affected the affairs of any company who had the mortgages as collateral.

Q. And the Guarantee Trust Company had mortgages of that kind as collateral?

A. We certainly did; yes.

Q. So that in reaching that conclusion you were looking out for your own benefit as well as the benefit of the bondholders, as you saw it?

A. We were.

Q. And in reaching that conclusion you concluded that you were using good business judgment and doing a good banking business?

A. We did.

Q. And by reason of having taken that stand you were able to gradually weed out all of the guaranteed mortgages, collateral mortgages, in your institution and have other collateral substituted therefor?

A. We were not compelled to weed out many of these mortgages, Mr. Clevenger, we did not have such a very large volume of them, we had comparatively few in number, so that there wasn't a very great weeding process so far as those mortgages were concerned.

(Question repeated.)

A. I think I have answered it.

Mr. Clevenger—If your Honor please, I think that is susceptible of an answer yes or no, and I am entitled to that.

The Vice-Chancellor—I don't know whether it is or not, Mr. Clevenger.

A. (Continuing)—I don't either. Pardon me, Vice-Chancellor, but I don't think it can be answered that way; I can't, without explanation.

By the Vice-Chancellor.

Q. If you say you cannot answer it satisfactorily by yes or no I will let your answer stand. Do you say so?

A. That is what I say, I cannot answer it satisfactorily yes or no; the answer I have given explained the situation.

By Mr. Clevenger.

Q. You do not deny, do you, that you weeded out those collaterals from your institution?

A. My recollection right now is that, with the exception of these that were taken out at the time of the settlement of the West Jersey Mortgage Company's loans, we did not have more than, I would say, three or four others that were, as you call it, weeded out, I don't know whether we had that many or not.

Q. Well, you got rid of those, didn't you?

A. It was so small in amount and number that it would not have made any difference one way or the other, whether they had stayed or gone out, so far as the security was concerned.

Q. But you cut them out, didn't you?

A. I don't know whether we did or not.

Q. Are they there in the bank yet?

A. Our records will show that.

Q. Are they there in the bank yet?

A. We have one or two; we have two, I think.

Q. Have additional collateral with them?

A. No; we have an ample margin, though, of security.

Q. Now, the interest, Mr. Sypherd, on lot 14, 108 B, which was due on March 1st, 1915, was not paid until September 20th, 1915, was it?

A. I think the record showed that; yes, I am sure it did.

Q. The correction to your letter of November 22d, which you sent on November 24th, 1915—

A. Yes.

Q. —came in response to a letter which I wrote, did it not?

A. It did.

Q. And that letter that I wrote directed your attention to the fact that there was no payment of $2,000 by the Ventnor Syndicate, did it not?

A. It did.

Q. Between September 1st, 1911 and March 1st, 1915, what discussions relative to the administration of this trust took place before the board of directors of the Guarantee Trust Company?

A. I have just explained to you a few minutes ago that no discussions took place as to the administration of this particular trust, but I did explain to you that discussions took place from time to time as to the advisability of a foreclosure or collections of mortgages of this type.

Q. I call your attention, Mr. Sypherd, to the fact that your first answer to that question was that no particular discussion took place; now you say no discussion took place. Which is it?

A. What I said—and I think the stenographer will bear me out—was that no discussion took place as to the administration of this particular trust.

Q. In other words, this trust was never discussed by the board of directors of the Guarantee Trust Company between the first of September, 1911, and the first day of March, 1915?

A. No, sir, except as qualified by my answer.

Q. And what was your qualification?

A. That the discussion as to the advisability of the foreclosure of mortgages of this type did take place.

By Mr. Cole.

Q. Mr. Sypherd, I want your own opinion about this: Could purchasers have been found for the properties covered by these mortgages at sale under foreclosure?

Mr. Clevenger—I object to that, that is a mere speculation.

The Vice-Chancellor—I think it is competent if it relates to what his opinion then was. If it is intended to make Mr. Sypherd the witness of the defense to show that fact it is competent then, I think, as a matter of defense. You may answer it.

A. In my judgment, purchasers for the property could not have been found at that time.

Carlton Godfrey, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says—

By Mr. Clevenger.

Q. I just want to ask you a question or two, Mr. Godfrey. You were the secretary of the Ventnor Syndicate, weren't you?

A. I was.

Q. And when the company was first incorporated and undertook the speculation in real estate in lower Atlantic City it had a block at that time, had it not?

A. My recollection is that the first purchase the company made was four blocks.

Q. Then they filled those blocks and sold them?

A. Then they filled the blocks and sold them. Well, they sold them while they were being filled, my recollection is; perhaps,—yes, I think while they were being filled, pretty soon after the work was started, I think, the contract for sale was made by the company and completed while the person to whom we sold them was retailing them. In other words, our company felt that they should sell wholesale if they could.

Q. Now, there were other bond issues, were there not, of a similar character to this one under discussion, —that is, where mortgages had been deposited as security for collateral bonds?

A. Not that I recollect. The mortgages—

Q. From the Ventnor Syndicate, yes.

A. My recollection is that the mortgages were all sold separate mortgage on each lot without any bonds of the character of these bonds, all of the sales until this particular transaction.

Q. The reason I ask and the reason I am putting you on the stand is the Vice-Chancellor at the first hearing asked what was the meaning of the clause in this particular agreement where it mentions the bonds of this series, and he wanted to know if there was any other series of bonds.

A. My recollection is that this is the only series, in this case.

Q. Well, you are sure of that?

A. I am sure I am right about that.

Q. There never was but one series of Ventnor Syndicate bonds?

A. Only one series.

Q. Wasn't there a second series?

A. No, not of this character; there was another issue of Ventnor Syndicate bonds but not of this character.

Q. Well, were they secured by mortgages deposited with the Trust Company?

A. That issue was secured by a blanket mortgage upon a number of blocks and was a second mortgage on most of the property; that issue was $200,000 authorized, but not all issued, as I recollect it.

Q. Then they were direct bonds with a blanket mortgage?

A. Yes.

Q. Now, how many of those were there?

A. My recollection is that there was only one issue of that character of bonds.

Q. Then the sum and substance of your testimony is that there was no other series of bonds similar to this one that is in litigation to-day?

A. That is my recollection.

No cross-examination.

George Conover, the complainant, being duly sworn according to law, on his oath says.

By Mr. Clevenger.

Q. Mr. Conover, where do you live?

A. Bridgeboro, Burlington County.

Q. How long have you lived there?

A. Seventy years, a little over.

Q. What is your business?

A. Retired farmer.

Q. Did you make an investment in Ventnor Syndicate bonds?

A. I did.

Q. To what extent?

A. $5.000.

Q. $4,000, wasn't it?

A. Four at first, but there was another thousand later.

Q. How many of those bonds have you got left?

A. Two.

Q. Are these the two bonds (exhibiting to witness)?

A. Yes.

Q. Now, both of the bonds are registered in your name, are they not, Mr. Conover?

A. Yes.

Q. Bond No. 6 is your own property, isn't it?

A. Yes.

Q. And bond No. 7 you hold in trust for another?

A. That is right.

Q. Is the principal sum due to you on those bonds?

A. Yes.

Q. With interest from what date?

A. From 1915, first of March.

Mr. Clevenger—I would like to offer those bonds in evidence.

(Said bonds marked *Exhibit C 34* and *C 35*, respectively.)

Q. Did you ever hear, Mr. Conover, that taxes were due and unpaid on the properties covered by the mortgages assigned to protect these bonds?

A. No.

Q. Did you ever hear that the interest had not been paid upon those mortgages?

A. No, I didn't hear anything about it.

Q. Did you ever hear by letter or otherwise from the Guarantee Trust Company other than to receive your interest check until you got the notice of December 6th?

A. No, I never did.

Q. Where did you buy those bonds?

A. Why, at the Bartlett Building.

Q. Where did you settle for them?

A. There.

Q. What office?

A. In an office back of the bank.

Q. You mean the Guarantee Trust Company?

A. Eh?

Q. You mean the Guarantee Trust Company—the office back of the Guarantee Trust Company?

A. Yes.

Q. Who was present?

A. Why, this man that just testified.

Q. Mr. Sypherd, do you mean?

A. Yes.

Q. Who else?

A. Mr. Buzby.

Q. Harry J. Buzby?

A. Yes.

Q. Who else?

A. No one that I know of.

Q. Wasn't Mr. Ingersoll there?

A. Oh, yes, he was there.

Q. Four of these bonds belong to him—in fact, all of them belonged to him?

A. All of them belonged to him.

Q. And the transfer took place in the office there?

A. Yes.

Q. Do you know what the proceeds of the sale of the bonds was used for?

A. Why, yes, I know what they said there—that the bonds were up for a loan.

Q. Yes?

A. And this went to take up a note.

Q. Whose note was it?

A. Ingersoll's.

Cross-examination, by Mr. Cole.

Q. You didn't buy these bonds from the Guarantee Trust Company, did you?

A. Didn't buy them where?

Q. I say, you didn't buy these bonds from the Guarantee Trust Company?

A. Oh, no.

Q. You bought them from who?

A. Ingersoll, Mr. Buzby and me bought them together.

Q. You went into this building solely for the purpose of having them transferred to you, didn't you?

A. Yes.

Q. Do you say that you never knew that the taxes on the mortgaged premises were unpaid?

A. No.

Q. Have you never found that out yet?

A. Only what I have heard here.

Q. Well, didn't you know when Mr. Clevenger was writing the Guarantee Trust Company in 1915?

A. I didn't.

Q. Didn't you know then that the taxes were unpaid?

A. I did not.

Q. Didn't he tell you?

A. Not that I remember.

Q. When did you place this matter in his hands?

A. Why, I think it was in April, 1915.

Q. Well, do you mean to say that you didn't know then or shortly thereafter that the taxes were unpaid?

A. I didn't know nothing about it.

Q. And your first information about the taxes being unpaid on the property in question was here in this court-room, is that right?

A. That is right, that is first that I knew of it.

Q. And the same applies to the overdue interest?

A. The overdue interest.

Q. When did you first know that there had been a default in the payment of interest on the bonds?

A. Why, when they failed to pay me my interest.

Q. In March, 1915?

A. Yes.

Q. And then it was you placed the matter in Mr. Clevenger's hands?

A. Yes.

Q. And told him to investigate for you?

A. Yes.

Q. Did you know anything about the terms of this trust agreement?

A. What trust agreement?

Q. Under which these bonds had been deposited with the Guarantee Trust Company.

A. Only what the guarantee stated in regards to the mortgages.

Q. Where did you see that agreement?

A. In the Trust building.

Q. You read it, did you?

A. Yes.

The Vice-Chancellor—He is talking about the guarantee.

A. (Continuing.) I am talking about the guarantee on the bond.

Q. Did you ever see the agreement?

Mr. Clevenger—Show it to him, Judge.

Q. You knew there was some sort of an agreement, didn't you, under which these bonds had been issued?

A. Sure.

Q. And did you ever see it?

A. Yes.

Q. Where did you see it?

A. Saw it in the Guarantee Trust building.

Q. When was that?

A. That was, I think, the first day of March.

Q. What year?

A. 1912.

Q. At the time you bought your bonds?

A. Well, it was a few days prior to that.

Q. So that you knew what was in this agreement, didn't you?

A. Yes.

Q. Did you ever suggest to Mr. Clevenger, your counsel, or to any one of the Guarantee Trust Company, that you would pay the expenses incident to a foreclosure of any of these mortgages when the default came?

A. I don't quite understand that.

(Question repeated.)

A. No.

Q. Did you ever communicate with any other of the bondholders to get them to join with you in having the foreclosures?

A. No.

Q. Did you ever instruct your attorney to write the other bondholders to get them to join with you in having the mortgages foreclosed?

A. No.

Q. Do you know Mrs. Grace K. Weatherby, one of the bondholders?

A. No; I don't think I do.

Q. Did you either write or see her and ask her to join with you in proceedings to have the mortgages foreclosed?

A. No.

Q. Did you have any communication with her at all?

A. No.

Q. You don't know, then, why or how it came about that she wrote to the Guarantee Trust for advice as to whether she should join with you in your suit, do you?

A. No; I don't know anything at all about it.

Q. Did you ever ask Mr. Clevenger as to the result of his investigation of the matter of overdue interest and unpaid taxes on this property?

A. No; I never did.

Q. Well, you knew, didn't you, that you had a right to call on the Guarantee Trust Company to foreclose these mortgages on which defaults had been made, didn't you?

A. Well, I don't think I did until after I placed it in the hands of Mr. Clevenger, I expected for him to do what he thought best.

Q. Aside from the question of putting it in Mr. Clevenger's hands, didn't you know by the terms of the agreement, which you admit you read in 1912, that you had a right to call upon the Guarantee Trust Company to foreclose these mortgages?

A. Well, I don't know as I did.

Q. You didn't know that you had that right?

A. To ask the Guarantee Trust to foreclose these mortgages?

Q. Yes.

A. Well, I never thought nothing about it; I expected the bonds were good, when they matured I would get my money.

Q. In other words, you relied upon the security given to pay those bonds?

A. I did rely.

Q. And that is all the attention you gave it?

A. That is all.

Q. After that you left the matter wholly in the hands of your attorney?

A. I did.

Q. And gave no further attention to it?

A. No.

Q. Well, you knew, didn't you, that you had applied—at least, there was an application in your name for a receiver for the West Jersey Mortgage Company and the Ventnor Syndicate?

A. I knew that.

Q. You knew that, didn't you?

A. I did.

Q. What was your object in filing this present bill and having a receiver appointed for these companies? Was it simply to force the payment of the money that was owed you, or were you acting in the interest of the other bondholders?

A. It was in my own interest.

Q. In your interest? That is all you care about it, isn't it?

A. Well, I will tell you why—

Q. I say, that is all you care about it, to get your own bonds paid?

A. That is all I care particularly about, to get my own, but—

Q. That is all; I want a frank answer.

A. —the reason why I did this—

Q. I don't care for your reason, Mr. Clevenger may. This bill was filed in December, 1915. Are you cognizant of that fact? Do you know that to be true—that it was filed in 1915?

A. Yes.

Q. Do you know why there has been such a long time elapsed in bringing it on to a hearing?

A. No, I don't know.

Q. Did you make any investigation of the character of the land that the mortgages covered?

A. No, sir.

Q. On what did you rely when you took these bonds over for your security?

A. I supposed that my friend Buzby—what he told me in regards to the bonds and mortgages that the Trust Company held for the security of these bonds was sufficient.

Q. In other words, you were told by Mr. Buzby, through whom you got these bonds, that the mortgages which were lodged with the Guarantee Trust Company to secure these bonds were a good security?

A. That was it.

Q. And that was all the investigation you made and that is all you cared about it?

A. Well, he told me that you could borrow 85 per cent. in any of the banks on these bonds, and that looked to me as if the bonds must be pretty nearly right.

Q. On the bonds or on the mortgages?

A. On the bonds.

Q. What did he say about the mortgages?

A. Nothing said any more than there was ample mortgages to provide for the payment of these bonds when they matured.

Q. Did he tell you the mortgages were a good security?

A. He did.

Q. Is he a friend of yours?

A. Yes.

Q. How long have you known him?

A. Pretty nearly fifty years.

Q. He told you that in 1912?

A. Eh?

Q. Told you that in 1912?

A. Yes.

Q. You believed him, of course?

A. Certainly.

Q. And you believed he thought that to be true, didn't you?

A. I did.

Q. Still think so?

A. I still think he thought that was true.

By Mr. Clevenger.

Q. Now, Mr. Conover, you made some investigation relative to the Guarantee Trust Company or didn't you at the time you took the bonds?

A. Yes.

Q. And what investigation did you make in regard to them?

A. Well, Mr. Buzby told me also that the Guarantee Trust Company were the guaranteers of the payment of these bonds; I had inquired about what the stock was worth and I was told 265.

By the Vice-Chancellor.

Q. The stock of which company?

A. Why, the Guarantee Trust Company.

By Mr. Cole.

Q. You say that Mr. Buzby told you that the Guarantee Trust Company had guaranteed the payment of these bonds?

A. Yes.

Q. Sure about that?

A. Yes.

Q. Did he tell you in what way they had guaranteed them?

A. Well, he said the West Jersey Mortgage Company were the guaranteers first, that the Guarantee Trust Company were the guaranteers of both the Ventnor and the West Jersey Mortgage Company.

Q. Now, did he tell you that they were the trustees?

A. No.

Q. He left you with the impression, did he ,from what he told you, what he said to you—

A. Yes.

Q. —that the Guarantee Trust Company had guaranteed the payment of these bonds?

A. Yes.

Q. You believed that?

A. I did, and they paid me the interest for three years.

Q. I am not asking you about that, I am asking about what impression Mr. Buzby left with you. You say he left you with the impression and told you that the Guarantee Trust Company had guaranteed the payment of these bonds?

A. Yes, sir.

Q. You never saw any written evidence of that, did you?

A. Well, the way I understand the bonds—

Q. I say, did you ever see any written evidence of that?

A. Well, I saw what I understood—

Q. The written evidence that the Guarantee Trust Company had guaranteed the payment of these bonds?

A. The way it read I understood it so.

Q. What did you read?

A. Well, just the print on the bonds.

Q. On this bond (exhibiting)?

A. Yes.

Q. All right. Now, I will show you the bond, it has been offered in evidence, and is that the thing that you read from which you got the impression that the Guarantee Trust Company had guaranteed the payment?

A. Well, yes; I read that.

Q. Now, just a moment. Did you get your impression, now, wholly from what was on the bond or wholly from what Mr. Buzby told you?

A. Well, I first got it from Buzby and I supposed that was facts, and when I read the bond I felt sure that that was correct.

Q. That is, you felt sure after reading this bond that what Mr. Buzby told you, to wit, that the Guarantee Trust Company had guaranteed the payment of these bonds, was in fact true?

A. I did.

The Vice-Chancellor—What is it on the bond that gave that impression—where they certify to it as trustee?

Mr. Cole—Yes, certifies it is one of a series of bonds.

Q. And you are a man of some business experience, Mr. Conover?

A. Mr. Buzby?

Q. No, you; I say you are a man of some business experience?

A. Oh, a little.

Q. How long were you a farmer?

A. Thirty-eight years.

Q. And you have retired?

A. Yes.

Q. A man of some means?

A. A little.

Q. And have other investments than these?

A. Some.

Q. How?

A. Some.

Q. Some?

A. Yes, no bonds.

Q. Do you hold any other bonds than the bonds of the Ventnor Syndicate?

A. No, no bonds.

Q. Mortgages?

A. I have mortgages, not here in Atlantic City.

By Mr. Clevenger.

Q. Just one more question, Mr. Conover. I want you to look at this paper that Mr. Cole showed you and ask you if you really mean that you ever saw that be-

fore? Look at it, the way it is signed, maybe that will help you out.

A. I don't remember ever seeing this before.

Q. Now, when you went there to buy these bonds how many papers were shown you?

A. Only the bonds.

Q. And how many of those were there purchased at that time?

A. How many did I purchase?

Q. Yes.

A. Five.

Q. You took four and Mr. Buzby one?

A. Yes.

Q. And is that one of the papers (exhibiting to witness)?

A. Yes.

Q. And is that what you read and saw?

A. Yes.

Mr. Clevenger—The witness refers to *Exhibit C 34.*

By Mr. Cole.

Q. Mr. Conover, now that you have had a further examination by your own lawyer, let me ask you this: What did you mean when you said, in reply to my question, that you had seen the agreement?

A. Seen the agreement?

Q. Yes.

A. What agreement?

Q. That is what I want to know. I asked you whether you had seen the agreement under which these mortgages had been deposited with the Guarantee Trust Company and you said that you had and that you had read it. Now, what did you mean by that answer?

A. I meant the bond, the agreement, I understood you, of the Trust Company, in regards to the payment of these bonds, that is what I understood you.

Q. Well, did you ever see any agreement in which the Trust Company agreed to pay these bonds?

A. Well, it seems as if they agreed to pay the interest, at least I understood it so.

Q. From what did you understand that?

A. Well, from the fact that they were trustees and always paid the interest for the three years.

Q. Well, now, did you get the impression that they had agreed to pay from the fact that they did pay it, or from the fact that you saw it in some agreement?

A. Well, I suppose, why—they paid it, they had a right to and it was their duty to do so.

Q. So, after all, Mr. Conover, does it come to this: That because the Guarantee Trust Company had paid you the interest you assumed that they had agreed to pay it?

A. Well, I understood it so on the bonds.

Q. Then your testimony now is that all that you ever read in connection with this matter is what you saw on the bonds?

A. That is right.

Q. But you did know that there was an agreement between the Guarantee Trust Company, the Ventnor Syndicate and the West Jersey Mortgage Company, which embraced the terms and agreements touching these bonds, didn't you?

A. No.

Q. Didn't even know that?

A. No.

Mr. Clevenger—Judge, will you admit that a demand was made on the Ventnor Syndicate, on the West Jersey Mortgage Company and on the Guarantee Trust Company for the payment of these bonds and refused before bill filed?

Mr. Cole—I don't know of any reason why I should not admit it.

Mr. Clevenger—Judge Cole and I have made a stipulation as to the value of the Young's Pier and Hotel property and the amount of encumbrances against it. That is all I have.

CASE FOR DEFENDANTS.

Mr. Cole—Complainant admits that in November, 1914, the Atlantic Safe Deposit & Trust Company, in the usual course of business, purchased some of these bonds of the Young-McShea Amusement Company that have been referred to in this case, at 90.

Charles H. Jeffries, recalled, for defendants.

By Mr. Cole.

Q. Mr. Jeffries, in your testimony on direct examination you said that Mr. Godfrey and Mr. Sypherd had told the directors on one occasion in connection with this trusteeship that the company's position was safe. Have you since giving that testimony recalled as to what the circumstances were that brought that about?

A. Yes; it was the discussion of Mr. Clevenger's notice or letter to the effect that he was going to commence suit.

Q. That is what you meant, was it, when you said—

A. Yes, sir.

Q. —that they gave that advice?

A. Yes, sir.

Cross-examination by Mr. Clevenger.

Q. Now, how did you come to change your mind about that, Mr. Jeffries?

A. I asked questions concerning the matter, after I left here.

Q. Of whom?

A. Of Mr. Sypherd.

Q. Who else?

A. I asked no one else.

Q. What was the conversation you had with Mr. Sypherd?

A. I asked him as to about when the letters were received from you, stating that suit was going to be started.

Q. What prompted you to open that up to him?

A. Sir?

Q. What prompted you to open up the conversation to him?

A. I wanted to know as to whether I had made the correct answers.

Q. Who said you had made a wrong answer?

A. I imagined that I had from the drift of the questions and answers after that.

Q. When did you reach that conclusion?

A. After I left the stand.

Q. Who told you you had made a wrong answer?

A. I don't know that any one did.

Q. Didn't Mr. Sypherd tell you that you had made a wrong answer?

A. No.

Q. How did he come to correct you, then, if he didn't tell you that you had made a wrong answer?

A. He didn't say that I had made a wrong answer.

Q. What did he say?

A. If I remember correctly it was that I must have had reference to matters preceding—I can't recall, Mr. Clevenger.

Q. Then he suggested to you, did he, that you must have had reference to time after the letter had been written by me,—is that right?

A. No; I don't know that he suggested that.

Q. Well, you say he made reference to it?

A. He made reference to it, yes.

Q. Then he suggested it, didn't he?

A. I asked him concerning it.

Q. Then he suggested it, didn't he?

A. No; I don't think that he made a suggestion.

Q. Well, you hadn't heard anything about my letters yesterday afternoon, had you?

A. I think I was present at the board meeting when all of your letters were read and discussed.

Q. But you hadn't heard anything about it being in the case until this morning, had you?

A. I knew that Mr. Sypherd had certain letters or copies of them.

Q. But you didn't know that they were in this case, did you?

A. No.

Q. Did you have a talk with Judge Cole about the matter?

A. I don't know that I did.

Q. Did you have a talk with Mr. Godfrey about it?

A. I said a few words to Mr. Godfrey this morning in the room here.

Q. And when was this talk with Mr. Sypherd about it?

A. In the banking room yesterday afternoon after returning.

Q. And did he explain to you the importance of having that conversation take place after the receipt of my leters?

A. Well, I realized that it was all after that time when he gave me the date of his letter.

Q. Well, did he explain to you the importance of it?

A. No; I don't think so.

Q. Well, do you know so?

A. Yes; I should imagine it was important to the Guarantee Trust Company.

Q. Well, do you know that he explained it?

A. No, he didn't make any great explanation.

Q. He made some explanation of it?

A. Just relative to the date of the letter, &c., in answer to questions that I put to him.

Q. And told you the importance of having that discussion in the board after that date?

A. No, not the importance.

Q. Well, he told you it was necessary, didn't he?

A. No, but he said the discussion took place.

Q. That is, he told you that it did take place?

A. He said that it did, yes.

Q. Well, he told you that?

A. Yes, and I remembered it was so.

Q. But not until then?

A. Not until then, no.

By Mr. Cole.

Q. Mr. Jeffries, are you trying to conceal anything in this case?

A. Conceal?

Q. Yes.

A. No, sir.

Q. When did you next see me after you left this room yesterday afternoon?

A. I saw you, I should judge, 7:30 in the evening.

Q. By appointment, didn't you?

A. By appointment.

Q. Who were there?

A. Mr. Godfrey, Mr. Sypherd, Mr. Bartlett, Mr. Slack, Mr. Faunce and myself.

Q. And the object of that meeting was to go over this case, wasn't it?

A. Yes, sir.

Q. Do you remember my asking you last night in the Guarantee Trust building, at that meeting, what you meant by testifying that Mr. Godfrey and Mr. Sypherd had told the directors of the company that the company's position in relation to this matter was safe?

A. Yes.

Q. What did you tell me?

A. Just as I have said here.

Q. Well, what? What did you tell me?

A. That that had reference to the letter or statement made before the board in connection with this letter which was received from Mr. Clevenger threatening suit.

Q. Now, did that question from me come to you before there had been any discussion by me with Mr. Sypherd at all about your testimony?

A. Yes, sir.

By Mr. Clevenger.

Q. But you had talked with Mr. Sypherd prior to that time?

Mr. Cole—I am not through, Mr. Clevenger.

Mr. Clevenger—Pardon me.

By Mr. Cole.

Q. In answer to Mr. Clevenger's question you said you had changed your mind. What do you mean by that? What have you changed your mind about?

A. As to the answers I gave relative to certain questions that he put to me yesterday pertaining to this one matter, the letter, &c.

By Mr. Clevenger.

Q. Mr. Jeffries, your conversation with Judge Cole last evening was after your conversation with Mr. Sypherd in the board room?

A. My conversation with Mr. Sypherd was in his own office, the trust officer's office.

Q. And before you went to Judge Cole's office?

A. Yes.

By Mr. Cole.

Q. You didn't go to my office at all, Mr. Jeffries, did you?

A. No, sir.

Q. Well, you just told Mr. Clevenger you did. Well, did you go to my office?

A. No, sir.

By Mr. Clevenger.

Q. Well, it was before you saw Judge Cole that your conversation took place with Mr. Sypherd?

A. My conversation with Mr. Sypherd was about 5:30, and I met Judge Cole with the other gentlemen named at 7:30, in the board room of the Guarantee Trust Company.

Q. So it must have been afterwards—that is right?
A. Yes, sir.

William A. Faunce, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says.

By Mr. Cole:

Q. Mr. Faunce, what is your business?
A. Insurance and real estate business.
Q. How long have you been in that business?
A. About thirty-three or four years.
Q. Where do you live?
A. Atlantic City, N. J.
Q. How long have you lived here?
A. The same length of time.
Q. Are you a director in the West Jersey Title Company?
A. I am.
Q. And the Guarantee Trust Company?
A. I am.
Q. And have you been a director in the West Jersey Mortgage and Ventnor Syndicate?
A. No, sir; I was not a director of the Ventnor Syndicate, I was a director of the West Jersey Mortgage Company.
Q. Do you know whether or not the directors of the West Jersey Title Company ever discussed the question of what should be done with and whether or not there should be a foreclosure of the mortgages given by the Ventnor Syndicate?

Mr. Clevenger—I object to that question, if your Honor please, as not being relevant to this issue.

Mr. Cole—I want to show that the West Jersey Title Company, which company owns a considerable sum of these bonds, took some action, and I think that the action of that Title Company is some evidence to confirm the judg-

ment of the Guarantee Trust Company on this question of what the proceedings should have been.

The Vice-Chancellor—I apprehend that may be relevant. The test of conduct of the trustee, as I presently understand it, is the question of whether or not it was the reasonable exercise of a reasonable care and skill and judgment.

Mr. Cole—The cases say the exercise of ordinary care.

The Vice-Chancellor—Yes, and I do not know any standard better than what others do in like conditions. I think that will be competent testimony.

Q. What amount of these bonds does the West Jersey Title Company hold, do you recall?

A. Well, from twenty-three to twenty-seven thousand dollars worth of the bonds, Judge. I ought to know the correct amount but I don't know.

Q. And did the directors of the company take some action concerning them?

A. Thomas E. French, of Camden, and myself have been on the auditing committee of the West Jersey Title Company for the past eight or nine years, and in December or early January, of 1916, with Mr. French, we examined every property that was covered by these mortgages with the exception of one, and while we did not physically get on the land of this one property, we was on the street on which it was located. We made a report to the stockholders and directors of the West Jersey Title Company in January, 1916, recommending that the Guarantee Trust Company be asked to sell the mortgages, not to foreclose the mortgages but to sell the mortgages for the benefit of the bondholders and give each bondholder a chance to purchase the mortgages and thus control the land. And I think our report sets forth the fact that we do not think that the West Jersey Title Company will lose any money if

that action is taken. Now, conforming to that action the directors and stockholders ordered that the recommendation of the committee be carried out.

Q. Did you know the conditions existing during the year 1915 on this property in question?

A. May I ask what you mean by that, Judge?

Q. I mean—

A. Physical conditions?

Q. I mean the physical conditions of the property?

A. Regarding the breaks in the bulkhead?

Q. Yes.

A. Yes, sir.

Q. Now, having the conditions in mind during 1915, as well as the conditions in mind at the time you made this report, is your judgment touching the foreclosure of those mortgages the same?

