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Notice of Appeal.

ESSEX COUNTY CIRCUIT COURT.

PARKVIEW BUILDING & LOAN ASSO-
CIATION, of the City of Newark,

Plaintiff,

vs.

EDWIN E. ROSE,

Defendant.

10

Action
at Law.

To Messrs. Riker & Riker,

Attorneys for Plaintiff:

20

TAKE NOTICE, that the defendant, Edwin E. Rose, appeals to the Court of Errors and Appeals, from the whole of the Judgment entered in this cause against him, on the following grounds:

(1) The Court erred in denying the defendant's motion for a non-suit.

(2) The Court erred in denying the defendant's motion for a direction of verdict in favor of the defendant.

30

(3) The Court erred in directing a verdict in favor of the plaintiff.

(4) The verdict directed by the Court is not supported by the evidence.

Dated, March 30, 1916.

Respectfully yours,

PHILIP J. SCHOTLAND,
Attorney of Defendant.

40

Summons.

The State of New Jersey to Edwin E. Rose:
(L.S.)

10 YOU ARE SUMMONED to answer the annexed complaint of Parkview Building and Loan Association of the City of Newark, a corporation, in an action in the Essex County Circuit Court and take notice that unless you file your answer to said complaint with the Clerk of said Essex County Circuit Court, at the Court House, in the City of Newark, 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 entered against you.

WITNESS, Frederic Adams, Esquire, Judge of our said Circuit Court, at Newark, this thirteenth day of June, 1914.

20

RIKER & RIKER,
Attorneys.

JOSEPH McDONOUGH,
Clerk.

30

40

Complaint.**ESSEX COUNTY CIRCUIT COURT.**

PARKVIEW BUILDING & LOAN ASSO-
CIATION, of the City of Newark,

Plaintiff,

vs.

EDWIN E. ROSE,

Defendant.

Action
at Law. 10

Plaintiff, a corporation organized and existing under the building and loan laws of the State of New Jersey, having its principal place of business at the corner of Elizabeth and Watson Avenues in the City of Newark, says:

1. It sues to recover from the defendant, Edwin E. Rose, residing at No. 45 Frelinghuysen Avenue, in said City of Newark, the sum of \$1809.60, with interest thereon from July 7, 1913, obtained by the defendant from the plaintiff under the following circumstances. 20

Said defendant was prior to the first day of July, 1913, the owner of ten shares of stock in the first series of said association of the maturity value of \$2,000; said shares matured at a meeting of said association held on the first Monday of July of said year; that said defendant had borrowed on account of said shares the sum of \$1800 as evidence of which indebtedness he delivered to plaintiff a promissory note, in the sum of \$1800, bearing interest at the rate of 6% per annum, and subject in addition thereto to certain fees thereon as premiums amounting to the further sum of 60c per month; that on or about the 7th day of July, 1913, plaintiff drew its check to the 30

40

Complaint.

order of defendant in the sum of \$2,000, the maturity value of said shares, and hold the same pending payment by the defendant of the amount owing to plaintiff upon said note, to wit, the sum of \$1809.60 that on or about the seventh day of July, 1913, said check for \$2,000, together with
 10 tiff, taken from the safe of said plaintiff at its office by one George Brown, Jr., and by him delivered to said defendant.

2. Said defendant has not paid to plaintiff the said sum of \$1809.60, owing to said plaintiff for the money so loaned, nor any part thereof.

3. Plaintiff has demanded payment thereof, and defendant has refused to pay the same or any part thereof.

20 Plaintiff, by such refusal, has suffered damages in the sum of \$1809.60, together with interest thereon from the 7th day of July, 1913.

RIKER & RIKER,
 Attorneys of Plaintiff.

July 22, 1916.

30

40

Answer.**ESSEX COUNTY CIRCUIT COURT.**

PARKVIEW BUILDING & LOAN ASSO-
CIATION, of the City of Newark,

Plaintiff,

vs.

EDWIN E. ROSE,

Defendant.

Action
at Law.

10

Defendant resides at 196 Sandford Avenue, Irvington, New Jersey, and says:

(1) Defendant admits that he was the holder of ten shares of stock of the maturity value of Two thousand dollars, in the plaintiff association, and that said shares matured and that he had borrowed on account of said shares, the sum of eighteen hundred dollars, and that he received from the agent of the plaintiff association, its check in the sum of Two thousand dollars, the maturity value of said shares, but denies the remaining allegations in paragraph one of the complaint. 20

(2) Defendant denies that he has not paid the plaintiff the sum of Eighteen hundred and nine dollars and sixty cents, as alleged in paragraph two of said complaint. 30

(3) Defendant denies that he owes plaintiff Eighteen hundred and nine dollars and sixty cents, or any other sum.

