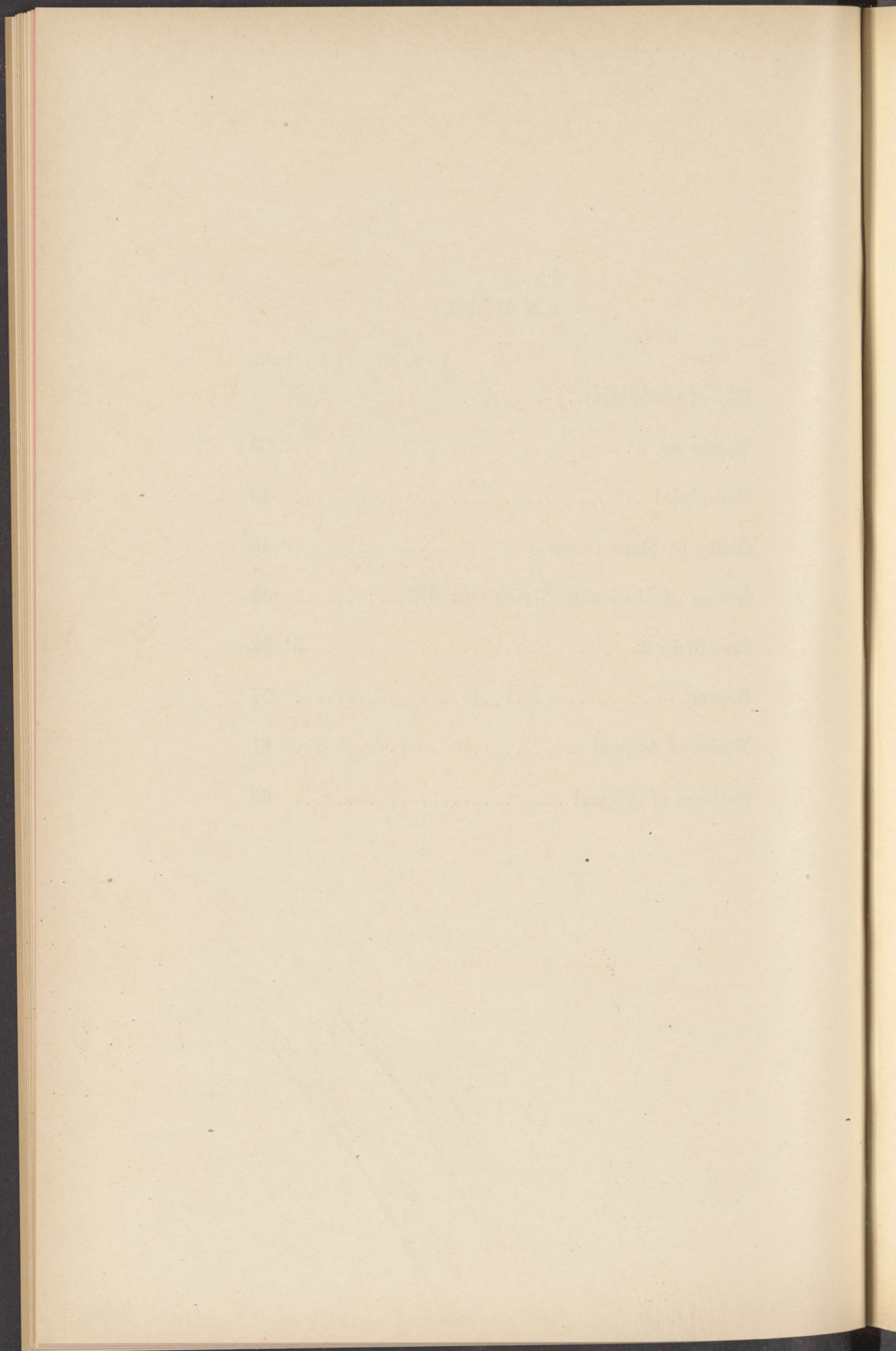


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BILL.

(Filed May 29, 1931.)

IN CHANCERY OF NEW JERSEY.

10

Between:

CAMDEN MORTGAGE GUAR-
ANTY & TITLE COM-
PANY, a New Jersey
corporation, dissolved,
and HENRY B. COLES,
et al., Statutory Trus-
tees thereof,

Complainants,

and

ELIZABETH K. HAINES,

Defendant.

Bill.

20

The complainants, Camden Mortgage Guaranty &
Title Company, dissolved, a New Jersey corporation,
and Henry B. Coles, William C. Coles, Elmer E.
Long, William P. Hallinger, Edwin G. C. Bleakly, 30
Charles P. Halyburton, Patrick H. Harding, Isaiah
S. Hatch, John A. Riggins, Henry F. Stockwell,
Howard B. Hemphill, Charles Halyburton, Joseph
C. Lukens, statutory trustees thereof, respectfully
show:

1. That said Camden Mortgage Guaranty & Title Company was on June 2, 1923, duly incorporated under an Act of the Legislature of the State of New Jersey, entitled "An Act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State," approved April third, nineteen hundred
10 and two, and the supplements thereto and amendments thereof. Said certificate of incorporation, upon certificate of the then Attorney General and with the approval of the Commissioner of Banking and Insurance, being filed in the office of said Department of Banking and Insurance on the second day of June, 1923, all of which will more fully appear by certified copy of said charter in the possession of these complaints, which will be produced, a true copy thereof being attached hereto and made a
20 part hereof and marked Exhibit A.

2. Thereupon said company began its business of buying, selling, dealing in and insuring first mortgages on real estate and with paid in cash capital of \$125,000.00, and the directors elected for the first year were: Henry B. Coles, William C. Coles, George A. Frey, Joseph H. Forsyth, William P. Hallinger, Edwin G. C. Bleakly, Maja Leon Berry, Charles P. Halyburton, Patrick H. Harding, Isaiah
30 S. Hatch, Henry F. Stockwell, John A. Riggins, Howard B. Hemphill, Joseph A. Potter and Joseph C. Lukens. Of said number Joseph A. Potter died in the year 1925; said Maja Leon Berry disposed of his stock and resigned from the board; Joseph H. Forsyth died in November, 1928, prior to the disso-

lution proceedings hereinafter mentioned, and George A. Frey died in September, 1929, since the dissolution proceedings were initiated. Charles Halyburton was elected a director January 28, 1924; Elmer E. Long was elected a director March 19, 1926. So that at the time of the proceedings on dissolution hereinafter mentioned, the directors and officers of said corporation were:

10

- Charles P. Halyburton, President,
- Isaiah S. Hatch, Vice-President,
- Howard B. Hemphill, Secretary,
- George A. Frey, Treasurer,
- Patrick H. Harding, Ass't. Secretary and Ass't. Treasurer.

DIRECTORS:

- | | |
|-----------------------|--------------------|
| Henry B. Coles | Charles Halyburton |
| William C. Coles | Isaiah S. Hatch |
| Elmer E. Long | John A. Riggins |
| William P. Hallinger | Henry F. Stockwell |
| Charles P. Halyburton | Howard B. Hemphill |
| Edwin G. C. Bleakly | Joseph C. Lukens |
| Patrick H. Harding | George A. Frey. |

20

And all of said directors survive except the said George A. Frey.

3. The said corporation actively prosecuted its business of buying, insuring and selling first mortgages on real estate from its incorporation down to June 19th, 1929, at which time the board of directors did by unanimous vote adopt a resolution resolving that it was for the best interest of said company that its business should be discontinued and it should be dissolved. Thereafter all of the

30

stockholders of said company signed a written consent to such dissolution and formal papers as required by law, under the hands of the officers of said company, and accompanied by said consents in writing, were filed with the Commissioner of Banking and Insurance of the State of New Jersey for his consideration and approval, whereupon the said
10 Commissioner of Banking and Insurance, after investigation of said company and said proceedings, did on the twenty-third day of July, 1929, issue to said company his certificate of dissolution, a true and correct copy of which is attached hereto and made a part hereof and marked Exhibit B, the original thereof being in the possession of complainants and ready to be produced. The board of directors of said company thereupon caused said certificate to be published for four weeks successively, at least
20 once a week in the Camden Argus, a newspaper published in the City and County of Camden, being the office and principal place of business of said company, and after said publication filed with the said Department of Banking and Insurance an affidavit duly proving that said certificate had been published as required by law, all of which proceedings were taken and pursued in compliance with Chapter 343 of the laws of 1929, being:

30 “An Act to amend an Act entitled ‘An Act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State,’ approved April third, one thousand nine hundred and two.”

Which Act was approved May 6, 1929.

Whereupon the said individual complainants herein became and are now statutory trustees of said dissolved corporation and ever since the issuance of said certificate have been and are still actively, thoroughly and impartially administering the said assets of said company, which have come to their hands as required by law.

4. In pursuing the business for which said corporation was incorporated and organized, said company issued its guaranty policies upon first mortgages upon improved properties in the State of New Jersey, guaranteeing for the consideration therein named and paid by the insured, the instalments of interest upon the mortgages insured as and when the interest on same became due and payable, and also guaranteeing the payment of the principal of said mortgages as soon as collected, but in no event later than one year after payment thereof shall have been demanded in writing by the insured, but no demand for payment of the principal was to be made by the insured until the same becomes due and payable. Guaranties in accordance with said form were issued by said company on numerous mortgages, so that at the time said dissolution proceedings were initiated there were outstanding 580 guaranties on approximately 580 mortgages. Under the terms of said insurance, the company became the agent for the insured for the collection of interest, was obliged to and did collect and remit the interest. At the time said dissolution proceedings were instituted, this company had on deposit with the Department of Banking and Insurance as required by law securities in the shape of Federal

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and municipal bonds of a value as of July 29, 1929, of \$51,470.36, which securities are still on deposit with said Insurance Commissioner. In addition thereto, said company owns numerous properties and other assets.

At the time of the issuance of said dissolution proceedings, this company had a surplus of \$19,331.16
10 and its only debts at the time of said dissolution proceedings consisted of the contingent liabilities of said company upon its guaranties outstanding amounting to \$2,162,227.00.

5. The defendant, Elizabeth K. Haines, of Haddonfield, N. J., holds guaranty No. 619 of said company, covering premises in the Borough of Brooklawn, Camden County, New Jersey, insuring a first mortgage of \$2,000.00 thereon, a copy of said guaranty being attached hereto and marked Exhibit C.
20 Complainants, in compliance with the statutory requirements governing dissolution proceedings of this corporation, have uniformly followed the rule that after such dissolution proceedings became effective upon the issuing of said certificate of approval by the Commissioner of Banking and Insurance, any interest actually collected by said company from the owners of said properties should be remitted to the mortgagees immediately, but as to any interest not
30 so collected and as to the principal of the mortgages insured under any of its policies payment thereof could not and would not be made to any insured until said company's assets should be collected in, its liabilities determined and a distribution, pursuant to the terms of the statute, be made by them as such statutory trustees.

6. Defendant, Elizabeth K. Haines, filed her bill in this court to foreclose the mortgage covered by said guaranty and at the sheriff's sale under said proceedings said property was sold for the sum of \$100.00. The amount which was due the said Elizabeth K. Haines, as shown by final decree entered therein was the sum of \$2,136.00, with interest thereon from January 15, 1931, and the sum of \$155.12 costs, with interest thereon from January 21, 1931. Thereafter sheriff's sale was had and the property was sold on a bid of \$100.00, leaving a deficiency due the said Elizabeth K. Haines on said decree, to wit, the sum of \$2136.00 and interest thereon. Thereupon, on the 14th day of April, 1931, defendant caused summons and complaint to be issued out of the New Jersey Supreme Court, venue Camden County, in a suit entitled "Elizabeth K. Haines, plaintiff, v. Camden Mortgage Guaranty & Title Company, defendant," upon the said guaranty and demanding judgment against the complainant herein for said deficiency, in the sum of \$2136.00, with interest thereon from January 15, 1931, and costs of suit. Upon the service of said summons and complaint upon the defendant therein, the present complainant, complainant prepared and served upon the said Elizabeth K. Haines, through her attorneys, French, Richards and Bradley, on the 25th day of May, 1931, the following letter or communication:

"May 25th, 1931.