A. At the present time?

Q. Yes.

A. It is.

Q. Why did you not favor a foreclosure of the mortgages rather than a sale of them?

A. When the mortgages were originally placed every mortgage within that trusteeship was worth the full amount of the amount of the mortgage. The Mortgage Company had guaranteed a number of such mortgages, and mortgages had been purchased by other people without the guarantee of the Mortgage Company, the West Jersey Mortgage Company, because they would not pay the guarantee premium. The Mortgage Company and other individuals had purchased a large number of mortgages of a like character on vacant ground immediately adjoining to the north. The Mortgage Company had guaranteed mortgages all over Atlantic City on vacant ground, not only between Pacific avenue and the beach but north of Pacific avenue, and those mortgages had always proved very successful. In 1913, I think, it may have been before that, but in 1913 we had a

particularly bad storm. The owners of the property had spent considerable money in putting the bulkheads back and every one believed that with the bulkheads back and a change in the real estate conditions—in 1913 not only was the real estate conditions not as good in Atlantic City as they had been a few years previous but the general conditions of the country was the same. In 1914, I think, the spring, we had another storm, I can't recollect because I haven't had time to verify the matter, but we had another storm in 1914, I think, which practically stopped the value of lands, of this kind of property, from a marketable standpoint for immediate sale. In August, 1914, there was a war in Europe which particularly upset not only the real estate proposition in Atlantic City but the general money market throughout this country; the stock exchange was closed August 1st and was allowed to be pried open a little bit the latter part of December, but then only a limited amount of stock was allowed to be sold on the exchange, and things of that kind, and if you will go back for a short time you will remember that through that period, not only in Atlantic City but all over the country, it was not easy to market securities. The West Jersey Mortgage Company was a going concern, it had a number of outstanding guarantees, the same as it had for a number of years, but it was meeting its obligations, and in my judgment except for the break in the bulkhead, except for the insistence of a receivership, the West Jersey Mortgage Company would have been able to have taken care of its obligations, and one of the best illustrations to my mind was the fact that right here on this stand yesterday a property that would easily have sold for $250,000, and should have sold for that, was sacrificed, so that the West Jersey Mortgage Company lost the biggest share of $75,000 under a mortgage that was perfectly good.

Q. Now, Mr. Faunce, I am not sure that you fully answered my question, and that is, why it was you did not deem it wise to foreclose these mortgages in 1915?

A. Because of the general conditions throughout the State of New Jersey, not only down the beach but the same thing applied to any other place. Suppose you had foreclosed them? What would have happened? Why, the bondholders would have become the owners of the property and in my judgment not have been as well off as they are to-day. And there were a lot of mortgages that were held by people outside of these guaranteed mortgages, they have not foreclosed them yet, some that did, however, have foreclosed to get the property.

Q. Now, the West Jersey Mortgage Company had a lot of these mortgages, didn't it?

A. It did.

Q. Did it take any action as to whether it would or would not foreclose during that period?

A. I don't think it took action that it would not foreclose because of the fact that if it did foreclose it meant that each of the mortgages as it fell due would be called by the other people, whereas the payment of the interest would allow the Mortgage Company to go along and take care of the situation, so that they would probably tide over their financial troubles.

Q. Now, having in mind that there were overdue taxes on these properties in 1915, having in mind that there was interest unpaid, do you now say that it was not the part of wisdom to have foreclosed the mortgages deposited with the Guarantee Trust Company?

A. My judgment is that it was not the part of wisdom to have foreclosed the mortgages, and the general belief by people who had the best interests of Atlantic City at heart was that the people who had their money in that property—and there was a good many hundreds of thousands of dollars in it—would, by reason of the efforts that was made to rebuild the

bulkheads, get their money out, and they themselves would pay the taxes and pay up the interest, the back interest, and put the property back in some kind of shape.

Q. Now, coming to the Guarantee Trust Company, of which you were a director, let me ask you: Do you know of any instance where any officer of the West Jersey Mortgage Company requested the directors of the Guarantee Trust Company not to foreclose these mortgages?

A. I do not.

Q. So far as you know of your own knowledge, or from any discussion in your presence, did the Guarantee Trust Company refrain from foreclosing because of any request on the part of the West Jersey Mortgage Company or to help that company in any way?

A. Not to my knowledge.

Q. Do you remember that there was a discussion among the directors of the Guarantee Trust Company concerning these securities on Margate and Ventnor property?

A. I should say that there were a number of discussions over a period of twelve or fifteen months as to the general situation of the properties down the beach, not only those held by the Guarantee Trust Company as trustee under these mortgages, but the general situation, for the general public good of the people who owned property in Atlantic City.

Q. Did you personally believe or were you hopeful that there would be a betterment of the condition down there?

A. Why, I believed and still do believe that there is no trouble about the betterment of the condition down there.

Q. Do you know whether that belief and hope was enjoyed by others who were members of the Guarantee Trust Company as well as the West Jersey Mortgage Company?

A. Well, I should say that it was their general belief and of people outside of either one of those companies or any of them.

Q. Now, you spoke of mortgages on these tracts of land that were held by parties that were not guaranteed?

A. Yes, sir.

Q. By the West Jersey Mortgage Company?

A. Yes.

Q. Have you any particular mortgages or persons in mind?

A. Why, Mr. John O. Wilson, of Camden, of Wilson & Carr, bought one or two or three blocks of the same blocks of mortgages and he wouldn't pay for the guarantee, and in discussion with him—

Mr. Clevenger—I object.

Q. Never mind discussion with him. He took the mortgages without any guarantee at all?

A. He did, because they were worth the face of them, so he said to me.

Mr. Clevenger—I ask that that be stricken out.

Mr. Cole—Yes, strike it out.

Q. Well, you believed they were worth the face of the mortgages?

A. I did, I do.

Q. Assuming, Mr. Faunce, that these bulkheads had remained intact and normal conditions had prevailed, is there any reason you can think of why these mortgages would not have been perfectly good security?

A. There is no conditions, and if the bulkheads were put back substantially each property will sell for from thirty to fifty per cent. above the amount of the mortgage and you can market them inside of thirty days, in my judgment.

Q. Did you as a director of the Guarantee Trust Company have any information at the time when settlement was made with the West Jersey Mortgage Company that it had defaulted in the payment of interest on March 1st? Was any such information furnished to the board that you know of?

A. There was no such information furnished to the board and there was no such information furnished to me, and while the Mortgage Company may have had times that it did not have money by large sums, and things of that kind, it had met its obligations and would have continued to have met its obligations, in my judgment, there would have been no question about it, except for these troubles.

By the Vice-Chancellor.

Q. Which troubles?

A. The breaking of the bulkhead, the breaking out of the war in Europe—that made a good deal of difference in the handling of these securities—and the suit for receivership, the application for a receivership.

Q. When you speak of the suit for receivership you will have to take into account that a receiver was not appointed until after it was found that judgments were almost ready for entry, and the receiver was appointed to get in ahead of those judgments.

A. Your Honor, while the receiver was not appointed it was the general knowledge that a lot of people in Atlantic City were doing what they could to cause the company a lot of trouble, and the receiver might as well, for practical purposes, have been appointed eight weeks before that, in my judgment.

Q. Yes, I think that is probably true, but the point I was making was that if the receiver had not been appointed there would have been a lot of judgments that would have procured preferment.

A. Well, I think so, probably in the long run, but most of those, your Honor, I think would have been taken care of.

By Mr. Cole.

Q. It appears in the case that the Guarantee Trust Company has filed a bill to foreclose a mortgage which it holds in Margate City. What have you to say as to

whether it was wise—if you deem it was wise to foreclose that mortgage?

A. People holding separate mortgages in the same tract, guaranteed, had been foreclosing the mortgages at a time when there was practically little or no sale for that kind of real estate, obtaining deficiency judgments, wiping out all the equity of the Margate Company, that was the holder of title, and there was practically no chance for the people who owned the property to redeem the same, and the only thing that would be left in that case for the company to do would be to foreclose.

Q. What, in your opinion, was the fair market value of the Young-McShea Amusement bonds March 1st, 1915, when they were purchased from the West Jersey Mortgage Company?

A. Ninety-five, full market value.

Q. Was the question of satisfying the Guarantee Trust Company discussed by the directors of the West Jersey Mortgage Company or the executive committee?

A. The Guarantee Trust Company had asked the West Jersey Mortgage Company to reduce its obligations where the mortgages were up for collateral or—

Q. You mean these mortgages in question?

A. Yes, or pay off the loan covered by that amount, covering a period of two or three months, and it is my recollection that—in fact I know that Mr. Godfrey called a meeting of the directors—of the executive committee of the West Jersey Mortgage Company, at which was present Mr. Godfrey, myself, Mr. Read, the secretary, treasurer—I think it was Mr. Hackney, although other members present think it was Mr. Adams and that Mr. Hackney was telephoned—now it was my thought—

Q. Well, let us have your recollection.

A. Well, it was my recollection that Mr. Hackney was present, but—

Mr. Clevenger—I object. The minutes are the best evidence.

Mr. Cole—Now, I am going to show there was no minutes. You showed that yourself.

Mr. Clevenger—Well, then, I object to the testimony being given, because the minutes should have been recorded, that is the best evidence.

The Vice-Chancellor—Well, if a meeting was held at which no minute was kept it can be testified to.

A. (Continuing) Mr. Adams was telephoned to regarding the sale of these securities to the Guarantee Trust Company, and the Mortgage Company sold the securities to the Guarantee Trust Company to pay off its indebtedness and put itself in beter shape, and we thought that we were getting a better price for those securities than we could obtain elsewhere, because we had been endeavoring to get the money to pay off our loans and if we had sold the securities we would have used that money to have paid off these loans.

Q. What is your present recollection as to where the suggestion came from touching the sale of these bonds? Did it emanate from the Guarantee Trust Company or emanate from the West Jersey Mortgage Company?

A. It is my thought, and always has been, that the West Jersey Mortgage Company made the proposition to the examining committee of the Guarantee Trust Company.

Q. Now, this meeting you say was the meeting of the executive committee of the West Jersey Mortgage Company?

A. Yes, sir.

Q. Now, the minute book of the West Jersey Mortgage Company was introduced in evidence at a hearing in Camden some ten days or two weeks ago and there appears to be no minute of that action. Do you know why?

A. I have no idea.

Q. Is there any reason, so far as you know, why it should not have been recorded?

A. I think it should have been recorded.

Q. Did you know that it was not recorded?

A. I did not.

The Vice-Chancellor—Is there no minute of the meeting on that day or is there a minute of the meeting with no record of the resolution?

Mr. Cole—Now, Vice-Chancellor, I don't remember about that. Maybe Mr. Clevenger can help us. I know that Mr. Clevenger asked the receiver, I think, or the accountant, whether there was any minute showing action by the West Jersey Mortgage Company looking to the sale of these bonds and the answer was that there was not. Now, whether that meant entire absence of a minute or—

The Vice-Chancellor—This was a meeting of the executive committee?

Mr. Clevenger—I have an indistinct recollection that there was a loose-leaf minute book showing a minute either of the executive committee or of the board under date of March blank but nothing about this in it, that I am not sure of.

Mr. Cole—And your Honor may remember that the by-laws of the West Jersey Mortgage Company give the committee all the powers of the board of directors.

The Vice-Chancellor—Yes, I recall that.

A. (Resuming) I think, your Honor, that the receiver wrote the bank that no authority had ever been given. That was the first intimation that I ever had that the minutes was not in full.

By the Vice-Chancellor.

Q. Well, it was determined upon at a meeting of the executive committee?

A. Oh, it was.

By Mr. Cole.

Q. You are quite clear about that?

A. There is no question in my mind about it, because I think that the examining committee of the bank was waiting for the proposition as to whether we would accept that amount after we had made the offer to them.

Q. Now, Mr. Faunce, so far as you are personally concerned, or so far as any discussion took place in your presence by the directors of the Guarantee Trust Company, was there any purpose on your part or theirs in failing to foreclose these mortgages other than the fact, if it be a fact, that you did not think it was wise to have it done?

A. That was the only reason.

Cross-examination, by Mr. Clevenger.

Q. Mr. Faunce, you have always been a director of the Guarantee Trust Company up to date, haven't you?

A. I have.

Q. You have always been a director of the West Jersey Mortgage Company?

A. No.

Q. You were up to the time it went into the hands of the receiver, were you not?

A. I was from the time—about the first eight or nine or ten months from its organization until it went into the hands of the receiver.

Q. You are a member of the finance committee of the West Jersey Mortgage Company?

A. Finance committee? I don't think I was.

Q. Executive committee?

A. I am on the executive committee, yes.

Q. Mr. Godfrey is the president of the West Jersey Title & Guaranty Company?

A. He is.

Q. He was the president of the Guarantee Trust Company?

A. Yes.

Q. He was president of the West Jersey Mortgage Company?

A. He was.

Q. He was also on the finance committee of the West Jersey Mortgage Company?

A. You mean executive committee?

Q. Yes, I mean executive committee.

A. Why, as an officer of the West Jersey Mortgage Company he was a member of the executive committee.

Q. You, as a member of the executive committee or as a member of the board of directors of the West Jersey Mortgage Company, authorized the guaranteeing of the principal and interest of these mortgages on unimproved land down the beach?

A. Why, I can't say whether I was present at the meeting that was authorized or not, but after they were authorized, and things of that kind, why, we carried out the contracts.

Q. You acquiesced in it?

A. Yes.

Q. After it was done?

A. Absolutely.

Q. But you didn't vote for it?

A. Well, that I can't tell you; I don't know that; I could not remember as to whether I was at the meeting or not.

Q. It was a departure from the former policy of the company, wasn't it?

A. It was not.

Q. Had they been in the habit of insuring mortgages on unimproved land?

A. They practically had always done so, and had insured a good many hundreds of mortgages above there and in that vicinity.

Q. But I am speaking up in the town?

A. In the town and also the right adjoining tract, they had taken care of several blocks too.

Q. Always on unimproved land?

A. No; it was on improved and unimproved land. These adjoining blocks that I am telling you about was all unimproved, just the same as this.

Q. But the question I asked you was, wasn't the policy of the company changed when it undertook to insure mortgages on unimproved land?

A. If it was changed I have no knowledge of it, because my recollection is that it always insured any mortgages that it thought was ample security.

Q. Do you think that the holders of the mortgages are better off with the burden of having to pay overdue taxes with the accrued interest at twelve and eight per cent. than they would have been if they had foreclosed and taken the title and paid the taxes themselves?

A. I think they are considerably better off.

Q. How do you figure that out?

A. It is my judgment that the property will bring considerably more now than it would if they had forecolsed any time within the last eighteen months, and particularly any time between the spring of 1913 or the summer of 1913 and the summer of 1916, because conditions changed wonderfully down the beach during this last summer.

Q. Do you think these mortgages are worth their face value now?

A. Wherever the bulkheads are not gone.

Q. Would you pay the face value for them?

A. If I had money to invest I would buy the last one of them to-day.

Q. Do you think these bonds are worth their face value?

A. Any one that takes the land for the bonds and pays the taxes in my judgment will get very much more than six per cent. interest for his money to-day.

Q. A great many of these properties during the last two years have been put up for sale, haven't they, under foreclosure?

A. Yes.

Q. None of them have brought twenty-five per cent. of the mortgages, have they?

A. Oh, yes; many of them have brought forty and fifty per cent. above the mortgages.

Q. But none above that?

A. Some have brought seventy-five per cent.

Q. And most of them bought in by the parties who held the mortgages?

A. Yes, because they wouldn't sacrifice the property; there has been a few that have but that is where they could obtain a deficiency judgment and get after more property.

Q. And the only bidders they had were either those who were interested in the West Jersey Mortgage Company or the Ventnor Syndicate and the party foreclosing the mortgage, were they not?

A. I couldn't say so.

Q. Can you tell me of any instance where there were other bidders?

A. No, because I didn't attend very many of the sales.

Q. Then you don't know?

A. I attended three or four of the sales where people were that were not interested—that were not directors of the West Jersey Mortgage Company.

Q. Which ones?

A. Land that was sold north of Ventnor Parkway and Ventnor. And, Mr. Clevenger, I might say to you, for your information, that we tried to buy three or four lots within a period of six months at considerably more than the amount of the mortgages and the accrued interest down there and we couldn't get any one to let go of the property, they wouldn't sell them for the amount of the mortgages and the accrued interest.

Q. Who did you make those inquiries of?

A. Several people who owned lots.

Q. Who?

A. Through people who were the holders of mortgages and who we thought would be glad to foreclose and get the title.

Q. I say who?

A. Well, through the office of Godfrey & Godfrey, and through the office of—oh, I can't give the other office. We made the inquiries in two or three cases, because we had a woman living in the Champion who wanted to buy three or four lots down there and we couldn't find anybody who would let go.

Q. That inquiry was made of Mr. Godfrey?

A. And other officers besides.

Q. What other officers?

A. I will get you the information and give it to you.

Q. I want it now.

A. I can't give it to you now.

By Mr. Cole.

Q. Mr. Faunce, I think your testimony was that the auditing committee of the West Jersey Title Company made a recommendation in December, 1914. Did they make a like recommendation in December, 1916?

A. December, 1915, and January, 1916, it was, and I can't just give you the dates of it, but there was a meeting of the directors of the Title Company the last part of 1916 where the matter of these mortgages were then discussed.

Q. I was particularly anxious to know whether there was any action taken in December, 1916?

A. Yes, it was discussed in December, 1916, when the request was continued that the—

Q. That is what I mean.

A. —that the action recommended by the committee of the year before be carried out as speedily as possible.

Charles A. Bartlett, a witness produced in behalf of the defendants, alleging himself conscientiously scrupulous of taking an oath, being duly affirmed according to law, on his solemn affirmation saith:

By Mr. Cole.

Q. Mr. Bartlett, are you a member of the Guarantee Trust Company?

A. Yes, sir.

Q. And have been how long?

A. Five years.

Q. And what is your business?

A. Real estate and insurance.

Q. Were you ever a director of the West Jersey Mortgage Company? 10

A. No, sir.

Q. Interested in any way in the company?

A. No, sir.

Q. Or in the Ventnor Syndicate?

A. No, sir.

Q. So far as your knowledge goes, or anything that was said or took place in your presence, was there ever a request made by the West Jersey Mortgage Company or the Ventnor Syndicate not to foreclose the mortgages which were deposited with the Guarantee Trust 20 Company to secure the issue of bonds of the Ventnor Syndicate?

A. There never was.

Q. So far as you know, which came to you directly or by anything said or done in your presence, was there any suggestion made by any member or officer of the West Jersey Mortgage Company that these mortgages should not be foreclosed?

A. There was not.

Q. Do you recall whether while you were a director 30 there was a discussion, either general or special, concerning the securities in Ventnor and Margate that have been talked about in this case?

A. It was discussed several times.

Q. And what is your recollection of the character of the discussion? What was it about?

A. Why, it was about starting the foreclosure proceedings on some of the mortgages which were held in the bank.

Q. What was the judgment arrived at?

A. Why, that it was not a propitious time to foreclose them.

Q. Can you recall now what were the factors in the problem that caused you to reach the conclusion that it should not be done at that time? What was it you talked about?

A. Well, the general conditions.

Q. Well, what were they?

A. The washing out of the bulkhead, and the war breaking out and the tightness of money, and several things that came right along at that time.

Q. Was it your individual judgment that it was not wise to foreclose the mortgages?

A. It was my individual judgment, as a general proposition, not to foreclose any mortgage.

Q. Well, I know, but these mortgages in particular at that time, I mean, was it your judgment that they ought not to be foreclosed?

A. It certainly was.

Q. Do you recall whether there had been any statement made to any of the directors of the Guarantee Trust Company or to you before March 5th, 1915, that the West Jersey Mortgage Company had defaulted in the payment of interest due March 1st?

A. No.

Q. Did you, during the month of March, 1915, know that the West Jersey Mortgage Company was not in a healthy condition financially?

A. I did not.

Q. When did you first learn that it was not in a healthy condition?

A. Why, I was up at Pocono in October and my brother read out of the Public Ledger that the West Jersey Mortgage Company had gone into the hands of receiver, and I couldn't believe it.

Q. Was it a surprise to you?

A. It certainly was.

Q. Now, was it your idea as a member of the board of directors of the Guarantee Trust Company that there should be some change in the loans that had been made to the West Jersey Mortgage Company?

A. It was.

Q. What was your idea?

A. I think the main sentiment of the board was to cut down the amount of the loan and to have other collateral substituted for it.

Q. Collateral substituted for what,—the bonds or the mortgages?

A. For the mortgages.

Q. What was the trouble with the mortgages from your viewpoint?

A. Why, the washing out of the bulkheads down there had depreciated the property on which the mortgages were.

Q. I don't know whether, Mr. Bartlett, you have any notion about it or not, but I will ask you: Do you know anything about whether or not these mortgages that had been deposited under this trust agreement were at that time sufficiently secured by the land given as security?

A. I couldn't answer that question.

Q. You don't know anything about that?

A. No. I know that there were committees appointed in the bank to investigate them and report, but I have no knowledge of just which ones they were.

No cross-examination.

Carlton Godfrey, recalled, in behalf of the defendants.

By Mr. Cole.

Q. Mr. Godfrey, do you recall whether or not there was action by the directors of the West Jersey Mortgage Company or the executive committee touching the

sale of the Young-McShea Amusement bonds to the Guarantee Trust Company?

A. A meeting of the executive committee was called and the question was considered, that is, the question of the request of the bank to strengthen the collateral, or to deposit collateral that was more marketable, I think was the actual words used, and in the discussion in the executive committee the question came up as to whether we might not sell some securities that we owned and pay off the loan, and it was discussed at some length, finally we agreed that was really the preferable thing to do. My recollection is it probably might have been discussed at more than one meeting, but I know it was discussed at one meeting and at the meeting that Mr. Faunce has testified to.

Q. Well, then, finally did the committee authorize the sale of those bonds to pay the loans which had been made by the Guarantee Trust Company?

A. The committee did authorize the sale of the bonds at a price of 95.

Q. Now, at the time that these bonds were sold did the West Jersey Mortgage Company have any other collateral to give to the Guarantee Trust Company other than these mortgages on the land in Margate or Ventnor and mortgages of that character?

A. They probably had no collateral of sufficient amount that was immediately marketable. They had collateral that was good, yet possibly not immediately marketable.

Q. What, in your opinion, was the fair market value of these bonds at the time they were sold to the Guarantee Trust Company?

A. Ninety-five was a good market value for them.

Q. Have you any knowledge of any sales of those bonds at any higher figure than that?

A. I have not.

Q. Any knowledge of a sale any lower than 95, except the sale already testified to here to-day, or agreed upon, to the Atlantic Safe Deposit & Trust Company?

A. I think there was another sale at 90 of a small amount of bonds.

Q. Did you ever request any of the officers or directors of the Guarantee Trust Company not to foreclose the mortgages in question?

A. I did not.

Q. Was there ever any action taken by the West Jersey Mortgage Company in the nature of a request to the Guarantee Trust Company not to foreclose the mortgages?

A. There was not.

Q. Was there ever any action by the West Jersey Mortgage Company itself not to foreclose the mortgages which it held,—speaking now after the storms had taken the bulkheads?

A. It was their judgment—it was the judgment of the executive committee of the West Jersey Mortgage Company that it was not the time to foreclose mortgages.

Q. Was it your judgment?

A. It certainly was.

Q. Can you give us your reason for that?

A. Prior to the storms the land was fairly marketable at prices far above the amount of the mortgages, but when the storm came it was so severe that the property was so injured that the values disappeared, that is, the market value absolutely disappeared, and at that time there could not be a market value. Land can hardly have a market value unless it is available for immediate improvement. Now, this land was cut up in lots, and persons buying at foreclosure sale would have to buy a large quantity and build bulkheads before it could be improved or built upon for any purpose, consequently there could be no market value and was none. If mortgages had been foreclosed at that time the land would have brought less money by considerable than it would bring now even; the bulkheads will have to be rebuilt before there is the same values

that existed. While the bulkheads, of course, were in good condition, personally my effort was to cause the rebuilding of those bulkheads, and I spent weeks and months at a time in endeavoring to get it done.

Q. Was that after the receiver was appointed?

A. About the time and after the receiver was appointed?

Q. When did the first severe storm occur, according to your recollection?

A. The winter of 1912 and 1913.

Q. Now, did that wash down the bulkheads—some of them?

A. Yes, it washed down about from one to two squares of bulkhead.

Q. Were those bulkheads restored?

A. Yes; the company had, at that time, sufficient money and credit to restore the bulkheads and they put them back in the same condition they was before.

Q. How much did it cost, do you recall?

A. My recollection is somewhere between thirty and forty thousand dollars; it might have been in excess of that figure.

Q. Up to that time what was the standing financially of the Ventnor Syndicate, good or bad?

A. It was good, paid its bills promptly, had money on hand, good credit, stock sold at par and upwards.

Q. When did the next storm occur?

A. The following year.

Q. And what damage, if any, did that do?

A. There was two storms that year, each of which did a great deal more damage than the storm of the year previous, with the result that there were several breaks in bulkheads and the same piece of bulkhead that was washed out the year before was washed again but the opening was much widened and the bulkhead was weakened almost its entire length, while possibly two-thirds of the length of the bulkhead remained standing yet it was very much weakened and had the effect of absolutely destroying salable values.

Q. And when you speak of its entire length just what was that entire length?

A. One mile and a half, I should say.

Q. Were you able to restore the bulkheads?

A. The company had no money or credit with which to restore the bulkheads and therefore it was necessary to create some different plan if they were to be restored.

Q. Assuming the restoration of the bulkheads and the filling in of the property in the condition it was before the storms came along, what is your judgment as to the value of the property? Is it security for these mortgages or not?

A. The property was worth and would have sold readily, fairly readily, at fifty per cent. above the mortgages.

Q. Had there been such sales before the storm?

A. Yes, numbers of them.

Q. Do you know whether there were mortgages down there that had been purchased by others than those who had the guarantee of the West Jersey Mortgage Company?

A. Oh, yes; there were sales made to others.

Q. Have you some instance in mind?

A. I know that Wilson & Carr bought one block, if not more, of mortgages in that section without the guarantee of the West Jersey Mortgage Company.

Q. What is your judgment as to the ability of the West Jersey Mortgage Company to have rehabilitated itself in, say, 1915 if a receiver had not been appointed?

A. I think that it could have been rehabilitated, either with or without a receiver. My judgment was that it was very easy for the receiver to do it if he had been so inclined.

Q. Now, speaking of March 1st, 1915, or, rather, speaking of the date when the bonds of the Young-McShea Amusement Company were sold to the Guarantee Trust Company, was there any information communicated to the directors of the Guarantee Trust

Company that there had been a default on the part of the West Jersey Mortgage Company in paying interest due March 1st, 1915?

A. Not that I know of.

Q. What knowledge have you about that?

A. I knew that the West Jersey Mortgage Company was making every effort to pay its guarantees promptly. There might have been some delays in some cases of a few days, but I know of no delays that was for any length of time, and the interest was being paid with reasonable promptness, up until within a very short time before that it was paid absolutely promptly, in fact there was very little complaint until after the period you name.

Q. So far as you know, was the failure of the Guarantee Trust Company to foreclose these mortgages due to any action or request on your part or that of the West Jersey Mortgage Company?

A. It was not. It was by reason of their judgment that such foreclosure should not occur, and for the benefit of any person who might own such mortgages they should not be foreclosed, and the subsequent evidence has proven that that was wise.

Q. Now, there has since been rather a number of these mortgages foreclosed, have there not?

A. Yes.

Q. And tell us, so far as your personal knowledge goes, what happened to those foreclosures?

A. The property has sold at the foreclosure sales along that front for sums varying, I would say, from a third to a half, up to sixty per cent., sometimes more, of the amount of the mortgages. In other words, they have brought, I would say, on an everage substantially the same as, and oftentimes very much more, than mortgages located otherwise, other places.

Q. In some of these cases did you become a bidder, either for yourself or somebody else?

A. Quite a considerable number of cases.

Q. You were president of the Guarantee Trust Company during 1915. Had you known of any demand or request by any of the bondholders of the Ventnor Syndicate to foreclose the mortgages?

A. No such request was ever made, to the best of my knowledge, until the letters of Mr. Clevenger; they were the only requests that had been made for information or for any action, so far as I know.

Cross-examination, by Mr. Clevenger.

Q. Mr. Godfrey, the agreement in this case provides for an issue of bonds, $200,000, doesn't it?

A. I suppose the agreement speaks for itself. I presume you are right. I haven't it before me.

Q. And the agreement was made originally in September of 1911, is that right?

A. Well, the agreement will speak for itself. The dates are upon it, no doubt.

Q. Look at it (handing paper to witness). Are those dates correct, Mr. Godfrey?

A. The agreement is dated September 1st, 1911.

Q. The amount of bonds authorized is $200,000?

The Vice-Chancellor—Assume it is so, Mr. Clevenger, if you have any question to ask.

A. Aggregate of $200,000, correct.

Q. Now, do you know why there was only $79,000 of the bonds issued under this agreement?

A. They were to be issued at the convenience of the Ventnor Syndicate, and I suppose their needs and convenience only required that amount to be issued.

Q. Well, is that the fact or your supposition?

A. It is a fact, so far as I know.

Q. Then do you mean to say that they did not need the balance of $133,000?

A. No, they were selling mortgages, and in some cases the mortgages were deposited and these bonds issued, as provided by this agreement, and other mortgages were sold direct, and it was a matter of con-

venience and arrangement as to which purchasers obtained, so that the statement that I made before was right.

Q. Do I understand, then, that they did not need the $133,000?

A. That does not follow from the statement that I made.

Q. I am asking if that is the fact, that they did not need the $133,000?

A. Their plan was to sell mortgages upon all the land that they improved, and they did do that—that is, they did sell all of the bonds and mortgages.

Q. Did the company need the $133,000?

A. They could not issue bonds under this agreement without depositing the mortgages to secure them. Now, then, if the mortgages were sold direct they could not use them in two ways, so that the question is not a proper question, based upon the—

Q. Did the company need the $133,000?

A. I suppose every company needs all the money it can get.

Q. And the Ventnor Syndicate needed that?

A. Undoubtedly the Ventnor Syndicate would like to have all the money it could obtain properly.

Q. Did the Ventnor Syndicate need the $133,000, Mr. Godfrey?

A. What $133,000? What $133,000 do you refer to?

Q. The difference between the amount of bonds they actually issued and the amount authorized.

A. There was no such difference.

Q. What was the difference?

A. There was no bonds to be issued and could be no money obtained without the deposit of mortgages with the trustee corporation upon which to base the issuing of bonds, now there could not be any bonds issued upon which to obtain the money unless the mortgages were deposited.

Q. You deposited the mortgages as you issued the bonds?

A. Yes, sir.

Q. As you sold the bonds you put the mortgages up?

A. We deposited the mortgages and then sold and delivered the bonds.

Q. Now, you say in your direct examination, Mr. Godfrey, that you never requested the Guarantee Trust Company not to foreclose these mortgages. Did you ever request them, individually, to foreclose them? 10

A. No, because it was my judgment, in the interest of all the bondholders and other owners of mortgages, that the mortgages should not be foreclosed.