DEFENSE.

Defendant claims by way of defense, that he received the maturity value of his shares from the agent of the plaintiff, and paid to the agent

40

Answer.

of the plaintiff, his indebtedness to the plaintiff, and received in return from said agent of the plaintiff, his note representing his indebtedness, and that the indebtedness was then and there cancelled and fully paid to plaintiff.

PHILIP J. SCHOTLAND,
Attorney of Defendant.

10

STATE OF NEW JERSEY, }
County of Essex. } ss.:

EDWIN E. ROSE, of full age, being duly sworn, on his oath, deposes and says, that he is the defendant in the above stated cause; that the above answer is not filed for the purpose of delay, but in truth and in good faith and that he believes that he has a just and legal defense to said action on the merits of the case.

20

EDWIN E. ROSE.

Sworn and subscribed to before me }
this 8th day of July, A. D. 1914. }

Joseph J. Pallitta,
Attorney at Law,
of New Jersey.

Filed, July 9, 1914.

We hereby consent to the within answer being

30 filed as to time.

RIKER & RIKER,
Attorneys for Plaintiff.

July 8, 1914.

**Rule to Show Cause Why Verdict
Should not be Set Aside.**

ESSEX COUNTY CIRCUIT COURT.

PARKVIEW BUILDING & LOAN ASSO-
CIATION,

Plaintiff,

vs.

EDWIN E. ROSE,

Defendant.

Action
at Law. 10

Application having been made within four days
after the rendering of the verdict in this cause,
now on motion of Philip J. Schotland, of counsel
with the defendant, it is on this 26th day of Oc-
tober, Nineteen hundred and fifteen, 20

ORDERED, that the plaintiff show cause before
Honorable Frederic Adams, Judge of the Circuit
Court, at the Court House, in the City of New-
ark, on the 20th day of November, Nineteen hun-
dred and fifteen, why said verdict should not be
set aside and a new trial granted to the defend-
ant.

LEAVE is hereby given and the defendant here-
by reserves all exceptions appearing on the rec-
ord. 30

FREDERIC ADAMS,
Circuit Court Judge.

October 30, 1915.

Interrogatories.

ESSEX COUNTY CIRCUIT COURT.

PARKVIEW BUILDING & LOAN ASSO-
CIATION, of the City of Newark,

Plaintiff,

vs.

EDWIN E. ROSE,

Defendant.

Action
at Law.

10

To Philip J. Scotland, Esq.,
Attorney of Defendant.

Dear Sir:

PLEASE TAKE NOTICE, that we demand that
within ten days from the day of service hereof,
20 you cause answers to the following interrogatories
to be made under oath of the defendant, and that
you cause the same to be served upon the plain-
tiff or its attorneys, within the said time:

First Interrogatory. Were you the owner of
ten shares of stock in the first series of the plain-
tiff association?

Second Interrogatory. Did you not borrow
upon your note, pledging said shares as collater-
al for the loan, the sum of \$1800 from the plain-
30 tiff association?

Third Interrogatory. Did you ever regain pos-
session of the note? If so, by whom was it given
to you and where?

Fourth Interrogatory. Did you at any time
deliver to George Brown, Jr., a check to his or-
der made by you in the sum of \$1809.60; or if
not in that amount in any other amount?

Fifth Interrogatory. If a check was delivered

40

Interrogatories.

as set forth in the Fourth Interrogatory, where and when was it delivered?

Sixth Interrogatory. What did you do with the note of \$1800 to the order of the Parkview Building and Loan Association upon its receipt by you, if you received said note?

Seventh Interrogatory. Did you receive a check of the Parkview Building and Loan Association in the sum of \$2,000, the maturity value of ten shares in the first series of said association? 10

Eighth Interrogatory. If you received a check as mentioned in the Seventh Interrogatory, when, where and under what circumstances did you receive it?

Yours very truly,

RIKER & RIKER,
Attorneys of Plaintiff. 20

Dated, October 1st, 1915.

November 3, 1915.

Service of the within Interrogatories is hereby acknowledged this 4th day of October, 1915.

P. J. SCHOTLAND,
Attorney of Defendant.

30

40

Answers to Interrogatories.**ESSEX COUNTY CIRCUIT COURT.**

10	PARKVIEW BUILDING & LOAN ASSO- CIATION, of the City of Newark, <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> EDWIN E. ROSE, <p style="text-align: right;"><i>Defendant.</i></p>	} Action at Law.
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To Messrs. Riker & Riker,
 Attorneys for Plaintiff.