To Elizabeth K, Haines and
French, Richards & Bradley,
her attorneys;

Dear Madam and Gentlemen:

You have recently brought suit in the New

Jersey Supreme Court, Camden County, against Camden Mortgage Guaranty & Title Company, entitled 'Elizabeth K. Haines, Plaintiff, vs. Camden Mortgage Guaranty & Title Company, Defendant,' summons dated April 14, 1931, in which you make claim against the Camden Mortgage Guaranty & Title Company in the sum of \$2136.00, with interest thereon from January 15th, 1931.

The amount of said claim is not disputed and is admitted.

You were advised long before the bringing of said suit that the Camden Mortgage Guaranty & Title Company is in voluntary dissolution under the statute. You are, therefore, requested to immediately discontinue said suit and file your claim against the Company, to the end that you may participate with other creditors in any distribution under said dissolution proceedings. If you refuse or fail to comply with this request, we shall be obliged to apply to the Court of Chancery for an injunction to restrain the prosecution of said suit.

Please let us have your reply by return mail.

Yours Very truly,

CAMDEN MORTGAGE GUARANTY &
TITLE COMPANY IN DISSOLU-
TION."

Acknowledgment of the receipt thereof by said attorneys on behalf of said Elizabeth K. Haines was endorsed upon said letter. Said attorneys then and there refused to withdraw said suit or to file their claim against the Camden Mortgage Guaranty &

Title Company in said dissolution proceedings. The claim of the said Elizabeth K. Haines is not disputed, but is admitted and said Elizabeth K. Haines has been so advised. Complainant has filed no answer in said suit so brought by Elizabeth K. Haines against said company and the time for answering has not yet expired. A copy of said summons and complaint is hereto attached, made a part hereof and marked Exhibit D. 10

7. Complainants have in all respects complied with the terms of said statute under which said dissolution proceedings were taken and with the provisions of the General Corporation Act (Act of April 21, 1896), applicable to said proceedings. They have been administering and are still administering said corporation's assets to the best possible advantage, avoiding any sacrifice thereof, and are doing it in an economical manner and with impartiality and without advantage whatever to said trustees or any of them. By virtue of said Insurance Act and the provisions of the General Corporation Law likewise applicable to said proceedings, these complainants are treating all its assets as a trust fund for the creditors of said corporation, to the end that, as required by said Act, the complainants shall 20

“pay ratably as far as its moneys and property shall enable them, all the creditors of the corporation who prove their debts in the manner directed by the Court and if any balance remain after the payment of such debts and necessary expenses, the same shall be distributed among the stockholders.” 30

8. Since said company became dissolved, said trustees have been able to redeem and procure the cancellation of 207 guaranties, of a total of \$750,500, in amount, and without preferring any creditor in so doing and without paying out any of the company's assets for such purpose. Complainants do not dispute with the said Elizabeth K. Haines the liability of said company under said guaranty policy, nor the fact that she has a present claim against said company as stated in said complaint and they concede the right of said Elizabeth K. Haines to file said claim against said company in the dissolution proceedings and to have the same allowed for the amount stated.

Complainants show that the proper and efficient performance of their duties as statutory trustees will be materially impaired by the entry of a judgment at law against said dissolved corporation on said disputed claim and the result would be to place a cloud upon the title to the real estate owned by the complainant and interfere with the orderly sale thereof and liquidation of its assets and that a judgment entered upon said claim could secure no advantage to the plaintiff in said suit, if the assets of said dissolved corporation are to be distributed ratably among all the creditors of said company without preference to any one.

30

Complainants are without adequate remedy in the courts of law, and, therefore, pray:

1. That Elizabeth K. Haines, who is the defendant to this suit, may answer this bill of complaint and each statement therein made.

2. That the defendant may be enjoined from further prosecution of said action at law in the New Jersey Supreme Court, Camden County, against this dissolved corporation or against the trustees thereof.

3. That complainants may have such other and further relief in the premises as to this Court may seem proper and just. 10

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

BLEAKLY, STOCKWELL & BURLING,
*Solicitors for and of Counsel
with Complainants.*

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

CHARLES P. HALYBURTON, of full age, being duly sworn according to law, on his oath says:

I have been a director and president of Camden Mortgage Guaranty & Title Company ever since its incorporation in the month of June, 1923. I have read over carefully the bill of complaint herein and I am personally familiar with the matters and things therein set out and the statements therein made are true. 30

Said company was incorporated under what is known as the Insurance Act of April 3, 1902, as

therein stated and as such corporation was under the supervision of the Commissioner of Banking and Insurance of the State of New Jersey and is still under such supervision. The copies of the papers attached to said bill of complaint are true and correct.

The original directors elected by said company are stated in paragraph 2 of the bill. Of that number, Maja Leon Berry (now Vice-Chancellor Berry) disposed of his stock some time after said company was organized and resigned from the board. Joseph Potter, another director, died in the year 1925. Joseph H. Forsyth died in November, 1928. George A. Frey died in September, 1929. Mr. Potter and Mr. Forsyth both died before the dissolution proceedings were initiated and George A. Frey died thereafter, to wit, in September, 1929. Elmer E. Long was elected a director March 19, 1926, and Charles Halyburton was elected a director January 28, 1924. Therefore, at the time said dissolution proceedings were started the directors and officers were:

Charles P. Halyburton, President.
 Isaiah S. Hatch, Vice-President.
 Howard B. Hemphill, Secretary.
 George A. Frey, Treasurer.
 Patrick H. Harding, Ass't. Secretary
 and Ass't. Treas.

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DIRECTORS:

Henry B. Coles
 William C. Coles
 Elmer E. Long
 William P. Hallinger
 Edwin G. C. Bleakly

Charles P. Halyburton
Patrick H. Harding
Isaiah S. Hatch
Charles Halyburton
John A. Riggins
Henry F. Stockwell
Howard B. Hemphill
Joseph C. Lukens
George A. Frey,

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and all of said directors survive except the said George A. Frey. I was in active charge of the company's business as president from its formation to the date of dissolution and am now carrying out the directors of the statutory trustees in the liquidation of said company. Said company's business was buying, insuring and selling first mortgages on improved real estate in the State of New Jersey exclusively and said mortgages were on such improved real estate in the southern counties of New Jersey and principally in the County of Camden. 20

On June 19, 1929, the directors, by unanimous vote, adopted a resolution to the effect that it was for the best interest of said company that its business should be discontinued and that it should be dissolved and promptly thereafter a stockholders' meeting of said company was held and a certificate as required by law was executed, acknowledged and filed with the Commissioner of Banking and Insurance, providing for the voluntary dissolution of said company, accompanied by the written consent of all the stockholders of said company. Said Commissioner then investigated said company and the proceedings on dissolution and thereafter did, on the 23rd day of July, 1929, issue to said company his 30

certificate of dissolution as provided by law, and the Exhibit B attached to the bill of complaint is a true copy of said certificate, the original being in the possession of said statutory trustees and ready to be produced. The certificate of dissolution was published for four weeks, as required by law, in a newspaper circulating in the City and County of Camden, due proof of such publication was filed with said Commissioner, all of said proceedings were taken upon the advice of counsel and I am confident in strict accord with the requirements of the Insurance Act, to wit, Chapter 343 of the Laws of 1929, being the latest amendment of said Act, expressly relating to the dissolution of such a company and also in compliance with the provisions of the General Corporation Act relating to dissolved corporations, duties and obligations of statutory trustees thereunder, and the procedure therein provided for liquidating such a company. Immediately upon initiating such dissolution proceedings said company stopped its regular business and arranged to continue thereafter only for the purpose of liquidating said company and upon the certificate of dissolution being received from the Commissioner of Banking and Insurance, the said directors, on July 29, 1929, met and organized as statutory trustees. At said meeting, I was continued "as president or chairman of the trustees on dissolution." George A. Frey was continued as treasurer of the trustees and Howard B. Hemphill was continued as secretary thereof. A small committee, made up of Henry B. Coles, Isaiah S. Hatch and Elmer E. Long was appointed by said trustees to carry out the instructions of the trustees between the meetings of the trustees. The president

and treasurer were authorized to transmit by the company's check any interest that should be collected on mortgages owned by the company's policy holders immediately on the receipt of such interest payments. Steps were taken to protect the properties owned by the company and see that repairs which were absolutely necessary to protect the company's property should be made. I, as president, was authorized to arrange for such clerical help as should be needed during the dissolution of the company. Said executive committee was directed to arrange and pay for the necessary quarters in conducting the company's business on dissolution and to pay for the necessary expenses in connection therewith. At the time of said dissolution certificate, the only officer receiving a salary was myself as president. This salary was discontinued immediately upon such dissolution proceedings being effected. 10 20

The trustees on dissolution, ever since said proceedings became effective, have been and are still actively, impartially and, I believe, very effectively and economically administering the assets of the company in the interest of the creditors and the stockholders.

In pursuing the company's business prior to dissolution, the company issued its guaranty policy, similar in form to the policy issued to the defendant, Elizabeth K. Haines, a copy of which is attached hereto and marked Exhibit C. By such policies the company guaranteed for a consideration named in said guaranty to the holder of said policy the payment of instalments of interest upon the mortgages insured, as and when said interest should become 30

due and payable on the mortgages and also guaranteed the payment of the principal of said mortgages as soon as collected, but in no event later than one year after payment thereof should be demanded in writing by the insured, providing, of course, said mortgage principal should be due and payable under the terms of said mortgage. The company issued
10 and sold numerous mortgages, accompanied by said guaranty policies and issued a few guaranties which were not accompanied by mortgages sold by the company. At the time said dissolution proceedings were taken there were 580 guaranties of the company outstanding on approximately the same number of mortgages. In many instances, participation certificates were issued by the company and said mortgages under which said participation certificates were issued were assigned to and held by the Broad-
20 way-Merchants Trust Company as trustee for the holders of the participation certificates in the respective mortgages. In fixing the number of guaranties outstanding, I refer to the number of mortgages and against each individual mortgage was issued a policy, but in issuing the participation certificates under that mortgage, these participation certificates contained the guaranty on the part of the company similar to that in the formal policy.

At the time of said dissolution proceedings, this
30 company had on deposit with the Department of Banking and Insurance securities which had a value as of the date of July 29, 1929, of \$51,470.36, all of which securities are still on deposit with said Insurance Commissioner and available as assets of this company at the proper time with the other assets of the company when they shall be liquidated, for

distribution among creditors and stockholders as required by law. In addition to said deposited securities, this company owns numerous properties and other assets.

The company's assets consist entirely of the deposited securities, real estate properties owned, certain mortgages and accrued interest on mortgages and cash. At the time said dissolution proceedings were taken, the company's book surplus was \$19,331.16, and it had no debts at that time excepting such obligations as might arise out of the liabilities of the company on the guaranty policies outstanding. The mortgages insured matured at varying dates and said guaranties will not all mature before November 21, 1932. The mortgages taken by the company and sold were insured after conservative appraisal by the appraisal committee of said company and never in excess of 60% of the actual fair value of the property at the time of said appraisal, according to the best judgment of said directors and said appraisers.

Defendant, Elizabeth K. Haines, holds a first mortgage of \$2,000.00 on premises in the Borough of Brooklawn, Camden County, N. J., insured by one of the company's policies, a copy of which is attached hereto and made a part hereof.