Q. As the president of the West Jersey Mortgage Company, and as a member of the executive committee of the West Jersey Mortgage Company, did you ever request the Guarantee Trust Company to foreclose those mortgages?

A. I never requested the Guarantee Trust Company to foreclose these mortgages. 20

Q. Either individually or representing any company?

A. No, because I thought it was not wise.

Q. Now, you attended the sale of the Hand foreclosure of the lot on Ventnor Parkway fully two squares back of the bulkhead?

A. Yes.

Q. That mortgage was $2,500, plus interest, was it not?

A. Yes.

Q. And the highest bid on that property was $1,300, 30 was it not?

A. Yes, I think so.

Q. You attended the sale of the McKeague foreclosure, did you not, being a lot on Atlantic avenue back of the bulkhead?

A. I think so.

Q. That mortgage was $2,500, plus interest and costs?

A. It was if it was located on Atlantic avenue.

Q. The highest bid on that lot was $1,000, was it not?

A. I imagine so.

Q. You attended the sale of the three Rightmire foreclosures, did you not, land located between Atlantic avenue and the boardwalk, and each of the mortgages were $2,000, plus interest and costs?

A. I think I remember being there. I have attended almost every sheriff's sale of these mortgages.

Q. One of these lots brought $600, did it not?

A. That is my recollection.

Q. Another one $900?

A. That is my recollection.

Q. Another one a thousand dollars?

A. That is my recollection.

Q. You attended the sale of the three mortgages held by the Tuckerton Bank, did you not?

A. I think I remember being there.

Q. And those lots were between Atlantic avenue and the bulkhead, and one of them in the Ventnor section, is that not right?

A. I don't remember really where they were located. I imagine your statement is correct.

Q. And one of those lots brought $475?

A. You are making the statement.

Q. I ask you?

A. I don't remember.

Q. Another one of them brought $500, did it not?

A. I don't remember.

Q. And another one $500, did it not?

A. I couldn't say.

Q. Two of the mortgages were $2,000 each, were they not?

A. If the mortgages were in the Ventnor section they were $2,000 each.

Q. And the one facing the beach front was a $5,000 mortgage, wasn't it?

A. The mortgages facing the boardwalk were $5,000.

Q. That is right, isn't it?

A. Yes.

Q. That lot brought $500, didn't it?

A. I never attended any sale under which a $5,000 mortgage was sold for $500 to the best of my knowledge.

Q. You attended the sale of the two Earle foreclosures, each for $2,000?

A. It is hard for me to remember each one. I attended, I would think, nine out of ten sales where foreclosures in that vicinity have occurred.

Q. In the sale of the Earle lots they were bid in for $500 each, were they not?

A. What were the Earle mortgages?

Q. $2,000 each.

A. Where located?

Q. Between Atlantic avenue and the boardwalk.

A. I don't remember what they did bring.

Q. Now, Mr. Godfrey, you said that the West Jersey Mortgage Company at the time they sold the $54,000 of Young-McShea Amusement Company bonds had other assets. What assets did they have other than either bonds or bonds and mortgages on unimproved real estate in Ventnor and Margate—do you know?

A. If we had the books of the West Jersey Mortgage Company here I could tell you.

Q. As a matter of fact it didn't have anything, did it?

A. How is that?

Q. As a matter of fact it didn't have anything except that, did it?

A. They had other collateral.

Q. Well, but I mean other bonds and mortgages or bonds secured by bonds and mortgages on unimproved real estate—did they have any other assets?

A. Well, I would have to have the books of the Mortgage Company here to determine that question.

Q. You can't think of anything?

A. They didn't have assets that were readily marketable.

Q. You cannot think of any particular assets they had other than those I mention without the aid of the books?

A. Well, I would much prefer to testify as to specific assets from the record of the assets in the books of the company.

Q. Can you recall anything except those bonds?

A. I don't want to testify as to things that I am not absolutely sure of.

Q. You can't recall anything?

A. I will testify from the books when you produce them.

Q. I say, you can't recall anything now?

A. I know that they had other assets.

Q. But you can't recall what they are?

A. The books will show what they are.

Q. I say, you can't recall what they are?

A. It is better to testify from the books accurately.

Q. Well, can you recall or can't you?

A. I have given you my best information.

By Mr. Cole.

Q. Mr. Godfrey, in these cases that Mr. Clevenger has spoken to you about, purchases and sales, do you know whether or not they were bid in by the mortgages or not?

A. My recollection is that practically all of them were.

Q. Now, who were the directors of the West Jersey Title & Guaranty Company during 1915 and 1916, as nearly as you can recall?

Mr. Clevenger—That is in evidence, Judge.

Mr. Cole—West Jersey Title Company?

Mr. Clevenger—Oh, I beg your pardon; no. I will consent to you filing that.

A. Suppose I give you the accurate information, I will send it to you.

Q. You don't recall?

A. Oh, I can name almost all of them, but I might miss two or three.

Q. Well, tell us those you can remember.

A. Charles R. Stevenson, of Camden; Thomas E. French, of Camden; Lewis Starr; William S. Casselman; William A. Faunce; myself; C. J. Adams; his son, Carlton Adams; I. G. Adams; I think D. S. White.

By Mr. Clevenger.

Q. John W. Hackney?

A. John W. Hackney, and there were several others.

By Mr. Cole.

Q. That is all you can presently recall?

A. Yes.

By Mr. Clevenger.

Q. Just one more question, Mr. Godfrey: The Rightmire lot that sold for $600 and the Rightmire lot that sold for $900 were bought in by John Stafford, Jr., were they not, and not the person foreclosing the mortgage?

A. I am not sure as to who did buy it in. There was so many of them sold that I can't pretend to remember the particular one that was bought by a particular person, unless there was something to call my attention to it.

By Mr. Cole.

Q. Was Mr. Howard M. Cooper a director of the West Jersey Guaranty & Title Company?

A. Yes.

William F. Wahl, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says:

By Mr. Cole.

Q. Mr. Wahl, are you a director of the Guarantee Trust Company?

A. Yes, sir.

Q. And have been for how long?

A. Since it was organized, about fifteen or sixteen years.

Q. Have you ever been an officer or director of the West Jersey Mortgage Company?

A. No.

Q. You were, I believe, an officer in the Ventnor Syndicate, were you not?

A. Director in the Ventnor Syndicate for a time.

Q. So far as you know, was the failure of the Guarantee Trust Company to foreclose the mortgages that are in question here, that were deposited to secure the Ventnor Syndicate bonds, due to any request from any officer or director of the West Jersey Mortgage Company?

A. No.

Q. Was there ever any talk or discussion around the table of the directors of the Guarantee Trust Company that these mortgages should not be foreclosed out of deference to the West Jersey Mortgage Company?

A. No, I have no recollection of any.

Q. Do you know whether there was ever any information given to the directors, or did any come to you, up to the time of the purchase of these Young & McShea Amusement Company bonds, that the West Jersey Mortgage Company had defaulted in the interest payment March first?

A. I had no such knowledge; never heard of any.

Q. Had you any notion as to the market value, the fair market value, of these bonds at the time they were bought?

A. No, I don't, only what I heard at that time, I was told that that was a fair market value, I know nothing about it.

Q. Do you know whether or not there was some discussion by the directors of the Guarantee Trust Company touching the wisdom of the foreclosure of the mortgage that they held covering the Ventnor and Margate properties?

A. Yes, I think there was some discussion.

Q. What conclusion did you reach, if any, as to the wisdom of foreclosing these mortgages during 1915?

A. Well, in my opinion, my judgment, it would have been unwise to do, on account of the market conditions and the slump in real estate, that we would jeopardize the interest of those concerned if the foreclosure were brought about.

Q. Have you dealt in real estate in Atlantic City?

A. Yes.

Q. During what period of years?

A. I have been in Atlantic City for forty-six years and I have always dealt in real estate, more or less, during that entire time.

Q. You are presently an owner of real estate?

A. Yes, sir.

Q. Is it presently your judgment that it was not wise to have foreclosed those mortgages?

A. Yes.

Q. What brought about the slump, as you call it, in the values down on the beach?

A. Well, there were several reasons, the storm tides and many conditions in general; the property down the beach was very much injured by the storm tides two years in succession.

Q. Prior to the time of the destruction of the bulkheads, what is your judgment as to the security which the mortgaged premises afforded for the payment of the mortgages that were given on those tracts?

A. Well, I have examined some of those, made some examination, and my judgment was that the value of those mortgages was about fifty per cent. of the land value, fifty or sixty per cent. of the land value.

Q. What is your recollection of the request or demand that was made upon the West Jersey Mortgage Company concerning the loans that were there during March of 1915?

A. Well, we had quite a few securities of that kind, mortgages on property of that kind, and we felt that we ought to have less of them, and we asked the Mortgage Company to substitute other collateral, not only the Mortgage Company but some other parties of whom we held mortgages of that kind, to substitute other collateral or reduce their loans.

Q. Where did the question of the sale of these bonds initiate—the Guarantee Trust Company or the West Jersey Mortgage Company?

A. Well, it came from the West Jersey Mortgage Company, because the Guarantee Trust Company had held those bonds—I don't know, I was present when it was proposed to the Guarantee Trust Company that if we would purchase these bonds they would use the money in paying off their loans.

Q. Did you know that the Guarantee Trust Company had some of these bonds as collateral?

A. Yes, I did know that, but I didn't know they were for sale.

Q. Then you say the first information you had concerning the sale came from them?

A. I mean the sale; I don't mean to say I didn't know they had any; I mean I didn't know they had them for sale.

Q. Are you still of the opinion that it would not have been wise to have foreclosed those mortgages?

A. Yes.

Q. Now, so far as you were personally concerned, had you any purpose in not ordering a foreclosure of those mortgages other than to protect the people who were interested in them?

A. I had none whatever.

Q. Had you any purpose to aid the Ventnor Syndicate or the West Jersey Mortgage Company?

A. No.

Cross-examination, by Mr. Clevenger.

Q. You were on the board of directors of the Ventnor Syndicate, were you not?

A. Yes, sir.

Q. On the board of directors of the West Jersey Mortgage Company?

A. No.

Q. On the board of directors of the Guarantee Trust Company?

A. Yes.

Q. How many shares of stock did you have in the Ventnor Syndicate?

A. 150.

Q. Par was what?

A. 100.

Q. Did your wife and daughter have shares of stock in it?

A. My wife had 100 shares.

Q. Each of them?

A. No, the wife only.

Q. Your wife had 100 shares?

A. Yes.

Q. You say you thought that the Guarantee Trust Company held too many of those mortgages on that class of real estate?

A. Yes.

Q. And it was well to weed them out?

A. I didn't catch that.

Q. And it was well to weed them out?

A. Well, part of them, yes.

Q. Well, did you proceed to weed them out and have other collateral substituted?

A. We asked several people to substitute other collateral. How much of it was done I cannot say at this time.

A. Well, you are pretty well rid of them now, aren't you?

A. I couldn't tell except by reference to the books.

Q. You got rid of quite a few of them, did you not?

A. I couldn't tell; I don't carry it in mind.

Q. But you did carry in mind, though, those that were held as collateral for the West Jersey Mortgage Company?

A. In a general way, yes, the same as I did the others.

Q. Now, you knew, did you not, Mr. Wahl, that the Ventnor Syndicate had practically failed around about 1912 or 1913?

A. No, I don't think they were practically failed.

Q. They were in dire need of cash, were they not?

A. What is that?

Q. They were in dire need of cash, were they not?

A. Well, I judge so; I am not sure as to just what condition they were in.

Q. And in December, 1913, they met and determined to divide up their assets, did they not?

A. They had a meeting in which they offered or tried to formulate a plan to offer stockholders some of their property for part cash and part stock.

Q. And that was accepted by a great many?

A. By some, yes; I don't know how many.

Q. And that occurred in 1913, did it not?

A. I don't know the date; I know there was such a thing done.

Q. Well, at any rate, on March 1st, 1915, you knew that the Ventnor Syndicate was a failing institution?

A. I couldn't say that because I don't recall the dates, Mr. Clevenger.

Q. You knew it was a failing institution before they offered to exchange land for cash and stock, didn't you?

A. Well, we thought by doing so that the company might save itself, and if it had been carried out I think it would, there would have been no failure.

Q. How could it save itself by giving its land for stock?

A. Well, they didn't give it, they took stock and received money, and the thing was figured out—I couldn't give you the figures.

Q. Now, you knew that the West JerseyMortgage Company was heavily involved by reason of advances it had made on mortgages, didn't you?

A. No; I knew nothing about the West Jersey Mortgage Company.

Q. You knew they were a borrower of the bank to the extent of $54,000, didn't you?

A. Yes, I knew they had borrowed money from us.

Q. Didn't that strike you as being quite a heavy loan?

A. Well, it would depend what condition the company might be in; it might not be heavy for one company and it might be for another.

Q. It was over one-tenth of its capitalization, was it not?

A. Yes.

Herman Sypherd, recalled.

Q. I wish you would give us the benefit of your recollection as to what took place between you and Mr. Jeffries after you left here yesterday afternoon and before meeting in your office at 7:30?

A. I made the remark to Mr. Jeffries after leaving here that I felt that his testimony was of such a nature that it left a wrong impression in the mind of the Vice-Chancellor as to what the actual facts were concerning which he was endeavoring to testify, and I asked him what he meant by a portion of his testimony, particularly where he referred to the fact that Mr. Godfrey or myself, or both of us, had advised the directors that we were legally safe. I felt that he had left the impression in the mind of the Vice-Chancellor that that is all we cared about, to know that we were legally

safe during the administration of this trust fund. And he immediately told me that he did not intend to convey that impression. Then I said, "If that is the case you ought to go on the stand again to-morrow and make yourself clear as to just what you did mean." He told me he meant to convey the impression that this advice—

Mr. Clevenger—I object to what he told you.

Q. Well, did you by anything that you said to him suggest that he change his testimony?

Mr. Clevenger—I object to that, if your Honor, please. Let him tell what took place.

Q. All right, Mr. Sypherd, tell us.

A. Mr. Jeffries then said—

Mr. Clevenger—I object to what Mr. Jefries said.

The Vice-Chancellor—In other words, tell half of what took place.

A. (Continuing.) Well, I simply told him those facts, and told him that he had created this wrong impression, in my judgment; I told him he ought to straighten it out and give the facts as they actually existed, because I knew very well what he was driving at and what the conditions were and when this statement was made, and, as I have testified here, the statement as to the legally safe proposition was only made when we had a suit threatened and not before.

Cross-examination, by Mr. Clevenger.

Q. That is all you told him?

A. That is all.

Mr. Clevenger—There is a report made by the receiver of the West Jersey Mortgage Company. I want that in evidence. It is a statement that was made up from the books; it has all of the assets of the company and the money that has been paid out for guarantees.

Mr. Cole—Well, presently I do not see the relevancy of it. I would like to have the benefit of an objection. I will think about it.

The Vice-Chancellor—It will simply stand, as I gather, as a tabulation or condensed statement of what appears on the books of the company.

Mr. Clevenger—Yes, sir.

The Vice-Chancellor—Let it be marked.

Mr. Cole—I will take the benefit of an objection to it now.

(Said paper considered marked *Exhibit C 36.*)

Both sides rest.

EXHIBIT C. 1.

By-Laws of Ventnor Syndicate.

Article II. Board of Directors.

* * * * * * * * *

Section 2. A stated meeting of the Board of Directors shall be held at the principal office of the Company in New Jersey, or at such other office of the Company in New Jersey as the Board of Directors may, from time to time, decide, on Thursday of each week, at two o'clock P. M., or such other place, time and hour as the Board may, from time to time, provide. Special meetings of the Board of Directors may be called at any time by the President. At meetings of the Board of Directors three members, which shall include the President and Secretary, shall be a quorum for the transaction of business. Should the President and Secretary not be present at any meeting, a majority of the whole number of directors shall be a quorum for the transaction of business.

Section 3. All of the corporate powers shall be and are hereby vested in and shall be exercised by the Board

of Directors. Express power and authority are hereby conferred upon the Board of Directors from time to time to borrow on the credit and responsibility of the Company such sums of money as they may deem necessary or proper for the purposes and interests of the Company, in such form and for such time as they may deem proper, and to pledge or mortgage any or all stocks, bonds, securities or other estate, real or personal, belonging to the Company as security for the payment of loans and advances.

Article III. Officers.

* * * * * * * * *

Section 5. The Secretary shall keep a record in due form of the proceedings of the meetings of the stockholders and the directors and all Committees. He shall also prepare and keep proper books of account for the business of the Company subject to the direction of the Board of Directors, and shall perform such other duties as the Board of Directors shall require.

The Assistant Secretary may perform such of the duties of the Secretary as the Secretary or Board of Directors may designate.

Article V. Executive Committee.

Section 1. There may be an executive committee consisting of the President and three directors. Such committee shall be appointed by the President; but the appointment shall be confirmed by the Board of Directors. The members of said Committee shall hold their office until others are appointed and confirmed in their stead. All vacancies in such committee shall be filled in the same manner as the original appointment. The executive committee shall meet at such times as shall be fixed by the Committee and shall also meet at the call of the President. The executive committee shall

have power to transact any and all business of the Company, except such acts as are specifically by law required to be done by the Board.

EXHIBIT C 2.

The minute book of the Ventnor Syndicate is not printed.

EXHIBIT C 3.

BY-LAWS OF WEST JERSEY MORTGAGE COMPANY.

Art. II. *Board of Directors.*

* * * * * * * * *

Sec. III. All the corporate powers shall be and are hereby vested in and shall be exercised by the Board of Directors. Express power and authority are hereby conferred upon the Board of Directors from time to time to borrow on the credit and responsibility of the corporation such sums of money as they may deem necessary or proper for the purposes and interests of the Company in such form and for such time as they may deem proper, and to pledge or mortgage any or all stocks, bonds, securities or other estate, real or personal, belonging to the Company as security for repayment of such loans and advances.

Art. III. *Officers.*

* * * * * * * * *

Sec. V. The Secretary shall keep a record in due form of the proceedings of all meetings of the stockholders, of the directors and all committees. He shall

sign all documents requiring the signature of the President, except checks or drafts, certificates of stock or vouchers for money, and shall perform the duties usual to the office of Secretary. All books, papers and correspondence shall be kept in the office of the Company, and all of such, except as the same are specially placed in the custody of the Treasurer shall be in the charge of the Secretary. In case of the death, absence or inability to act of the Secretary, his duties and powers shall be exercised by the Assistant Secretary.

Sec. VI. The Treasurer shall countersign all certificates of stock of the Company. He shall keep a record of all moneys received and paid and receipts given therefor. He shall also keep proper books of account for the business of the Company, subject to the direction of the Board of Directors. He shall perform such other duties as are incident by law to the office of Treasurer and as may be required by the President or Board of Directors. The Treasurer shall give bond to the corporation in the sum of Ten Thousand Dollars, which bond may be a corporate bond, the expense of which shall be paid out of the Treasury of the Company.

Art. IV. *Executive Committee.*

Sec. 1. There may be an Executive Committee consisting of the President, Treasurer, Secretary and four members of the Board of Directors. They shall hold office until others are chosen in their stead. All vacancies in said Committee shall be filled by a majority vote of the Committee. The Executive Committee shall meet at such times as shall be fixed by the Committee, and shall also meet at the call of the President. The Executive Committee shall exercise all of the powers of the Board of Directors when the latter is not in session.

EXHIBITS C 4 TO C 12.

(Following is the form of collateral note heretofore referred to in the testimony:)

"$.....

ATLANTIC CITY, N. J.....191

.....months after date, For Value Received .....promise to pay to the order of the GUARANTEE TRUST COMPANY, at its Banking Office, Atlantic City, N. J., ... DOLLARS, in United States Gold Coin or its equivalent, having deposited with the said Company 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 Company, due or to become due, whether now existing or hereafter arising, the following property, viz.:

.....

.....

.....

.....

of a market value estimated by the undersigned at $....., and the undersigned agree to deliver to the said Company additional securities to its satisfaction, should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property or securities given unto or left in the possession of the said Company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said Company.

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 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 Company to sell, assign and deliver the whole of the said securities or any part thereof or any substitution therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safekeeping or otherwise, at any broker's board or at public or private sale at the option of the said Company or of its President or Treasurer, without either demand, advertisement or notice of any kind, which are hereby expressly waived. At any such sale, the said Company 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 Company may apply the residue of the proceeds of the sale or sales so made, to pay one or more or all of the said liabilities to the said Company, as it or its President or Treasurer shall deem 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 Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its option, at any time to appropriate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company, 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.

No..... Due.....

.....

(On the reverse side is the following:)

In consideration of one dollar paid to the undersigned, and of the making at the request of the undersigned, of the loan evidenced by the within note, the undersigned hereby jointly and severally guarantee to the GUARANTEE TRUST COMPANY, Atlantic City, N. J., its successors, endorsees or assigns, the punctual payment, at maturity, of the said Loan, and hereby assent to all the terms and conditions of the said note and consent that the securities for the said loan may be exchanged or surrendered from time to time, or the time of payment of the said loan extended, without notice to or further assent from the undersigned, who will remain bound upon this guarantee notwithstanding such changes, surrender or extension, hereby waiving demand, protest and notice thereof.

....."

EXHIBIT C 13.

The Minute Book of the West Jersey Mortgage Company, Board of Directors and Executive Committee are not printed in full. The following minutes are taken from the book of the Executive Committee.

May 26, 1913.

A meeting of the Executive Committee of the West Jersey Mortgage Company was held on this date.

Present were Messrs. Godfrey, Faunce, Hackney, Adams, Robbins, and Sypherd.

A number of mortgages were reported by the Treasurer on which guarantees had been written and on which the interest was more than thirty days overdue.

The Secretary was directed to notify the various owners of the properties involved that unless the interest be paid within 10 days from the date of notice that foreclosure proceedings would be instituted, and upon failure of such owners to make settlement to deposit the mortgages with the attorneys of the company to foreclose.

Foreclosure was directed to be instituted in connection with Guaranty #A 640.

Upon motion the Secretary was directed to notify the Ventnor Syndicate and the Margate Co. that unless the 1911 taxes and the overdue interest on mortgages guaranteed and owned by this company be paid within thirty days from date of notice that foreclosure proceedings would be instituted.

Upon motion the attorneys of the company were authorized to proceed with the foreclosure of the mortgage against the land of the Record Development Company in Ventnor.

Mr. C. J. Adams reported that the mortgage which the company holds on his property at Longport, also the balance due on his collateral note would be paid not later than July 15th next.

Upon motion it was decided to have a regular meeting of the Committee on the second Tuesday night of each month.

Upon motion the treasurer was authorized to sell the balance of unsold stock of the company at 105 until further action.

Meeting then adjourned.

H. M. SYPHERD
Asst. Secy.

June 10, 1913.

A regular meeting of the Executive Committee of the Board of Directors of the West Jersey Mortgage Co. was held on this date.

Present were Messrs. Godfrey, Faunce, Robbins, Hackney, and Sypherd.

The minutes of the previous meeting were read and approved.

Upon motion duly seconded the Secretary was instructed to notify Albert T. Bell that unless the interest on the mortgage of $10,000 given by the Stacey Real Estate Co. together with back taxes and interest on the first mortgage of $25,000 be paid within 15 days from date, the mortgage would be placed in the hands of the attorneys of the company for foreclosure.

Upon motion the officers were authorized to issue a guaranty on mortgage $1000 covering property of Ross Irwin 2711 Atlantic Ave. Lot 25 x 137, without the joinder of the wife in the mortgage.

The committee appraised the land at $5000.

Meeting then adjourned.

H. M. SYPHERD
Asst. Secy.

Addenda for Minutes of Meeting May 26, 1913.

Upon motion the officers were authorized to proceed to collect the amount due from Howard G. Harris under his agreement to purchase certain stock of the Ventnor Syndicate now owned by this company and unless payment is made promptly to place the same in the hands of Godfrey & Godfrey for collection.

It was agreed that the committee should meet again on Thursday May 29th at 10.30 A.M. at which Mr. A. T. Bell was to be given the privilege of appearing before the committee in the matter of the Steacey mortgage.

H. M. SYPHERD
Asst. Secy.

July 8, 1913.

A meeting of the Executive Committee of the Board of Directors of the West Jersey Mortgage Company was held on this date.

Present were Messrs. Adams, Godfrey, Robbins, Hackney and Sypherd.

The treasurer reported that the instructions given relative to foreclosing a number of mortgages on which interest is in arrears has been followed and the papers delivered to Godfrey & Godfrey for foreclosure.

Upon motion the treasurer was authorized $4000 1st mortgage bonds of Ventnor Syndicate secured by mortgage on land Montpelier Ave. & Beach on account of interest due the company on $150,000 bonds of Margate Co.

Meeting then adjourned.

H. M. SYPHERD
Asst. Secy.

December 18, 1913.

A meeting of the Executive Committee of the Board of Directors of the West Jersey Mortgage Co. was held on this date.

Present were Messrs. Godfrey, Faunce, Robbins, Adams, Hackney and Sypherd.

The committee received a report from the Treasurer relative to unpaid interest on a number of mortgages guaranteed and owned by the company and the following action was ordered taken.

Foreclosure at once was ordered on mortgages covered by guaranties Nos. 230, 439, 440, 441, 422, 447, 452, 476, 604, 457, 469, 480, 786 to 793 inclusive, 802, 803, 810, 812 and 795.

In the following cases the Treasurer was directed to foreclose if, after ten days notice, the arrears of interest were not adjusted.

Guaranties Nos. A 214, 222, 321, 436, 437, 444, 445, 446, 453, 454, 500, 507, 748, 824 and 825.

Upon motion the officers were authorized to purchase from the Margate Co. two mortgages of $5000 each covering lots Nos. in Block the proceeds of said sale to be applied on account of guaranty premiums and interest due the company.

The meeting then adjourned.

H. M. SYPHERD
Asst. Secy.

March 14, 1914.

A meeting of the Executive Committee of the Board of Directors of the West Jersey Mortgage Company was held on this date.

Present were Messrs. Godfrey, Hackney, Faunce and Sypherd.

The financial condition of the company was discussed very thoroughly and it was decided to insist upon the payment of certain obligations due the company.

Upon motion the Treasurer was directed to notify Mr. C. J. Adams that unless the balance due upon his collateral note held by this company be paid within five days and the mortgage of $3,000 covering property at Longport within fifteen days proceedings will be instituted for the collection of the same.

Upon motion Mr. Hackney was authorized to arrange a conference with the Committee of the Sterling Realty Corporation relative to the indebtedness of that Company to this Company.

Meeting then adjourned to meet Friday night next at 8 P. M.

H. M. SYPHERD
Asst. Secy.

July 20, 1914.

A meeting of the Executive Committee of the Board of Directors of the West Jersey Mortgage Company was held on this day.

Present were Messrs. Godfrey, Adams, Hackney and Sypherd.

Upon motion the Treasurer was instructed that when mortgages are called on properties of Ventnor Syndicate and Margate Co. they be not foreclosed until further orders.

Upon motion the mortgage under Guaranty A 436 was directed not to be foreclosed until further orders.

Upon motion the mortgage under Guar. A 250 was ordered delivered to Godfrey & Godfrey with direc-

tions to write to Emery Marvel concerning payment of the same.

Guar. A 251 was ordered delivered to Godfrey & Godfrey with instructions to write to the Inlet Improvement Co. demanding payment of the same within ten days.

A bill of P. G. Hannum for 15.14 for repairs to the property on the coal yard on N. California Ave. was ordered paid.

Upon motion one of the old buildings on the property at Delaware & Baltic Avenues was ordered torn down.

Upon motion the action of members of the executive committee in approving the issuance of guaranties on the following mortgages was ratified:

Sarah Jones $3000—220 N. Vermont Ave.

Curtis Risley 2500—N. W. Sumner & Winchester Aves.

Hampton Bros. Co. 3500—4712 Ventnor Ave.

Emma L. Cottingham 5500—207 S. Vermont Ave.

Seaside Land Co. 1500—W. side of Nashville Ave. 96 S. of Winchester 96 x 87½.

Howard G. Harris, N. W. Cor. Weymouth Ave. & Boardwalk $22,500.

Meeting then adjourned.

H. M. SYPHERD
Asst. Secy.

August 19, 1914.

A meeting of the Executive Committee of the Board of Directors of the West Jersey Mortgage Co. was held on this date.

Present were Messrs. Godfrey, Faunce, Adams, Hackney and Sypherd.

Upon motion the following action was taken in respect to certain guaranties in connection with which interest is in arrears—

Guaranty No. A 61 to Godfrey, Giddings & Read for collection

" " A 245, 246, 343, 346, 444, 552, 553, 554, 773, 816 and all guaranties of Roebling Realty Co. mortgages now in arrears for more than 60 days to Godfrey, Giddings & Read for foreclosure.

Mr. John W. Hackney states that owing to the demands upon his time as city engineer he could not continue the work of Secretary and Treasurer of the company, and therefore tendered his resignation to take effect September 1, 1914.

Upon motion the resignation of Mr. Hackney was accepted.

Upon motion Mr. Raymond P. Read was elected Secretary and Treasurer of the company with the same salary now paid Mr. Hackney, with the understanding that he furnish an office for the company and pay the clerk now employed by Mr. Hackney from his compensation.

Mr. Herman M. Sypherd then stated that he did not feel that the business of the company required his services as assistant secretary and he thereupon tendered his resignation to take effect September 1, 1914.

Upon motion the resignation of Mr. Sypherd was accepted.

Upon motion the officers were authorized to purchase a steel filing cabinet from Ashmead & Hackney for $200.

The committee meeting then adjourned to meet on Thursday, August 26, 1914, at 4.30 P. M.

H. M. SYPHERD
Asst. Secretary.

The following Executive Committee minute was found loose in the minute book:

Mar 5

Meeting of
Execu. Com. of
Mtg Co.
Hackney—Faunce
Adams
Godfrey
Read.
Agree to sign easement
agreement writ
Change in regard
Williams Mortgage
S Va Ave

The following is the last minute of the Board of Directors:

January 13, 1915.

A meeting of the Executive Committee was held this day. Present were Messrs. Faunce, Sypherd and Godfrey. Mr. Giddings was also present. Mr. Giddings presented a proposition which he had received for the sale of the property at Florida Avenue and the Beach, owned by this company, for $40,000.00, all cash above the mortgage or for the exchange of the property for property on Pacific Avenue near Florida Avenue. The matter was thoroughly discussed and the proposition to exchange the property was declined. On motion the officers of the company were authorized to sell the property at Florida Avenue and the Beach for a sum not less than $40,000.00, all cash above the mortgage, settlement to be made as soon as the papers can be prepared, and to pay a commission of two (2) per cent to H. G. Harris & Company, the agents making the sale.