GENTLEMEN :

The following are the answers to the Interrogatories served upon the attorney for the defendant :

20 *Answer to First Interrogatory:* Yes.

Answer to Second Interrogatory: Yes, through the secretary of the plaintiff association. I did not appear before the association at any meeting.

Answer to Third Interrogatory: Yes, by the Secretary, at a store I conducted at that time, at 15 Frelinghuysen Avenue, Newark, New Jersey.

30 *Answer to Fourth Interrogatory:* I caused to be delivered to George Brown, Jr., a check to his order for Eighteen hundred and nine dollars and fifty-four cents.

Answer to Fifth Interrogatory: On the first Monday in July, Nineteen hundred and thirteen, at the store I then conducted, at 15 Frelinghuysen Avenue, Newark, New Jersey.

Answer to Sixth Interrogatory: Destroyed it.

Answer to Seventh Interrogatory: I received check from the Secretary of the plaintiff association.

Answer to Interrogatories.

Answer to Eighth Interrogatory: I was notified by George Brown, Jr., Secretary of the plaintiff association, on or about the first Monday in July, Nineteen hundred and thirteen, that my shares had matured, and that instead of making out a check to me for One hundred and ninety dollars and forty-six cents, which was the balance due me, he paid the association the Eighteen hundred and nine dollars and fifty four cents which I owed on my note, and then made out a check to my order for Two thousand dollars, and that he would deliver the Two thousand dollars check, together with my note, at my store, and if I, or my wife, would not be in, we should leave check for him for the Eighteen hundred and nine dollars and fifty-four cents. This was done, and I received the Two thousand dollar check, together with my note.

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Dated, October 6, 1915.

EDWIN E. ROSE.

STATE OF NEW JERSEY, }
 County of Essex. } ss.:

EDWIN E. ROSE, of full age, being duly sworn, on his oath says that he is the defendant in the suit in which the answers to the Interrogatories are made, and that he is familiar with the facts in the case, and that the facts set out in the said answers and the statements made therein are true to the best of his knowledge as he verily believes.

30

EDWIN E. ROSE.

Sworn and subscribed to before me }
 this 8th day of October, A. D. 1915. }

Helen Jedell,
 Notary Public,
 of New Jersey.

40

Nov. 3, 1915.

Reasons.**ESSEX COUNTY CIRCUIT COURT.**

PARKVIEW BUILDING & LOAN ASSO-
CIATION, of the City of Newark,

Plaintiff,

vs.

EDWIN E. ROSE,

Defendant.

Action
at Law.
On Rule to
Show Cause.

10

The following is the cause upon which the defendant, Edwin E. Rose, rests the motion for a new trial in the above stated cause:

The verdict of the jury is not supported by the weight of the evidence.

Dated, November 1, 1915.

20

Respectfully submitted,

PHILIP J. SCHOTLAND,

Attorney for Defendant.

November 9, 1915.

30

40

Stipulation.**ESSEX COUNTY CIRCUIT COURT.**

PARKVIEW BUILDING & LOAN ASSO-
CIATION, of the City of Newark,

*Plaintiff,**vs.*

EDWIN E. ROSE,

Defendant.

Action
at Law.

10

It is hereby stipulated and agreed by and between Messrs. Riker & Riker, Attorneys for plaintiff, and Philip J. Schotland, Esq., Attorney for defendant, that the hearing on the Rule to Show Cause in the above entitled matter is hereby adjourned from Saturday, November Twentieth, Nineteen hundred and fifteen, to Saturday, November Twenty-seventh, Nineteen hundred and fifteen.

20

RIKER & RIKER,
Attorneys for Plaintiff.
PHILIP J. SCHOTLAND,
Attorney for Defendant.

November 20, 1915.

30

40

Stipulation.**ESSEX COUNTY CIRCUIT COURT.**

PARKVIEW BUILDING & LOAN ASSO-
CIATION, of the City of Newark,

Plaintiff,

vs.

EDWIN E. ROSE,

Defendant.

Action
at Law.

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20

It is hereby stipulated and agreed by and between Messrs. Riker & Riker, attorneys for plaintiff, and Philip J. Schotland, Esq., Attorney for defendant, that the hearing on the Rule to Show Cause in the above entitled matter is hereby adjourned from Saturday, November, Twenty-seventh, nineteen hundred and fifteen, to Saturday, December eleventh, nineteen hundred and fifteen.

RIKER & RIKER,

Attorneys for Plaintiff.

PHILIP J. SCHOTLAND,

Attorney for Defendant.

Filed, November 27, 1915.

JOSEPH McDONOUGH,

Clerk.