Complainants, in what they believed and still believe to be in strict compliance with the statutory requirements governing the dissolution of this corporation, have laid down and uniformly followed the rule that after such dissolution proceedings became effective by the issuance of the certificate of dissolution of the Commissioner of Banking and Insurance, any interest which was actually collected by the

company as agent for the mortgagee should be immediately remitted to that mortgagee, but as to any interest due on any mortgage which was not actually collected by the company and as to any principal of any mortgage insured, payment thereof could not and would not be made to the insured until the said company's assets should be collected in, its liabilities determined and then upon distribution, pursuant to the terms of the statute. The said defendant, Elizabeth K. Haines, filed her bill in this court to foreclose the mortgage covered by said guaranty and at the sheriff's sale under said proceedings said property was sold for \$100.00. There was due to said Elizabeth K. Haines, as shown by the final decree entered in said foreclosure proceedings, the sum of \$2136.00, with interest from January 15, 1931, and costs amounting to \$155.12, with interest thereon from January 21, 1931. Thereafter sheriff's sale was had and the property was sold on a bid of \$100, leaving a deficiency due the said Elizabeth K. Haines on said decree, of the sum of \$2136.00 and interest thereon. Suit was then, on the 14th day of April, 1931, started in the New Jersey Supreme Court, Camden County, by the said Elizabeth K. Haines against said company. Exhibit D is a true copy of the summons and complaint in said cause. Upon the service of said summons and complaint upon this company, the present complainant, this deponent served upon the said Elizabeth K. Haines, through her attorneys, French, Richards and Bradley, on May 25, 1931, the letter recited in paragraph 6 of this bill, and receipt thereof was acknowledged by said attorneys on behalf of said Elizabeth K. Haines by endorsement upon

said letter. Said attorneys then and there refused to withdraw said suit or to file a claim against said company. Said claim of the said Elizabeth K. Haines is not disputed, but is admitted and the defendant has been so advised. No answer has yet been filed in said suit and the time for answering has not yet expired.

Said trustees have endeavored to comply and believe they have complied in all respects with the requirements of the laws of the State of New Jersey respecting the dissolution of said company. They have been administering and are still administering said corporation's assets to the best advantage of the creditors and stockholders, are avoiding any sacrifice thereof and are doing it all in the most economical manner, with absolute impartiality and without any advantage to the said trustees or any of them, except as said trustees may with all stockholders be advantaged by the proper, efficient and economical administration of said company's affairs. Said dissolution proceedings were taken, the trustees have been able to secure the cancellation of approximately 207 guaranties, of a total of \$750,500 in amount and this has been done without preferring any creditor in so doing and without paying out any of the company's assets for such purpose. 10
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The company and its liquidating trustees do not dispute with the said Elizabeth K. Haines the liability of said company under said guaranty policy, nor the fact that she has a present claim against said company and they concede the right of the defendant to file said claim against said company and to have the same allowed for the amount stated and 30

to be paid ratably with other claims in accordance with the General Corporation Act, Secs. 54 to 58, inc., Comp. St., pp. 1635, &c., wherein it is provided that the trustees shall upon collecting in its assets pay ratably, as far as its moneys and property shall enable them, all the creditors of said corporation who prove their debts in the manner directed by the Court, and if any balance remain after the payment of such debts and necessary expenses the same shall be distributed among the stockholders.

I have at all times been in touch with the company's business from its organization to the present time and I know as a fact that the business is being cared for strictly in the interest of the creditors as a whole and thereafter in the interest of the stockholders as a whole, without advantage or preference to any creditor over any other creditor and without advantage to any stockholder, and said administration is being pursued with the least possible expenditure of money and officers are being paid no salaries. The only salary being paid at the time of the dissolution proceedings was that of my own, as president, and that was discontinued upon said dissolution proceedings being had.

If said complainant is permitted to reduce his claim to judgment and execution, it will jeopardize the efficient, impartial and lawful administration of said assets and, furthermore, if said assets are to be distributed ratably among creditors when collected, the entry of such judgment could be of no advantage to the said Elizabeth K. Haines.

CHARLES P. HALYBURTON.

Sworn to and subscribed before me this 29th day
of May, A. D. 1931.

IDA M. STRANG,
Notary Public of N. J.

EXHIBIT A.

10

CERTIFICATE OF INCORPORATION
OF
CAMDEN MORTGAGE GUARANTY & TITLE
COMPANY.

THIS IS TO CERTIFY, That we, the under-
signed, intend to form a corporation under an act
of the Legislature of the State of New Jersey, en-
titled "An Act to provide for the regulation and
incorporation of insurance companies and to regu-
late the transaction of insurance business in this
State," approved April 3d, 1902, and the supple-
ments thereto and acts amendatory thereof, and
hereby set forth: 20

FIRST: The name of said Company is to be
Camden Mortgage Guaranty & Title Company.

SECOND: The place where the principal office 30
of the said Company is to be located and its general
business conducted is at 432 Market Street, in the
City of Camden, in the County of Camden, and State
of New Jersey, and the name of the agent therein
and in charge thereof, upon whom process against

said Company may be served is Charles P. Halyburton.

THIRD: The kinds of insurance proposed to be transacted by said Company are:

- 10 1. Against loss or damage on account of encumbrances upon or defects in titles to real property and against loss by reason of the non-payment of the principal and interest of bonds and mortgages, and to take, buy, sell and deal in first mortgages on real estate and to issue bonds, debentures and certificates against such mortgages, as authorized by subdivision Eight of Section one of said Act.

FOURTH: The said Company is to be a stock company.

20

FIFTH: The amount of the capital stock of said Company is One Hundred and Twenty-five Thousand Dollars, divided into twelve hundred and fifty shares of the par value of One Hundred Dollars each.

SIXTH: The period limited for the duration of said Company shall be perpetual.

- 30 SEVENTH: In addition to the powers inherent in the corporation by general law, the corporation shall have the following powers and its affairs shall be conducted and regulated by the following provisions:

1. The Directors shall from time to time deter-

mine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the Directors. 10

2. The Board of Directors shall have power to make and alter the bylaws of the corporation.

IN WITNESS WHEREOF we have hereunto set our hands and seals this twenty-fifth day of May, 1923.

EDWIN G. C. BLEAKLY
CHARLES P. HALYBURTON
HENRY F. STOCKWELL 20
HENRY B. COLES
GEORGE A. FREY
JOSEPH FORSYTH
WILLIAM C. COLES
PATRICK H. HARDING
JOSEPH POTTER
JOHN A. RIGGINS
JOSEPH C. LUKENS
CHARLES HALYBURTON
HOWARD B. HEMPHILL 30
ISAIAH S. HATCH.

Signed, sealed and Delivered :
in the presence of :
Alexander P. Denmead.

STATE OF NEW JERSEY }
 COUNTY OF CAMDEN } ss.

BE IT REMEMBERED that on this twenty-fifth day of May, 1923, before me, the subscriber, a Notary Public of New Jersey personally appeared Edwin G. C. Bleakly, Charles P. Halyburton, Henry
 10 F. Stockwell, Henry B. Coles, George A. Frey, Joseph Forsyth, William C. Coles, Patrick H. Harding, Joseph Potter, John A. Riggins, Joseph C. Lukens, Charles Halyburton, Howard B. Hemphill and Isaiah S. Hatch, the persons who executed the foregoing certificate of incorporation and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed.

20 Alexander P. Denmead
 Notary Public
 Commission Expires Oct. 20, 1926.
 (Seal)

STATE OF NEW JERSEY

OFFICE OF THE ATTORNEY GENERAL.

30

May 29th, 1923.

I, Thomas F. McCran, Attorney General of the State of New Jersey, hereby certify that the foregoing certificate of incorporation of the CAMDEN MORTGAGE GUARANTY & TITLE COMPANY, of Camden, N. J., has been submitted to, and examined by me, and I find it to be in accordance with

the act of the Legislature of the State of New Jersey, entitled "An Act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State," approved April 3rd, 1902, and not inconsistent with the Constitution or laws of this State.

THOMAS F. McCRAN,
Attorney General.

10

Received 6/1/1923 and recorded in the
Clerk's Office of the County of Camden in
Book 53 of Corporations, page 145, etc.
WM. D. BROWN, Clerk.

(On back)

20

CERTIFICATE OF INCORPORATION
OF
CAMDEN MORTGAGE GUARANTY
& TITLE COMPANY.

STATE OF NEW JERSEY.

DEPARTMENT OF BANKING AND
INSURANCE.

30

I, Edward Maxson, Commissioner of Banking and Insurance of the State of New Jersey do hereby Certify that the foregoing is a true copy of certificate of incorporation of the Camden Mortgage

Guaranty & Title Company, of Camden, N. J., with approval of the Attorney General and endorsement thereon: as taken from and compared with the original (filed June 2, 1923) now remaining on file in this Department.

10

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my Official Seal, at Trenton this 2nd day of June, A. D. 1923.

(Seal)

EDWARD MAXSON

EXHIBIT B.

(COPY)

20

STATE OF NEW JERSEY

DEPARTMENT OF BANKING AND
INSURANCEBUREAU OF INSURANCE
TRENTON.

Office in Trenton
30 Trust Company Bldg.

CERTIFICATE OF DISSOLUTION
OF
CAMDEN MORTGAGE GUARANTY & TITLE
COMPANY.

To all to whom these presents may come, Greeting:

WHEREAS it appears to my satisfaction, by duly authenticated and verified record of the proceedings for the voluntary dissolution thereof by the unanimous consent of all the stockholders, filed in this department, that the Camden Mortgage Guaranty & Title Company, a corporation of this State, 10 whose principal office is situated at Fifth and Market Streets in the City of Camden, County of Camden, State of New Jersey (Charles P. Halyburton being the agent therein and in charge thereof, upon whom process may be served) has complied with the requirements of Section 15 of "An Act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State," approved April 3d, 1902, as amended by Chapter 343, Laws of 1929, preliminary to the issuing of this Certificate. 20

NOW, THEREFORE, I, Frank H. Smith, Commissioner of Banking and Insurance of the State of New Jersey, do hereby certify that the said corporation did, on the second day of July, 1929, file in this department a duly executed and attested consent in writing to the dissolution of said corporation, executed by all the stockholders thereof, which said consent and the record of the proceedings 30 aforesaid are now on file therein.

IN TESTIMONY WHEREOF I have hereto set my hand and affixed my official seal, at Trenton, this twenty-

third day of July, A. D. one thousand nine hundred and twenty-nine.
(SEAL)

FRANK H. SMITH
Commissioner of Banking and Insurance.

10

EXHIBIT C.

CAMDEN MORTGAGE GUARANTY & TITLE
COMPANY

Camden, New Jersey

20

GUARANTY No. 619.

The CAMDEN MORTGAGE GUARANTY & TITLE COMPANY, (herein designated as "this Company") in consideration of the premium and terms of guarantee named below, guarantees to ELIZABETH K. HAINES, of the Borough of Haddonfield, County of Camden and State of New Jersey and all subsequent owners and holders of the bond and mortgage described in Schedule A, who shall give this Company notice and proof of ownership (each and every person and corporation to whom under this clause this guarantee runs, being hereinafter included in the designation "the insured").

First.—Payment at the rate of six per cent. per annum, from February 29th, A. D. 1928, to the date of payment of the principal of said bond, and mortgage, as and when the interest on same becomes due and payable.

Second.—Payment of the principal, as soon as collected, but in no event later than one year after 10
payment thereof shall have been demanded in writing by the insured, with regular payment meantime of interest at the rate guaranteed; provided, however, that no demand for payment of the principal shall be made by the insured until same becomes due and payable.

Premiums and Terms of Guaranty

By the acceptance of this guarantee this Company 20
is made irrevocably the agent of the insured until the said bond and mortgage be paid, with the exclusive right, but at its own expense, to sue for and receive the proceeds of any policy of title insurance, fire insurance or tornado insurance covering the mortgaged premises and to collect the interest as it falls due on the bond and mortgage hereby guaranteed.

This guarantee is subject to the conditions annexed hereto. 30

In Witness Whereof, The Camden Mortgage Guaranty & Title Company has caused its corporate seal to be hereto affixed and this instrument to be signed by its President and attested by its Secretary.