On motion the officers of the company were authorized to consent to the extension of any guaranties pre-

viously issued and the action of the officers in making such renewals heretofore was ratified and confirmed.

On motion the officers were authorized to issue a guaranty of $1,000.00 on property owned by Amanda M. Walls.

The meeting then adjourned.

.....

Assistant Secretary.

EXHIBITS C 16 TO C 20.

These are not printed, but appear in testimony.

EXHIBITS C 21 AND C 22.

The following schedule is printed in lieu of the tax bills, etc., produced in evidence.

COMPILED DATA RELATING TO THE BONDS AND MORTGAGES, TAXES AND INTEREST.

Margate City.

Block.	Lot.	Taxes. Years Due.	Total.	Amt. of Mtge.	Date.	Rate.	Guar.	Date Prin. Due.	Date Int. Due.	Amount Int. Adv.	Amount Int. Due.	Appraisers.	Assessed Value. 1913-14	1915	1916
9	9	1913 to 1916	281.91	5000.00	9, 1, 1911	6%	A601	9, 1, 1914	9, 1, 1914	300.00	750.00	J. W. Hackney & C. J. Adams	6,000	1,600	1,280
11	16	1912 to 1916	288.38	5000.00	3, 1, 1912	6%	642	3, 1, 1915	9, 1, 1914	600.00	750.00	" & F. C. Robbins	4,700	1,200	960
12	8	1912 to 1916	288.38	5000.00	3, 1, 1912	6%	654	3, 1, 1915	9, 1, 1914	600.00	750.00	" & C. J. Adams	4,700	1,200	960
12	16	1912 to 1916	288.38	5000.00	9, 1, 1911	6%	652	9, 1, 1914	9, 1, 1914	600.00	750.00	" " "	4,700	1,200	960
3B 86A	7	1914 to 1916	140.33	5000.00	3, 1, 1912	6%	662	3, 1, 1915	9, 1, 1914	150.00	750.00	" " "	4,500	1,200	960
4B 88A	5	1912 to 1916	120.69	2000.00	8, 31, 1912	6%	762	8, 31, 1915	8, 31, 1914	240.00	360.00	Missing	1,500	1,000	800
88A	7	1912 to 1916	278.48	5000.00	8, 21, 1912	6%	764	8, 21, 1915	8, 21, 1914	591.67	900.00	"	4,500	1,200	960
88A	11	1912 to 1916	120.69	2000.00	8, 31, 1912	6%	763	8, 31, 1915	8, 31, 1914	240.00	360.00	"	1,500	1,000	800
88A	12	1912 to 1916	120.69	2000.00	8, 31, 1912	6%	761	8, 31, 1915	8, 31, 1914	240.00	360.00	"	1,500	1,000	800
4A 88A	12	1912 to 1916	120.69	2000.00	8, 31, 1912	6%	720	8, 31, 1915	8, 31, 1914	300.00	360.00	"	1,500	1,000	800
88B	13	1912 to 1916	120.69	2000.00	8, 31, 1912	6%	721	8, 31, 1915	8, 31, 1914	240.00	360.00	"	1,500	1,000	800
			216931	40,000.00						4101.67	6,450.00		36,600	12,600	10,080

Ventnor City.

71A	14	1912 to 1916	865.58	5000.00	11, 12, 1912	6%	A500	11, 12, 1915	11, 12, 1914	600.00	750.00	"	7,225	6,500	6,500
100A	7	1912 to 1916	734.03	5000.00	9, 1, 1911	6%	550	9, 1, 1914	9, 1, 1914	300.00	750.00	F. C. Robbins & C. J. Adams	6,875	4,800	4,800
100A	14	1915 to 1916	248.16	5000.00	8, 10, 1911	6%	564	8, 10, 1914	2, 10, 1915	.....	600.00	" "	.....	4,800	4,800
108B	4	1913 to 1916	288.40	2000.00	9, 1, 1911	6%	549	9, 1, 1914	9, 1, 1914	180.00	300.00	" "	.....	2,300	2,300
108B	5	1913 to 1916	288.40	2000.00	9, 1, 1911	6%	545	9, 1, 1914	9, 1, 1914	180.00	300.00	" "	.....	2,300	2,300
108B	6	1913 to 1916	288.40	2000.00	9, 1, 1911	6%	548	9, 1, 1914	9, 1, 1914	180.00	300.00	" "	.....	2,300	2,300
108B	7	1913 to 1916	248.16	5000.00	9, 1, 1911	6%	546	9, 1, 1914	9, 1, 1914	.....	750.00	" "	.....	4,800	4,800
108B	11	1913 to 1916	288.40	2000.00	9, 1, 1911	6%	543	9, 1, 1914	9, 1, 1914	180.00	300.00	" "	.....	2,300	2,300
108B	12	1913 to 1916	288.40	2000.00	9, 1, 1911	6%	544	9, 1, 1914	9, 1, 1914	180.00	300.00	" "	.....	2,300	2,300
108B	13	1913 to 1916	288.40	2000.00	9, 1, 1911	6%	542	9, 1, 1914	9, 1, 1914	180.00	360.00	" "	.....	2,300	2,300
108B	14	1913 to 1916	248.16	5000.00	9, 1, 1911	6%	547	9, 1, 1914	3, 1, 1915	.....	750.00	" "	.....	4,800	4,800
			4074.49	37,000.00						1980.00	5460.00		.....	39,500	39,500
		Grand Total,	6243.80	77,000.00						6081.67	11910.00		.....	52,100	50,380

| | | |

EXHIBIT C 23.

Guarantee Trust Company	West Jersey Mortgage Company	Ventnor Syndicate
1910	1910	1910
Directors	*Directors*	*Directors*
Carlton Godfrey	Carlton Godfrey	Carlton Godfrey
Clement J. Adams	Clement J. Adams	Clement J. Adams
George P. Eldredge	William S. Casselman	Howard G. Harris
William A. Faunce	William A. Faunce	Lewis T. Imley
John W. Hackney	John W. Hackney	H. A. Davis
Frederick C. Robbins	Frederick C. Robbins	John A. Ireland
William F. Wahl	Arthur Wright	William F. Wahl
Henry W. Leeds	Lewis Starr	Daniel W. Myers
Heulings Lippincott	I. G. Adams	Philip I. Marvel
John J. Gardner	J. B. Rogers	J. B. Rogers
Oliver J. Hammell	Thomas E. French	M. D. Youngman
Hubert Somers	Louis Keuhnle	Louis Kuehnle
James Parker	J. Willard Morgan	Clarence M. Brown
Nelson Ingram	C. R. Stevenson	Charles C. Carmen
William M. Pollard	R. B. Stites	R. B. Stites
Silas R. Morse	H. M. Sypherd	C. A. Daniel
Walter E. Edge	John H. Tunstall	P. G. Hannum
James B. Reilly	W. B. Bell	A. P. Hunter
Daniel S. White	G. P. Eldredge	A. M. Lanfeld
Albert Beyer	H. S. Giddings	John McGlinn
Charles D. White		John J. McGurk
Lewis T. Bryant		C. H. Stinson
Harry E. Tietjen		J. D. Sisler
H. M. Sypherd		

GUARANTEE TRUST COMPANY

1911

Directors

Carlton Godfrey
Clement J. Adams
George P. Eldredge
William A. Faunce
John W. Hackney
Frederick C. Robbins
Wiliam F. Wahl
Henry W. Leeds
Heulings Lippincott,
John J. Gardner
Oliver J. Hammell
Hubert Somers
James Parker
William M. Pollard
Silas R. Morse
Walter E. Edge
James B. Reilly
Daniel S. White
Albert Beyer
Charles D. White
Lewis T. Bryant
Harry E. Tietjen
H. M. Sypherd

WEST JERSEY MORTGAGE COMPANY

1911

Directors

Carlton Godfrey
Clement J. Adams
George P. Eldredge
William A. Faunce
John W. Hackney
Frederick C. Robbins
Arthur Wright
J. B. Rogers
R. B. Stites
I. G. Adams
Louis Kuehnle
William M. Bell
William S. Casselman
Thomas E. French
H. Starr Giddings
J. Willard Morgan
Lewis Starr
C. R. Stevenson
H. M. Sypherd
John H. Tunstall

VENTNOR SYNDICATE

1911

Directors

Carlton Godfrey
Clement J. Adams
Howard G. Harris
Lewis T. Imley
John A. Ireland
Philip I. Marvel
William F. Wahl
J. B. Rogers
R. B. Stites
Daniel W. Myers
Louis Kuehnle
M. D. Youngman
Clarence M. Brown
Charles C. Carmen
Howard A. Davis
C. A. Daniel
P. G. Hannum
A. P. Hunter
A. M. Lanfeld
John McGlinn
John J. McGurk
C. H. Stinson
J. D. Sisler
Charles F. Wahl

GUARANTEE TRUST COMPANY

1912

Directors

Carlton Godfrey
Clement J. Adams
Herman M. Sypherd
Frederick C. Robbins
John W. Hackney
George P. Eldredge
William A. Faunce
William F. Wahl
Henry W. Leeds
Heulings Lippincott
John J. Gardner
Oliver J. Hammell
Hubert Somers
James Parker
William M. Pollard
Silas R. Morse
Walter E. Edge
James B. Reilly
Daniel S. White
Albert Beyer
Charles D. White
Lewis T. Bryant
Harry E. Tietjen
C. A. Bartlett

WEST JERSEY MORTGAGE COMPANY

1912

Directors

Carlton Godfrey
Clement J. Adams
Herman M. Sypherd
Frederick C. Robbins
John W. Hackney
George P. Eldredge
William A. Faunce
I. G. Adams
R. B. Stites
J. B. Rogers
William B. Bell
William S. Casselman
Thomas E. French
H. Starr Giddings
Louis Keuhnle
Lewis Starr
C. R. Stevenson
John H. Tunstall
Arthur Wright
J. W. Morgan

VENTNOR SYNDICATE

1912

Directors

Carlton Godfrey
Clement J. Adams
Howard G. Harris
Lewis T. Imley
John A. Ireland
P. G. Hannum
Daniel W. Myers
William F. Wahl
R. B. Stites
J. B. Rogers
Philip I. Marvel
Clarence M. Brown
Charles C. Carmen
Thompson Irvin
Louis Keuhnle
S. B. Richards
A. P. Hunter
A. M. Lanfeld
John McGlinn
John J. McGurk
C. H. Stinsom
J. D. Sisler
M. D. Youngman
Charles F. Wahl
C. A. Daniel
H. A. Davis

Guarantee Trust Company	West Jersey Mortgage Company	Ventnor Syndicate
1913	1913	1913
Directors	*Directors*	*Directors*
Carlton Godfrey	Carlton Godfrey	Carlton Godfrey
Clement J. Adams	Clement J. Adams	Clement J. Adams
Herman M .Sypherd	Herman M. Sypherd	Howard G. Harris
Frederick C. Robbins	Frederick C. Robbins	John A. Ireland
John W. Hackney	John W. Hackney	A. M. Lanfield
George P. Eldredge	George P .Eldredge	Daniel W. Myers
William A. Faunce	William A. Faunce	M. D. Youngman
William F. Wahl	I. G. Adams	William F. Wahl
Heulings Lippincott	R. B. Stites	R. B. Stites
John J. Gardner	J. B. Rogers	J. B. Rogers
O. J. Hammell	William S. Casselman	Philip I. Marvel
Hubert Sommers	William B. Bell	P. G. Hannum
James Parker	H. Starr Giddings	A. P. Hunter
William M. Pollard	Louis Kuehnle	Louis Kuehnle
Silas R. Morse	Lewis Starr	John McGlinn
Walter E. Edge	C. R. Stevenson	Charles F. Wahl
James B. Reilly	John H. Tunstall	Thompson Irvin
Daniel S. White	Arthur Wright	C. H. Stinson
Albert Beyer		
Charles D. White		
Lewis T. Bryant		
Harry E. Tietjen		
C. A. Bartlett		
H. W. Leeds		

GUARANTEE TRUST COMPANY

1914

Directors

Carlton Godfrey
Clement J. Adams
Herman M. Sypherd
Frederick C. Robbins
John W. Hackney
George P. Eldredge
William A. Faunce
William F. Wahl
Heulings Lippincott
O. J. Hammell
Hubert Sommers
James Parker
William M. Pollard
Silas R. Morse
Walter E. Edge
Daniel S. White
Albert Beyer
Charles D. White
Lewis T. Bryant
Harry E. Tietjen
C. A .Bartlett

WEST JERSEY MORTGAGE COMPANY

1914

Directors

Carlton Godfrey
Clement J. Adams
Herman M. Sypherd
Frederick C. Robbins
John W. Hackney
George P. Eldredge
William A. Faunce
R. B. Stites
J. B. Rogers
William S. Casselman
William B. Bell
H. Starr Giddings
C. R. Stevenson
John H. Tunstall
Arthur Wright

VENTNOR SYNDICATE

1914

Directors

Carlton Godfrey
Clement J. Adams
Howard G. Harris
M. D. Youngman
P. G. Hannum
Daniel W. Myers
William F. Wahl
R. B. Stites
J. B. Rogers
Philip I. Marvel
John McGlinn
Charles F. Wahl
Louis Kuehnle
Thompson Irvin
A. M. Langfeld

GUARANTEE TRUST COMPANY

1915

Directors

Carlton Godfrey
Clement J. Adams
Herman M. Sypherd
John W. Hackney
George P. Eldredge
William A. Faunce
William F. Wahl
Heulings Lippincott
Hubert Sommers
James Parker
William M. Pollard
Silas R. Morse
Walter E. Edge
Daniel S. White
Albert Beyer
Lewis T. Bryant
Harry E. Tietjen
C. A. Bartlett
H. H. Hallman
J. Vaughn Mathis
Robert B. Scull
C. D. White

WEST JERSEY MORTGAGE COMPANY

1915

Directors

Carlton Godfrey
Clement J. Adams
Raymond P. Reed
John W. Hackney
George P. Eldredge
William A. Faunce
William B. Bell
R. B. Stites
William S. Casselman
John H. Tunstall
H. Starr Giddings
J. B. Rogers
Arthur Wright

VENTNOR SYNDICATE

1915

Directors

Carlton Godfrey
Clement J. Adams
Howard G. Harris
Louis Kuehnle
Philip I. Marvel
M. D. Youngman
P. G. Hannum
R. B. Stites
A. M. Lanfeld
John McGlinn
T. Irvin

New Jersey State Library

January 11, 1910.

Directors:

Carlton Godfrey
Heulings Lippincott
George P. Eldredge
Oliver J. Hammell
Nelson Ingram, M. D.
Silas R. Morse
James B. Reilley
Daniel S. White
John W. Hackney
Frederick C. Robbins
H. E. Tietjen
William F. Wahl
Henry W. Leeds
John J. Gardner
William A. Faunce
Hubert Somers
James Parker
William M. Pollard
Walter E. Edge
Clement J. Adams
Albert Beyer
Charles D. White
Lewis T. Bryant

Officers:

Carlton Godfrey, President.
Henry W. Leeds, 1st Vice-President
D. S. White, 2nd Vice-President
Chas. H. Jeffries, Secretary and Treasurer
Herman M. Sypherd, Trust Officer

January 10, 1911.

Directors:

Carlton Godfrey
Heulings Lippincott
George P. Eldredge
Oliver J. Hammell
William F. Wahl
William M. Pollard
Walter E. Edge
Clement J. Adams
Albert Beyer
Charles D. White
Lewis T. Bryant
Henry W. Leeds
John J. Gardner
William A. Faunce
Hubert Somers
James Parker
Silas R. Morse
James B. Reilley
Daniel S. White
John W. Hackney
Frederick C. Robbins
H. E. Tietjen

January 12, 1911.

Officers:

Carlton Godfrey, President
Henry W. Leeds, 1st Vice-Pres't
D. S. White, 2nd Vice-Pres't
Chas. H. Jeffries, Sec'y & Treas.
Herman M. Sypherd, Trust Officer

January 9, 1912.

Directors:

Carlton Godfrey
Heulings Lippincott
George P. Eldredge
Oliver J. Hammell
William F. Wahl
William M. Pollard
Walter E. Edge
Clement J. Adams
Albert Beyer
Charles D. White
Lewis T. Bryant
Henry W. Leeds
Charles A. Bartlett
John J. Gardner
William A. Faunce
Hubert Somers
James Parker
Silas R. Morse
James B. Reilley
Daniel S. White
John W. Hackney
Frederick C. Robbins
H. E. Tietjen
Herman M. Sypherd

Officers:

Carlton Godfrey, President
Henry W. Leeds, 1st Vice-Pres't
Daniel S. White, 2nd Vice-Pres't
H. M. Sypherd, 3rd Vice-Pres't and Trust Officer
Chas. H. Jeffries, Sec'y & Treas.

January 14, 1913.

Directors:

Carlton Godfrey
Henry W. Leeds
Heulings Lippincott
John J. Gardner
George P. Eldredge
William A. Faunce
Oliver J. Hammell
Hubert Somers
William F. Wahl
James Parker
William M. Pollard
Chas. A. Bartlett
Silas R. Morse
Walter E. Edge
James B. Reilley
Clement J. Adams
Daniel S. White
Albert Beyer
John W. Hackney
Charles D. White
Frederick C. Robbins
Lewis T. Bryant
H. E. Tietjen
Herman M. Sypherd

Officers:

Carlton Godfrey, President
Henry W. Leeds, 1st Vice-Pres't
Daniel S. White, 2nd Vice-Pres't
H. M. Sypherd, 3rd Vice-Pres't and Trust Officer
Chas. H. Jeffries, Sec'y & Treas.

January 13, 1914.

Directors:

Carlton Godfrey
Heulings Lippincott
William A. Faunce
Oliver J. Hammell
Hubert Somers
William F. Wahl
James Parker
William M. Pollard
Silas R. Morse
Charles A. Bartlett
George P. Eldredge
Walter E. Edge
Clement J. Adams
Daniel S. White
Albert Beyer
John W. Hackney
Charles D. White
Frederick C. Robbins
Lewis T. Bryant
H. E. Tietjen
Herman M. Sypherd

Officers:

Carlton Godfrey, President
Daniel S. White, 1st Vice-Pres't
Herman M. Sypherd, 2nd Vice-Pres't and Trust Officer
Chas. H. Jeffries, Sec'y & Treas.

January 12, 1915.

Directors:

Carlton Godfrey
Heulings Lippincott
George P. Eldredge
William A. Faunce
Hubert Somers
William F. Wahl
James Parker
William M. Pollard
Silas R. Morse
Walter E. Edge
Clement J. Adams
Daniel S. White
Albert Beyer
John W. Hackney
Charles D. White
H. E. Tietjen
Lewis T. Bryant
Charles A. Bartlett
Herman M. Sypherd
Harry H. Hallman
J. Vaughn Mathis
Robert B. Scull

Officers:

Carlton Godfrey, President
Daniel S. White, 1st Vice-Pres't
Herman M. Sypherd, 2nd Vice-Pres't and Trust Officer
Chas. H. Jeffries, Sec'y & Treas.

EXHIBIT C 24.

By-Laws of the Guarantee Trust Company Adopted November 8, 1899.

Article 4.

Officers.

* * * * * * *

Sec. 3. It shall be the duty of the President to preside at all meetings of the Stockholders and of Directors, and shall ex officio be a member of and chairman of all Committees of the Stockholders and Directors *and shall at all times exercise a general supervision and direction over all the affairs of the Corporation.*

Sec. 4. The Vice President shall preside over any meeting in the absence of the President, and in the absence of the President shall perform his duties.

Sec. 5. The Secretary shall keep a record in due form of the proceedings of all meetings of the Stockholders and the Directors and all Committees thereof, and perform such other duties as may be prescribed by the Board.

Sec. 6. The Treasurer shall perform such duties as may from time to time be prescribed by the Board of Directors.

EXHIBITS C 25 TO C 27.

These are not printed, but appear in the testimony.

EXHIBIT C 28.

Printed with the Bill.

EXHIBIT C 29.

By agreement, the following only is printed:

* * * * * * * * *

			Folio.	*Principal Cr.*	
1914.					
Mar.	20	West Jersey Mortgage Company, Six months' interest due 2/28/15 Mortgage $2000. Premises Lot 13, Block 88A Ventnor Syndicate Tract	140	60 00	
	31	Joseph Lavina, refund of interest paid in error 3/20/15 on 1000 bond	142	30 00	10
June	3	West Jersey Mortgage Company Six months' interest due 2/19/15 Mortgage 5000. Ventnor Syndicate Covering Lot 14, Block 108A.....	162	150 00	
				390 00	
1915					
June	30	*By Balance*		*360 00*	
Sept.	20	West Jersey Mortgage Company, Six months' interest due 3/1/15 mortgage $5000, Ventnor Syndicate Premises Lot 14, Block 108B.....	198	150 00	20
				510 00	
1916					
June	30	*By Balance*		*510 00*	

EXHIBIT C 30.

(VENTNOR SYNDICATE) 30

LIST OF BOND HOLDERS AND AMOUNTS HELD:

$5,000.	Cumberland National Bank, Bridgeton, N. J.
25,500.	West Jersey Title & Guarantee Company
3,000.	George Conover
1,000.	John W. Hudson
2,000.	Mary R. Lippincott
1,000.	Sara N. Lippincott

1,000.	Kate T. Bower
1,000.	George F. Neumayer
5,000.	John W. Ingersoll
1,000.	Grace K. Weatherby
2,000.	Alice B. Longworth
1,000.	Margaret Cooke
1,000.	Martha M. McKee
1,000.	William G. Saalman
1,000.	Pauline Rupprecht
1,000.	Lizzie Quigg
1,000.	Joseph Levina
1,500.	Benjamin G. Carl
4,000.	Stephen Oberst
5,000.	Emily Minerd
1,000.	Lena E. Deppe
1,000.	Henry D. Graut
1,000.	Frederick Thoms
2,000.	Alice Nuskey
3,000.	William T. Weeks
1,000.	Victoria Realty & Mortgage Co.
500.	Hannah L. Andrews
500.	Gertrude Hollick
500.	George L. Gillingham
500.	Myrtle R. Moyer
2,000.	West Jersey Mortgage Co.
$77,000.	

EXHIBIT C 31.

April 14th, 1915.

Guarantee Trust Company,
Atlantic City.

GENTLEMEN:

I represent Mr. George Conover, of Bridgeboro, Burlington County, New Jersey, who holds bonds 6, 7, 8, 9 and 10 issued by the Ventnor Syndicate on Sep-

tember 1st, 1911. These bonds are known as six per cent. Guaranteed Collateral Gold Bonds and aggregate $5,000.

In the body of the bond, it is recited that there is on deposit with your Company, as trustee, bonds and first mortgages of a par value of not less than the par value of the bonds of the series, of which Mr. Conover's bonds form a part. According to the bonds in my possession, the aggregate issue of the series in question is $200,000. May I ask you to furnish me by return mail, in the enclosed stamped envelope, the following information:

1. The book and page of record of the trust agreement or deed, under which you are acting for the issue of bonds in question.

2. A descriptive list of the bonds and first mortgages in your possession at this time as collateral for the issue aforesaid. In giving me the information concerning first mortgages I only wish the date, the amount and the book and page of record.

3. Inasmuch as it is sometimes provided in bond issues of this character that bonds and first mortgages may be substituted, I would like to be advised if there has been any substitution of bonds or first mortgages since the original deposit and, if so, a list of the bonds and mortgages taken away and a list of those substituted in the room of those taken.

4. I should also like to know the number of bonds outstanding if you have the information.

5. I should also like to know if you have in your possession sufficient money to the credit of the Ventnor Syndicate for the purpose of paying the principal sum of the said bonds or the interest thereon, which came due on the 1st day of March, 1915,

Yours truly,

WM. M. CLEVENGER.

GUARANTEE TRUST COMPANY.

ATLANTIC CITY, N. J.
April 16, 1915.

William M. Clevenger, Esq.,
Guarantee Trust Building,
Atlantic City, N. J.

DEAR MR. CLEVENGER:

Replying to your letter, I beg to furnish you with the following information relative to the collateral bonds of the Ventnor Syndicate, dated September 1st, 1911, of which your client, Mr. George Conover, holds $5,000:

1:—These bonds are issued under the terms of a Trust Agreement between the Ventnor Syndicate, West Jersey Mortgage Company and Guarantee Trust Company, as trustee, which agreement is on file in our office but is not recorded.

2:—The following are the mortgages in our custody, as trustee, on this date:

$5,000	recorded in	Book	120,	page	420
5,000	" " "	124	"		51
5,000	" " "	123	"		484
2,000	" " "	124	"		262
2,000	" " "	124	"		263
2,000	" " "	124	"		264
5,000	" " "	124	"		266
2,000	" " "	124	"		267
2,000	" " "	124	"		268
2,000	" " "	124	"		270
5,000	" " "	124	"		271
5,000	" " "	130	"		26
5,000	" " "	129	"		55
5,000	" " "	127	"		482
5,000	" " "	130	"		79
2,000	" " "	129	"		451
2,000	" " "	129	"		443
2,000	" " "	133	"		267
2,000	" " "	131	"		417

2,000 " " " 131 " 418
5,000 " " " 130 " 278
5,000 " " " 131 " 447

3:—There has been no substitution of Mortgages since the original deposit.

4:—The amount of bonds outstanding is $77,000.

5:—Funds for the payment of the principal of these bonds have not been deposited with us by the Ventnor Syndicate, nor are there sufficient funds in our hands to pay the interest which was due on March 1st, 1915.

Yours very truly,

HERMAN M. SYPHERD,
Trust Officer.

April 17th, 1915.

Guarantee Trust Company,
Atlantic City.

GENTLEMEN:

I have your letter of the 16th instant, giving me the information desired relative to the bonds of the Ventnor Syndicate held by George Conover and am obliged to you for the same. I would like to inquire if the assignments of mortgages to you as trustee, mentioned in paragraph 2 of your letter, have been duly recorded in the Clerk's office of the County of Atlantic. If not, I desire to direct your attention to the fact that the interest due to my client on the bonds has not been paid and that Mr. Conover requests of you that the assignments be placed of record at once.

In behalf of Mr. Conover, the owner and holder of bonds 6, 7, 8, 9 and 10, mentioned in my letter of the 14th instant, I desire to demand of you the interest on the said bonds, which came due on the 1st day of March, 1915.

In like behalf of Mr. Conover, owner of the said bonds, I desire to demand of you the principal sum thereof, which came due on the first day of September, 1914.

This demand for principal and interest is made for the purpose of creating the default, which is no doubt provided for by the agreement filed in your office and mentioned in your letter of the 16th instant.

Yours truly,

WM. M. CLEVENGER.

GUARANTEE TRUST COMPANY

ATLANTIC CITY, N. J.
April 21, 1915.

William M. Clevenger, Esq.,
#615 Guarantee Trust Building,
Atlantic City, N. J.

DEAR SIR:

Replying to your letter of the 17th instant, would state that all the mortgages held by this Company, as trustee, in connection with the bonds of the Ventnor Syndicate, are duly assigned and of record in the Atlantic County Clerk's office.

Yours very truly,

HERMAN M. SYPHERD,
Trust Officer.

April 21st, 1915.

Guarantee Trust Company,
Atlantic City, N. J.

GENTLEMEN:

Referring to your letter of the 16th instant, furnishing me with a list of the mortgages in your possession as collateral security for Ventnor Syndicate Bonds, held by George Conover, I beg to advise that, in checking the same, I failed to find a $5,000 mortgage, recorded in Book 130, page 278, and it has occurred to me that perhaps you gave me the wrong book and page number. This item is the second line from the bottom of paragraph two of your letter on page two. If investi-

gation proves I am right, will you kindly advise me of the correct book and page number of this particular mortgage.

Yours truly,
WM. M. CLEVENGER.

August 30th, 1915.

Guarantee Trust Company,
Atlantic City.

GENTLEMEN:

My client, George Conover, of Bridgeboro, New Jersey, is still the owner of bonds 6, 7, and 8 of the Ventnor Syndicate, about which I corresponded with you in April last. On April 21st, 1915, I inquired as to the book and page of record of the $5000 mortgage which I was unable to locate, but have never had a reply to that letter. Will you kindly let me hear from you concerning this and at the same time answer the following questions:

1. Have the interest charges been paid on all of the mortgages held by you and mentioned in your letter of April 16th, 1915, and, if not, upon which mortgages are interest installments due and how much?

2. Have the taxes all been paid against the lots upon which these mortgages are held, and, if not, for which years, upon which lots and for what amounts are payments due?

3. If there are unpaid taxes and interest charges, have foreclosure proceedings been instituted upon any of the mortgages, and, if so, upon which mortgages?

4. If there are unpaid taxes and interest charges and no foreclosure proceedings have been instituted, when will action be taken?

If you have a printed copy of the trust agreement between the Ventnor Syndicate, the West Jersey Mortgage Company and your Company, will you send me one and at the same time take notice that Mr. Conover

desires an immediate foreclosure of the mortgages upon which there is a default in interest or taxes.

Yours truly,

WM. M. CLEVENGER.

GUARANTEE TRUST COMPANY

ATLANTIC CITY, N. J.
September 11, 1915.

William M. Clevenger, Esq.,
615 Guarantee Trust Building,
Atlantic City, N. J.

DEAR SIR:

Referring to your communication, relative to bonds of the Ventnor Syndicate, owned by George Conover, of Bridgeboro, New Jersey, would state that the book and page of record of the mortgage referred to in your letter of April 21st, is book #127 page #482.

Interest is due on the various mortgages held by us, as trustee, as follows:

Mortgage $5,000, lot 9, block 9, interest due from 9/1/14.
" 5,000, " 14, " 108-A, no interest in arrears.
" 5,000, " 7, " 100-A, interest due from 9/1/14.
" 5,000, " 14, " 108-B, interest due from 3/1/15.
" 2,000, " 13, " 108-B, interest due from 9/1/14.
3 mortgages, $2,000 each, lots 11, 15 and 5, block 108-B, due 9/1/14.
Mortgage, 5,000, lot 7, block 108-B, interest due from 3/1/15.
" 2,000, " 6, " 108-B, " " " 9/1/14.
" 2,000, " 4, " 108-B, " " " "
4 mortgages, $5,000 each, lot 8, block 12, lot 16, block 12, lot 16, block 11 and lot 7, block 86-A, interest due from 9/1/14.