30

40

Rule Discharging Rule to Show Cause.**ESSEX COUNTY CIRCUIT COURT.**

PARKVIEW BUILDING & LOAN ASSO-
CIATION, of the City of Newark,

*Plaintiff,**vs.*

EDWIN E. ROSE,

Defendant.

Action
at Law. 10

A rule having been made in the above entitled cause ordering the plaintiff, Parkview Building and Loan Association of the City of Newark, to show cause before the above Court, at Newark, New Jersey, on the 20th day of November, 1915, why the verdict awarded in said cause should not be set aside as against the weight of evidence and a new trial granted, and the argument on said rule having been adjourned from time to time until December 18th, 1915, on which day said argument was had, and thereafter, on January 22nd, 1916, said Court having rendered a decision that said verdict should stand and discharging said rule to show cause; 20

It is, on this fifth day of February, 1916, on motion of Riker & Riker, attorneys of the plaintiff, Parkview Building and Loan Association of the City of Newark, ORDERED that the rule to show cause made in the above entitled cause be, and the same is hereby discharged, with costs. 30

Let the above rule be entered in the minutes.

FREDERIC ADAMS,
Circuit Court Judge.

Filed, February 8, 1916.

JOSEPH McDONOUGH,
Clerk. 40

Judgment.**ESSEX COUNTY CIRCUIT COURT.**

25756.

10	PARKVIEW BUILDING & LOAN ASSO- CIATION, of the City of Newark, <i>Plaintiff,</i> <i>vs.</i> EDWIN E. ROSE, <i>Defendant.</i>	Action at Law.
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After Verdict by Order of Court.

Judgment entered October 22, A. D. 1915.

Damage, \$1949.78

Cost, 77.91

20 Total, \$2027.69

RIKER & RIKER,
 Attorneys of Plaintiff.

30 Judgment by order of Court with a jury in the above entitled action at law was rendered on the Twenty-second day of October, A. D., Nineteen hundred and fifteen in favor of the said plaintiff Parkview Building and Loan Association, and against the said defendant Edwin E. Rose for the sum of Nineteen hundred and forty-nine dol- lars and seventy-eight cents damage and the sum of Seventy-seven dollars ninety one cents, costs of suit.

Judgment entered and signed October 22, A. D. 1915.

WM. S. GUMMERE,
 Judge.

Book 93—page 216.

Testimony.**ESSEX COUNTY CIRCUIT COURT.**

Thursday, October 21, 1915.

 PARKVIEW BUILDING & LOAN ASSO-
 CIATION,
vs.

EDWIN E. ROSE.

)
 Action
 at Law.

10

 Before Hon. Frederic Adams, J., and a jury.

 For Plaintiff appear Messrs. Riker & Riker
 (by Spaulding Frazer, Esq., and Richard
 Hartshorne, Esq.);

 For Defendant appears Philip J. Schot-
 land, Esq.

 A jury is called and sworn.

20

Mr. Frazer opens for plaintiff.

Mr. Schotland opens for defendant.

 Plaintiff's counsel offer in evidence certain in-
 terrogatories propounded to the defendant and
 the answers thereto.

Marked respectively Ex. P-1 and Ex. P-2.

Mr. Frazer reads Ex. P-1 and Ex. P-2.

 SOLOMON B. BEIDELMAN, sworn in behalf of
 plaintiff.

30

DIRECT EXAMINATION BY MR. FRAZER:

 Q. Mr. Beidelman, you are the treasurer of the
 Parkview Building & Loan Association? A. Yes,
 sir.

Q. Were you treasurer of that association at

40

Soloman B. Beidelman—Cross.

the time of the maturity of its first series of stock?

A. Yes, sir.

Q. And have been so continuously since that time? A. Yes, sir.

Q. Can you state, from your knowledge of the records of the association and from your knowledge as an officer—treasurer—whether the association has at any time received any part of the sum of \$1800 represented by the note given by Mr. Rose to the association? A. No, sir.

Q. I asked you whether you could state, whether you knew. Do you know whether it has or has not? A. It has not.

CROSS EXAMINATION BY MR. SCHOTLAND:

Q. What is your knowledge based on? A. Well, I have never received it.

20 Q. You have never received it? A. No, sir; never received the amount.

Q. You, as treasurer, never received it? A. No, sir.

Q. All the moneys that were paid to this association were paid to the secretary, in the first instance, were they not? A. Yes, sir.

Q. And by him turned over to you? A. Well, that I couldn't say; this—

30 THE COURT: The question is as to the regular practice.

WITNESS: The regular practice at the meeting nights?