Dated the twenty-ninth day of February,
1928.

Attest:

Secretary.

President.

SCHEDULE A

The bond covered by this guarantee was made by Rose Levitt, single woman to Camden Mortgage Guaranty & Title Company dated November 28th, A. D., 1927 and is marked for identification with the number of this guarantee and the signature of one of the officers of this Company. It was given for the payment of Two thousand Dollars (\$2,000) on the twenty-eighth day of November, A. D. 1930 with
20 interest at the rate of six per cent. per annum, payable on the twenty-eighth days of November and May in each year. The mortgage given to secure said bond is similarly identified and was made by the said Rose Levitt, single woman to Camden Mortgage Guaranty & Title Company dated November 28th A. D. 1927 and is registered in the office of the Register of Deeds of the County of Camden in Book 324 of Mortgages, on page 73 &c.

This Company holds as collateral to said bond
30 and mortgage fire insurance in the sum of \$, and tornado insurance in the sum of \$, covering the real property described in said mortgage.

The real property covered by this guarantee is described as follows:

All that certain lot, tract or parcel of land and premises, situate in the Borough of Brooklawn,

County of Camden and State of New Jersey, described according to a survey made by W. H. Macnamara, C. E., dated October 12th, 1927 as follows:

BEGINNING at a point in the northerly line of Bergen Street, distant 178.26 feet eastwardly from the intersection of said northerly line of Bergen Street with the easterly line of Haakon Road, said point being in the extended middle line of a party wall between premises herein described and premises adjoining on the west, thence (1) eastwardly along said northerly line of Bergen Street 14.04 feet to a point in the extended middle line of a party wall between premises herein described and premises adjoining on the east, thence (2) northwardly along the extended line and the middle line of said last mentioned party wall at right angles to the northerly line of Bergen Street, 75.56 feet to a point in the southerly line of a 15 feet wide driveway, thence (3) northwestwardly along the southerly line of said Driveway, 16.27 feet to a point in the extended middle line of said first mentioned party wall, thence (4) southwardly, along the extended middle lines and the middle lines of said first mentioned party wall, at right angles to the northerly line of Bergen Street, 83.79 feet to the northerly line of Bergen Street, at place of beginning.

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30

CONDITIONS.

This Company is Bound:

1. To conduct, without expense to the insured, all actions or proceedings that it may deem necessary

to enforce the performance of any and all covenants contained in the bond or mortgage.

2. To continue this guaranty on any extension of the mortgage on payment of the same premium per annum as is charged for this guaranty, unless this Company shall elect to collect said mortgage.

10

3. To keep the mortgaged premises insured against damage by fire or windstorm to the amount stated in Schedule A, by policies of fire and tornado insurance, having mortgagee clause attached, and to require the owner to pay the premiums for such fire and tornado insurance, provided such policies are left in the custody of this Company by the insured for that purpose; and if not so left with this Company the liability of this Company shall be reduced in case of damage by fire or windstorm by the amount of depreciation in the Mortgage security caused by such fire or windstorm.

20

4. To require the owner to pay all taxes, assessments, water and sewer rents, which are required to be paid by the terms of the mortgage.

5. To consent to the assignment of this guaranty, subject to the terms thereof to any subsequent owner and holder of the bond and mortgage who shall give this Company prompt notice and proof of ownership. Unless such notice and proof be given, no subsequent owner or holder shall be entitled to the benefits of this guaranty.

30

The Insured is Bound:

1. To permit this Company to collect all interest and the principal secured by said bond and mortgage, and to refrain from collecting any part of the principal secured by said bond and mortgage except through this Company.

2. To notify this Company in writing, within one month after any demand has been made by the insured for the payment of the principal of said mortgage. 10

3. To notify this Company promptly in writing of any assignment of said bond and mortgage, (which must be accepted subject to the terms of this guaranty); or of any action or proceeding of which the insured has knowledge, affecting said bond or mortgage, or any rights or claims thereunder. 20

4. The insured shall forward to this Company within a reasonable time after the receipt thereof, any notices relating to any policy of fire or tornado insurance or any other notice affecting the mortgaged premises.

5. To allow this Company, in the name of the insured, to exercise any right or option secured to the insured by said bond and mortgage, and without further action on the part of the insured, this Company is authorized to enforce payment in the name of the insured from time to time of any sums which may be or become due under said bond and mortgage, or under any policy of title, fire or tornado insurance issued on the premises covered by 30

said mortgage; and the insured is bound, on request of this Company, to produce and deposit with it for that purpose the bond and mortgage, all securities, all collateral thereto, all muniments of title held by the insured therewith, and the title insurance, and to render such reasonable assistance to that end as this Company may require, but not to
10 incur any expense in so doing.

6. To assign said bond and mortgage, fire and tornado insurance, title policies and other securities deposited in connection therewith, muniments of title, &c., if requested so to do, upon receipt from this Company of the amount due the insured, whenever the insured is entitled to require payment of the amount secured.

20

General:

The Company shall not be held liable for loss, caused directly or indirectly, by invasion, insurrection, riot, civil war or commotion or military or usurped power, or by order of any civil authority.

No suit or action on this policy, for the recovery of any claim, shall be sustained in any court of law or equity, unless commenced within twelve months next after the loss has been ascertained.

30 Wherever in this policy the word "insured" occurs, it shall be held to include the legal representatives of the insured.

If this policy insures a mortgage not obtained from the Company, the entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circum-

stance concerning this insurance or the subject thereof, or if the interest of the insured in the property be not truly stated herein, or in case of any fraud or false swearing by the insured, touching any matter relating to this insurance or the subject thereof, whether before or after a loss; provided, however, that the assignee for value, to whom this policy has been or may be transferred, 10 with the consent of the Company endorsed thereon, shall not be affected by any untrue statements, misrepresentations, answers or suppressions, or breach of warranty contained in the application or otherwise, of which the assignee was ignorant at the time the assent to the transfer to such assignee was so endorsed by the Company.

All notices required or given under this guaranty, by the insured to the Company or by the Company to the insured, shall be in writing and may be sent 20 by mail.

The address of the insured, to which such notices shall be sent, shall be deemed to be the address indicated on the first page of this guaranty, or any new address which the insured may give the Company by written notice.

Notices from the insured to the Company shall be sent to its principal office in the City of Camden, in the County of Camden and all payments to the Company of principal and interest shall be made at 30 said place.

Page 4 Guaranty No.....

In Approving Transfers No Additional Liability is Assumed by Camden Mortgage Guaranty & Title Company. The Only Change is the Party Guaranteed.

THIS GUARANTY IS TRANSFERRED TO ASSIGNEE AS INTEREST MAY APPEAR, AS FOLLOWS:

Month	Day	Year	ASSIGNOR	ASSIGNEE	WITNESS	Approved: Camden Mortgage Guaranty & Title Company
						By President
						By President
						By President
						By President

						By President
						By President
						By President
						By President
						By President
						By President
						By President

10

20

30

(On back):

OFFICERS

CHARLES P. HALYBURTON,
President

ISAIAH S. HATCH,
Vice-President

10 GEORGE A. FREY,
Treasurer

HOWARD B. HEMPHILL,
Secretary

JOSEPH H. FORSYTH,
Ass't Sec't'y and Treas.

BLEAKLY, STOCKWELL &
BURLING
Counsel

DIRECTORS

20 Edwin G. C. Bleakly

Henry B. Coles

William C. Coles

Joseph H. Forsyth

George A. Frey

William P. Hallinger

Charles P. Halyburton

Patrick H. Harding

Isaiah S. Hatch

Howard B. Hemphill

30 Joseph C. Lukens

Joseph Potter

John A. Riggins

Henry F. Stockwell

MORTGAGE GUARANTY POLICY
Read the Conditions of This Guaranty

CAMDEN MORTGAGE GUARANTY
& TITLE COMPANY

CAPITAL (Full Paid) \$125,000

Guaranty No. 619

Mortgagor, Rose Levitt, single

Premises, N. li. of Bergen St., 178.26

feet E. from Haakon Rd. Brooklawn

Amount, \$2,000 10

Interest, 6%

Due Date, 11/28/30

Int. Dates, November 28th and May
28th.

Offices

432 Market Street

CAMDEN - NEW JERSEY

20

SUMMONS.

THE STATE OF NEW JERSEY TO CAMDEN MORTGAGE
GUARANTY & TITLE COMPANY:

You are summoned to answer the an-
nexed complaint of Elizabeth K. Haines
(Seal) in an action at law in the Supreme Court.
And take notice that unless you file your
answer to the said complaint with the 30
Clerk of the Supreme Court, at Trenton, New Jer-
sey, within twenty days after service upon you of
this writ and the annexed complaint, the plaintiff
may proceed in the suit and judgment may be en-
tered against you.

Witness, HONORABLE WILLIAM S. GUMMERE, Chief

Justice of the Supreme Court, at Trenton, this 14th
day of April, nineteen hundred and thirty-one.

FRED L. BLOODGOOD,
Clerk.

FRENCH, RICHARDS & BRADLEY,
Attorneys.

10

COMPLAINT.

SUPREME COURT OF NEW JERSEY.
CAMDEN COUNTY.

20 ELIZABETH K. HAINES,
Plaintiff,

v.

CAMDEN MORTGAGE GUAR-
ANTY & TITLE COMPANY,
Defendant.

Action at Law.
Complaint.

The plaintiff, Elizabeth K. Haines, residing at
Haddonfield, New Jersey, says:

30

1. The defendant is, and at all times hereinafter
mentioned was a corporation existing under and by
virtue of the laws of the State of New Jersey.

2. On February 29, 1928, the plaintiff purchased
of the defendant and the defendant assigned to the

plaintiff a certain bond and mortgage made by Rose Levitt, single, to the defendant, dated November 28, 1927, conditioned for the payment of \$2,000 at the expiration of 3 years from the date thereof with interest at 6% per annum, payable semi-annually, with a provision that upon 19 days' default in the payment of any semi-annual payment of interest the whole principal debt should become due and payable immediately, the mortgage being recorded November 29, 1927, in the office of the Register of Deeds of Camden County, in Book 324 of Mortgages, page 73, &c., and covering premises in the Borough of Brooklawn, Camden County, New Jersey, in said mortgage particularly described. 10

3. For a valuable consideration, the defendant on February 29, 1928, issued to the plaintiff its Mortgage Guaranty Policy No. 619, wherein and whereby it guaranteed to the plaintiff, among other things, payment of interest at the rate of six per cent per annum, from February 28th, A. D. 1928, to the date of payment of principal of said bond and mortgage, as and when the interest on same becomes due and payable. It further guaranteed to require the owner to pay all taxes, assessments, water and sewer rents, which are required to be paid by the terms of the mortgage. It further guaranteed the payment of the principal in no event later than one year after payment thereof should be demanded, with regular payment meantime of interest at the rate guaranteed. The policy contained a provision that no suit or action on said policy for the recovery of any claim should be sustained in any court of law or equity, unless com- 20 30

menced within twelve months after the loss has been ascertained.

4. Plaintiff has complied with and observed all the conditions, provisos, restrictions, prohibitions and stipulations on said policy on her part to be complied with, performed and observed according
10 to the form and effect of said policy.

5. An installment of six months' interest upon said bond and mortgage became due on May 28, 1930, and was not paid by the mortgagor nor by anyone else at that time nor at any other time and plaintiff elected to have the whole principal debt due and payable and notice was promptly given to the owner demanding the payment of principal and interest.
20

6. Defendant has neither paid nor required anyone else to pay, and the plaintiff has not received, any interest upon said bond and mortgage since the installment of interest due November 28th, 1929.

7. Defendant has neither paid nor required anyone else to pay taxes, assessments, water and sewer rents which are required to be paid by the terms of the mortgage, and such taxes, assessments, water
30 and sewer rents have not been paid.

8. Defendant has neither paid nor required anyone else to pay, and the plaintiff has not received the principal of said bond or mortgage nor any part thereof.