Mortgage $2,000, lot 13, block 88-A, interest due from 2/28/15.
" 2,000, " 13, " 88-B, " " " "
" 2,000, " 12, " 88-A, " " " "
" 2,000, " 5, " 88-A, " " " "
" 2,000, " 11, " 88-A, " " " "
" 5,000, " 7, " 88-A, " " " 8/21/14.
" 5,000, " 14, " 71-A, " " " 11/12/14.

The taxes on nearly all these lots are not paid for the years 1913 and 1914, but we have not yet received a full report as to the amounts due upon the various lots. We have been holding up a reply to your letter awaiting this information, and as soon as we do receive it, we will furnish you with the same.

We will take up the matter at once of the institution of foreclosure proceedings upon the various mortgages which are in default, and advise you of the action taken within a few days.

Yours very truly,

HERMAN M. SYPHERD,
Second Vice President.

October 13th, 1915.

Guarantee Trust Company,
Atlantic City.

GENTLEMEN:

I have before me your letter of September 11th, 1915, and notice that in many instances the interest on the mortgages held by you, as trustee, is overdue for a year and the taxes unpaid for at least two years. In behalf of George Conover, the owner of bonds 6 and 7 issued by the Ventnor Syndicate upon the mortgages held by you as such trustee, I would like to inquire why, as trustee, you permitted the mortgages held by you to remain in your possession without foreclosure or notice to the bondholders of such default.

I enclose stamped envelope for a reply.

Yours truly,

WM. M. CLEVENGER.

GUARANTEE TRUST COMPANY

ATLANTIC CITY, N. J.
October 21st, 1915.

William M. Clevenger, Esquire,
615 Guarantee Trust Building,
Atlantic City, N. J.

DEAR SIR:

Replying to your letter of the 13th instant would state that it is, we believe, the invariable practice of Trust Companies when acting as trustee under a trust mortgage to proceed only on instructions of the bond holders as provided in the trust agreement under which the bonds are issued, and this company has always so acted. No instructions were ever received by us from the requisite number of bond holders in the matter of the issue of the bonds of the Ventnor Syndicate issued under a trust agreement dated September 1st, 1911, although default was made by the obligor company in the payment of interest on the bonds due on March 1st, 1915, and again on September 1st, 1915.

Our position in regard to this matter was gone over quite fully by the writer in an interview with you on the 15th instant, and we believe that we have acted in this matter strictly in accordance with the terms of the trust agreement.

Yours very truly,
HERMAN M. SYPHERD,
Trust Officer.

HS/FEL

October 22nd, 1915.

Guarantee Trust Co.,
Atlantic City, N. J.

GENTLEMEN:

On October 15th, 1915, I wrote you in behalf of George Conover, holder of Ventnor Syndicate bonds Nos. 6 and 7, inquiring "why, as trustee, you permitted the mortgages held by you to remain in your possession

without foreclosure or notice to the bondholders of such default." The letter was promepted because interest for a year and taxes for several years were overdue. Your Mr. Herman M. Sypherd called on me during the afternoon of October 15th, 1915, and stated verbally that the only reasons for your neglect were that you had used your best judgment as you would have to become the purchaser at any foreclosure sale and that there was no sale for real estate to advantage during the past year; that you were not obliged to foreclose unless indemnified; that such burden was on the West Jersey Mortgage Company under its policies held by you; that you were not obliged to notify bondholders of default in interest and tax payments; that the non receipt of interest was sufficient notice to such bondholders and you would confirm the conversation by letter. To-day I am in receipt of your letter of October 21st, 1915, and, as the reasons therein given vary from the reasons verbally given me by Mr. Sypherd, I am prompted to inquire:

1. Are the reasons given by Mr. Sypherd your reasons or do you stand solely on your letter of October 21st, 1915?

2. Pursuant to paragraph 5 of the agreement of September 1st, 1911, did you notify Ventnor Syndicate to substitute other collateral because of the default in taxes, and, if so, on what date and with what results?

3. Why did you not foreclose as provided by section 5 of said agreement?

4. What did you do looking toward preserving what purports to be seventy seven thousand dollars of value in your hands for the benefit of the bondholders under the said agreement?

5. Why did you permit the withdrawal of a $2000 mortgage on October 16th, 1914, at a time when there was default in both taxes and interest charges?

In addition to the foregoing, I wish you would state by what authority you certified bonds 6 and 7 held by

my client in face of your full knowledge that the schedule attached to the agreement of September 1st, 1911, discloses only $10,000 of bonds and mortgages *assigned* in accordance with the terms of the agreement?

Yours truly,
WM. M. CLEVENGER.

October 28th, 1915.

Guarantee Trust Co.,
Atlantic City.

GENTLEMEN:

Upon referring to my letter to you of October 22nd, 1915, I notice that I failed to enclose a stamped envelope for reply. I am now enclosing such a stamped envelope and would ask that you let me have your reply by return mail.

Yours truly,
WM. M. CLEVENGER.

GUARANTEE TRUST COMPANY

ATLANTIC CITY, N. J.,
October 29th, 1915.

William M. Clevenger, Esq.,
615 Guarantee Trust Bldg.,
Atlantic City, N. J.

DEAR SIR:

Replying to your letter of the 22nd instant would state that our position in this matter has been thoroughly explained to you both in person and by letter and we have nothing further to add to the same.

Yours very truly,
HERMAN M. SYPHERD,
Trust Officer.

Oct. 30th, 1915.

To the Board of Directors
of the Guarantee Trust Company.

GENTLEMEN:

The enclosed correspondence speaks for itself.

It is hardly necessary for me to state that there are three questions yet unanswered by your Company:

1. Why did your Company neglect to foreclose under paragraph 5 of the agreement of September 1st, 1911?

2. Why did your Company permit $2000 of assets to pass from your possession when taxes and interest were in default?

3. Why did you certify you had $77,000 of assigned mortgages when you in fact only held $10,000?

This matter is directed to the attention of each member of the Board of your Company in order to be sure the refusal of information to one, for whom you are acting as trustee, is the act of the Board and not of the individual officers.

I propose instituting a suit against you for George Conover, who holds $2000 of the issue of bonds mentioned in the correspondenue, unless you advise with the relieving facts necessarily in your possession, if they exist.

I trust you will reconsider your Trust Officer's letter of the 29th instant.

Yours truly,
WM. M. CLEVENGER.

GUARANTEE TRUST COMPANY

ATLANTIC CITY, N. J.,
November 6th, 1915.

William M. Clevenger, Esq.,
#615 Guarantee Trust Building,
Atlantic City, N. J.

DEAR SIR:

Your communication, addressed to the Board of Directors of this Company and sent to each member of the

Board, was given due consideration at a meeting of the Board last Thursday, and I was authorized to send you the following answers to your questions:

Your question #1:—Why did your Company neglect to foreclose under Paragraph 5 of the agreement of September 1, 1911?

Our reply thereto:—Under the terms of Article 5 of the trust agreement the trustee is authorized, if it deems it necessary for the security of the bondholders that any of the mortgages should be collected, to proceed to do so by foreclosure or otherwise. This Company did not deem it necessary for the security of the bondholders that this action should have been taken and believed that it would not have been to the advantage of the bondholders if such foreclosure had taken place. For this reason no action was taken under the authority vested in the trustee by this article.

The fact that ninety-seven per cent. of the bondholders apparently agreed that our position was correct, as shown by the fact that they did not even request the trustee to take any action looking to the foreclosure of these mortgages, is a further confirmation of the wisdom of the position taken by this Company. The trust agreement provides that twenty-five per cent. of the bondholders, in case of default, might have requested such foreclosure, but to this date no such action has been taken by the bondholders.

Your question #2:—Why did your Company permit $2,000 of assets to pass from your possession when taxes and interest were in default?

Our reply thereto:—This Company did not permit $2,000 of the assets in this trust to pass from its possession. The facts are that the Ventnor Syndicate paid to this Company, as trustee, $2,000 and withdrew a mortgage of like amount, then presented for retirement $2,000 of its bonds and received cash in lieu of the same, thus reducing the amount of mortgages in the trust fund by $2,000 and lowering the bonds outstanding by a like amount, all of which was done in strict

accordance with the trust agreement. The withdrawal of this $2,000 did not affect the remaining bondholders.

Your question #3:—Why did you certify you had $77,000 of assigned mortgages when you in fact only held $10,000?

Our reply thereto:—If this question is intended as a statement of fact it is absolutely untrue.

At no time has any bond been certified by this Company, as trustee, unless prior to such certification an equal amount of mortgages has first been deposited with it. The books of this Company show that at all times there has been an amount of mortgages deposited in the trust fund equal to the bonds certified. There are now $77,000 of mortgages in the fund, a full list of which you have had in your possession since April 16th, 1915.

I am directed to say to you that the Board of Directors has the fullest confidence in its officers as to the course pursued relative to these mortgages and feel that whatever has been done has been in accordance with the terms of the trust agreement and, in the judgment of this Company, for the best interest of the bondholders.

Yours very truly,

HERMAN M. SYPHERD,
Trust Officer.

Nov. 9th, 1915.

Guarantee Trust Co.,
Atlantic City.

GENTLEMEN:

Your letter of the 6th instant, with answers to the questions heretofore refused to me as the representative of George Conover for whom you are trustee under the agreement of September 1st, 1911, duly received.

I regret your answers are such as to compel Mr. Conover to litigate with your Company to protect what he deems has been a violation of your duty as his trustee.

Yours truly,

WM. M. CLEVENGER.

Nov. 22nd, 1915.

Guarantee Trust Co.,
Atlantic City.

GENTLEMEN:

Referring further to your letter of November 6th, 1915 concerning the bonds issued under the agreement of September 1st, 1911, I beg to state that I have examined the books of the Ventnor Syndicate and cannot verify the statement made by you in reply to my question No. 2. May I ask you to advance me by return mail in the enclosed stamped envelope on what date the Ventnor Syndicate paid you $2000, as trustee, and on what date you paid the $2000 of bonds, which it presented for retirement.

I should add that on the original agreement the mortgage is noted as having been withdrawn on October 16th, 1914.

Yours truly,
WM. M. CLEVENGER,

GUARANTEE TRUST COMPANY

ATLANTIC CITY, N. J.
November 24, 1915.

William M. Clevenger, Esq.,
Guarantee Trust Building,
Atlantic City, N. J.

DEAR SIR:

Replying to your letter of November 22nd in relation to our reply to question #2, submitted by you under date of October 30th, I beg to advise you that I was in error in a portion of that statement. It was made from memory and I felt absolutely sure that the facts therein stated were correct in every detail.

I find, however, that the transaction took place in a little different manner from that stated in our answer. The facts as shown by our books, are as follows:

Section #11 of the Trust Agreement provides among other things the following: "If at any time the Company shall pay or retire any of the bonds secured by this instrument and shall surrender the same to the Trustee for cancellation, the Company shall be entitled to withdraw from the trust fund any bonds and mortgages of a value equal to the Company's bonds so surrendered by it."

Under this power on October 6th, 1914, the following letter was handed to us,

"To the Guarantee Trust Company, Trustee:

In accordance with the terms of a Trust Agreement under which an issue of bonds of this Company, dated September 1st, 1911, were issued, we hand you herewith bonds of this Company, dated September 1st, 1911, and due September 1st, 1914, amounting to $2,000 and will ask you to deliver to us by assignment to Christiana Krumm, a mortgage of $2,000, held by you as a part of said trust fund dated March 1st, 1912, covering lot #2 in block #82-B and recorded in Book #129 of Mortgages, page 16.

(Signed) VENTNOR SYNDICATE,
By CARLTON GODFREY,
Treasurer."

Pursuant to this direction we accordingly delivered the above mortgage and cancelled the bonds, thus accomplishing the same result as set forth in our answer; namely, reducing the amount of mortgages in the trust fund by $2,000 and lowering the bonds outstanding by a like amount.

I regret very much that the answer given to you was not in exact conformity with the facts, but this letter will explain the situation exactly as it exists.

Yours very truly,
HERMAN M. SYPHERD,
Trust Officer.

Nov. 22nd, 1915.

Guarantee Trust Co.,
Atlantic City.

GENTLEMEN:

I am about to institute the suit for George Conover mentioned in my letter of November 9th, 1915 and it is necessary for me to have the names and addresses of the registered holders of the bonds secured by the agreement of September 1st, 1911. Will you kindly furnish me with this information in the enclosed stamped envelope by return mail.

Yours truly,

WM. M. CLEVENGER.

GUARANTEE TRUST COMPANY.

ATLANTIC CITY, N. J.
November 24, 1915.

William M. Clevenger, Esq.,
Guarantee Trust Building,
Atlantic City, N. J.

DEAR SIR:

Replying to your letter of the 22d instant, asking us for a list of the names and addresses of the registered holders of bonds of the Ventnor Syndicate, secured by the agreement of September 1st, 1911, would state that we are uncertain as to whether it would be proper for us to make public this list of bondholders by giving their names to you.

For this reason we feel that the matter should first be referred to our Board for its action.

The next meeting of the Board takes place on Friday morning and immediately thereafter I shall advise you of our position in this matter.

Yours very truly,

HERMAN M. SYPHERD,
Trust Officer.

GUARANTEE TRUST COMPANY.

ATLANTIC CITY, N. J.
December 2, 1915.

William M. Clevenger, Esq.,
#615 *Guarantee Trust Building,*
Atlantic City, N. J.

DEAR SIR:

Replying to your request for a list of the names of the registered bondholders under the trust agreement between this Company and the Ventnor Syndicate, dated September first, 1911, would state that, as previously stated to you, it is contrary to our practice to furnish the names of the registered holders of the bonds of any company for which the Guarantee Trust Company acts as trustee.

In this particular case we are acting as trustee for the Ventnor Syndicate, which corporation is now represented by Judge Shinn, as Receiver. We have furnished him with a list of these bondholders and we feel that you should apply to him for the information.

Yours very truly,
HERMAN M. SYPHERD,
Trust Officer.

Dec. 3rd, 1915.

Guarantee Trust Co.,
Atlantic City.

GENTLEMEN:

I have been obliged to file a bill for George Conover vs. you and others and am enclosing you herewith carbon copy of the same for your files. The subpœna will reach you in due course.

Yours truly,
WM. M. CLEVENGER.

EXHIBIT C 32.

Received
May 16 1917
By W. M. C.

LIST OF MORTGAGES HELD AS COLLATERAL IN CONNECTION WITH BONDS OF THE VENTNOR SYNDICATE, DATED SEPTEMBER 1, 1911:

	Covering Property:			
Amount:	*Lot No.*	*Block No.*	*Interest Due From:*	
$5,000	14	71–A	Nov.	12, 1914
5,000	7	88–A	Aug.	21, 1914
2,000	11	88–A	Aug.	31, 1914
2,000	5	88–A	Aug.	31, 1914
2,000	12	88–A	Aug.	31, 1914
2,000	13	88–B	Aug.	31, 1914
2,000	13	88–A	Aug.	31, 1914
5,000	7	86–A	Sept.	1, 1914
5,000	16	11	Sept.	1, 1914
5,000	16	12	Sept.	1, 1914
5,000	8	12	Sept.	1, 1914
2,000	4	108–B	Sept.	1, 1914
5,000	7	108–B	Sept.	1, 1914
2,000	6	108–B	Sept.	1, 1914
2,000	5	108–B	Sept.	1, 1914
2,000	12	108–B	Sept.	1, 1914
2,000	11	108–B	Sept.	1, 1914
2,000	13	108–B	Sept.	1, 1914
5,000	14	108–B	March	1, 1915
5,000	7	100–A	Sept.	1, 1914
5,000	14	108–A	Feb.	10, 1915
5,000	9	9	Sept.	1, 1914

EXHIBIT C 33.

ATLANTIC CITY, N. J., December 6, 1916.

To the Holders of the First Mortgage Collateral Trust Bonds of the Ventnor Syndicate, dated September 1, 1911:

Interest, as you are aware, is now in default on your Bonds since September 1, 1914 ...., but no request has been received from the required number of bond-holders (twenty five per cent.) which would enable this Company to proceed with the foreclosure of the various Mortgages held in trust as security for these bonds.

This Company deems it wise at this time that the bond-holders give consideration to the matter of the foreclosure of these Mortgages, and to that end we are calling a meeting of the bond-holders, at the office of this Company, on Wednesday, December 13, 1916, at 11:00 A. M. to consider what action, if any, should be taken.

These bonds are all registered, and, for your information, we give you the list of the bond-holders, as they now appear upon the books of this Company, as Registrar.

GUARANTEE TRUST COMPANY, Trustee,
By.....
Trust Officer.

LIST OF BOND HOLDERS:

Cumberland National Bank, of Bridgeton, N. J.
West Jersey Title & Guaranty Company, Camden, N. J.
George Conover, Bridgeboro, Burlington County, N. J.
John W. Hudson, P. O. Box 252, Camden, N. J.

Mary R. Lippincott,
care Joseph Kaighn, 3rd & Market Sts., Camden, N. J.
Sara N. Lippincott,
" " " " " " " " "
Kate T. Bower,
" " " " " " " " "
George F. Neumayer,
" " " " " " " " "
John W. Ingersoll, Margate City, N. J.
Grace K. Weatherby, Hackensack, N. J.
Alice B. Longworth, 920 N. 63rd St., Philadelphia, Pa.
Margaret Cooke, 1101 Pacific Ave., Atlantic City, N. J.
Martha M. McKee, 53 LaClede Place, Atlantic City, N. J.
William G. Saalmann, Egg Harbor City, N. J.
Pauline Rupprecht, 3032 Fontain St., Philadelphia, Pa.
Lizzie Quigg, " " " " "
Joseph Levina, N. Carolina & Atlantic Aves., Atlantic City, N. J.
Benjamin G. Carl, care Jos. Kaighn, 3rd & Market Sts., Camden, N. J.
Stephen Oberst, Egg Harbor City, N. J.
Emily Minerd, 4935 Broadway, New York City, N. Y.
Lena E. Deppe, Pomerania, N. J.
Henry D. Graut, care C. J. Adams Co., Atlantic City, N. J.
Frederick Thoms, Egg Harbor City, N. J.
Alice Nuskey, 1201 Filmore St., Frankford, Phila., Pa.
William T. Weeks, Weekstown, N. J.
Victoria Realty & Mortgage Co.,
3rd & Market Sts., Camden, N. J.
Hannah L. Andrews,
care Jos. Kaighn, 3rd & Market Sts., " "
Gertrude Hollick, The Parkside, Camden, N. J.
George L. Gillingham, care Jos. Kaighn, 3rd & Market Sts., Camden, N. J.
Myrtle R. Moyer, 1419 Thompson St., Harrisburgh, Pa.
John G. Horner, Rec'r of West Jersey Mortgage Co., 311 Market St., Camden, N. J.

EXHIBITS C 34 AND C 35

Printed with the Bill.

EXHIBIT C 36.

Prepared from Books of Company
by Frederick L. Mead,
Certified Public Accountant.

WEST JERSEY MORTGAGE COMPANY.

ASSETS AND LIABILITIES.

September 30, 1915.

SCHEDULES ATTACHED.

Prepared from Books of Company
by Frederick L. Mead,
Certified Public Accountant.

WEST JERSEY MORTGAGE COMPANY.

STATEMENT OF ASSETS AND LIABILITIES.

September 30, 1915.

Assets:

Bonds: Margate Co	Schedule A...		$140,750.00
do Ventnor Syndicate			2,000.00
do Youngs' Pier & Hotel Co.			84,000.00
Collections Account	Schedule B.....		115,439.65
Mortgages Receivable	Schedule C.....		136,275.00
Notes Receivable	Schedule D.....		21,515.58
Accrued Interest Receivable	Schedule E.....		60,298.86

Real Estate Parcel #1	Schedule F	3,664.73
" " " #5		11,000.00
" " " #7		14,262.46
" " " #8		3,392.72
Accrued Rents Receivable		187.50
Mutual B. & L. Ass'n		311.00
Office Furniture & Fixtures		328.00
Cash to Receiver		658.03
		$594,083.53

Liabilities.

Accounts Payable	Schedule G	1,713.01
Accrued Interest Payable	Schedule H	207.00
Mortgages Payable	Schedule I	10,200.00
Capital Stock		522,300.00
Profit & Loss		59,663.52
		$594,083.53

West Jersey Mortgage Company.

Schedule A.

Bonds.

Sept. 30, 1915.

Margate Co. $140,750.00

Temporary. Six per cent.
Dated December 18, 1912.
Registered. Guarantee Trust Co., Trustee
Interest due from December 18, 1913
Originally $150,000.00

One Bond

Ventnor Syndicate 2,000.00

Dated September 1, 1911. Six per cent
Registered. Guarantee Trust Co., Trustee.
Interest due from September 1, 1914.
Guaranteed by West Jersey Mortgage Company.
Taken over by West Jersey Mtg. Co., 1915.

Two Bonds.

Young's Pier & Hotel Co..... 84,000.00

Serial. Dated January 15, 1912.
Six per cent. Registered

Taken over for unpaid interest from Sterling Realty Corporation.....	$62,000.00	
Taken over for unpaid interest from Young's Pier & Hotel Co.....	18,000.00	
Purchased from Godfrey & Godfrey..	4,000.00	
	$84,000.00	
Total:		$226,750.00

SCHEDULE B.

"COLLECTION ACCOUNT."

Showing amounts paid to Mortgagees but not collected from Mortgagors.

Collections account September 30, 1915. WJ. Mag. Co.

Guar. No.	*Due From*	*Amount.*	*Amt. (Pd. in Adv.)*
A—35	Sterling Realty Co.	1,200.00	
A—39	" " "	17,820.00	
A—40	" " "	10,860.00	
A—80	Margate Company	2,194.98	
A-116	Inlet Improvement Co.	275.00	
A-118	Victor J. Fisher	220.00	
A-133	Margate Co.	60.00	
A-148	Paid by Jos. H. Scott		33.00
A-149	" " Ann Jane Gregson		55.00
A-192	J. W. Risley	412.50	
A-200	Ansley B. Bowen	60.00	
A-202	" " "	60.00	
A-208	Ventnor Syndicate	1,200.00	
A-209	" "	900.00	
A-222	R. L. Babcock et al	300.00	
A-240	Walter K. Cavileer	60.00	
A-248	" " "	30.00	
A-255	Ventnor Syndicate	225.00	
A-256	" "	225.00	
A-257	" "	225.00	
A-258	" "	225.00	
A-259	" "	225.00	
A-261	" "	270.00	
A-262	" "	225.00	
A-263	" "	225.00	
A-264	" "	225.00	
A-265	W. J. Securities Co.	45.00	

A–266	Ventnor Syndicate	270.00		
A–267	" "	270.00		
A–272	Est. of H. J. Mulock	60.00		
A–273	Roebling Realty Company	110.00		
A–275	Ventnor Syndicate	225.00		
A–277	Paid by Culver & MacKechnie			45.00
A–286	Margate Company	60.00		
A–287	" "	60.00		
A–288	" "	225.00		
A–289	" "	60.00		
A–290	" "	60.00		
A–291	" "	90.00		
A–292	" "	55.00		
A–293	" "	300.00		
A–294	" "	60.00		
A–295	" "	60.00		
A–296	" "	90.00		
A–297	" "	90.00		
A–298	" "	90.00		
A–299	" "	90.00		
A–302	Ventnor Syndicate	270.00		
A–303	" "	270.00		
A–305	H. Starr Giddings	135.00		
A–306	Ventnor Syndicate	270.00		
A–307	" "	270.00		
A–308	" "	270.00		
A–310	" "	270.00		
A–316	Margate Company	90.00		
A–317	" "	60.00		
A–318	" "	90.00		
A–319	" "	60.00		
A–320	" "	90.00		
A–324	" "	225.00		
A–327	" "	225.00		
A–328	" "	240.00		
A–329	" "	90.00		
A–332	" "	36.67		
A–342	" "	90.00		
	Forward:	$		$
	Forwarded:	$		$
A–343	Dr. Emery Marvel	135.00		
A–346	" " "	135.00		
A–350	Margate Company	60.00		
A–351	" "	60.00		
A–352	" "	90.00		

A-353	Ventnor Syndicate	270.00
A-354	" "	225.00
A-355	Margate Company	60.00
A-356	Ventnor Syndicate	270.00
A-357	Margate Company	60.00
A-358	Ventnor Syndicate	225.00
A-360	Margate Company, ...	60.00
A-361	" "	60.00
A-362	Ventnor Syndicate	270.00
A-363	" "	225.00
A-364	Margate Company	30.00
A-365	" "	30.00
A-366	" "	30.00
A-367	" "	52.75
A-368	Ventnor Syndicate	225.00
A-369	Margate Company	67.75
A-370	Ventnor Syndicate	225.00
A-371	" "	225.00
A-372	" "	225.00
A-373	" "	225.00
A-374	" "	225.00
A-375	" "	225.00
A-376	" "	225.00
A-377	" "	225.00
A-379	Sallie L. Ballinger	45.00
A-380	Margate Company	60.00
A-381	" "	75.00
A-382	" "	75.00
A-383	" "	60.00
A-385	Ventnor Syndicate	225.00
A-386	" "	225.00
A-387	" "	225.00
A-388	" "	225.00
A-389	Margate Company	60.00
A-390	" "	90.00
A-391	" "	60.00
A-392	" "	60.00
A-393	" "	90.00
A-394	" "	90.00
A-395	" "	60.00
A-396	" "	90.00
A-397	" "	60.00
A-398	" "	60.00
A-399	" "	60.00
A-400	" "	60.00
A-401	" "	60.00
A-402	" "	60.00
A-403	" "	60.00
A-404	" "	112.50

A–405	Ventnor Syndicate	225.00
A–406	" "	225.00
A–407	Absecon Inlet Land Co.	150.00
A–408	" " " "	120.00
A–409	" " " "	120 00
A–410	" " " "	120.00
A–411	" " " "	120.00
A–412	F. E. Baldwin	150.00
A–413	Ella E. Cain	300.00
	Forward	$ $
	Forwarded	$ $
A–414	J. W. Ryan	120.00
A–415	" " "	300.00
A–416	Margate Company	90.00
A–417	" "	90.00
A–418	Ventnor Syndicate	225.00
A–419	" "	225.00
A–422	Daniel L. Collins	240.00
A–424	Chelsea Brick Company	300.00
A–425	Ella E. Cain	300.00
A–426	David Cohen	225.00
A–427	Est. of John Levy	180.00
A–428	E. G. Harris	360.00
A–429	Mark S. Shimp	60.00
A–430	Est. of John C. Levy	60.00
A–431	Nashville Company	300.00
A–432	" "	300.00
A–433	" "	300.00
A–436	James Keernes	300.00
A–437	Thos. O. Metz et al	300.00
A–438	W. J. Securities Co.	300.00
A–439	Daniel L. Collins	240.00
A–440	" " "	240.00
A–441	" " "	240.00
A–443	Chelsea Brick Co.	300.00
A–444	James Keernes	240.00
A–445	D. W. Myers et al	300.00
A–447	Daniel L. Collins	240.00
A–448	Margate Company	90.00
A–449	" "	90.00
A–450	" "	90.00
A–451	" "	90.00
A–452	Daniel L. Collins	240.00
A–453	W. J. Securities Co.	240.00
A–454	" " " "	120.00
A–455	Margate Company	300.00
A–456	" "	60.00

A-457	H. G. Harris	24.00	
A-468	E. G. Harris	300.00	
A-470	Daniel L. Collins	240.00	
A-471	Roebling Realty Company	30.00	
A-472	" " "	30.00	
A-473	" " "	30.00	
A-476	Margate Company	60.00	
A-477	" "	60.00	
A-480	Daniel L. Collins	900.00	
A-481	Margate Company	60.00	
A-482	" "	60.00	
A-483	" "	60.00	
A-485	" "	225.00	
A-486	" "	300.00	
A-487	Victor S. Fisher	75.00	
A-488	Margate Company	300.00	
A-489	" "	60.00	
A-490	" "	60.00	
A-491	" "	60.00	
A-492	" "	60.00	
A-493	" "	225.00	
A-494	" "	60.00	
A-495	" "	225.00	
A-496	" "	60.00	
A-497	" "	60.00	
A-498	" "	60.00	
A-499	" "	60.00	
A-500	Roebling Realty Company	600.00	
	Forward:	$	$

	Forwarded	$	$
A-502	Margate Company	60.00	
A-503	" "	60.00	
A-504	" "	60.00	
A-505	" "	60.00	
A-506	" "	60.00	
A-507	D. W. Myers et al	240.00	
A-508	Margate Company	60.00	
A-509	Chelsea Brick Company	240.00	
A-511	Margate Company	300.00	
A-512	" "	60.00	
A-513	" "	45.00	
A-514	" "	45.00	
A-515	" "	60.00	
A-516	" "	60.00	
A-521	" "	120.00	

A–522	" "	60.00		
A–523	" "	60.00		
A–532	" "	180.00		
A–540	Mrs. Sophie Taplinger	75.00		
A–541	Margate Company	300.00		
A–542	Chelsea Brick Company	180.00		
A–543	" " "	180.00		
A–544	" " "	180.00		
A–545	" " "	180.00		
A–546	Paid by Wm. F. Shaw			150.00
A–548	Chelsea Brick Company	180.00		
A–549	" " "	180.00		
A–550	A. F. Hancock	300.00		
A–552	William B. Bell	180.00		
A–553	" " "	180.00		
A–554	" " "	180.00		
A–555	Ventor Syndicate	750.00		
A–561	Margate Company	60.00		
A–566	" "	180.00		
A–567	" "	45.00		
A–569	Roebling Realty Company	960.00		
A–570	" " "	720.00		
A–575	Margate Company	60.00		
A–576	" "	75.00		
A–578	Roebling Realty Company	60.00		
A–583	Margate Company	180.00		
A–584	Roebling Realty Company	60.00		
A–585	" " "	900.00		
A–588	" " "	900.00		
A–590	" " "	60.00		
A–592	Margate Company	180.00		
A–593	" "	180.00		
A–596	Roebling Realty Company	450.00		
A–598	Ventnor Syndicate	450.00		
A–599	Mark S. Shimp	150.00		
A–600	" " "	120.00		
A–601	Dr. Emery Marvel	300.00		
A–602	Margate Company	120.00		
A–604	Daniel L. Collins	240.00		
A–611	Ventnor Syndicate	450.00		
A–612	" "	360.00		
A–615	Edgar S. Hill	75.00		
A–617	" " "	60.00		
A–619	James H. Johnson	120.00		
A–620	Paid by John W. Risley			75.00
A–621	Margate Company	300.00		
A–623	Paid by Thomas Kilcourse ...			330.00
A–625	Mark S. Shimp	120.00		
	Forward	$		$