Q. The regular practice in this association was for the secretary to receive the moneys? A. Yes, sir.

Q. And at the close of the pay night turn them over to you and take your receipt for them? A. Yes, sir.

40 Q. Now, the officer who received the money

Solomon B. Beidelman—Cross.

from the shareholders was the secretary, then?

A. At the meeting nights; yes, sir.

Q. Why, were there moneys received by the association at other times than meeting nights?

A. That I couldn't say.

Q. What is that? A. At other times than the meeting night?

Q. Yes. A. Yes, sir; on this occasion. 10

Q. By whom were those payments received?

A. Just ask that question again.

Q. Well, Mr. Beidelman, you seemed to limit your answer, when I asked you as to the secretary receiving the money, by adding to your answer "at the meeting night." A. Yes, sir.

Q. Now, I want to know whether moneys were received by the association at other times than the meeting night. A. No, sir.

Q. Than all the moneys that were ever received 20
by the association, under its practice and under its constitution, would always come through the secretary; is that so? A. Yes, sir.

Q. Then all you know, when you say that this \$1800 was not turned over to the association, is that the secretary did not turn over any such sum to you? That is all you know about it, is it not? A. I know that amount was not turned over.

Q. You know that that amount was not turned 30
over by the secretary to you? A. Yes, sir.

Q. That is so, is it not? A. Yes, sir.

Q. You do not know whether it was paid to the secretary or not, do you? A. No, sir.

Q. In fact, you have heard that it was, have you not? A. Yes, sir.

Q. Now, as treasurer, you are the one that made out this check for \$2,000, are you not? A. No, sir.

Q. Who made it out? A. The secretary. 40

Solomon B. Beidelman—Cross.

Q. Who was the secretary? A. George Brown, Jr.

Q. And was he secretary of this association from the time that it started? A. He was secretary of the association since I have been treasurer, since 1904, July 1904.

10 Q. Now, he made out the check for the \$2,000, then, when the first series matured? A. Yes, sir.

Q. And when was that?

BY THE COURT:

Q. (Interposing.) You mean George Brown? A. George Brown.

Q. That he made out the check for \$2,000? A. Yes, sir.

Q. Is that it? A. Yes, sir.

BY MR. SCHOTLAND:

20 Q. You countersigned it? A. Sir?

Q. You countersigned it—you signed it? A. Yes, sir.

Q. He also signed it, did he not? A. Yes, sir.

Q. And another officer countersigned it? A. Yes, sir.

Q. Who? A. The president.

30 Q. Then all checks that were issued were made out by the secretary, signed by him and countersigned by you, as treasurer, and by the president? A. Yes, sir.

Q. What was done with the check after it was made out in that manner? A. Placed in the safe.

Objected to as not cross examination.

THE COURT: (After argument.) I think you have a right to trace the money for the purpose of seeing whether it was received by any authorized person.

Question and answer read.

40 Q. By whom?

Solomon B. Beidelman—Cross.

THE COURT: That check is a check for \$2,000, is it not?

MR. FRAZER: Yes, sir.

THE COURT: That check is the check for \$2,000?

MR. SCHOTLAND: Yes, sir.

Q. By whom was it placed in the safe?

10

Objected to on the same ground.

Objection overruled.

Plaintiff's counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. By whom was it placed in the safe? A. By me.

Q. By you? A. By me, with the—

Q. With what? A. It was placed in the safe with the other securities by me.

20

Q. Now, you knew when you signed this check that that represented the maturity value of the same ten shares of stock which Mr. Rose had pledged as security for his loan of \$1800, did you not?

Objected to as not cross examination.

Objection overruled.

Plaintiff's counsel pray an exception to this ruling of the Court.

30

Exception noted as ground of appeal.

(Question read.) A. Yes, sir.

Q. And you had the note representing that \$1800 loan, did you? A. Yes, sir.

Q. And you had the certificate for those ten shares of stock? A. Yes, sir.

Q. Now, where did you have the note and the certificate for the ten shares of stock? A. Attached to the—in the pigeon-hole in the safe with the check.

40

Solomon B. Beidelman—Cross.

Q. What check? A. \$2,000.

Q. With this \$2,000 check? A. Yes, sir.

Q. What did you put it in the safe for? A. With the other securities, for security.

Q. For security for what? A. It is customary to put all checks in the safe and to hold them there until such time as the settlement is made.

10 Q. Who made the settlements on behalf of the association as a rule? A. I did.

Q. You did as a rule? A. Well, when they called there for their settlements I made the settlements.

Q. When they called there when? A. At any time.

20 MR. FRAZER: I do not wish to be continually objecting, but it seems to me this is getting beyond the line of cross examination, and I would like to object to this line of testimony, without renewing it after each question—my objection being that it is beyond the scope of the direct examination.