9. The defendant, pursuant to the conditions of said policy conducted in the name of the plaintiff, but without expense to the plaintiff, proceedings to foreclose said mortgage, resulting in a final decree in favor of the plaintiff dated January 21, 1931, for \$2,136.00, with lawful interest thereon to be computed from January 15, 1931, being the date of the Master's report, besides costs. Under said 10
decree the property was advertised by the sheriff for sale.

10. The plaintiff notified the defendant that she had decided not to take title to the property. On the contrary, she directed that it be sold to a stranger, the highest bidder, so that the amount of her loss should be at once determined. The defendant thereupon proceeded with the sale and the property 20
was on March 13, 1931, cried off and sold to one J. Harry Smith at \$100, that being less than the taxed costs, so that the plaintiff's loss was then and there fixed and determined at the sum of \$2,136.00, with lawful interest thereon to be computed from January 15, 1931, of all of which the defendant had knowledge.

11. Defendant, not regarding its said premises and undertakings, did not and would not pay said sum of \$2,136.00 with lawful interest thereon to 30
be computed from January 15, 1931, or any part thereof, to the plaintiff, although frequently requested so to do, but has wholly neglected and refused and still neglects and refuses to pay the same to the plaintiff.

Plaintiff demands as damages \$2,136.00 and interest thereon from January 15, 1931, besides costs.

FRENCH, RICHARDS & BRADLEY,
Attorneys for Plaintiff.

10 *To the Defendant:*

Judgment will be demanded in this action for \$2,136.00 and interest thereon from January 15, 1931, besides costs.

FRENCH, RICHARDS & BRADLEY,
Attorneys for Plaintiff.

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30

ORDER TO SHOW CAUSE.

(Filed May 29, 1931.)

IN CHANCERY OF NEW JERSEY.

10

Between

CAMDEN MORTGAGE GUARANTY & TITLE COMPANY, a New Jersey corporation, dissolved, and HENRY B. COLES, *et al.*, statutory trustees thereof,

Complainants,
and

ELIZABETH K. HAINES,
Defendant.

On Bill, &c.
Order to Show Cause.

20

Complainants, Camden Mortgage Guaranty & Title Company, dissolved, a New Jersey corporation; Henry B. Coles, William C. Coles, Elmer E. Long, William P. Hallinger, Edwin G. C. Bleakly, Charles P. Halyburton, Patrick H. Harding, Isaiah S. Hatch, John A. Riggins, Henry F. Stockwell, Howard B. Hemphill, Charles Halyburton, Joseph C. Lukens, statutory trustees thereof, having filed their bill of complaint and affidavits and exhibits,

30

and it appearing among other things therefrom that said Camden Mortgage Guaranty & Title Company is in voluntary dissolution under the statute and that complainants are the statutory trustees of such dissolved corporation and that they are settling its affairs and administering its assets and that no distribution has been made among creditors or stock-
10 holders, and it appearing that a certificate of dissolution was issued by the Commissioner of Banking and Insurance to said corporation on the twenty-third day of July, 1929, and that defendant has brought suit in the New Jersey Supreme Court, Camden County, and that the time for answering said complaint has not yet expired and that in and by said suit the defendant herein seeks to obtain judgment on a claim which is not disputed by the
20 complainants and as to which complainants are willing that a claim should be filed with and admitted by the statutory trustees, and said complainants in the bill praying for an injunction out of this court enjoining the defendant from further prosecution of said suit;

It is thereupon ordered on this 29th day of May, 1931, on motion of Bleakly, Stockwell & Burling, of counsel with the complainants, that the defendant show cause before this Court at Chancery
30 Chambers in the City of Camden, on Monday, the 8th day of June, 1931, at the hour of ten o'clock in the forenoon of said day or as soon thereafter as counsel can be heard thereon, why the prayer of complainants should not be granted and why said defendant should not be enjoined from further prosecution of said suit and such other relief, if

any, should not be granted in accordance with the prayer of said bill.

And it is further ordered that a copy of this order to show cause and a copy of said bill and affidavit and exhibits attached thereto, all of which may be uncertified, be served upon the said Elizabeth K. Haines, or her attorneys of record, French, Richards & Bradley, within five days prior to the 10 return day hereof.

And it is further ordered that the said Elizabeth K. Haines be and she is hereby restrained until the further order of this Court from the further prosecution of said action in said New Jersey Supreme Court against the complainant, Camden Mortgage Guaranty & Title Company or against the other complainants, being the statutory trustees of said Camden Mortgage Guaranty & Title Company.

E. R. WALKER, 20
C.

Respectfully advised,
E. B. LEAMING,
V. C.

NOTICE OF MOTION TO STRIKE OUT BILL.

(Filed June 8, 1931.)

IN CHANCERY OF NEW JERSEY.

10

Between
CAMDEN MORTGAGE GUAR-
ANTY & TITLE COM-
PANY, *et al.*,
Complainants,
and
ELIZABETH K. HAINES,
20 *Defendant.*

On Bill, &c.
Notice of Motion to
Strike Out Bill.

30 Take notice, that on the 8th day of June, 1931,
at ten o'clock in the forenoon, daylight saving time,
or as soon thereafter as counsel can be heard
thereon, at the Chancery Chambers in Camden, we
shall apply to the Chancellor for an order striking
out the bill of complaint filed by you in the above-
entitled cause, for the following reasons:

1. The said bill of complaint discloses no cause
of action in that:

(a) The bill contains no allegation of corporate
insolvency.

(b) The bill contains no allegation of the appointment of an insolvency receiver.

(c) The bill contains nothing that would or could show any right to restrain or interfere with a creditor of a solvent corporation.

(d) The bill contains an admission that the amount sued for is due to this defendant, but that is a ground for summary judgment and not a ground for restraining the suit. 10

(e) The bill sets up voluntary dissolution proceedings, which are a convenient procedure for a solvent corporation, but are in no sense a shield against a creditor seeking to enforce legal rights.

(f) Inasmuch as directors of any corporation, from the time of their election, are trustees, and, as such, are responsible for their action and inaction, the matters set forth in the bill, if such matters could be a ground for restraint here, would be a ground for restraint in any suit brought against any corporation. 20

2. For lack of jurisdiction, in that:

(a) The bill contains nothing that would or could give jurisdiction to overrule or disregard the legislative declaration that a corporation in dissolution is still suable and that suit may still be brought against it by its corporate name. 30

(b) The bill shows nothing that would or could

give jurisdiction to restrain a creditor from pursuing a legal remedy.

(c) The bill shows nothing that would give the Court jurisdiction to overrule the legislative determination that the business of insurance is lawful.

- 10 (d) Assuming that the allegations of the bill show that a total loss upon all of its policies would render this insurance company insolvent (it would any insurance company), that does not warrant the Court in restraining a party insured from enforcing his lawful remedy for a loss.

3. The bill on its face shows that the complainants are estopped.

- 20 The bill shows a contract of guaranty, which estops the corporation, its directors and stockholders, from taking dissolution proceedings that would or could hinder, delay or prevent the defendant, a guaranteed creditor, from securing a judgment and an execution lien upon the assets of the corporation.

FRENCH, RICHARDS & BRADLEY,
Solicitors of Defendant.

30

—————
TO MESSRS. BLEAKLY, STOCKWELL & BURLING,
Solicitors of Complainants:

This notice was duly served upon the solicitors of complainants.

CONCLUSIONS.

(Filed July 9, 1931.)

IN CHANCERY OF NEW JERSEY.

10

85/79

Between:

CAMDEN MORTGAGE GUARANTY & TITLE COMPANY, a New Jersey corporation, dissolved, and HENRY B. COLES, *et al.*, Statutory Trustees, etc.,

Complainants,

and

ELIZABETH K. HAINES,

Defendant.

On Bill to restrain action at law.
Hearing on motion of defendant to strike out bill. 20
Conclusions.

BLEAKLY, STOCKWELL & BURLING, Esqs., for complainants. 30

FRENCH, RICHARDS & BRADLEY, Esqs., for defendant.

LEAMING, V. C.

I adhere to the views expressed by me in Trustees of Sea Isle City Realty Co. v. The First Nat. Bank

of Ocean City, 87 N. J. Eq. 84, and Camden Mortgage Guaranty & Title Co. v. Borton, decided July 16, 1930, but not reported (Docket number 79/189.) The facts in the latter case are the same as in the present case.

The restraint sought by complainant will be awarded.

10 Determined July 9, 1931.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

79/189.

20 Between:

CAMDEN MORTGAGE GUARANTY & TITLE COMPANY, a New Jersey corporation, dissolved, and HENRY B. COLES, *et al.*, Statutory Trustees thereof,

Complainants,
and

30 ALBERT D. BORTON,

Defendant.

Hearing on return of order to show cause for restraint of action at law.
Conclusions.

BLEAKLY, STOCKWELL & BURLING, Esqs., for complainants.

WADDINGTON & MATHEWS, Esqs., for defendant.

LEAMING, V. C.

Camden Mortgage Guaranty & Title Company was incorporated under our insurance companies Act (2 C. S. 2838) and has been voluntarily dissolved pursuant to Section 15 of that Act as amended by P. L. 1929, p. 771. That section provides that upon such dissolution "the board shall proceed to settle up and adjust its business and affairs," the board at this time is actively engaged in settling up the affairs of the dissolved corporation. The Insurance Act nowhere prescribes the powers or duties of the board in settling up the business after dissolution except in Section 57 (2 C. S., p. 2855). That Section provides: 10

"All companies organized under this Act, and the stockholders, members and directors thereof, shall have all the powers granted and be subject to all the duties and obligations imposed by the Act concerning corporations, approved April twenty-first, one thousand eight hundred and ninety-six, and the acts supplementary thereto and amendatory thereof, except so far as they may be inconsistent with the provisions of this Act." 20

It seems clear that by force of this section the powers and duties of the directors at dissolution are to be ascertained by the provisions of the General Corporations Act therein referred to. 30

The material provisions of the General Corporation Act relating to the affairs of dissolved corporations are Sections 53 to 60 (2 C. S., pp. 1634-1637).

The present bill of complaint is filed by the board

of directors as statutory trustees, and seeks to restrain defendant from further prosecuting an action at law to recover money due to him from the dissolved corporation. The indebtedness is admitted.

The ground of relief is precisely the same as that in Trustees Sea Isle City Realty Co. v. First National Bank of Ocean City, 87 N. J. Eq. 84, in which case restraint was sustained by me. If defendant herein prosecutes his action at law to judgment, the existence of the judgment will alone seriously embarrass the advantageous performance of the trust, but defendant's obvious purpose is also to enforce the payment of the judgment by process of execution and thus collect as a preferred creditor. It is entirely clear that if creditors with undisputed claims are privileged to enforce their claims in this manner an advantageous administration of the trust will be impossible.

In these circumstances I adhere to the views stated in the case cited. Section 58 of the Act contemplates a pro rata distribution among creditors, should assets be inadequate to pay creditors in full; the enforcement of admitted claims is clearly inconsistent with that duty on the part of the trustees. While it does not appear that this corporation is not in enjoyment of assets which, if properly conserved, may be adequate to discharge all its liabilities, no one can safely assume to predict the result if creditors are to enforce immediate payment by judgments, or even encumbered the assets by unnecessary judgment liens.