	Forwarded:	$	$
A-626	Ventnor Syndicate	350.33	
A-627	Edgar S. Hill	60.00	
A-628	Margate Company	84.00	
A-629	Edgar S. Hill	60.00	
A-630	" " "	60.00	
A-631	Margate Company	240.00	
A-632	Roebling Realty Company	450.00	
A-633	George D. Conover	60.00	
A-634	Edgar S. Hill	300.00	
A-635	George D. Conover	60.00	
A-637	Martin Herr	60.00	
A-638	Margate Company	360.00	
A-642	Ventnor Syndicate	600.00	
A-643	George D. Conover	60.00	
A-644	Ventnor Syndicate	600.00	
A-645	Margate Company	264.00	
A-646	" "	264.00	
A-647	Ventnor Syndicate	300.00	
A-648	" "	300.00	
A-650	" "	450.00	
A-651	" "	450.00	
A-652	" "	600.00	
A-653	" "	375.00	
A-654	" "	375.00	
A-655	Margate Company	225.00	
A-656	Ventnor Syndicate	300.00	
A-658	Edgar S. Hill	75.00	
A-659	Ventnor Syndicate	360.00	
A-660	" "	360.00	
A-661	" "	300.00	
A-662	Edgar S. Hill	150.00	
A-663	Ventnor Syndicate	300.00	
A-664	" "	300.00	
A-665	" "	300.00	
A-666	" "	300.00	
A-667	" "	300.00	
A-668	" "	300.00	
A-669	" "	300.00	
A-670	" "	300.00	
A-671	" "	300.00	
A-672	" "	300.00	
A-673	" "	300.00	
A-674	" "	362.50	
A-675	" "	362.50	
A-676	" "	725.00	
A-677	" "	725.00	
A-678	" "	300.00	
A-679	George D. Conover	60.00	
A-680	" " "	60.00	
A-681	" " "	60.00	

	A–682	Ventnor Syndicate	450.00		
	A–683	" "	360.00		
	A–684	" "	360.00		
	A–685	" "	360.00		
	A–686	" "	360.00		
	A–688	Edgar S. Hill	60.00		
	A–689	Ventnor Syndicate	900.00		
	A–690	" "	450.00		
	A–691	" "	450.00		
	A–692	George D. Conover	60.00		
	A–693	Ventnor Syndicate	360.00		
	A–695	Ventnor Syndicate	360.00		
10	A–690	Ventnor Syndicate	300.00		
		Forward:	$	$	
		Forwarded:	$	$	
	A–701	Ventnor Syndicate	360.00		
	A–702	" "	375.00		
	A–703	" "	375.00		
	A–704	" "	375.00		
	A–705	" "	375.00		
	A–706	" "	300.00		
	A–709	" "	300.00		
	A–710	" "	300.00		
20	A–711	" "	300.00		
	A–712	" "	300.00		
	A–713	" "	300.00		
	A–714	" "	375.00		
	A–715	" "	300.00		
	A–720	" "	300.00		
	A–721	" "	240.00		
	A–722	" "	300.00		
	A–724	" "	300.00		
	A–738	Paid by I. Greenberg			37.50
	A–740	Ventnor Syndicate	300.00		
	A–741	" "	300.00		
30	A–742	" "	300.00		
	A–743	" "	300.00		
	A–744	" "	300.00		
	A–745	" "	360.00		
	A–746	" "	300.00		
	A–747	" "	300.00		
	A–748	Frederick C. Lingg	150.00		
	A–749	Ventnor Syndicate	120.00		
	A–750	" "	300.00		
	A–751	" "	300.00		
	A–752	" "	300.00		
	A–753	" "	300.00		
	A–755	" "	375.00		

A-756	Essie S. Karrer	750.00	
A-757	Edgar S. Hill	300.00	
A-759	Ventnor Syndicate	240.00	
A-760	" "	240.00	
A-761	" "	240.00	
A-762	" "	240.00	
A-763	" "	240.00	
A-764	" "	591.67	
A-765	" "	300.00	
A-768	Edgar S. Hill	60.00	
A-769	" " "	60.00	
A-771	Ventnor Syndicate	249.67	
A-772	" "	202.33	
A-773	Arthur Butler	180.00	
A-774	Irene C. Imlay	180.00	
A-775	Ventnor Syndicate	240.00	
A-776	" "	180.00	
A-777	" "	180.00	
A-794	" "	300.00	
A-798	Mark S. Shimp	120.00	
A-801	Ventnor Syndicate	506.67	
A-806	Sarah T. Crowley	30.00	
A-807	Ventnor Syndicate	900.00	
A-808	" "	1350.00	
A-809	Sarah T. Crowley	30.00	
A-810	Hamilton Corporation	150.00	
A-811	Edgar S. Hill	60.00	
A-812	Hamilton Corporation	300.00	
A-814	Ventnor Syndicate	246.33	
A-816	Arthur Butler	180.00	
A-821	Edgar S. Hill	60.00	
	Forward:	$	$
	Forwarded:	$114,335.15	$725.50
A-822	Ventnor Syndicate	191.67	
A-826	" "	218.33	
A-827	William B. Riley	180.00	
A-829	Ventnor Syndicate	820.00	
A-842	Edgar S. Hill	60.00	
	Totals:	$115,805.15	$725.50

Add following payments (not shown on guaranty registers) made by West Jersey Mortgage Company on account of guaranty of Ventnor Syndicate Bonds. (Interest due March 1, 1915.)

1915.			
3/27	Paid interest on Bond	#59	30.00
4/22	" " " " 's	#6	30.00
		#7)	
		#8)	
		#9)	
		#10)	120.00
5/1	" " " "	#54	30.00
7/30	" " " " 's	#65)	
		#66)	
		#67)	
		#68)	
		#69	150.00
	Total:		116,165.15
	Deduct amounts collected by company as detailed above but not remitted to mortgagees prior to Receivership.		725.50
	Balance due company		$115,439.65 O. K. with Ledger.

West Jersey Mortgage Company.

Schedule C.

Mtg. No.	*Mortgages Receivable.*	*Sept. 30, 1915.*
92	C. J. Adams, Mortgagee	$3,000.00
	Interest due from 6/30/14	
	(First Mtge.) Purchased.	
97	Record Development Co. Mortgagee	725.00
	Interest due from 8/23/10 on various amounts	
	(Subject to prior Mtges.) Purchased.	
172	Ventnor Syndicate, Mortgagee	75,000.00
	Interest due from 8/1/12	
	(Second Mtge.) Purchased.	5,000.00
185	Irene C. Imlay, Mortgagee	5,000.00
	Interest due from 8/21/13	
	(First Mtge.) Purchased.	
186	Louis Lott, Mortgagee	5,000.00
	Interest due from 8/21/14	
	(First Mtge.) Purchased.	

188	Ventnor Syndicate, Mortgagee ..... Interest due from 2/21/12 (First Mtge.) Purchased.	5,000.00
202	Ventnor Syndicate, Mortgagee ..... Interest due from 3/23/12 (First Mtge.) Purchased.	5,000.00
203	Ventnor Syndicate, Mortgagee ..... Interest due from 3/23/12 (First Mtge.) Purchased.	5,000.00
211	Wm. B. Riley, Mortgagee ..... Interest due from 12/28/13 (First Mtge.) Purchased.	2,000.00
212	Edgar S. Hill, Mortgagee ..... Interest due from 6/28/14 (First Mtge.) Purchased.	2,000.00
224	Ventnor Syndicate, Mortgagee ..... Interest due from 7/18/12 (First Mtge.) Purchased.	5,000.00
225	Ventnor Syndicate, Mortgagee ..... Interest due from 8/21/12 (First Mtge.) Purchased.	2,000.00
228	Ventnor Syndicate, Mortgagee ..... Interest due from 7/18/12 (First Mtge.) Purchased.	5,000.00
	Forward:	$119,725.00
	Forward:	$119,725.00
Mtg. No.		
229	Ventnor Syndicate, Mortgagee ..... Interest due from 8/21/12 (First Mtge.) Purchased.	5,000.00
230	Bertha J. Fry, Mortgagee ..... Interest from March 17, 1915 (Second Mtge.) Purchased.	300.00
231	Inlet Improvement Co., Mortgagee ..... Interest due from 6/10/14 (First Mtge. taken over under Guar. A–251)	5,000.00

232	Dr. Emery Marvel, Mortgagee	5,000.00
	Interest due from 12/10/13	
	(First Mtge. taken over under Guar. A–250)	
	Equity in Mtge. under Guar. A-858	1,250.00
	Advanced account of purchase of mtge.	
	Total:	$136,275.00

West Jersey Mortgage Company.

Schedule D.

Notes Receivable. Sept. 30, 1915.

Maker:	C. J. Adams	$3,933.28
	Collateral note dated September 16, 1905	
	Interest due from October 18, 1914	
	Original amount $8,000.00	
	Collateral:	
	Fourteen shares Guarantee Trust Co. stock	
	Fifty shares St. Leonards Land Co. stock	
	Note given in payment of Capital stock.	
Maker:	G. Garrison.	
	Dated August 23, 1913	582.30
	Interest due from September 23, 1913	
	Original amount $682.30	
	Note considered to be secured by Bill of sale of buildings formerly owned by him.	
	Note given to secure payment of rents collected by him since W. J. Mtg. Co. acquired property by foreclosure proceedings.	
Maker:	Ventnor Syndicate	$17,000.00
	Collateral note dated December 29, 1913.	
	Due on demand	
	Interest due from various dates	
	Original amount $29,500.00	
	Original amount of collateral $32,500.00 of Ventnor Syndicate bonds.	
	Balance of collateral held; $20,000.00 of Ventnor Syndicate Bonds.	
	Note purchased December 29, 1913	
	Total:	$21,515.58

West Jersey Mortgage Company.

Schedule E.

Accrued Interest Receivable. Sept. 30, 1915.

On Bonds:		
Young's Pier & Hotel Co.	$18,690.00	
Margate Company	15,060.25	
Ventnor Syndicate	129.67	
Total:		$33,879.92
On Mortgages:		
C. J. Adams	225.00	
Record Development Co.	339.10	
Ventnor Syndicate	20948.83	
Irene C. Imlay	632.50	
Louis Lott	332.50	
Wm. B. Riley	210.67	
Edgar S. Hill	150.67	
Bertha J. Fry	9.66	
Inlet Improvement Co.	391.67	
Dr. Emery Marvel	541.67	
Total:		$23,782.26
On Notes Receivable:		
C. J. Adams	224.20	
G. Garrison	70.55	
Ventnor Syndicate	2,341.93	
Total		2,636.68
Total Interest Receivable		$60,298.86

West Jersey Mortgage Company.

Schedule F.

Real Estate. Sept. 30, 1915.

Parcel #1	$3,664.73

Represents amounts expended on three lots located on Winchester Avenue below Providence Avenue, Atlantic City, New Jersey.

Note: The above value includes a mortgage for $2,700.00 given to Jennie M. Bachroch.

Parcel #5 ..... 11,000.00

Represents amount of equity in property on California Avenue, North of Arctic Avenue, Atlantic City, New Jersey, consisting of land, dwellings, stable and coal-yard.

Note: The above value does not include two mortgages, $8,000.00 and $3,500.00 respectively, assumed by the Company but not carried on its books.

Parcel #7 ..... 14,262.46

Represents amount expended on ground and dwellings located at the Southwest corner of Delaware and Baltic Avenues, Atlantic City, New Jersey.

Note: The above value includes a $7,500.00 mortgage given to the Mutual Building and Loan Association of Atlantic City, N. J.

Parcel #8 ..... 3,392.72

Represents amount of equity in nine lots (beachfront)situate in Ventnor City, New Jersey, acquired by Company for arrears of interest.

Note: The above value does not include nine mortgages for $2,000.00 each, aggregating $18,000.00, held by various parties.

Total: $32,319.91

West Jersey Mortgage Company.

Schedule G.

Accounts Payable. Sept. 30, 1915.

State of New Jersey		State Tax 1915	$522.30
Atl. City Sewerage Co.	#5	Sewer rental 1915–16	15.75
A. H. Phillips Co.	#5	Fire Insurance	36.90
A. H. Phillips Co.		Premium: Treas's Bond ..	35.00
Guarantee Trust Co.		Box rent 1914–1916	40.00
Philip V .Leigh	#5	Repairs 8/2/15	3.85
Philip G. Hannum	#5	Repairs 9/30/15	36.87
W. J. Title & Guar. Co.		Transfer charge	.50
Carlton Godfrey		Salary: Sept. 1915	166.67
Raymond P. Read		Salary: Sept. 1915	183.33

Atlantic Title Co.	Interest on deferred payments on Guar's. A-39 and A-40	321.84
Carlton Godfrey	Loan account; bal. due	350.00
	Total:	$1,713.01

Note: Unpaid water rents and taxes to the amount of about $400.00 on R. E. Parcels No. 1 and No. 5 are not included in the foregoing.

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WEST JERSEY MORTGAGE COMPANY.

SCHEDULE H.

Accrued Interest Payable. Sept. 30, 1915.

Jennie M. Bochroch, Mortgagee	$67.50
Interest on $2,700.00: 4/30/15 to 9/30/15	
(Real Estate Parcel # 1)	
Mutual Building & Loan Association, Mortgagee	139.50
Interest on $7,500.00: 6/30/15 to 9/30/15	
(Real Estate Parcel #7)	
Total:	$207.00

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WEST JERSEY MORTGAGE COMPANY.

SCHEDULE I.

Mortgages Payable. Sept. 30, 1915.

Jennie M. Bochroch, Mortgagee	$2,700.00
Interest due from 4/30/15	
Mortgage on Real Estate Parcel #1	
Mutual Building & Loan Association ... Mortgagee,	7,500.00
Interest due from 6/30/15	
Mortgage on Real Estate Parcel #7	
Total:	$10,200.00

Note: The above schedule does not include the following mortgages assumed by the company but not carried on its books:

Mortgagee:

Estate of Daniel Dorey	8,000.00
Interest paid to 4/1/15	
Mortgage on R. E. Parcel #5	
Fidelity Trust Co. for Estate of May M. Howard	3,500.00
Interest paid to 6/25/15	
Mortgage on R. E. Parcel #5	
Note: Following mortgages on R. E. Parcel #8	
Louis Wagner	2,000.00
Interest paid to 2/11/15 See Guar. A-786	
Louis Wagner	2,000.00
Interest paid to 2/11/15 See Guar. A-787	
Morris Grabfelder	2,000.00
Interest paid to 8/11/15 See Guar. A-789	
Claude B. Smith	2,000.00
Interest paid to 2/11/15 See Guar. A-790	
Henry Jacoby	2,000.00
Interest paid to 2/11/15 See Guar. A-791	
Morris Grabfelder	2,000.00
Interest paid to 8/11/15 See Guar. A-792	
George E. Yeiter	2,000.00
Interest paid to 2/11/15 See Guar. A-793	
Forward	$25,500.00
Forward:	$25,500.00

Mortgagees:

James L. Risley	2,000.00
Interest paid to 2/11/15 See Guar. A-802	
Battie D. Mattix	2,000.00
Interest paid to 2/11/15 See Guar. A-803	
Total:	$29,500.00

IN CHANCERY OF NEW JERSEY.

BETWEEN
GEORGE CONOVER,
Complainant,
AND
GUARANTEE TRUST
COMPANY ET AL.,
Defendants.

Final Hearing on Bill to Remove a Trustee and Procure an Accounting.

CONCLUSIONS.

(*Filed January 5, 1918.*)

William M. Clevenger, Esq., for complainant.
Hon. Clarence L. Cole, for defendants.

LEAMING, V. C.

By the bill complainant seeks the removal of defendant Guarantee Trust Company as trustee under a certain instrument of trust, the appointment of a new trustee and an accounting by the trustee so removed; the bill also seeks to fasten upon the trustee, as personal obligations, liability for certain losses which are claimed to have arisen from alleged breaches of trust duties upon the part of the trustee.

The trust was created to enable the Ventnor Syndicate—a real estate corporation which is now insolvent—to issue and sell a series of its bonds. The trust agreement, under date of September 1st, 1911, was executed by three corporations: the Ventnor Syndicate, who was to issue the bonds, the West Jersey Mortgage Company—a corporation which is insolvent now also—who was to guarantee the payment of interest and principal of the bonds, and the Guarantee Trust Company, who was to act as trustee and certify to the bonds as they were issued from time to time pursuant to the terms of the trust agreement.

The provisions of the trust agreement authorized the Ventnor Syndicate from time to time to assign to the trustee bonds and mortgages which were to be appraised as to value by the West Jersey Mortgage Company; as such bonds and mortgages, so assigned and appraised, were deposited with the trustee bonds in like amounts, known as "guaranteed collateral bonds," could be issued by the Ventnor Syndicate upon such collateral bonds being guaranteed as to the payment of principal and interest by the West Jersey Mortgage Company and certified to by the trustee as having been issued pursuant to the terms of the trust agreement. The purchaser of a collateral bond would thus hold the direct bond obligation of the Ventnor Syndicate, the guarantee of payment of the West Jersey Mortgage Company of the principal and interest of the collateral bond, and also share pro rata with other holders of collateral bonds the security afforded by the bonds and mortgages of equal amount which had been and might thereafter be in like manner assigned to the trustee by the Ventnor Syndicate as a trust fund to secure payment of the principal and interest of the collateral bonds. The collateral bonds were all dated September 1st, 1911, and drew interest at six per cent., payable each six months, and matured as to principal three years from their date.

The authorized issue under the trust agreement was $200,000 in amount; $79,000 were issued. Two of the issued bonds, aggregating in amount $2,000, were subsequently surrendered to the trustee; accordingly there is now outstanding $77,000 of the collateral bonds. Complainant owns two of these bonds, aggregating in amount $2,000. The guarantee Trust Company, the receivers of the Ventnor Syndicate and West Jersey Mortgage Company, and all the holders of collateral bonds, other than complainant, are made defendants. The Guarantee Trust Company and the receiver of the West Jersey Mortgage Company have answered.

A charge is made by complainant to the effect that the trustee transcended its powers by accepting mort-

gages for the trust fund which were not authorized by the trust agreement. Of the $77,000 in amount of mortgages which now constitute the trust fund, all but $10,000 are mortgages which were made by the Ventnor Syndicate to the trustee on land owned by the Ventnor Syndicate; each mortgage is accompanied by a bond of the Ventnor Syndicate which it secures. The trust agreement does not authorize the trustee to accept for the trust fund mortgages made by the Ventnor Syndicate to the trustee. Throughout the trust agreement, in instances almost too numerous to justify specification, the bonds and mortgages which are to be made the trust fund are declared to be bonds and mortgages which are to be *assigned* to the trustee. On the first page of the trust agreement it is recited that the Ventnor Syndicate "has determined to issue its guaranteed collateral bonds, as hereinafter set forth, and to secure the same by assignment to and deposit with the Trustee of bonds and first mortgages." In the form of the collateral bond embodied in the trust agreement, which form conforms to the form of the collateral bonds as subsequently issued, it is stated: "To secure the payment of this bond and all other bonds which constitute this series, together with interest thereon, there have been assigned to and deposited with the said Guarantee Trust Company, as trustee, bonds and first mortgages of a par value of not less than the par value of the bonds of this series outstanding and certified by the said trustee, to be held in trust by the said trustee, and its successors, for the benefit of the holders of said bonds according to a certain Trust Agreement. . . . This bond shall not become valid until the certificate hereon shall be signed by the trustee." The form of trustee's certificate embodied in the agreement, which form conforms to the form thereafter used as collateral bonds, were from time to time certified by the trustee, is follows: "it is hereby certified that the within bond is one of the Guaranteed Collateral Bonds of Ventnor

Syndicate, all of like tenor and effect, and in denominations of one thousand or five hundred dollars each, amounting in the aggregate to two hundred thousand dollars ($200,000), described in the agreement therein mentioned, Guarantee Trust Company, Trustee." The second paragraph of the trust agreement is as follows: "2. That Ventnor Syndicate, a corporation of the State of New Jersey, party of the first part, has granted, bargained, sold, assigned and set over, and by these presents doth grant, bargain, sell, assign and set over unto the Guarantee Trust Company, also a corporation of the State of New Jersey, party hereto of the second part, all the bonds and first mortgages set forth and described in the schedule hereto annexed and which forms a part of this instrument, and bears even date herewith, and is identified by the certificate of the Trustee and of the Company, it being the intention of the Company to assign and set over said bonds and mortgages to the Trustee fully and effectually not only by these presents but also by a separate instrument of assignment of each of the said bonds and mortgages." It will be noted that the schedule there referred to is a schedule which is to be built up from time to time as mortgages are assigned to the trustee. Paragraph three of the trust agreement provides: "That inasmuch as at the time of the execution and delivery of these presents, the Company may not desire to issue all the said Guaranteed Collateral Bonds, and to transfer and assign to the Trustee bonds and mortgages or other securities to the full contemplated amount of Two Hundred Thousand Dollars ($200,000), it is agreed that from time to time hereafter the Company may issue its said bonds and assign to the Trustee bonds and first mortgages until the amount of Two Hundred Thousand Dollars ($200,000) in value of such bonds and mortgages is made up, and that as the said bonds and mortgages are assigned and delivered to the Trustee, they shall be entered in the Schedule hereto attach-

ed, and shall form a part of the Trust Fund hereby created, and shall in all respects be subject to the provisions of this agreement with like force and effect as if they and the particulars thereof had been entered in said Schedule at the time of the execution and delivery hereof, and as if such bonds or mortgages had then been assigned and delivered to the Trustee. The Trustee shall be under no obligation to record this instrument or the assignment of any of the bonds and mortgages constituting the Trust Fund at any time unless and until any default shall be made on the part of the Company in the payment of interest on the Company's bonds, or any of them, or unless and until in its judgment the protection of the bondholders shall require such action on its part." Paragraph four provides: At the time of the presentation of any of said bonds to the Trustee for certification, there shall be delivered to the Trustee a request in writing signed by the President of the Company, certified under the seal of the Company, requesting the Trustee to certify and deliver to the Company or its nominee a specified amount of such bonds, together with such number of said bonds as the Company desires to be certified for issue, and bonds and first mortgages equal in value to at least the par value of the bonds so to be issued, together with properly executed instruments of assignment thereof to the Trustee. Upon the receipt thereof, the Trustee shall permit the Company to enter said bonds and mortgages in the annexed schedule as hereinbefore provided or shall itself make such entry and shall forthwith certify the bonds so presented to it for certification and deliver the same to the Company for issue." Paragraph five provides: "That in case the Company shall, for any reason, deem it necessary to take any proceedings for the collection by foreclosure or otherwise, of any bond and mortgage belonging to the Trust Fund, the Company shall forthwith substitute bonds and first mortgages, of equal value, and shall assign and transfer

the same to the Trustee to be held as part of the Trust Fund, and shall thereupon be entitled to the delivery to it of the bond and mortgage which is so to be collected." It will be noted that this provision contemplates a possible foreclosure by the Ventnor Syndicate of mortgages withdrawn from the trust. In paragraph five it is also provided: "Whenever and as often as there shall be in the hands of the Trustee cash belonging to the Trust Fund, the Company shall have the right to have such cash paid to it upon transferring and assigning to the Trustee bonds and first mortgages equal in value to the amount of such cash.

"So long as the Company shall not be in default under any provision of this agreement, it shall be entitled to receive from the Trustee, if and when collected, all income from the bonds and mortgages comprising the Trust estate." Paragraph six provides: "That upon the collection by the Trustee of any bond and mortgage forming part of the Trust Fund, the Trustee may, unless the Company shall within thirty days from the time when the amount of such collection shall have been received by the Trustee, assign to and deposit with the Trustee bonds and mortgages, equal in value to the amount of such collection, proceed to invest the amount so collected in bonds and first mortgages, such bonds and mortgages shall thereupon become a part of the Trust Fund. If upon collection, by the Trustee of any bond and mortgage, the amount realized shall be less than the amount of principal and interest due upon said bond and mortgage at the time of such collection, the Company agrees to deliver to the Trustee additional bonds and first mortgages duly assigned to the Trustee in an amount equal in value to the amount of such deficiency." In paragraph seven it is provided: "In case of withdrawal of any such bond and mortgage the trustee shall re-assign the same to the company." The eighth paragraph provides: "That all bonds and mortgages assigned and transferred by the Company to the

trustee as hereinbefore provided shall be accompanied by a policy" of title insurance. Also, "All bonds and mortgages assigned and transferred by the Company to the trustee to constitute the Trust Fund herein provided, shall be accompanied by a written appraisal of ..ue to be made and certified to by the guarantor." . . . "It shall be no part of the duties of the trustee to make investigation concerning nor shall it be responsible for the validity, nature or actual value of the bonds and mortgages so assigned to it, nor shall it be answerable except for the due certification as aforesaid of the company's bonds issued hereunder and for the custody and disposition of the trust fund." Paragraph twelve again stipulates a duty to assign to the trustee additional bonds and mortgages in certain events.

Nowhere in the entire trust agreement is there to be found any provision which in the slightest degree by inference or otherwise suggests that the trust fund may at any time consist of any asset except cash and assigned bonds and mortgages, and, as already pointed out, the collateral bonds as issued, and certified to by the trustee, expressly declare that they are secured by bonds and first mortgages assigned to and deposited with the trustee. It seems impossible to escape the conclusion that in accepting for the trust fund mortgages made directly from the Ventnor Syndicate to the trustee which were created for the sole purpose of enabling the trustee to certify to collateral bonds the trustee accepted for the trust fund securities which were not in any way contemplated or authorized by the trust agreement, and certified against such securities collateral bonds of an equal amount contrary to the express provisions of the trust agreement. To that extent the trustee transcended the powers conferred upon it by the trust agreement. The difference in possible value and desirability between a bond and mortgage which has arisen in the ordinary course of trade, such as a mortgage made to the Ventnor Syndicate in part payment for land sold by it or a

bond and mortgage made to it for a loan of money in the ordinary course of trade, and a bond and mortgage made by that company to the trustee for the sole purposes of affording collateral security under the trust agreement, are reasonably obvious, and it seems entirely clear that the latter class of collateral was in no way contemplated by the trust agreement. I have searched in vain throughout the instrument of trust to find some provision from which an implied power of the trustee to accept such mortgages for the trust might be reasonably inferred. By accepting such mortgages the whole scheme was, in marked effect, converted into an ordinary bond issue secured by a trust deed of the land owner. Indeed, with mortgages executed by the Ventnor Syndicate made the basis of security it is difficult to discern substantial advantages to flow from a trusteeship; it would seem that such mortgages should be equally desirable for an investor without a trust. But, however that may be, it is impossible to read the trust agreement, or even the collateral bonds alone, and escape the conviction that the terms of the trust excluded from the trust fund bonds and mortgages made by the Ventnor Syndicate to the trustee as a basis for the collateral bond issue. In that view the trustee must be held to have transcended its powers in accepting that class of securities for the trust fund and certifying collateral bonds against them.

The rule of liability of a trustee who has transcended his powers is defined in 28 *Am. & Eng. Enc. of Law*, 1063, as follows: "Trustees are bound to observe the limits placed upon their powers, either by law or by the trust instrument, and if they transcend such powers and cause damage to the estate they will be held responsible therefor, although they may have acted in perfect good faith." Prof. Pomeroy defines every violation by a trustee of a duty which equity lays upon him, whether wilful and fraudulent, or arising through negligence, or arising through mere oversight or for-

getfulness, as a breach of trust, and declares the trustee's personal liability to make compensation for the loss occasioned by such breach of trust to be "a simple contract equitable debt," and also that the amount of liability is always sufficient for the complete indemnification and compensation of the beneficiary. 3 *Pom. Eq. Jur., secs.* 1062, 1079, 1080. The destinction between a case in which a trustee has transcended the powers conferred by the trust and one relating to matters of judgment or conduct on the part of a trustee in transactions within the trustee's powers necessarily enters into all considerations touching a trustee's liability. For the former there appears to be no justification; for the latter there may be. When the instrument of trust specifically and clearly defines the powers of the trustee there can exist no possible field for the exercise of discretion on the part of the trustee touching the powers he is permitted to exercise. Such powers being specifically defined are necessarily fixed and inflexible. But in transactions of the trustee in the administration of the trust which are within the scope of the defined powers good faith and reasonable diligence and care may justify errors of judgment. There is, of course, a possible field for the exercise of judgment—not discretion—on the part of a trustee in accurately determining the powers conferred upon him by the trust instrument; but if a justification can be found for an error of judgment in that respect it clearly must be found in the want of clear or explicit definition of powers in the trust instrument. In the present case the trust instrument authorized the trustee to certify out collateral bonds of the Ventnor Syndicate when mortgage should be assigned to it. No direction could be more clear or explicit or less capable of misunderstanding. Whether mortgages of the Ventnor Syndicate made directly to the trustee to enable the trustee to certify out the collateral bonds were more or less desirable than the class of securities which the trust instru-

ment directed to be made the basis of the bond issue is immaterial so far as the inquiry touching power is concerned; and the circumstance that the trustee may have believed that the direction for assigned mortgages to be made the basis of the trust was not a material direction or that the mortgages which it accepted for the trust were in quality essentially the same as the assigned mortgages required by the trust instrument seems equally immaterial, for the trustee well knew the plain mandate of the trust instrument and its disregard of that mandate can only be here regarded as a deliberate assumption of unauthorized power. In *Gilbert* v. *Kalb*, 85 *Md.* 627, touching loss sustained by acts of a conventional trustee, it is said: "Loss resulting from an act of a conventional trustee, though the act were done in the utmost good faith, if it were not an act permitted by the instrument creating or defining the trust, or where done without judicial sanction, would fall on the trustee, who, having no discretion at all, or a very limited one, is justly held to a rigid accountability, without the slightest regard to the motives that may have influenced his action, or the prudence he displayed in performing it. *Limmerman* v. *Fraley*, 70 *Md.* 561."

In the Limmerman case cited the trustee was authorized to invest "in landed securities"; it was held that the purchase of land transcended the power and rendered the trustee liable. This distinction between acts unauthorized by the trust and errors of judgment or discretion in the performance of authorized acts appears to be recognized by our Court of Errors and Appeals in *Quick's Ex'rs* v. *Fisher*, 9 *N. J. Eq.* 802. The transaction there complained of was the conversion of personal property into real estate. In the reported opinion it is said: "The trustee, if the principle be correctly stated, has in this case exceeded his authority. The loss has been sustained not by an error of judgment committed by the trustee in the management of the trust fund, but by an illegal and unauthor-

ized disposition of the trust funds in his hands. He is consequently liable for the loss." In such circumstances, it is there held, the trustee "acts at his peril." See, also, *Melick* v. *Voorhees*, 24 *N. J. Eq.* 305; *s. c.* 25 *Ib.* 523.