THE COURT: You may object to the whole line, and you may take an exception.

Plaintiff's counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

30 Q. Were you there at any time? A. Well, not always; I was there at such time as the people would make an appointment that had a check due, and I would go there with them and make the settlement.

Q. Do you mean to say that you made it a practice of personally making the settlement with the shareholders as a rule? A. Yes, sir.

Q. You did not make it the practice of letting Mr. Brown attend to that part of it? A. No, sir.

40 Q. The checks were never turned over to him

Solomon B. Beidelman—Cross.

to attend to it? A. There has been checks turned over to him.

Q. To attend to the settlement? A. When the proper papers were brought there, the proper securities.

Q. This very loan itself that was made, who brought the note there and who received the check for it when the loan was made? 10

Objected to as immaterial.

A. That I couldn't say.

THE COURT (After argument): I will take the testimony, subject to your objection.

Plaintiff's counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Question read.) 20

BY THE COURT:

Q. In the first place, who brought the check?

A. Who brought the note there?

Q. Who brought the check, you were asked.

A. The check was left in the safe.

BY MR. SCHOTLAND:

Q. Well, I mean the \$1800 check, when the loan was made? A. I didn't see no \$1800 check.

Q. Did not the association loan \$1800 on these shares? A. No, sir; they loaned it on different notes, or different checks. 30

Q. Well, the last loan that was made on these shares was \$1200, was it not? A. Yes, sir.

Q. In January, 1913? A. Yes, sir.

Q. Now, who brought the note there for that \$1200? A. The note was brought there, or delivered there—the note and check was brought there by Mr. Brown, I suppose, the secretary.

Q. To whom was the check for the \$1200 delivered? 40

Solomon B. Beidelman—Cross.

ered? A. I think it was delivered to Mr. Brown.

Q. Delivered to Mr. Brown, the secretary? A. The secretary—on the stock certificate and note.

Q. That was the way the business was done most of the time, was it not? A. No, sir.

Q. It was done in many instances that way, was it not? A. Not many; no, sir. When they

10 were friends, I suppose, when he was—

Q. Was it done in as many as twenty-five instances? A. No, sir; not that I know of; no, sir.

Q. In how many instances was it done that way? A. That I couldn't say.

Q. Was it done in as many as fifteen instances? A. No, sir.

Q. Was it done in as many as three instances?

A. Well, it might have been done in two or three; 20 something of that kind. It was very seldom such a thing was done.

Q. Very seldom such a thing was done? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Now, you say that this money was not paid back? A. Yes, sir; not to my knowledge.

Q. What is that? A. No, sir.

Q. This \$1800? A. Yes, sir.

Q. Your check for the \$2,000 was issued when?

30 A. In July.

Q. 1913? A. 1914—1913, yes.

Q. July, 1913? A. Yes.

Q. Your check for the \$2,000 went through the bank shortly after it was issued, did it not? A. Yes, sir; I guess it did.

Q. Well, you had charge of your bank balance, did you not? A. Yes, sir.

Q. You knew whether that check went through or not, did you not? A. No, sir.

40 Q. Well, who kept your book, for you? A. Mr. Brown kept the check-book.

Solomon B. Beidelman—Cross.

Q. You were the treasurer? A. Yes, sir.

Q. But Mr. Brown kept the check-book; is that true? A. He wrote the checks.

Q. And he kept the check-book? A. Yes, sir; he had charge of it.

Q. And he kept account of the bank balance? A. The returned checks; yes, sir.

Q. So that you, as treasurer, did not know that this \$2,000 check of the association had gone through the bank and been deducted from its funds? A. I didn't receive the returned checks; he received those.

Q. What is that? A. He handled the returned checks.

Q. Did you not keep a treasurer's book? A. I kept it from the bank-book, yes, sir.

Q. You kept the bank-book; that is, the deposit book? A. Yes, sir.

Q. Did you not keep a treasurer's book, keeping an account of what money you received and what checks were drawn against it? A. Yes, just the money deposited.

Q. Do you mean to say that the only book you had was the pass-book in which the bank entered the deposits that you made? A. Yes, sir; I kept the deposits.

Q. That is the only book you had? A. Yes, sir.

Q. Then the treasurer's record of the accounts and everything that the treasurer should have was kept by the secretary, Mr. Brown?

Objected to as calling for a conclusion.

Question withdrawn.

Q. Then, Mr. Beidelman, the treasurer's accounts were kept by the secretary instead of by you?

Objected to as calling for a conclusion.

Solomon B. Beidelman—Cross.