The argument presented against the duty of the trustees to make a pro rata distribution is that

Section 58, which so provides, is applicable only in case the provisions of Section 56 have been invoked by a creditor or stockholder. On the contrary I entertain the view that all the sections from 53 to 60, inclusive, are a part of one general plan for winding up the corporation's affairs, and that the only office and purpose of Section 56 is to enable the Court to remove the statutory trustees, if good cause exists. The refusal of the Court to remove in no way germinates new or other powers or duties in the trustees; in such case they continue to function as theretofore. Accordingly the provisions of Section 58 are not to be understood as relating only to trustees whom creditors or stockholders have unsuccessfully sought to remove. Section 57 specifically relates to proceedings under Section 56, but Section 58 is in no manner limited and embraces both receivers and trustees, and provides for pro rata distribution, as far as the assets will extend, among "all the creditors of the corporation who prove their debts in the manner directed by the Court;" any balance to stockholders. It will be noted that all the provisions of the Act from Sections 53 to 60 are in one enactment and relate to the one general subject of winding up the affairs of the dissolved corporation and the disposition of its assets; and that all these sections are essentially the same as corresponding sections of the Act of April 7, 1875 (Revision of 1875, p. 175). Section 62 of that Act is essentially the same as Section 58 of the present Act, but more specific in its terms touching pro rata distribution, and Section 63 gives to laborers preferred claims.

Referring to Section 59 of the Corporation Act

of 1875, which is the same as Section 53 of the present Act, Justice Depue, in *American Dock & Improvement Co. v. Trustees*, 39 N. J. Eq. 409, at page 419 said, "On the dissolution of a corporation, its property constitutes a trust fund for the payment debts and stockholders." This conception of a trust fund for the benefit of creditors inherently embraces the idea of equal protection as distinguished from a scramble of creditors for preference; also a pro rata distribution in the event of insufficient assets to pay all; the directors are trustees of this trust and are entitled to the aid of the Court of Chancery to protect the trust fund from acts which will either deny an equal distribution or prevent its efficient administration by the trustees. But aside from this general element of equitable jurisdiction, I am convinced Section 58 of our statute contemplates that creditors prove their claims in a manner to be directed by the Court of Chancery, and a distribution pro rata to creditors should the assets prove inadequate to discharge all claims.

Restraint will be advised.

Submitted:

July 15, 1930.

Determined:

July 16, 1930.

DECREE.

(Filed July 22, 1931.)

IN CHANCERY OF NEW JERSEY.

10

Between:

CAMDEN MORTGAGE GUAR-
ANTY & TITLE COM-
PANY, *et al.*,

Complainants,

and

ELIZABETH K. HAINES,

Defendant.

On Bill, &c.
Decree.

20

Complainants having filed their bill of complaint in this court, together with affidavits in support thereof, and this Court having made an order to show cause, dated the 29th day of May, 1931, requiring the defendant to show cause why she should not be enjoined from further prosecution of that certain suit brought by her in the New Jersey Supreme Court, venue Camden County, in which she is plaintiff and Camden Mortgage Guaranty & Title Company is defendant, which order to show cause was made returnable before this Court on the eighth day of June, 1931, and thereafter the defendant having given notice to the complainants of an ap- 30

plication to be made before this Court on June 8, 1931, for an order striking out said bill of complaint, claiming that the said bill of complaint disclosed no cause of action and that this Court lacked jurisdiction in the premises, and that said bill of complaint showed that the complainants are estopped; and this cause coming on to be heard on the return of

10 said order to show cause and upon defendant's motion to strike out complainants' bill, in the presence of Bleakly, Stockwell & Burling, counsel for the complainants, and French, Richards & Bradley, counsel for the defendant, and no pleadings and no affidavits being filed by the defendant, and the Court having read and considered complainants' bill and the affidavits in support thereof and having

20 heard and considered defendants' application to strike out complainant's bill and having heard and considered the arguments of counsel for the respective parties, and it being established to the satisfaction of the Court that Camden Mortgage Guaranty & Title Company, a New Jersey corporation, was incorporated under "An Act to provide for the regulation and incorporation of Insurance Companies and to regulate the transaction of insurance business in this State" (2 C. S. 2638); that said Corporation has been voluntarily dissolved under Section 15 of said statute as amended by Chapter 343 of the

30 Laws of 1929, page 771, and that the complainants were directors of said corporation at the time of said dissolution and became statutory trustees on dissolution and are engaged in the settling up of the affairs of the said corporation; and

It further appearing to the satisfaction of said Court that the defendant, Elizabeth K. Haines,

claiming to be a creditor of said corporation, issued summons out of the New Jersey Supreme Court, venue Camden County, on the 14th day of April, 1931, against the said Camden Mortgage Guaranty & Title Company for the recovery of a debt of \$2,136.00, which suit is undetermined, and that the complainants do not dispute the said indebtedness to Elizabeth K. Haines, but admit the same and are willing that the amount thereof shall be filed with them as a claim against the said corporation in said dissolution proceedings; and it further appearing that said corporation was engaged in the business of buying, selling and guaranteeing first mortgages upon improved real estate in the County of Camden and elsewhere in the State of New Jersey and in connection therewith issued numerous guaranties of such mortgages, and that among its assets are numerous parcels of real estate and other assets to be sold and disposed of by said statutory trustees, and that the entry of a judgment in plaintiff's said suit would embarrass and interfere with the advantageous performance by the said complainants of their duties as liquidating trustees, and the Court being of the opinion that the assets of said corporation in the hands of the complainant as liquidating trustees constitute a trust fund to be administered by the said complainants as such trustees for the equal benefit of all creditors of the said Corporation and thereafter for the equal benefit of the stockholders of said corporation, and that Section 58 of "An Act Concerning Corporations" (Revision of 1896) is applicable to said dissolution proceedings and requires payment pro rata of the claims of creditors of said corporation and if anything remains there-

after pro rata distribution among stockholders and that the entry of judgment by the plaintiff against the said corporation in said suit and the collection of said judgment would constitute a preference to the said creditor contrary to the terms of said statute.

10 It is thereupon on this 22nd day of July, 1931, on motion of Bleakly, Stockwell & Burling, counsel for the complainants, ordered, adjudged and decreed that the application of the defendant to strike out complainant's bill be and the same is hereby denied and that the defendant, Elizabeth K. Haines, be and she is hereby restrained until further order of this Court from the further prosecution of her said suit in the New Jersey Supreme Court against the said Camden Mortgage Guaranty & Title Com-

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E. R. WALKER,
C.

Respectfully advised,
E. B. LEAMING
V. C.

30

NOTICE OF APPEAL.

(Filed July 23, 1931.

IN CHANCERY OF NEW JERSEY.

10

Between:

CAMDEN MORTGAGE GUAR-
ANTY & TITLE COM-
PANY, *et al.*,

Complainants,

and

ELIZABETH K. HAINES,

Defendant.

On Bill, &c.
Notice of Appeal.

20

The defendant, Elizabeth K. Haines, hereby ap-
peals from the order made July 22, 1931, denying
defendant's motion to strike out the bill and grant-
ing the restraint prayed for by complainants in the
above-entitled cause, and from the whole and every
part thereof, to the Court of Errors and Appeals in
the Last Resort in All Causes.

FRENCH, RICHARDS & BRADLEY,
Solicitors for and of Counsel
with Defendant.

30

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

SAMUEL H. RICHARDS,
Of Counsel with Defendant.

A copy of this was served July 23, 1931, on the solicitors for complainants.

PETITION OF APPEAL.

10 (Filed July 24, 1931.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between:

20 CAMDEN MORTGAGE GUAR-
ANTY & TITLE COM-
PANY, *et al.*,

*Complainants-
Respondents,*

v.

ELIZABETH K. HAINES,
*Defendant-
Appellant.*

On Appeal from the
Court of Chancery.
Petition of Appeal.

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

The petition of Elizabeth K. Haines, the appellant in the above-entitled cause, respectfully shows that:

Petitioner finds herself aggrieved by an order or

decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date July 22, 1931, in a certain cause in said Court of Chancery wherein the said Camden Mortgage Guaranty & Title Company, *et al.*, were complainants and the said Elizabeth K. Haines was defendant, in this respect, to wit, that the said order or decree adjudges that the applica- 10
tion of the defendant to strike out complainants' bill be and it was thereby denied and that the defendant be and she was thereby restrained from the further prosecution of her suit in the New Jersey Supreme Court against the said Camden Mortgage Guaranty & Title Company;

And petitioner appeals from the order or decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that: the order to show cause should have been dismissed and 20
all restraint denied and the motion to strike out the bill should have been granted, because the bill discloses no cause of action, discloses a lack of jurisdiction and shows that the complainants are estopped from taking any proceedings that would or could hinder, delay or prevent the defendant, a guaranteed creditor, from securing a judgment and execution lien upon the assets of the corporation.

Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set 30
aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

FRENCH, RICHARDS & BRADLEY,
*Solicitors for and of Counsel
with Appellant.*

A copy of this was served July 24, 1931, on the solicitors for complainants.

Answer in usual form to petition of appeal was duly filed.

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70 FEB.T.1932

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

New Jersey Court of Errors and Appeals

CAMDEN MORTGAGE GUARANTY & TITLE
COMPANY, *et al.*,
Complainants-Respondents,

v.

ELIZABETH K. HAINES,
Defendant-Appellant.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF FOR APPELLANT.

Sat Below:
VICE-CHANCELLOR LEAMING.

STATEMENT OF THE CASE.

This is an appeal from an order, advised by Vice-Chancellor Leaming, granting restraint against an

action at law and denying the appellant's motion to strike out the bill.

The complainant, Camden Mortgage Guaranty & Title Company, is a guaranty company—an insurance company (pages 2 to 4 and 21 to 26). It is admittedly solvent. There is no allegation from which insolvency could even be suspected.

The defendant is a guaranteed creditor who has suffered a loss and who has a claim therefor against the company, the amount of which claim is admittedly due. Suit has been brought on the claim in the Supreme Court and, if an answer were interposed, there would be the right to a summary judgment (pages 6 to 8 and 28 to 44).

In order to hold creditors, including the defendant, at arm's length until it becomes more convenient for the company to pay, it has resorted to the use of voluntary dissolution proceedings. More than two years ago (June 19, 1929) by unanimous vote of stockholders and directors dissolution proceedings were taken (pages 3 and 4).

Claiming that, though solvent, the dissolution proceedings entitle it to a moratorium, it, together with its directors who are statutory trustees, file this bill to restrain the defendant from enforcing her lawful remedy for her loss (pages 9 to 11).

Upon the filing of the bill, an order to show cause with *ad interim* restraint was granted (pages 45 to 47). The defendant met this with a motion to strike out the bill (pages 48 to 50).

The order to show cause and the motion were heard and decided together. The Vice-Chancellor, relying upon *Trustees v. Bank*, 87 N. J. Eq. 84, and *Camden M. G. & T. Co. v. Borton* (not reported),

denied the motion to strike out and granted the restraint. From this order the defendant appeals (pages 51 to 63).

GROUPS OF APPEAL.

The order or decree appealed from is erroneous in that the order to show cause should have been dismissed and all restraint denied and the motion to strike out the bill should have been granted.

The bill discloses no cause of action.

(a) The bill sets up no adjudication of insolvency and does not even allege corporate insolvency.

(b) The bill contains no allegation of the appointment of an insolvency receiver.

(c) The bill contains nothing that would or could show any right to restrain or interfere with a creditor of a solvent corporation.

(d) The bill contains an admission that the amount sued for is due to this defendant, but that is a ground for summary judgment and not a ground for restraining the suit.

(e) The bill sets up voluntary dissolution proceedings, which are a convenient procedure for a solvent corporation, but are in no sense a shield against a creditor seeking to enforce legal rights.

(f) Inasmuch as directors of any corporation, from the time of their election, are trustees and, as such, are responsible for their action and inaction, the matters set forth in the bill, if such matters could be a ground for restraint here, would be a ground for restraint in any suit brought against any corporation.

The bill discloses a lack of jurisdiction.

(a) The bill contains nothing that would or could give jurisdiction to overrule or disregard the legislative declaration that a corporation in dissolution is still suable and that suit may be brought against it by its corporate name.

(b) The bill shows nothing that would or could give jurisdiction to restrain a creditor from pursuing a legal remedy.

(c) The bill shows nothing that would give the Court jurisdiction to overrule the legislative determination that the business of insurance is lawful.