The ordinary measure of accountability is recompense to the *cestuis que trustent* for the loss sustained by reason of the breach of trust. *Polhemus* v. *Holland Trust Co.*, 61 *N. J. Eq.* 654. *Pomeroy's Eq. Jur.* (*supra*).

It is obvious that it is here impossible of even approximate ascertainment what losses have failed to or will eventually be sustained by the collateral bondholders by reason of the breach of trust here in question, for the course of the trust, in the absence of the exercise of unauthorized power by the trustee, can never be known. In such circumstances the trustee must be deemed to have assumed personal responsibility for such losses as should fall to the holders of the collateral bonds by reason of the securities which were improperly accepted by the trustee and made the basis of issued collateral bonds by reason of the trustee's certificate ultimately producing less in value than the amounts for which they were unlawfully accepted and certified. Although the trust agreement by its terms imposed no responsibility on the trustee for the value of the mortgages to be assigned to the trust fund, when the trustee assumed to accept for the trust fund mortgages not authorized for that purpose by the trust agreement and certified against such securities collateral bonds as issued pursuant to the trust agreement a just regard for the rights of collateral bondholders, who were privileged to rely upon the trustee's certificate, necessarily imposes upon the trustee the measure of liability already stated, in the absence of any possible means of ascertainment whether a loss would have arisen had the trustee performed its plain duties as defined by the trust agreement. That measure of liability alone satisfied the principle that the trustee "acts at his peril" in transcending

his powers. A suggestion that had the Ventnor Syndicate made conveyances of lots to dummy vendees and taken purchase money mortgages and assigned them to the trustee the letter of the trust agreement would have been satisfied is without force; had the trustee been made acquainted with such procedure the situation would have been unchanged. In this view the trustee must answer to the bondholders for such loss as they ultimately sustain by reason of the mortgages which were made to the trustee realizing less than the amount they were pledged to secure, unless the immunity clauses of the trust agreement shall be found to exempt the trustee from such liability.

These immunity clauses are as follows: "It shall be no part of the duties of the Trustee to make investigation concerning nor shall it be responsible for the validity, nature or actual value of the bonds and mortgages so assigned to it, nor shall it be answerable except for the due certification as aforesaid of the Company's bonds issued hereunder and for the custody and disposition of the Trust funds." . . . . "The Trustee shall have full discretion as to the time and manner in which it shall proceed for the collection of the amounts secured by the Trust Fund, or the sale of any bonds and mortgages therein, and said Trustee shall not be liable to either the Company or to the bondholders for anything except lack of good faith or ordinary care therein." "That the Trust Fund shall at all times consist of Bonds and first mortgages or of bonds and mortgages and cash of a value equal to the par value of the Company's Bonds then outstanding, and the Company hereby agrees that upon demand by the Guarantor it will at any time pay into the Trust Fund cash, or assign to the Trustee bonds and first mortgages which shall equal in value any deficiency which may exist, and upon its failure so to do, within a reasonable time to be determined by the Guarantor, the Trustee shall upon the written order of the Guarantor, sell or otherwise dispose of any or all bonds and mortgages in the Trust

Fund in such manner as it, the Trustee, shall deem best; and in such event the said Trustee shall not be liable to the Company, the Guarantor or the bondholders for any depreciation of said bonds and mortgages between the time of receiving such orders to sell and the time of sale, or for any other act by it done in the premises in good faith, and with ordinary care." "That it is further mutually agreed by and between the parties hereto, and it is hereby declared to be a condition upon which the Trustee, and its successor or successors in the trust, hereby created, have assented to these presents and accepted this Trust, that the said Trustee, or its successor or successors, shall not be held responsible for persons employed by it, or them, not being part of its or their staff of officers or employees in its or their office in the City of Atlantic City, provided such persons have been selected with reasonable care, nor shall the Trustee be liable for any mistake of judgment or mistaken exercise of discretion."

The numerous adjudications touching the effect of immunity clauses contained in trust agreements or in testamentary provisions, designed to exempt trustees from liability, have in most instances arisen where the act complained of has been an act within the powers of the trustee, as distinguished from an act without such powers. *Tuttle* v. *Gelmore* 32 *N. J. Eq.* 611; *s. c.* 36 *N. J. Eq.* 617, was a case of the former nature. That trustee had the power to accept securities of the nature of the securities there in question (second mortgages), but the evidence disclosed that the securities were without substantial value and that no proper effort had been made by the trustee to ascertain that their values were reasonably sufficient to make them "good securities" on which he was to pass his judgment. It was there held that the liability imposed on and accepted by a trustee may be limited by the terms of the instrument creating the trust, but that in constructing such clauses the meaning to be attributed to them should be con-

sistent with the purpose and object of the trust, and that a strict rule of construction should be applied as against the claim of restriction. Accordingly it was held that a clause exempting the trustee from all liability except for wilful and intentional breaches of trust could not be understood as protecting the trustee from the loss sustained in the manner already stated. Had the terms of the trust in that case required the trustee to invest only in government bonds, or otherwise denied to the trustee the right to accept mortgage security, it cannot well be doubted that he would have been held liable for the loss, notwithstanding the immunity clause, even though reasonable care had been exercised by him in the ascertainment of the value of mortgages so accepted. It seems to me impossible to doubt that when a trustee transcends his powers by accepting securities for his trust of a nature or class which by the terms of the trust he is not authorized to accept all inquiries touching his judgment, mistaken exercise of discretion, good faith and the value of the securities so accepted are necessarily excluded from consideration, for the act being in itself contrary to the terms of the trust cannot find justification as within a field of discretion. It accordingly seems impossible to construe an immunity clause as intended to exempt a trustee from liability for transcending his powers as clearly defined by the trust agreement: his engagement is to exercise the powers and only the powers conferred upon him, and the appropriate office and purpose of an immunity clause forming a part of a trust agreement which specifically and clearly defines the trustee's powers appears to be to limit his responsibility in matters of judgment and discretion committed to him in the execution of these defined powers. No discretion has been conferred upon the trustee in this case as to the securities it was to receive against which it was to certify bonds. By the terms and spirit of the trust instrument the trustee was required to accept

mortgages assigned to it as trustee after such mortgage should have been appraised by the guarantor there named; for the value of such mortgages, so assigned and appraised, the trustee was exempted from responsibility. To construe the immunity clauses as intended to protect the trustee from errors of judgment in accepting for the trust securities of a different class from those explicitly defined by the terms of the trust instrument or in a manner other than the manner specifically set forth by its terms is to attribute to the immunity clauses not only a purpose to justify the exercise of a discretion by the trustee in a field in which no discretion is designed to be conferred, but also an operative force to nullify the express terms of the trust instrument which define the powers of the trustee antecedent to his certificate, and in that manner to deny to the prospective bondholders the right conferred upon them by the trust agreement to rely upon the certificate of the trustee to the substantial effect that the securities defined in the trust agreement have been assigned to the trustee and appraised in the manner stated in the bonds so issued. In the absence of language of an immunity clause which reasonably discloses a purpose that it shall have such far reaching and extraordinary effect it seems impossible to give it such force. It is this radical and inherent distinction, necessarily existing in all cases, between errors of judgment of a trustee in the management of a trust fund, that is, in acts performed by the trustee which are within the scope of his powers, and acts performed by him which are without or beyond the scope of the powers conferred, that I understand to be recognized in *Quick's Ex'rs* v. *Fisher, supra*, at page 806 of the reported case. Nor does it seem possible to distinguish between an extremely radical departure from the terms of the trust instrument and a departure less radical, so long as the terms of the trust instrument are clear. In *Pride* v. *Fooks*, 2 *Beav.* 430, *at page* 432, it appears that the

trustee was directed by the terms of a will to invest the trust money in consols. The will exempted the trustee from all losses except those arising from his wilful neglect and misconduct. He invested money in a mortgage on real estate. That act was held to be without the powers of the trustee and was treated as a breach of trust, and the trustee was charged, in behalf of the parties entitled to income, with the amount the consols would have earned. In 1 *Perry on Trusts, sec.* 460, the well recognized legal requirement that trustees shall strictly follow the directions of the trust instrument is considered at some length; at the conclusion of the section the author says: "If the trustee go beyond the prescribed limits, neither good faith nor care nor diligence, if they can accompany a departure from the direction of the instrument of trust, will protect them if a loss occurs." As our courts are always open to trustees for protecting advice touching their powers it seems difficult to contemplate any possible source of justification for the exercise of unauthorized powers.

I am impelled to the conclusion that in accepting for the trust mortgages made by the Ventnor Syndicate to the defendant trustee herein, the trustee disregarded the clear letter and spirit of the trust agreement and in consequence of such breach of trust through the exercise of powers not conferred upon the trustee the trustee has rendered itself liable to the *cestuis que trustent* for such losses as may be found to have arisen by reason of such mortgages realizing less than the amounts which they were made to secure; and also that the immunity clauses contained in the instrument of trust are inadequate to exempt the trustee from such liability.

This standard of responsibility renders it impossible to determine at this time the amount for which the trustee must account to the holders of collateral bonds; that can only be accurately ascertained at the final liquidation of the trust. Accordingly the bill must be held open until that time for that purpose.

Should the measure of responsibility here defined be accepted by the trustee, or confirmed on appeal, other charges of liability of the trustee as made in the bill become of little or no importance except in so far as they go to the merits of the prayer of the bill for the trustee's removal.

It is also urged by complainant in support of the relief sought that defendant trustee has been negligent in the performance of its trust duties by permitting the principal and interest to become in arrears for one year or more on many of the mortgages comprising the trust fund and also in permitting the taxes on much of the land covered by the mortgages to remain unpaid for two or three years, without foreclosing the mortgages or otherwise endeavoring to protect the bondholders.

By the fifth paragraph of the trust agreement the trustee is authorized to collect the mortgages constituting the trust fund by foreclosure or otherwise when interest on such mortgages should be overdue for thirty days or taxes on the mortgaged lands should be unpaid for sixty days after payable, in case the trustee should deem it necessary for the security of the bondholders; and by the tenth paragraph of the trust agreement upon default in payment of principal of interest on the collateral bonds the trustee is directed to foreclose or otherwise realize upon the mortgages constituting the trust fund upon requisition for that purpose made by twenty-five per cent. in value of the outstanding collateral bonds, or upon like requisition by the guarantor of the bonds. No requisition has been made. But complainant urges that under the provisions of the fifth paragraph of the trust agreement the trustee should have foreclosed or otherwise undertaken the collection of the mortgages; that ordinary care and prudence, such as men of common prudence ordinarily exercise in their own affairs, should have prompted such foreclosure; and also urges that this inaction of the trustee has been measureably caused by reason of the fact that

some of the directors and officers of the Ventnor Syndicate and West Jersey Mortgage Company were also directors and officers of defendant trustee.

I am convinced that the evidence does not justify an affirmative finding as to either of these contentions, although some doubt exists in my mind whether the inactivity of the trustee in the matters here complained of may not have been measurably occasioned by reason of the presence of conflicting interests of certain managing officers common to the three corporations. The evidence satisfies me that at the time these mortgages first could have been foreclosed and at all times since up to the time the bill was filed it would have been of more than doubtful benefit to the holders of the collateral bonds to have had the mortgages foreclosed.

The evidence is convincing to the effect that the destruction of the beach front at Ventnor in the winter of 1913, followed by further like injury in 1914, together with other conditions then well recognized, so far unsettled the market values of the several properties covered by the mortgages held in trust by defendant trustee that their foreclosure could not have reasonably been hoped to have accomplished more than a substitution of the land for the mortgages. It also seems clear that no purchasers for the mortgages at a fair price could have been found and that the Ventnor Syndicate was wholly unable to respond. I am convinced that the officers of the trustee company exercised an honest and reasonably sound judgment in their inaction and cannot be held for such losses as may have occurred, if any, through such inaction, even though the protection afforded by the immunity clauses of the trust agreement should not be invoked by the trustee.

Complainant further urges that defendant trustee collected in its own behalf from the West Jersey Mortgage Company its most valuable securities in such disregard of the interests of the collateral bond holders as to render defendant trustee liable to share with the

bond holders, pro rata, the value of the assets so collected.

The evidence touching this claim discloses that on March 5, 1915, the West Jersey Mortgage Company owed the defendant Guarantee Trust Company, the trustee herein, $54,000. This indebtedness was for money loaned from time to time in the ordinary course of defendant's banking business, and for which loans collaterals had been received by the Trust Company as follows: $42,000 of Young & McShea Bonds, $4,000 of collateral bonds of the Ventnor Syndicate—bonds of the issue here in question—$44,000 of mortgages of the Ventnor Syndicate on land in the vicinity of and similar to the land covered by the mortgages in the trust fund here in question. The collaterals so held aggregated in face value $90,000.

By reason of the unsettled value, already referred to, of the land covered by the $44,000 of mortgages defendant Trust Company had for some time been urging the Mortgage Company to substitute other collaterals in lieu thereof. Shortly prior to March 5, 1915, an agreement was consummated as follows: The Mortgage Company agreed to sell to the Trust Company the $42,000 of Young & McShea Bonds then held as collateral by the Trust Company and $16,000 additional like bonds, not then pledged, at 95 per cent. of their face value, and to apply the proceeds of sale in discharge of the debt. Complainant's charge is that the trustee thus collected the debt due to it and neglected to collect the debt due to the collateral bond holders, its *cestuis que trustent*, to the injury of the latter. It is also pointed out by complainant that the semi-annual interest payment on the collateral bonds, guaranteed by the Mortgage Company, had fallen due March 1, 1915, and had not been paid. The evidence discloses that prior to that time the Mortgage Company had been regularly paying to the trustee the interest on the collateral bonds. The principal for the collateral bonds was also then due, under the terms of the

trust agreement, but the Mortgage Company was not required to respond to that default until September 1, 1915. Taxes on much of the mortgaged premises were also in arrears, but the Trustee does not appear to have been aware of that fact, and its managing officers do not appear to have known of the interest default of March 1st. I am unable to conclude that in these circumstances the trustee owed any duty to the holders of the collateral bonds which was operative to deny to it the right to collect the money due it in the manner already stated. The debt which was collected was, as already stated, a debt which had arisen in the ordinary course of the banking business of the trustee, and was a debt secured by collaterals which the Trust Company was by its contract of loan privileged to apply in satisfaction of the debt. By the settlement which was made $42,000 of the collaterals so held were so applied by contract of purchase and $16,000 of unpledged like securities were purchased. The purchase price was the full value of the securities, and at the time of the purchase $48,000 of the pledged securities were released to the debtor. The collateral securities so surrendered to the debtor included mortgages to the amount of $44,000 on the property of the same kind as the mortgages in the trust fund. The securities so released were at that time undesirable securities for a banking institution to hold as collateral, but I do not think the evidence adequately established that the collaterals released were not then reasonably worth as much or more than the $16,000 of bonds which were purchased to effect their surrender to the debtor. I find in the trust agreement no power upon the part of the trustee to enforce at that time against the guarantor of the bonds any default then existing, and am unable to conclude that any trust duty existed upon the part of the trustee which equitably denied to it the right to collect its secured debt in the manner stated.

Complainant also charges that the trustee permitted the Ventnor Syndicate to withdraw from the trust fund

a mortgage of $2,000 by surrendering to the trustee for cancellation and retirement collateral bonds which had been theretofore issued for a like amount. The trust agreement authorized this when there should not be a default; the charge is that at the time there was a default and that the withdrawal was operative to create a preference in favor of the bonds so surrendered as against other like bonds. The mortgage so withdrawn was one of the mortgages which had been made by the Ventnor Syndicate to the trustee. What the amount of loss was, if any, which was suffered by other holders of collateral bonds by reason of the withdrawal, can only be finally determined at the conclusion of the liquidation of the trust; and as the bill is to be held open it seems unnecessary at this time to determine whether there was such a breach of trust in permitting the withdrawal as to impose liability upon the trustee.

Notwithstanding the views already expressed touching the trustee having accepted securities for the trust which were not authorized by the trust agreement, I am unable to reach the conclusion that the trustee should be removed. The trustee is a responsible banking institution, and I have found no satisfactory evidence of bad faith on its part in connection with the trust. With the measure of its liability herein defined, accepted by it, or confirmed on appeal, there can be no doubt touching its efforts to realize on the mortgages in its hands the utmost that can be so realized. The removal of a trustee is a matter directed to the sound discretion of a court; in the absence of bad faith upon the part of a trustee he should not be removed unless some benefits to the trust can be accomplished by such removal. See *Lathrop* v. *Smalley Ex's*, 23 *N. J. Eq.* 192; *McPherson* v. *Cox*, 96 *U. S.* 404; 36 *Cyc.* 261.

I will advise a decree in conformity with the views herein expressed.

Submitted: July 24, 1917.
Determined: December 26, 1917.

IN CHANCERY OF NEW JERSEY.

BETWEEN
GEORGE CONOVER,
Complainant,
and
GUARANTEE TRUST COMPANY ET AL.,
Defendants.
} On Bill, &c.

DECREE.

(*Filed March 5, 1918.*)

This cause coming on to be heard before the Court on bill, the answers of the Guarantee Trust Company and John G. Horner, Receiver of the West Jersey Mortgage Company, replications and oral proofs, and argument of counsel having been heard:

It is, on this fourth day of March, 1918, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, as follows:

1. That the defendant, the Guarantee Trust Company, as trustee, transcended its powers and improperly certified there had been assigned to and deposited with it, as trustee, bonds and first mortgages of a par value of not less than the par value of the $77,000 of bonds outstanding under the terms of the trust agreement of September 1st, 1911, set forth in complainant's bill.

2. That the defendant, the Guarantee Trust Company, as trustee, on October 16th, 1914, permitted the withdrawal from the said trust fund of a mortgage of $2,000, dated March 1st, 1912, covering Lot 2 in Block 82A, at a time when there had been a default under the mortgages held in the said fund and under the bonds secured by the trust agreement aforesaid.

3. That the defendant, the Guarantee Trust Company, pay into court for the complainant, George Conover, and the defendants, Cumberland National Bank

of Bridgeton, N. J., West Jersey Title & Guaranty Company, John W. Hudson, Mary R. Lippincott, Sara N. Lippincott, Kate T. Bower, George F. Neumayer, John W. Ingersoll, Grace K. Weatherly, Alice B. Longworth, Margaret Cooke, Martha M. McKee, William G. Saalmann, Pauline Rupprecht, Lizzie Quigg, Joseph Levina, Benjamin G. Carl, Stephen Oberst, Emily Minerd, Lena E. Deppe, Henry D. Graut, Frederick Thoms, Alice Nuskey, William T. Weeks, Victoria Realty & Mortgage Co., Hannah L. Andrews, Gertrude Hollick, George L. Gillingham, Myrtle R. Moyer, and John G. Horner, Receiver of West Jersey Mortgage Company, the loss which they and each of them sustain by reason of its conduct, to wit: the difference between the said aggregate principal sum of $77,000, with interest at six per centum per annum from September 1st, 1914, and the net proceeds to be realized by the said Guarantee Trust Company from the sale of the bonds and mortgages held by it as trustee as aforesaid, or from the foreclosure and sale of the premises covered by the mortgages aforesaid.

4. That the said Guarantee Trust Company, trustee as aforesaid, in its individual capacity, may purchase any or all of the bonds and mortgages held by it at any sale of the same as such trustee, and likewise may purchase any or all of the mortgaged premises at any sale held under any foreclosure proceedings instituted by it as such trustee.

5. That the bill of complainant be retained for further proceedings looking toward the fixing of the exact amount of the said loss, and to that end the said complainant or any one or all of the defendants have leave from time to time to petition the court in this cause for instructions as to the administration of the trust, or for further relief relating thereto.

6. That the Guarantee Trust Company be not removed as trustee for the breach of trust found by the Court and sustained by the proofs.

7. That the defendant, the Guarantee Trust Company, pay the complainant's costs, and that out of the trust fund administered by it there be paid to the solicitor of the complainant a counsel fee of five hundred dollars.

E. R. WALKER, *C.*

Respectfully advised,
E. B. LEAMING, *V. C.*

IN CHANCERY OF NEW JERSEY.

BETWEEN
GEORGE CONOVER,
Complainant,
AND
GUARANTEE TRUST COMPANY AND OTHERS,
Defendants.
} On Bill &c.

NOTICE OF APPEAL.

(*Filed March 9, 1918.*)

The defendant, Guarantee Trust Company, hereby appeals from the final decree in this cause, made on the fourth day of March, 1918, and from so much thereof as decrees as follows:

1. That the defendant, the Guarantee Trust Company, as trustee, transcended its powers and improperly certified there had been assigned to and deposited with it, as trustee, bonds and first mortgages of a par value of not less than the par value of the $77,000 of bonds outstanding under the terms of the trust agreement of September 1st, 1911, set forth in Complainant's bill.

2. That the defendant, the Guarantee Trust Company, as trustee, on October 16th, 1914, permitted the

withdrawal from the said trust fund of a mortgage of $2,000, dated March 1st, 1912, covering Lot 2 in Block 82A, at a time when there had been a default under the mortgages held in the said fund and under the bonds secured by the trust agreement aforesaid.

3. That the defendant, the Guarantee Trust Company, pay into court for the complainant, George Conover, and the defendants, Cumberland National Bank of Bridgeton, N. J., West Jersey Title & Guaranty Company, John W. Hudson, Mary R. Lippincott, Sara N. Lippincott, Kate T. Bower, George F. Neumayer, John W. Ingersoll, Grace K. Weatherly, Alice B. Longworth, Margaret Cooke, Martha M. McKee, William G. Saalmann, Pauline Rupprecht, Lizzie Quigg, Joseph Levina, Benjamin G. Carl, Stephen Oberst, Emily Minerd, Lena E. Deppe, Henry D. Graut, Frederick Thoms, Alice Nuskey, William T. Weeks, Victoria Realty & Mortgage Co., Hannah L. Andrews, Gertrude Hollick, George L. Gillingham, Myrtle R. Moyer, and John G. Horner, Reciever of West Jersey Mortgage Company, the loss which they and each of them sustain by reason of its conduct, to wit: the difference between the said aggregate principal sum of $77.000, with interest at six per centum per annum from September 1st, 1914, and the net proceeds to be realized by the said Guarantee Trust Company from the sale of the bonds and mortgages held by it as trustee as aforesaid, or from the foreclosure and sale of the premises covered by the mortgages aforesaid.

4. That the defendant, the Guarantee Trust Company, pay the complainant's costs, and that out of the trust fund administered by it there be paid to the solicitor of the complainant a counsel fee of five hun-

dred dollars, to the Court of Errors and Appeals, the last resort in all causes.

C. L. COLE,
Solicitor of Defendant,
Guarantee Trust Company.

C. L. COLE,
Of Counsel with Guarantee
Trust Company, Defendant.

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

C. L. COLE,
Of Counsel.

Due anl legal service acknowledged this 8th day of March, 1918, by

WM. M. CLEVENGER,
Solr. of Complainant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between GEORGE CONOVER, *Complainant-Respondent,* *and* GUARANTEE TRUST COMPANY AND OTHERS, *Defendants-Appellants.*	On Bill, &c. On Appeal of Guarantee Trust Company.

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PETITION OF APPEAL.

(*Filed March 9, 1918.*)

The petition of Guarantee Trust Company, the appellant in the above-stated cause, respectfully shows that your petitioner finds itself aggrieved by the final decree made by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the fourth day of March, in the year 1918, wherein the said George Conover was complainant and appellant and others were defendants, in this respect, to wit, that the said decree adjudges that:

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1. The defendant, the Guarantee Trust Company, as trustee, transcended its powers and improperly certified there had been assigned to and deposited with it, as trustee, bonds and first mortgages of a par value of not less than the par value of the $77,000 of bonds outstanding under the terms of the trust agreement of September 1st, 1911, set forth in complainant's bill.

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2. The defendant, the Guarantee Trust Company, as trustee, on October 16th, 1914, permitted the withdrawal from the said trust fund of a mortgage of $2,000, dated March 1st, 1912, covering lot 2 in Block 82A, at a time when there had been a default under the mortgages held in the said fund and under the bonds secured by the trust agreement aforesaid.

3. That the defendant, the Guarantee Trust Company, pay into court for the complainant, George Conover, and the defendants, Cumberland National Bank of Bridgeton, N. J., West Jersey Title & Guaranty Company, John W. Hudson, Mary R. Lippincott, Sara N. Lippincott, Kate T. Bower, George F. Neumayer, John W. Ingersoll, Grace K. Weatherly, Alice B. Longworth, Margaret Cooke, Martha M. McKee, William G. Saalmann, Pauline Rupprecht, Lizzie Quigg, Joseph Levina, Benjamin G. Carl, Stephen Oberst, Emily Minerd, Lena E. Deppe, Henry D. Graut, Frederick Thoms, Alice Nuskey, William T. Weeks, Victoria Realty & Mortgage Co., Hannah L. Andrews, Gertrude Hollick, George L. Gillingham, Myrtle R. Moyer, and John G. Horner, Receiver of West Jersey Mortgage Company, the loss of which they and each of them sustain by reason of its conduct, to wit: the difference between the said aggregate principal sum of $77,000, with interest at six per centum per annum from September 1st, 1914, and the net proceeds to be realized by the said Guarantee Trust Company from the sale of the bonds and mortgages held by it as trustee, as aforesaid, or from the foreclosure and sale of the premises covered by the mortgages aforesaid.

4. That the defendant, the Guarantee Trust Company, pay the complainant's costs, and that out of the trust fund administered by it there be paid to the solicitor of the complainant a counsel fee of five hundred dollars, and your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid on the ground that the same is erroneous for that under the law and the evidence there is no justification for the making of such decree; that the appellant was not guilty; that the appellant did not transcend its powers as decreed, nor did it do the acts decreed against it; the bill should have been dismissed.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars afore-

said reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

C. L. COLE,
Solicitor of Appellant.
C. L. COLE,
Of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
GEORGE CONOVER,
Complainant,
AND
GUARANTEE TRUST
COMPANY, ET AL.,
Defendants.

ANSWER TO PETITION OF APPEAL.

(Filed May 28, 1918.)

The answer of George Conover, the above-named respondent, to the petition of appeal of the Guarantee Trust Company.

George Conover, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was, on March 4th, 1918, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and

believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to the said George Conover.

WM. M. CLEVENGER,
Solicitor for and of Counsel
with George Conover.

CROSS APPEAL.

IN CHANCERY OF NEW JERSEY.

BETWEEN GEORGE CONOVER, *Complainant,* AND GUARANTEE TRUST COMPANY ET AL., *Defendants.*	On Bill, &c.

NOTICE OF APPEAL.

The complainant, George Conover, hereby appeals to the Court of Errors and Appeals, in the last resort in all causes, from so much of the final decree in this cause made on March 4th, 1918, as refuses to remove the Guarantee Trust Company as trustee.

WM. M. CLEVENGER,
Solicitor for and of
Counsel with Complainant.

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

WM. M. CLEVENGER,
Of Counsel with Complainant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
GEORGE CONOVER,
Complainant-Appellant,
AND
GUARANTEE TRUST COMPANY
ET AL.,
Defendants-Respondents.
} On Appeal.

PETITION.

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

The petition of George Conover, the appellant in the above-stated cause, respectfully shows that he 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 March 4th, 1918, wherein he was complainant and the Guarantee Trust Company, Trustee, and others, were defendants, in this respect, to wit: that the said decree adjudges that said Guarantee Trust Company be not removed as trustee under the agreement of September 1st, 1911.

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, and for reasons alleges:

1. That the said Guarantee Trust Company, as such trustee, permitted the land described in the bonds and mortgages held by it as trustee for the benefit of the complainant and others, to become in arrear for taxes, interest and principal, without foreclosing the same, although it had funds in its hands with which to proceed, and at the same time was protecting itself against

like loss upon like bonds and mortgages by foreclosing, collecting and otherwise disposing of same.

2. That the said Guarantee Trust Company, on March 5th, 1915, knowing the West Jersey Mortgage Company to be in failing circumstances, took from it its most valuable asset and used the proceeds from the purchase to pay itself $54,000.00 due it on notes at a time when as such trustee for the complainant and others it was neglecting to foreclose bonds and mortgages held in trust and upon which there were large arrearages for taxes, interest and principal and while it was individually disposing of bonds and mortgages of like character.

3. That the said Guarantee Trust Company certified $67,000.00 of collateral bonds under the said agreement as being secured by assigned bonds and mortgages when in truth and in fact it had no such bonds and mortgages in its possession as trustee.

4. That the said Guarantee Trust Company neglected to require the Ventnor Syndicate to deposit securities to take the place of those unlawfully accepted or where the values had been impaired.

5. That the said Guarantee Trust Company refused to foreclose the bond and mortgages for nonpayment of interest, principal and taxes as required to do by the trust agreement.

6. That the said Guarantee Trust Company permitted the Ventnor Syndicate to withdraw a $2,000.00 bond and mortgage from the trust fund at a time when to its knowledge the said Ventnor Syndicate was in default for taxes, principal and interest.

7. That the said Guarantee Trust Company neglected, failed and refused to perform the duties imposed upon it by the trust agreement of September 1st, 1911.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particular aforesaid, reversed, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as this honorable Court shall seem meet.

WM. M. CLEVENGER,
Solicitor for and of Counsel with Complainant

Service acknowledged.

C. L. COLE,
Solr. Deft.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN
GEORGE CONOVER,
Complainant-Respondent,
AND
GUARANTEE TRUST COMPANY,
TRUSTEE, ETC., ET AL.,
Defendants-Appellants.

ANSWER TO CROSS-PETITION.

The answer of the above-named respondent to the cross-petition of appeal of George Conover:

This respondent not acknowledging any of the matters which in the said petition of appeal are contained to be true, for answer thereto notwithstanding says and admits that a decree was made and entered in the Court of Chancery in the cause for that purpose mentioned in the petition as therein stated. And this respondent is advised and believes that the said decree in the respect to which the appellant George Conover appeals is agreeable to equity, and it prays that the same may in such respect be affirmed with costs to be adjudged to this respondent on the appeal of the said Conover.

C. L. COLE,
Solicitor and of Counsel with Guarantee Trust Company.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN GEORGE CONOVER, *Complainant-Appellan,* AND GUARANTEE TRUST COMPANY ET AL., *Defendants-Respondents.*	On Appeal.

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NOTICE OF ARGUMENT.

To the within-named defendants-respondents:

Take notice of the argument of this cause before the Court on the opening day of the June Term, 1918, or as soon thereafter as the same may be reached.