THE COURT: I do not know whether the words "treasurer's account" is a technical expression or not. I suppose they would naturally mean an account of the money that the treasurer received and paid out.

MR. SCHOTLAND: Yes.

THE COURT: If that is all it means—

10 MR. SCHOTLAND: That is all I mean by it.

THE COURT: —it does not involve any question of construction, but merely a question of fact. Understanding it in that way, you may ask your question. You may explain the phrase "treasurer's account," if you choose. Explain to the witness what you mean by it.

20 Q. Then, Mr. Beidelman, the only man connected with the Parkview Building & Loan Association who kept an account of the moneys received by the treasurer and of all of the drafts against those moneys was the secretary; is that so or not?
A. No, sir.

Q. Who else kept that account? A. The treasurer kept all the securities. Isn't that what you asked?

Q. (Former question read.) A. No, sir.

30 Q. Well, who kept the account of all the moneys received by the treasurer and of all the drafts drawn against those moneys, who kept that account? A. The secretary kept that account.

Q. The secretary did? A. Yes, sir.

Q. Then why did you say "No, sir"? You were mistaken; isn't that so? You were mistaken when you said, "No, sir"? A. Yes, sir.

Q. Now, Mr. Beidelman, what means did you have to ascertain whether when you signed a check on behalf of this building and loan association it was actually paid out by the bank or not?

40 A. I would find out as our balances, when the

Solomon B. Beidelman—Cross.

report was made by the secretary, always agreed with mine.

Q. All you knew, then, was this: that every month you put your pass book into the bank of deposit to be balanced for you? A. No, sir; they have a statement.

Q. What bank did you deposit in? A. The Essex County National. 10

Q. Every month you received a statement from the bank of deposit informing you what the balance to the credit of the association was? A. Yes, sir.

Q. That is so, is it not? A. Yes, sir.

Q. And every month the secretary would report at the directors' meeting what the balance should be, according to his books; is that so? A. From that statement, yes.

Q. And both of those statements always tallied, did they? A. No, sir—he checked up the statement and the checks, and made out his figures, and they agreed with mine—and they would agree with mine. 20

Q. You never did the checking up, did you? A. Well, he checked them up.

Q. You never did the checking up, did you? A. No, sir.

Q. No, you did not. It was the secretary who did the checking up, and it was the secretary who reported that both balanced; that is so, is it not? A. No, sir; I had my balance. When he would make a report before the board of directors of his balance it would agree with mine. 30

Q. He always had that statement from the bank, did he not, to show the balance? A. Yes, sir.

Q. He always had it before he made up his report, did he not? A. Yes, sir.

Q. You say yes? A. Yes, sir. 40

Solomon B. Beidelman—Cross.

Q. Now, then, you knew that you issued this \$2,000 check in July, 1913? A. Yes, sir.

Q. And you say you knew that you were entitled to receive from Mr. Rose, the payee of that check, the sum of \$1809.54; is that so? A. Yes, sir.

10 Q. You put that check in the safe? A. Yes, sir.

Q. And then in the same place where you put that check you had Mr. Rose's note for \$1800, did you? A. Yes, sir.

Q. And you had Mr. Rose's certificate for ten shares of stock in this association? A. Yes, sir.

Q. When you got the statement of the bank balance from the bank for your meeting in August of 1913, did you check it up to see whether your \$2,000 check had been paid out? A. No, sir.

20 Q. Did you look in the safe to see whether you still had the note? A. It was placed with the other securities, and we never looked at them until they were called for.

Q. Never looked at them? A. It wasn't necessary.

Q. Did Mr. Rose continue to pay any money to the association after July, 1913? A. No, sir.

Q. He owed the association \$1809.54 in July, did he not? A. Yes, sir.

30 Q. What steps did you take to collect that money? A. We didn't take any, no steps to collect the money, thinking that the check and the note were still in the safe with the other securities.

Q. What were you going to keep that \$2,000 check in the safe for? A. For safe keeping.

Q. What for, what was it made out for? A. For safe keeping.

40 Q. What for, what was it made out for? A. Well, we don't pay out a check until we come to settle up the \$1800.

Solomon B. Beidelman—Cross.

Q. Did you notify Mr. Rose that he should come and settle up the \$1800 and take the \$2,000?

A. It was the secretary's duty to do that.

Q. It was the secretary's duty to do that, was it not? A. Yes, sir.

Q. And did the secretary have access to these securities and the checks and the notes? A. Yes, sir.

10

Q. He had equal access, did he not? A. Yes, sir.

Q. He had equal access with you, did he not? A. Yes, sir.

Q. Well, how did you know, then, that the secretary did not really perform his duty by notifying Mr. Rose to come up with the \$1800 and take the \$2,000 check and take his note back? A. Why, I didn't know.