(d) Assuming that the allegations of the bill show that a total loss upon all of its policies would render this insurance company insolvent (it would any insurance company), that does not warrant the Court in restraining a party insured from enforcing his lawful remedy for a loss.

The bill shows that the complainants are estopped from taking any proceedings that would or could hinder, delay or prevent the defendant, a guaran-

teed creditor, from securing a judgment and execution lien upon the assets of the corporation.

BRIEF OF THE ARGUMENT.

1. There must first be an adjudication of insolvency and then a placing of the assets in the custody of the law before there is any right to restrain a creditor.

2. This company is not insolvent and, if it were, these statutory proceedings are not a substitute method for winding up an insolvent corporation.

3. These statutory proceedings can not be used as a ruse to give a solvent corporation a moratorium, either limited or unlimited.

4. The trust theory cannot be used to shield the property of a solvent corporation from a creditor seeking to enforce his legal rights.

5. It is the legislative policy to permit suits against a corporation in liquidation under the statute and to permit judgment in such suits.

6. Where, as here, the business of the company is guaranty and the creditor is a guaranteed creditor, dissolution proceedings should not be permitted to interfere with the creditor's enforcing legal rights.

7. The cases of *Trustees v. Bank*, 87 N. J. Eq. 84,

and *Camden Mortgage G. & T. Co. v. Borton*, are not binding upon this Court, are wrong in principle and should either be overruled or be disregarded.

ARGUMENT.

THERE MUST FIRST BE AN ADJUDICATION OF INSOLVENCY AND THEN A PLACING OF THE ASSETS IN THE CUSTODY OF THE LAW BEFORE THERE IS ANY RIGHT TO RESTRAIN A CREDITOR.

Even the appointment of a receiver of an insolvent corporation does not *per se* stay a creditor's suit. A suit proceeded to judgment after a receiver was appointed and this Court refused to open the judgment. *Ennis v. Eden Mills Paper Co.*, 65 N. J. L. 577.

This Court has likewise held that an application for an insolvency receiver will not prevent a creditor from proceeding to obtain a judgment and secure a lien. Mr. Justice Pitney (afterwards Chancellor Pitney), speaking for the Court, said, "it is the *adjudication of insolvency* that furnishes the occasion for placing the assets of the corporation into the custody of the law." (Italics ours). *Squire v. Princeton Lighting Co.*, 72 N. J. Eq. 883, at page 886.

These assets are not in the custody of the law.

II.

THIS COMPANY IS NOT INSOLVENT AND, IF IT WERE, THESE STATUTORY PROCEEDINGS ARE NOT A SUBSTITUTE METHOD FOR WINDING UP AN INSOLVENT CORPORATION.

This Court, in commenting upon a similar statute, said:

“This Act does not apply to insolvent corporations, but its purpose is only to afford a means of winding up *solvent* building and loan associations *when the interests of the creditors are not involved* and where the shareholders can see that their own interests will be best conserved by the dissolution of the association.” (Italics ours). *Fitzgerald v. State Mutual B. & L. Association*, 74 N. J. Eq. 440, at page 443.

This corporation, however, is admittedly solvent. There is no allegation from which insolvency could even be suspected.

If, in the judgment of stockholders, it is more to their interest to wind up than to carry on, they have a perfect right to institute these voluntary dissolution proceedings, but no right to use the proceedings to obstruct, hinder or delay creditors seeking to enforce their legal rights.

III.

THESE STATUTORY PROCEEDINGS CAN NOT
BE USED AS A RUSE TO GIVE A SOL-
VENT CORPORATION A MORATORIUM,
EITHER LIMITED OR UNLIMITED.

Where a corporation has been adjudged insolvent, creditors only are concerned, the assets are in the custody of the law, and, of course, equity is equality. Where, however, the corporation is solvent, no such situation exists. Stockholders of a solvent corporation are in no better position than that of any other solvent debtor. Such a debtor cannot speculate at the expense of his creditors. He cannot, in the hope of a rising market and an incidental increase in his wealth, stay the hands of his creditors and prevent them from enjoying their legal remedies. Creditors cannot be held at arm's length until it becomes convenient for the debtor to pay.

In *Schloss v. Schloss*, 43 N. Y. Supp. 788, at page 791, the New York Supreme Court looked through the proceedings whereby a receiver was appointed for a partnership, found that it was a ruse resorted to to hold creditors at arm's length until it became convenient for the debtors to pay, and determined to permit the creditor to proceed and levy on the assets.

Vice-Chancellor Lane has forcefully commented upon the evils of a moratorium and expressed doubts as to the power of a court of equity to prescribe it for a solvent corporation. *Hitchcock v. American*

Pipe & Construction Co., 89 N. J. Eq. 440, 453; *Hammer v. Israel*, 89 N. J. Eq. 481, 485.

IV.

THE TRUST THEORY CANNOT BE USED TO SHIELD THE PROPERTY OF A SOLVENT CORPORATION FROM A CREDITOR SEEKING TO ENFORCE HIS LEGAL RIGHTS.

On voluntary dissolution, directors are trustees, but they were always trustees. Every director is a trustee. 14a C. J. 97; *Marr v. Marr*, 73 N. J. Eq. 643.

The Court on application and with the proper parties before it, will advise a trustee as to what the law requires of him—what he should do. The trustee is, nevertheless, not an officer of the court.

He is still not an officer of the court, when he becomes a liquidating trustee. *Holmes v. Camp*, 175 N. Y. S. 349.

The fact that the director, both before and after dissolution proceedings, is a trustee, in and of itself, gives no jurisdiction to restrain a creditor of the corporation.

Indeed, every debtor holds equitably in his own right only the excess of his assets over liabilities. The rest he holds as trustee for his creditors. V. C. Lane in *Hammer v. Israel*, 89 N. J. Eq. 481, at page 485.

No one, however, would contend that the doctrine of trusteeship could give any jurisdiction to restrain

a creditor from pursuing his lawful remedies against a debtor.

It is interesting to note that the federal courts deny that there is even a trust, where a solvent corporation is in process of liquidation. *Lawrence v. Greenup*, 97 Fed. 906, 38 C. C. A. 546. They say it is only when the corporation becomes insolvent that a trust attaches to its property. *Ratcliff v. Clendenin*, 232 Fed. 61, at page 66; *Hollins v. Brieffield*, 150 U. S. 371.

Consequently, where we are dealing with a solvent corporation, the trust relation, whether or not it exists, can give no jurisdiction to restrain a creditor.

V.

IT IS THE LEGISLATIVE POLICY TO PERMIT SUITS AGAINST A CORPORATION IN LIQUIDATION UNDER THE STATUTE AND TO PERMIT JUDGMENT IN SUCH SUITS.

Upon dissolution, the corporation is still suable by its corporate name for the debts owing by it.

“The directors, constituted trustees as aforesaid, shall have authority to sue for and recover the aforesaid debts and property, by the name of the corporation, and shall be suable by the same name,” * * * “for the debts owing by such corporation.” 2 Comp. Stat. 1636, Sec. 55.

The corporation may be sued in contract or tort and process may still be served on the registered agent of the corporation. *Hould v. Squire & Co.*, 81 N. J. L. 103. In the Hould case, Mr. Justice Parker (page 105) says the words, "defending suits against them" mean suits at law or in equity, in contract or tort, or of what nature soever whether begun before or after dissolution.

The legislature should not be charged with intending to do a futile thing. To say that the legislature, while permitting a creditor to sue, intended to deny to that creditor the ordinary fruits of a suit, is to empty the statute of its meaning.

Stating it differently, such a construction makes the statute destroy itself. Courts will not so construe a statutory provision. *Adams Express Company v. Croninger*, 226 U. S. 491, at page 507.

These provisions apply also to insurance companies.

"All companies organized under this Act, and the stockholders, members and directors thereof, shall have all the powers granted and be subject to all the duties and obligations imposed by the Act concerning corporations, approved April twenty-first, one thousand eight hundred and ninety-six, and the Acts supplementary thereto and amendatory thereof, except so far as they may be inconsistent with the provisions of this Act." 2 Comp. Stat. 2855, Sec. 57.

The legislature having permitted the suit, there is no jurisdiction, under any facts here alleged, to restrain further proceedings in the suit nor to deny

to a judgment in that suit the ordinary and legal effect of a judgment.

Indeed, even if the effect of a judgment in such a suit could be nothing more than to ascertain the amount due, there would still be no jurisdiction to restrain the creditor from obtaining such a judgment.

That being the legislative policy, courts should aid and not obstruct the carrying out of the policy.

VI.

WHERE, AS HERE, THE BUSINESS OF THE COMPANY IS GUARANTY AND THE CREDITOR IS A GUARANTEED CREDITOR, DISSOLUTION PROCEEDINGS SHOULD NOT BE PERMITTED TO INTERFERE WITH THE CREDITOR ENFORCING LEGAL RIGHTS.

It would be much more appropriate to restrain the dissolution proceedings.

In *U. S. Industrial Co. v. Distilling Co. of America*, 89 N. J. Eq. 177, this Court held that an agreement not to dissolve was void and the power to dissolve was left intact, but the corporation could not dissolve, if that would injuriously affect its guarantee. Just what would be a sufficient protection to the holders of the guarantee the Court refused to say, but it restrained dissolution proceedings until the company formulated some method that would receive the approval either of the holders of the guarantee or of the Court.

Nothing should be placed in the way of a guaranteed creditor seeking to enforce his rights.

VII.

THE CASES OF TRUSTEES V. BANK, 87 N. J. EQ. 84, AND, CAMDEN MORTGAGE G. & T. CO. V. BORTON, ARE NOT BINDING UPON THIS COURT, ARE WRONG IN PRINCIPLE AND SHOULD EITHER BE OVERRULED OR BE DISREGARDED.

We tried to get the Vice-Chancellor to see his way clear to overrule these cases but he apparently considered them binding in his court and for that reason adhered to them.

In the Bank case the Court had made an order limiting creditors. No such condition of affairs exists here. No serious point was made there in opposition to the injunction in favor of the liquidating trustees. Indeed, counsel for the creditor (87 N. J. Eq. 86), conceded the right to such an injunction and to that extent, it might well have been considered as a situation calling for a consent decree.

In the Borton case (a copy of the opinion is printed on pages 52 to 56 of the state of the case) the Vice-Chancellor erroneously assumed that these statutory proceedings are a substitute method for winding up an insolvent corporation. He stressed the fact that there is to be a ratable distribution, overlooking the fact that creditors are to be *paid* (2 Comp. Stat. 1635, Sec. 54, etc.), and the ratable dis-

tribution is among *stockholders*, the component parts of the debtor itself.

Whether or not the Vice-Chancellor was bound by those decisions, this Court is entirely free to disregard them.

We submit that the trust theory, upon which those cases were decided, will not support such decisions and that the decisions themselves should be overruled.

CONCLUSION.

The order of the Court of Chancery should be reversed and the record remitted with a direction to enter a decree granting the defendant's motion to strike and dismissing the bill.

All of which is respectfully submitted.

FRENCH, RICHARDS & BRADLEY,
For Appellant.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

CAMDEN MORTGAGE GUARANTY & TITLE COMPANY,
et al.,
Complainants-Respondents,

v.

ELIZABETH K. HAINES,
Defendant-Appellant.

ON APPEAL FROM COURT OF CHANCERY.

BRIEF FOR RESPONDENTS.

STATEMENT.

Complainant, a corporation, is in voluntary dissolution. Its directors, as statutory trustees, are liquidating its assets. Defendant, being a creditor of the corporation, brought suit to collect her debt. The debt is admitted and the trustees offered to receive and allow as a valid claim the debt set up in defendant's complaint. Complainants filed their bill to enjoin the further prosecution of the suit and

upon affidavits filed the lower Court (Vice-Chancellor Leaming) made an order to show cause why the injunction should not issue. The defendant (present appellant) promptly gave notice of an application to strike out the bill. No answer and no affidavits were filed by the defendant. At the hearing under the Order to Show Cause and defendant's Notice to Strike, the Court refused to strike the Bill and made an order or decree enjoining the further prosecution of the suit. From that decree appellant has appealed.