WM. M. CLEVENGER,
Solicitor for Comp't.

June 5th, 1918.

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Service acknowledged.

C. L. COLE,
Sol'r for Def't.

SCHEDULE A TO BILL.

THIS AGREEMENT, made this first day of September, in the year of our Lord one thousand nine hundred and eleven, by and between the

VENTNOR SYNDICATE, a corporation under and by virtue of the laws of the State of New Jersey, hereinafter termed the "Company," party of the first part, and the

GUARANTEE TRUST COMPANY, *Trustee*, of Atlantic City, New Jersey, also a corporation under and by virtue of the laws of the State of New Jersey, and having power to execute the trust hereby created, and hereinafter termed the "Trustee," part of the second part, and the

WEST JERSEY MORTGAGE COMPANY, also a corporation under and by virtue of the laws of the State of New Jersey, hereinafter termed the "Guarantor," party of the third part, *witnesseth that,*

Whereas, the Company in pursuance of the powers conferred upon it by the law under which it is organized, has determined to issue its guaranteed collateral bonds, as hereinafter set forth, and to secure the same by assignment to and deposit with the Trustee of bonds and first mortgages, and

Whereas, the Trustee for itself and its successors has accepted and agreed to perform the trust hereby created, and

Whereas, the Guarantor for itself and its successors has agreed to guarantee the payment of the principal and interest of said bonds, and

Whereas, the said Guaranteed Collateral Bonds are to be issued in denominations of Five Hundred or One Thousand Dollars each, and are to be in the following form, namely:

UNITED STATES OF AMERICA.

$1000 $1000

No. No.

VENTNOR SYNDICATE.

ATLANTIC CITY, NEW JERSEY.

SIX PER CENT. GUARANTEED COLLATERAL GOLD BOND.

TOTAL ISSUE $200,000.

For value received, Ventnor Syndicate, a corporation of the State of New Jersey, promises to pay to the Guarantee Trust Company, a corporation of the said State, or to the registered hold hereof, *one thousand dollars,* in gold coin of the United States of America, of or equivalent to the present standard of weight and fineness, which said sum the said Company agrees to pay at the office of the Guarantee Trust Company in Atlantic City, New Jersey, on the first day of September, which will be in the year nineteen hundred and fourteen, with interest thereon at the rate of six per centum per annum, payable in like money half-yearly on the first days of March and September in each year at said office, to the registered holder hereof. In case default shall be made in such payment of interest on any of the bonds of this series and shall continue for the period of thirty days, the principal of this bond shall then become due. This is one of a series of bonds of the denominations of One Thousand Dollars ($1,000) or Five Hundred Dollars ($500), all of like tenor and effect, except as to the sum secured to be paid thereby, amounting in the aggregate to Two Hundred Thousand Dollars ($200,000) and may be paid at the option of the said Ventnor Syndicate at any time upon payment to the trustee of the Principal of this bond, together with all interest thereon to the date of such payment and an additional sum equal to three months' interest on the principal sum of this bond, and the trustee shall pay to the registered holder of this bond the amount so collected by it upon presentation and surrender of this bond for cancellation. To secure the payment of this

bond and all other bonds which constitute this series, together with interest thereon, there have been assigned to and deposited with the said Guarantee Trust Company, as trustee, bonds and first mortgages of a par value of not less than the par value of the bonds of this series outstanding and certified by the said trustee, to be held in trust by the said trustee, and its successors, for the benefit of the holders of the said bonds according to a certain Trust Agreement between the said Ventnor Syndicate and the said Guarantee Trust Company, trustee, and the West Jersey Mortgage Company, a corporation of the State of New Jersey, dated the first day of September, A. D. nineteen hundred and eleven. This bond shall not become valid until the certificate hereon shall be signed by the trustee.

This bond shall be registered by the first holder thereof upon the books of the trustee and after such registration no transfer of this bond except upon the books of the said Trustee will be valid. *In witness whereof,* Ventnor Syndicate has caused these presents to be signed by its President and attested by its Secretary and its corporate seal to be affixed hereunto the first day of September, A. D. nineteen hundred and eleven.

VENTNOR SYNDICATE,

[SEAL.] By

H. H. HARRIS,

Attest: *President.*

CARLTON GODFREY,

Secretary.

STATE OF NEW JERSEY.

Ventnor Syndicate
Atlantic City, New Jersey
Six Per Cent. Guaranteed Collateral Gold Bond
$1000
Interest Payable
March 1st and September 1st.
Principal and Interest Payable
at the office of the
Guarantee Trust Company
in
Atlantic City, New Jersey.

Trustee's Certificate.

It is Hereby Certified that the within bond is one of the Guaranteed Collateral Bonds of Ventnor Syndicate, all of like tenor and effect, and in denominations of One Thousand or Five Hundred Dollars each, amounting in the aggregate to Two Hundred Thousand Dollars ($200,000), described in the agreement therein mentioned.

GUARANTEE TRUST COMPANY,
Trustee.

By HERMAN M. SYPHERD,
Trust Officer.

Notice: No writing on this bond, except by an officer of the Trustee.

Date of Registry	*In Whose Name Registered*	*Registrar*
October 13, 1911	John W. Ingersoll	Guarantee Trust Company By Herman M. Sypherd Trust Officer
March 4, 1912	George Conover	Guarantee Trust Company By Herman M. Sypherd, Trust Officer.

NO. GUARANTY.

The West Jersey Mortgage Company, a corporation of New Jersey, in consideration of One Dollar to it paid by the VENTNOR SYNDICATE, the receipt whereof is hereby acknowledged, does hereby guarantee to the registered or other legal holder of the within bond: FIRST: Payment at the office of the trustee on the first days of March and September of each year, until the principal sum thereof is paid, of the sum of Thirty Dollars, being the interest due on said loan upon said bond. SECOND: Payment at the office of said trustee of the principal sum mentioned in said bond on or before the first day of September, nineteen hundred and fifteen. *In witness whereof,* the West Jersey Mortgage Company has caused these presents to be signed by its President, attested by its Secretary, and sealed with its corporate seal, this first day of September, A. D. nineteen hundred and eleven.

THE WEST JERSEY MORTGAGE COMPANY,
[SEAL.] By CARLTON GODFREY,
President.
Attest:
W. B. BELL,
Secretary.

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar paid by the Company to the Trustee, and the further sum of One Dollar paid by the Company to the Guarantor, the receipt of which sums is hereby acknowledged on the part of both the Trustee and the Guarantor, and in order to secure the due payment of the principal and interest of the Company's Guaranteed Collateral Bonds, issued and to be issued, as hereinafter provided, to an amount not exceeding *two hundred thousand dollars* ($200,000), the said Trustee for itself and its successors hath accepted, and doth hereby accept, and hath agreed and doth hereby agree, to perform the trust hereby created in accordance with the provisions of this agreement, and the Guaran-

tor hath agreed, and doth hereby agree, to guarantee the payment of the principal and interest of said bonds issued and to be issued as in this agreement provided, and it is further mutually agreed between the parties hereto:

1. That the term "Company's Bond" when used in this instrument shall be taken to mean all the Guaranteed Collateral Bonds, issued by the Company and certified by the Trustee as herein provided, and no others. The term "Bondholder" when used in this instrument shall be taken to mean the holder of any one of the "Company's Bonds." The term "Trust Fund" when used in this instrument shall be taken to mean and include all the property of what kind so ever which from time to time the Trustee shall hold as security for the payment of the "Company's Bonds." The term "value" when referring to the securities in said Trust Fund shall be considered to be the value as last appraised by the Guarantor in the manner hereinafter provided. Whenever the plural is used in this instrument it shall be construed to include the singular if the context so requires.

2. That Ventnor Syndicate, a corporation of the State of New Jersey, party of the first part, has granted, bargained, sold, assigned and set over and by these presents doth grant, bargain, sell, assign and set over unto the Guarantee Trust Company, also a corporation of the State of New Jersey, party hereto of the second part, all the bonds and first mortgages set forth and described in the Schedule hereto annexed and which forms a part of this instrument, and bears even date herewith, and is identified by the certificate of the Trustee and of the Company, it being the intention of the Company to assign and set over said bonds and mortgages to the Trustee fully and effectually not only by these presents but also by a separate instrument of assignment of each of the said bonds and mortgages.

3. That inasmuch as at the time of the execution and delivery of these presents the Company may not desire

to issue all the said Guaranteed Collateral Bonds, and to transfer and assign to the Trustee bonds and mortgages or other securities to the full contemplated amount of *two hundred thousand dollars* ($200,000), it is agreed that from time to time hereafter the Company may issue its said bonds and assign to the Trustee bonds and first mortgages until the amount of *two hundred thousand dollars* ($200,000) in value of such bonds and mortgages is made up, and that as the said bonds and mortgages are assigned and delivered to the Trustee, they shall be entered in the Schedule hereto attached, and shall form a part of the Trust Fund hereby created, and shall in all respects be subject to the provisions of this agreement with like force and effect as if they and the particulars thereof had been entered in said Schedule at the time of the execution and delivery hereof, and as if such bonds or mortgages had then been assigned and delivered to the Trustee. The Trustee shall be under no obligation to record this instrument or the assignment of any of the bonds and mortgages constituting the Trust Fund at any time unless and until any default shall be made on the part of the Company in the payment of interest on the Company's bonds, or any of them, or unless and until in its judgment the protection of the bondholders shall require such action on its part. The trustee shall have and hold such bonds and mortgages upon the trust hereby created, namely, for the equal pro rata benefit and security of the bondholders without any preference or priority to any one bond over another, by reason of priority in time of issue or negotiation thereof, or otherwise, and to secure the payment of each of the said bonds, together with the interest thereon, and for all the other uses and purposes, and upon the terms and conditions herein declared and expressed.

4. That the Company's Guaranteed Collateral Bonds secured hereby may be issued from time to time as shall be desired by the Company, but at no time to exceed

in the aggregate the sum of *two hundred thousand dollars* ($200,000). At the time of the presentation of any of said bonds to the Trustee for certification, there shall be delivered to the Trustee a request in writing signed by the President of the Company, certified under the seal of the Company, requesting the Trustee to certify and deliver to the Company or its nominee a specified amount of such bonds, together with such number of said bonds as the Company desires to be certified for issue, and bonds and first mortgages equal in value to at least the par value of the bonds so to be issued, together with properly executed instruments of assignment thereof to the Trustee. Upon the receipt thereof, the Trustee shall permit the Company to enter said bonds and mortgages in the annexed schedule as hereinbefore provided or shall itself make such entry and shall forthwith certify the bonds so presented to it for certification and deliver the same to the Company for issue.

5. That in case the Company shall, for any reason deem it necessary to take any proceedings for the collection by foreclosure or otherwise, of any bond and mortgage belonging to the Trust Fund, the Company shall forthwith substitute bonds and first mortgages, of equal value, and shall assign and transfer the same to the Trustee to be held as part of the Trust Fund, and shall thereupon be entitled to the delivery to it of the bond and mortgage which is so to be collected. In case the Trustee shall deem it necessary for the security of the bondholders that any bond and mortgage, the interest upon which has been in default for a period of not less than thirty days, or the taxes upon the property covered by which have been unpaid, for a period of not less than sixty days, shall be collected by foreclosure or otherwise, and Trustee shall give notice to the Company in writing requiring it to substitute for each bond and mortgage, cash or bonds and first mortgages, of an equal value, and in case the Company shall fail for twenty days after the service upon it of such notice to

make such substitution, then and in that case it shall be the duty of the Trustee through its officers, agents or attorneys to proceed with the collection of the bond and mortgage so in default by foreclosure or otherwise, or to sell the property covered by it according to law, and to collect the proceeds of such sale and place the same, less the expenses of such foreclosure, in the Trust Fund, and if the Trustee shall deem best, it may purchase the said property at such sale and take title thereto in its own name, or in that of an agent, but the Trustee shall be under no obligation to make such purchase unless provided with all cash necessary to be paid on such sale, with full power to the Trustee, through its officers, agents or attorneys, in its or their discretion, to grant from time to time reasonable postponements of the foreclosure or sale of said property. If upon the foreclosure or other collection of any such bond and mortgage, the Trustee shall become the purchaser of the property covered thereby, it shall forthwith certify to the Company the price at which it was purchased, including all expenses incidental thereto, and the Company shall within fifteen days thereafter pay to the Trustee such price and expenses, with interest, and shall be entitled to receive a conveyance from the Trustee of said proprty, such price to be paid by the Company either in cash or in bonds and mortgages of an equal value.

Whenever and as often as there shall be in the hands of the Trustee cash belonging to the Trust Fund, the Company shall have the right to have such cash paid to it upon transferring and assigning to the Trustee bonds and first mortgages equal in value to the amount of such cash.

So long as the Company shall not be in default under any provision of this agreement, it shall be entitled to receive from the Trustee, if and when collected, all income from the bonds and mortgages comprising the Trust estate.

6. That upon the collection by the Trustee of any bond and mortgage forming part of the Trust Fund, the Trustee may, unless the Company shall within thirty days from the time when the amount of such collection shall have been received by the Trustee, assign to and deposit with the Trustee bonds and mortgages, equal in value to the amount of such collection, proceed to invest the amount so collected in bonds and first mortgages, such bonds and mortgages shall thereupon become a part of the Trust Fund. If upon collection by the Trustee of any bond and mortgage, the amount realized shall be less than the amount of principal and interest due upon said bond and mortgage at the time of such collection, the Company agrees to deliver to the Trustee additional bonds and first mortgages duly assigned to the Trustee, in an amount equal in value to the amount of such deficiency.

7. That the Company may, if it so elect, from time to time, withdraw any of the bonds and mortgages belonging to the Trust Fund, provided that upon such withdrawal it shall deliver to the Trustee either cash equal in amount to the bonds and mortgages so withdrawn or other bonds and first mortgages of an equal value.

In case of the withdrawal of any such bond and mortgage the Trustee shall re-assign the same to the Company and the fact of such withdrawal shall be entered upon the Schedule hereto annexed, and such other entries shall from time to time be made therein as may be required to the end that the said Schedule shall at all times show in what manner the Trust Fund is constituted.

8. That all bonds and mortgages assigned and transferred by the Company to the Trustee as hereinbefore provided shall be accompanied by a policy or policies issued by the West Jersey Title and Guaranty Company, or some other corporation organized under the laws of the State of New Jersey for the purpose of in-

suring the titles to real estate, guaranteeing that the said mortgages are a valid and prior lien upon the premises covered thereby. All bonds and mortgages assigned and transferred by the Company to the Trustee to constitute the Trust Fund herein provided, shall be accompanied by a written appraisal of value to be made and certified to by the Gaurantor, and this value so appraised shall be accepted by said Trustee as a basis for certification of bonds as provided in Paragraph 4 and such securities shall be entered in the Schedule as of such value; provided that the Guarantor may at any time re-appraise such bonds and mortgages, and certify the same to the Trustee, and thereafter such last appraisal shall be considered the value to be given such bonds and mortgages in carrying out the provisions of this agreement. It shall be no part of the duties of the Trustee to make investigation concerning nor shall it be responsible for the validity, nature or actual value of the bonds and mortgages so assigned to it, nor shall it be answerable except for the due certification as aforesaid of the Company's bonds issued hereunder and for the custody and disposition of the Trust Fund.

9. That in case the Company shall make default in the payment of any interest upon any of the Company's Bonds, such payment having been demanded at the Trustee's Office in Atlantic City, New Jersey, and in case such default shall continue for thirty days after such demand, then and thereupon the principal of all the Company's Bonds shall become immediately due and payable.

10. That if default shall be made in the payment of any part of the principal or interest of the Company's Bonds and payment thereof shall have been demanded at the office of the Trustee in Atlantic City, New Jersey, and in case the said default shall continue for thirty days after said demand, then and in that case upon a requisition in writing signed by the holder or holders of the Company's Bonds to an

aggregate amount equal to twenty-five (25) per cent. in value of the Company's Bonds in this Series then outstanding, or upon requisition of the Guarantor, and upon proper indemnification of the Trustee for the costs and expenses to be incurred by it, it shall be the duty of the Trustee, upon thirty days' notice in writing to the Company to realize so far as possible by the foreclosure or sale or other collection of the bonds and mortgages which shall then constitute the Trust Fund, the amount secured thereby and to apply the amounts so collected to the payment of the principal and interest then due upon the Company's Bonds equally pro rata, and if the amounts so realized are not sufficient to pay the full amount then due for principal and interest upon the Company's Bonds, then outstanding in said series, the Trustee shall, upon further reasonable indemnification, take proceedings to collect from the Company said deficiency. The Trustee shall have full discretion as to the time and manner in which it shall proceed for the collection of the amounts secured by the Trust Fund, or the sale of any bonds and mortgages therein, and said Trustee shall not be liable either to the Company or to the bondholders for anything except lack of good faith or of ordinary care therein.

And the Company hereby agrees that it will, upon demand, pay to the Trustee any and all reasonable expenses which it may, as provided in this instrument incur, for the payment of which it may become liable, in the performance of any of its duties as such Trustee.

11. That it is mutually agreed by and between the parties hereto that upon the payment of the principal and interest due upon all of the Company's Bonds and delivery thereof to the Trustee for cancellation, and upon the payment to the Trustee of all expenses of the Trust, the Trust Fund shall be delivered and reassigned and conveyed by the Trustee to the Company or its nominee discharged of this trust. If at

any time the Company shall pay or retire any of the bonds secured by this instrument and shall surrender the same to the Trustee for cancellation, the Company shall be entitled to withdraw from the Trust Fund any bonds and mortgages of a value equal to the Company's Bonds so surrendered by it.

When the Company has once issued the Company's bonds to the amount of *two hundred thousand dollars* (200,000), it shall issue no further bonds to be secured hereby, notwithstanding that it may have paid and retired as hereinafter provided some of the Company's Bonds constituting the said amount of *two hundred thousand dollars* ($200,000).

12. That the Trust Fund shall at all times consist of Bonds and first mortgages or of bonds and mortgages and cash of a value equal to the par value of the Company's Bonds then outstanding, and the Company hereby agrees that upon demand by the Guarantor it will at any time pay into the Trust Fund cash, or assign to the Trustee bonds and first mortgages which shall equal in value any deficiency which may exist, and upon its failure so to do, within a reasonable time to be determined by the Guarantor, the Trustee shall upon the written order of the Guarantor, sell or otherwise dispose of any or all bonds and mortgages in the Trust Fund in such manner as it, the Trustee, shall deem best; and in such event the said Trustee shall not be liable to the Company, the Guarantor or the bondholders for any depreciation of said bonds and mortgages between the time of receiving such orders to sell and the time of sale, or for any other act by it done in the premises in good faith, and with ordinary care. On the other hand whenever the value of the Trust Fund shall exceed the amount of the par value of the Company's Bonds then outstanding, the Company shall have the right to demand and receive from the Trustee cash or any of the Bonds and mortgages belonging to the Trust Fund equal in value to the amount of such excess.

13. That it is further mutually agreed by and between the parties hereto, and it is hereby declared to be a condition upon which the Trustee, and its successor or successors in the trust, hereby created, have assented to these presents and accepted this Trust, that the said Trustee, or its successor or successors, shall not be held responsible for persons employed by it, or them, not being part of its or their staff of officers or employees in its or their office in the City of Atlantic City, provided such persons have been selected with reasonable care, nor shall the Trustee be liable for any mistake of judgment or mistaken exercise of discretion, and in all cases the Trustee shall be authorized to pay such reasonable compensation as it shall deem proper to the attorneys or agents whom it may reasonably employ in the operation of the Trust.

14. That it is further mutually agreed by and between the parties hereto that the Trustee, its successor or successors, may resign the Trust hereby created and be discharged from all duties hereunder, upon giving sixty days' notice in writing to the Company, or upon such similar notice as the Company may accept as sufficient, such resignation, however, not to take effect until a successor Trustee shall be appointed, which appointment shall be made by the Guarantor within said period of sixty days. Such successor Trustee shall in all cases be a Trust Company incorporated under the laws of the State of New Jersey, and having its principal place of business in the City of Atlantic City.

15. It is expressly covenanted and agreed between the parties hereto that in the event of the payment of any sum or sums of money by the Guarantor under its guaranty, that then such sum or sums shall be immediately due and payable from the Company to the Guarantor, and the Company agrees forthwith to pay any such sum or sums, and in addition thereto the Guarantor shall be immediately subrogated to any and all rights of the Company in the Trust Fund, and all payments

from the Trust Fund, either of income thereon or principal thereof, which under this agreement would become payable to the Company from the Trustee shall thenceforth be paid by the Trustee to the Guarantor instead of to the Company, until all such payments so made by the Guarantor shall have been repaid to said Guarantor in full, together with legal interest on all such sums so advanced, but nothing in this paragraph contained shall affect the rights of the bondholders in the Trust Fund.

16. And the Company further covenants and agrees with the Trustee and its successors, that the Company will at all times hereafter, and as often as requested by the Trustee execute, acknowledge and deliver all such instruments of assignment or conveyance or transfers in the law for the better assuring unto the said Trustee the title to the bonds and mortgages and other securities hereinbefore mentioned, assigned by this instrument, or agreed to be so assigned, as by the said Trustee, or its counsel learned in the law shall be reasonably advised, devised or required.

17. And the Trustee further covenants and agrees with the Company, for itself and its successor or successors, that it will do everything which may be reasonably necessary to carry out all the provisions of this agreement, and to effectuate the rights of the Company and of the bondholders respectively.

In witness whereof, the said Ventnor Syndicate, and the said Guarantee Trust Company and the said West Jersey Mortgage Company have caused these presents to be signed by their respective Presidents and sealed with their respective corporate seals, duly attested by

their respective secretaries on the day and year first above written.

[SEAL.] VENTNOR SYNDICATE,
Attest: By H. G. HARRIS,
CARLTON GODFREY, *President.*
Secretary.

GUARANTEE TRUST COMPANY,
Attest: By CARLTON GODFREY,
C. W. JEFFRIES, *President.*
Secretary.

WEST JERSEY MORTGAGE COMPANY,
Attest: By CARLTON GODFREY,
W. B. BELL, *President.*
Secretary.

STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } *ss.*

BE IT REMEMBERED, that on this eleventh day of October, in the year of our Lord, one thousand nine hundred and eleven, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared William B. Bell, who being by me duly sworn on his oath saith that he is the Secretary of West Jersey Mortgage Company, one of the parties mentioned in and who executed the foregoing instrument, and that Carlton Godfrey is the President; that deponent knows the common or corporate seal of said West Jersey Mortgage Company, and that the seal annexed to the foregoing instrument is such common or corporate seal; that the said instrument was signed by the said President and the seal of said West Jersey Mortgage Company affixed thereto in the presence of deponent; that the said instrument was signed, sealed and delivered as and for the voluntary act and deed of said West Jersey Mortgage Company for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said West Jersey Mortgage Co.; and

at the execution thereof this deponent subscribed his name thereto as witness.

WILLIAM B. BELL.

Sworn and subscribed the day and year aforesaid.

H. STARR GIDDINGS,
M. C. C. of N. J.

STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } *ss.*

BE IT REMEMBERED, that on this eleventh day of October, in the year of our Lord, one thousand nine hundred and eleven, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Carlton Godfrey, who being by me duly sworn on his oath saith that he is the Secretary of Ventnor Syndicate, one of the parties mentioned in and who executed the foregoing instrument, and that Howard G. Harris is the President, that deponent knows the common or corporate seal of said Ventnor Syndicate and that the seal annexed to the foregoing instrument is such common or corporate seal; that the said instrument was signed by the said President and the seal of said Ventnor Syndicate affixed thereto in the presence of deponent; that the said instrument was signed, sealed and delivered as and for the voluntary act and deed of said Ventnor Syndicate for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said Ventnor Syndicate; and at the execution thereof this deponent subscribed his name thereto as witness.

CARLTON GODFREY.

Sworn and subscribed the day and year aforesaid.

H. STARR GIDDINGS,
M. C. C. of N. J.

STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } *ss.*

BE IT REMEMBERED, that on this eleventh day of October, in the year of our Lord, one thousand nine hundred and eleven, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Charles H. Jeffries, who being by me duly sworn on his oath saith that he is the Secretary of Guarantee Trust Company, Trustee, one of the parties mentioned in and who executed the foregoing instrument, and that Carlton Godfrey is the President; that deponent knows the common or corporate seal of said Guarantee Trust Company, and that the seal annexed to the foregoing instrument is such common or corporate seal; that the said instrument was signed by the said President and the seal of said Guarantee Trust Company affixed thereto in the presence of deponent; that the said instrument was signed, sealed and delivered as and for the voluntary act and deed of said Guarantee Trust Company for the uses and purposes therein expressed, pursuant to a resolution of the Board of Directors of said Guarantee Trust Company; and at the execution thereof this deponent subscribed his name thereto as witness.

CHARLES H. JEFFRIES.

Sworn and subscribed the day and year aforesaid.

H. STARR GIDDINGS,
M. C. C. of N. J.

SCHEDULE B TO BILL.

List of Registered bondholders of Ventnor Syndicate Collateral Bonds, dated September 1, 1911.

Name.	*Address.*	*Amount.*
Cumberland National Bank	Bridgeton, N. J.	$5,000
John W. Ingersoll	711 N. Ohio Ave., City	5,000
West Jersey Title & Guaranty Co.	Camden, N. J.	20,500
Apollonia Schneider	308 N. 3rd St., Phila., Pa.	2,000
Christopher Schneider	" " " " " "	3,000
George Conover	Bridgeboro, N. J.	3,000
John W. Hudson	P. O. Box 252, City	1,000
Mary R. Lippincott,	c/o Joseph Kaighn, 3rd & Market	2,000
Sarah N. Lippincott,	Sts., Camden, N. J.	1,000
Kate T. Bower	Do	1,000
Georgia F. Neumayer	Do	1,000
Grace K. Weatherby	Hackensack, N. J.	1,000
Alice B. Longworth	920 N. 63 St., Phila., Pa.	2,000
Margaret Cooke	Melrose Hall, City	1,000
Martha M. McKee	53 LaClede Place, City	1,000
William G. Saalmann	Egg Harbor City, N. J.	1,000
Pauline Rupprecht	3032 Fontain St., Phila., Pa.	1,000
Lizzie Quigg	Do	1,000
Joseph Lavina	No. Carolina below Atlantic	1,000
Benjamin G. Carll	c/o Jos. Kaighn, Camden	1,500
Stephen Oberst	Egg Harbor City, N. J.	4,000
Emily Minerd	14 So. Maryland Ave., City	5,000
Lena E. Deppe	Pomerania, N. J.	1,000
	Forwarded	$65,000
Henry D. Grant	c/o C. J. Adams Co., City	1,000
Frederick Thoms	Egg Harbor City, N. J.	1,000
Alice Nuskey	1201 Fillmore St., Phila.	2,000
William T. Weeks	616 N. Arkansas Ave., City	3,000
Victoria Realty & Mtg. Co.	3rd & Market Sts., Camden, N. J.	1,000
West Jersey Mortgage Co.	Guarantee Trust Bldg., City	2,000
Hannah L. Andrews	c/o Jos. Kaighn, Camden, N. J.	500
Gertrude Hollick	Parkside, Camden, N. J.	500
George L. Gillingham	c/o Jos. Kaighn, Camden, N. J.	500
(Mrs.) Myrtle R. Moyer	1419 Thompson St., Harrisburg, Pa.	500
	Total	$77,000

Schedule of mortgages deposited under Trust Agreement between Ventnor Syndicate and Guarantee Trust Company, Trustee, dated September 1, 1911:

Oct. 11/11	Bond and mortgage, Ventnor Syndicate and Guarantee Trust Company, Trustee, dated August 10, 1911, covering lot 14, Block 108-A, on map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	$5,000
Oct. 12/11	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated September 1, 1911, covering lot 9, Block 9, in map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	5,000
Dec. 27/11	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated September 1, 1911, covering lot 7, Block 100-A, on map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	5,000
" "	Two bonds and mortgages, $5,000 each, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated September 1, 1911, covering lots 7 and 14, Block 108-B, on map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	10,000
" "	Six bonds and mortgages, $2,000 each, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated September 1, 1911, covering lots 4, 5, 6, 11, 12 and 13, Block 108-B, on map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	12,000
Mar. 12/12 withdrawn 10/16/14	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated March 1, 1912, covering lot 2, Block 82-B, on map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	2,000
May 16/12	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated March 1, 1912, covering lot 16, Block 11, on map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	5,000
June 3/12	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated March 1, 1912, covering lot 8, Block 12, on map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	5,000
June 15/12	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated September 1, 1911, covering lot 16, Block 12, on map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	5,000
July 11/12	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated March 1, 1912, covering lot 7, Block 86-A, on map of Ventnor Syndicate property in and adjacent to Ventnor City, ...	5,000
Sep. 2/12	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated Sept. 1, 1912, covering lot 13, Block 88-B, on map of Ventnor Syndicate property in and adjacent to Margate City, ...	2,000
6/12	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated Aug. 31, 1912, covering lot 13, Block 88-A, on map of Ventnor Syndicate property in and adjacent to Margate City, ...	2,000
Dec. 2/12	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated Aug. 31, 1912, covering lot 12, Block 88-A, on map of Ventnor Syndicate property in and adjacent to Margate City, ...	2,000

Dec. 3/12	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated Aug. 31, 1912, covering lot 5, Block 88-A, on map of Ventnor Syndicate property in and adjacent to Margate City, ...	2,000
	Bond and mortgage, Ventnor Syndicate to Guarantee Trust Company, Trustee, dated Aug. 31, 1912, covering lot 11, Block 88-A, on map of Ventnor Syndicate property in and adjacent to Margate City, ...	2,000
21/12	Bond and mortgage, Ventnor Syndicate to West Jersey Mortgage Company, dated Aug. 31, 1912, covering lot 7, Block 88-A, on map of Ventnor Syndicate property in and adjacent to Margate City, assigned by West Jersey Mortgage Company to Guarantee Trust Company, Trustee, November 16, 1912, ...	5,000
21/12	Bond and mortgage, Roebling Realty Company to Ventnor Syndicate, dated November 12, 1912, covering lot 14, Block 71-A, on map of Ventnor Syndicate property in and adjacent to Ventnor City, assigned by Ventnor Syndicate to Guarantee Trust Company, Trustee, December 6, 1912, ...	5,000
10/11/11	Bond and mortgage cov. lot 14, Block 108A Ventnor Syndicate, to West Jersey Mortgage Co.	5,000
#2	Bond and mortgage cov. lot 16, Block 24, Margate Park Ventnor Syndicate to Guarantee Trust Co. Trustee.	5,000

MINERVA