Complainant's Bill and Affidavits show the following facts:

Camden Mortgage Guaranty & Title Company was organized June 2, 1923, under the Insurance Act (Comp. St. 2838). Its sole purpose was to buy, sell and insure first mortgages. It was voluntarily dissolved in the month of July, 1929, and on July 23, 1929, the Commissioner of Banking and Insurance issued his certificate of satisfaction (Ex. B, p. 26) and the directors of the Corporation, as Liquidating Trustees, have since been and are still settling the affairs of the Company, liquidating its assets as promptly as possible, preparatory to a ratable distribution of its assets among its creditors and thereafter, if any balance remains, among stockholders.

The Company owned a considerable amount of real estate. This consisted of individual properties, improved and practically all dwellings, representing properties taken on foreclosure proceedings or by direct transfer to the company in the conduct of its business. A wise and careful sale of these properties, as well as a judicious liquidation of its other

assets is essential to the protection of the creditors, as well as the stockholders. Proceedings on dissolution are in every way regular and have the approval of the Commissioner of Banking and Insurance. There is no complaint of improper or even injudicious management of its affairs by the liquidating trustees.

Defendant-appellant is the holder of a guaranty policy issued by this Corporation, in which the Company contracts and guarantees to pay to the insured the interest as it falls due on a certain mortgage of \$2,000 and under certain conditions to pay the principal of the mortgage within one year after its maturity (copy of guaranty, Ex. C, p. 28). Defendant-appellant foreclosed her mortgage and at the Sheriff's sale the property was bought in by a third party on a bid of \$100.00. Defendant then brought suit in the New Jersey Supreme Court to collect this loss, claimed to be \$2136.00, with interest from January 15, 1931. The dissolution Trustees, immediately after service of the summons and complaint in defendant's suit, gave notice to her that her claim was not disputed, but admitted, and requested her to discontinue her suit and file her claim against the Company, "to the end that you may participate with other creditors in any distribution under said dissolution proceedings" (p. 8).

Defendant did not comply with this request and thereupon complainants filed their bill for an injunction to restrain the further prosecution of said suit. The dissolution Trustees notified defendant that they would allow a claim for the amount demanded as a valid claim against the Company. Complainants filed their petition with the Court of Chan-

very long before the bringing of this action, praying for an order directing all creditors of the Company to prove their claims before the trustees in such manner as the Court should deem proper and in accordance with the requirements of the statute and that the Court fix the character of the notice to be given and the time within which said claims should be proved and filed with said trustees. No order has yet been made on said petition.

The bill of complaint shows that the same conditions involving this Company obtained at the time of the filing of the complainant's bill herein as ^{at} the time of the filing of the bill of complaint by them against Albert D. Borton hereinafter referred to. The liquidation of the Company's assets is not yet completed.

The learned Vice-Chancellor in the decree complained of found, *inter alia*:

“that the assets of said corporation in the hands of the complainants as liquidating trustees constitute a trust fund to be administered by the said complainants as such trustees for the equal benefit of all creditors of the said corporation and thereafter for the equal benefit of the stockholders of said corporation, and that Section 58 of ‘An Act Concerning Corporations’ (Revision of 1896), is applicable to said dissolution proceedings and requires payment *pro rata* of the claims of creditors of said corporation and if anything remains thereafter *pro rata* distribution among stockholders and that the entry of judgment by the plaintiff against the said corporation in said suit and the collection of said judgment would constitute a preference to the

said creditor contrary to the terms of said statute.”

and then decreed that the application to strike was denied and that the defendant, Elizabeth K. Haines, should be restrained from further prosecution of said suit.

ARGUMENT.

I.

The Insurance Act (Chapter 343 of the Laws of 1929) provides the method by which an insurance company may be dissolved. Section 57 of the same Act (2 Comp. St., p. 2855), provides as follows:

“All companies organized under this Act, and the stockholders, members and directors thereof, shall have all the powers granted and be subject to all the duties and obligations imposed by the Act concerning corporations, approved April twenty-first, one thousand eight hundred and ninety-six, and the Acts supplementary thereto and amendatory thereof, except so far as they may be inconsistent with the provisions of this Act (P. L. 1902, p. 429).”

Therefore, Sections 53 to 60 of the General Corporation Act (2 Comp. St., pp.1634 to 1637) must be read into the Insurance Act under the language of Section 57 of that Insurance Act. Therefore, Sections 53 to 60 of the General Corporation Act apply

Amend Par. at top of P. 4:

Since the preparation of this Brief
the Court of Chancery made its
Order dated October 26, 1931,
requiring all creditors to present
their claims on or before February
26, 1932.

to the present dissolution proceedings. (See opinion by Vice-Chancellor Leaming in *Camden Mortgage Guaranty & Title Company v. Borton*, not printed, but found at pages 52 to 56 of the State of the Case.)

II.

The distribution of the assets of this dissolved corporation is controlled by Section 58 of the General Corporation Act (2 Comp. St., p. 1637), which reads as follows:

“58. Receiver, duties.— The said trustees or receivers *shall pay ratably*, as far as its moneys and property shall enable them, all the creditors of the corporation who prove their debts in the manner directed by the Court; and if any balance remain after the payment of such debts and necessary expenses, the same shall be distributed among the stockholders. (P. L. 1896, p. 296.)”

This Section, together with the other Sections involving the dissolution of a corporation (53 to 60, inc.), was construed in *Trustees v. First National Bank of Ocean City*, 87 N. J. Eq., p. 84, &c. It was there held:

“It seems to me that the general scope of these several sections of the statute, as well as the detailed provisions of some of the sections, disclose a legislative intent, which is manifest with almost as much clearness as could be expressed by any specific provision, that at dis-

solution the assets of the corporation become a trust fund for the equal benefit of all creditors as the rights of such creditor may be found to have existed at dissolution, and for the benefit of the stockholders after the payment of all debts of the corporation, and that this trust fund shall be preserved for and applied to the payment of such debts 'ratably'; and that the effect of the provisions is to fasten the debts of the corporation upon its property at the moment of dissolution to exactly the same extent as though by express terms of the statute the legal title of the assets as distinguished from the equitable title, had at that moment been made to pass to the trustees for the purpose of a trust for equal distribution. Such a trust is necessarily subservient to the burden of liens existing prior to its creation; but it seems manifest that the preservation of the right of general creditors to procure preferment after the creation of the statutory trust would be so clearly destructive of the statutory requirement for creditors to prove their debts before the trustees and for the trustees to make ratable distribution among the creditors as to render the provisions of Section 58 wholly nugatory and purposeless.'" Pages 86-87.

Substantially the same views were expressed by the Court of Chancery and by the same Vice-Chancellor (Vice-Chancellor Leaming) in an opinion filed in the case of *Camden Mortgage Guaranty & Title Company v. Borton*, not reported, but printed in the State of the Case at pages 52 to 56.

III.

The facts disclosed by the bill show that the company owns quite a large number of properties, being individual houses and lots, to which title must be made from time to time in order to reduce the Company's assets to cash. The bill and the affidavits supporting it show that the entry of a judgment would not only act as a preference to a single creditor over other creditors, but would place a cloud upon the title to all of its real estate and greatly embarrass the trustees in the protection of the trust property and in the performance of their duties under the trust.

The facts are not disputed, the necessity for the relief asked for is plain and, under the authorities cited, it was the duty of the Court of Chancery to protect this trust by issuing its injunction.

IV.

THE OBJECTIONS MADE BY THE DEFENDANT TO THESE PROCEEDINGS ARE NOT SOUND.

A. At page 2 of defendant's brief, this statement is made:

"In order to hold creditors, including the defendant, at arm's length until it becomes more convenient for the company to pay, it has resorted to the use of voluntary dissolution proceedings."

There is nothing in the record to justify this statement. The dissolution proceedings were brought in good faith, with the approval of the Commissioner of Banking and Insurance, have been prosecuted in good faith and not a word of criticism has been lodged by the defendant or other person against the performance of those duties by the trustees.

B. It is claimed, at page 6 of defendant's brief that there must be an adjudication of insolvency before a creditor can be restrained from entering judgment. We find no authority to support this proposition. The cases cited do not support it. In referring to *Squire v. Princeton Lighting Company*, 72 Eq. 883, it is stated by the Court in *Trustees v. First National Bank of Ocean City*, 87 Eq., p. 87, as follows:

"I find nothing there expressed (in *Squire v. Princeton Lighting Company*) inconsistent with the view that when in the proceedings for either an insolvency receivership or a dissolution trusteeship a trust for equal distribution has become consummated preferments can no longer be created."

C. It is claimed (page 7 of defendant's brief) that the complainant's bill lacks legal basis, because it does not show that the corporation is insolvent. In this statement the defendant entirely misconceives the nature of dissolution proceedings and the rights and obligations arising thereout. The case cited by the defendant under this heading, *Fitzgerald v. State Mutual B. & L. Association*, 74 Eq. 440, merely holds

that the statute therein referred to did not deprive the Court of its power to adjudicate the corporation as insolvent, if it were insolvent, and to appoint a receiver as for an insolvent corporation. It is very plain from a reading of that case and the statute therein referred to that had insolvency not supervened creditors would have been compelled to file their claims as provided by that statute or be barred.

We find nothing in *Schloss v. Schloss*, 43 N. Y. Supp. 788, *Hitchcock v. American Pipe & Construction Co.*, 89 N. J. Eq. 440, or in *Hammer v. Israel*, 89 N. J. Eq. 481, at variance with the principles enunciated by the Court of Chancery in the present case and in the companion case of *Camden Mortgage Guaranty & Title Co. v. Borton*, and *Trustees v. First National Bank of Ocean City*.

D. At page 9, defendant claims that directors are always trustees, whether or not the corporation is in dissolution. This view is untenable. Directors are not trustees for creditors until either insolvency takes place or the company goes into voluntary dissolution under the statute.

Bird v. Magowan, 43 Atl. Rep., p. 278;
see also *Landis v. Hotel Co.*, 31 Atl. Rep. 755.

The cases cited by defendant do not hold to the contrary.

E. It is claimed (page 12 of defendant's brief), that defendant is a "guaranteed creditor" and that, therefore, under *U. S. Industrial Co. v. Distilling Co. of America*, 89 N. J. Eq. 177, she cannot be in-

terfered with in enforcing her claim by judgment. The two cases have nothing in common. The case cited had to do with a corporation which had started voluntary dissolution proceedings under the statute, but where those dissolution proceedings had not been completed. The guaranty referred to in the cited authority was under a contract, by which one corporation guaranteed dividends to another corporation, and in which it was also provided:

“that no voluntary or involuntary dissolution, or merger or consolidation of the Cuba Company, or of the Distilling Company of America should, except by and with the written consent of the holders of record of all of said preferred stock outstanding at the time, release, discharge, modify or affect the guarantee in any way.”

The Court did not question the right of the Company to dissolve, but in view of the provision in the contract recited above the Court held that it was under an obligation to

“make reasonable provision for the protection of the holders of its guarantee, so that such guarantee shall not be injuriously affected by the act of dissolution.”

The decree should be affirmed.

Respectfully submitted,

BLEAKLY, STOCKWELL &
BURLING,

*Solicitors for and of Counsel
with Complainants.*

The first part of the book is devoted to a general
 introduction to the subject of the history of the
 world. It is divided into three main parts: the
 prehistoric period, the classical period, and the
 modern period. The prehistoric period is the
 longest and the most interesting. It is the
 period of the cave men, the stone age, and the
 bronze age. The classical period is the period
 of the Greeks and the Romans. The modern
 period is the period of the Middle Ages, the
 Renaissance, and the modern world.

The second part of the book is devoted to a
 detailed account of the history of the world.

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