Q. You did not know? A. No, sir; that he had not notified him. 20

Q. You do not know whether he did or not, do you? A. I do not.

Q. For all that you know, as treasurer, Mr. Brown, the secretary, might have fully performed his duty; he might have notified Mr. Rose, "The \$2,000 check is ready for you; come up and take it, and give me the \$1800 and take back your note"? So far as you know about it, he might have done that? A. No, of course, I didn't know that the check was paid. 30

Q. And, of course, you did not know—A. That the note was paid, the amount that he borrowed.

Q. You did not know, in the first place, that the \$2,000 check that you had issued in the regular course of business actually went through the bank, did you? A. No, sir.

Q. And you did not know that the note for \$1800 had been delivered to Mr. Rose, either, did you? A. No, sir. 40

Solomon B. Beidelman—Cross.

Q. Now, Mr. Beidelman, is not the real reason that you did not know when a check which you, as treasurer, signed for the association, went through the bank or not, and when securities held by this association were returned to the borrowers or not, because you left all the business to Mr. Brown, for him to take care of; is not that
 10 the real reason that you do not know? A. No, sir. When those things come back I filed them; but they never come back.

Q. If they came back? A. Yes, sir.

Q. And if they did not come back you did not know whether you should expect them back, do you? A. I suppose in time, when I would go over the securities, I would find out that they were missing.

Q. When did you find out that this check was
 20 missing and this note was missing? A. When Mr. Brown left, when the authorities—when we had an examination.

Q. It was not until after the State Department of Banking & Insurance found it out, was it? A. At that time, yes.

Q. They were the ones that showed it to you?
 A. They were the ones that found it out.

Q. You did not find it out yourself? You did not even know it, did you? A. No, I did not
 30 know it until that time, no.

Q. And when was that, that the Department of Banking & Insurance found that out and told you about it? A. About February, when the examination was made.

Q. Well, when was it that Brown disappeared?
 A. In February.

Q. What part of February did he disappear?
 A. I can't recall just the date.

Q. He disappeared in February, 1914? A. Yes,
 40 sir.

Solomon B. Beidelman—Cross.

Q. He disappeared more than seven months after this \$2,000 check had been issued? A. Yes, sir.

Q. And how soon after he disappeared was it that the banking and insurance department pointed out to you that this \$2,000 check had been cashed and that the \$1800 note had been delivered? A. Well, that was shortly after the accounting took place. 10

Q. Now, if Brown, as secretary, was not handling all of these transactions for the building and loan, how is it that you did not discover that your check had been cashed and the security gone? A. Well, I simply thought that the securities and checks were still in the safe.

Q. Did you not, as one of the financial officers of that association, make any report to the association showing that the entire first series was paid out? A. That is what I had check-book entries for; yes, sir. 20

Q. And then do you not suppose that, if the entire first series was paid out, this \$2,000 check, which was one of the checks in payment of that first series, was paid? A. Well—

Q. Well, yes or no. Did you not? A. Just ask that question again.

Q. (Question read.) A. No.

Q. You did not? A. I did not suppose it was. 30

Q. Did you not report a balance on hand after having paid out the first full series of shares? A. I reported my bank balance each month.

Q. And when you reported your bank balance was not that balance, as a matter of fact, arrived at by deducting all of the checks that had been issued in payment of shares in the first series? A. I can simply say that he made his balance agree with mine.

Q. They were the same, were they not? A. 40
They were.

Solomon B. Beidelman—Cross.

Q. The check had gone through the bank, had it not? A. Yes, sir; it seems to me so.

Q. The balance that you reported to the association in August was a balance arrived at after deducting this very check from your credit on the bank, was it not? A. It must have been.

10 Q. Now, then, Mr. Beidelman, as treasurer, why did you not demand the \$1,800 check in payment for that note, when you saw that your balance had been reduced by this \$2,000 check having been paid out in full? A. I didn't know that it had gone.

Q. You did not know it because you did not know what checks did go through and what checks did not go through, did you not? A. Well, I did know that the checks were placed in the safe and held there until such time that they would
20 come and take them up and pay their notes.

Q. How many checks were placed in the safe? A. Well, there are some—

Q. In July, 1913? A. Well, I can't recall just how many; quite a few.

Q. Quite a few? A. Yes, sir.

Q. How many of them were turned over to Mr. Brown to deliver to the shareholders? A. That I couldn't say.

30 Q. How many of them did he actually deliver to the shareholders? A. That I couldn't say.

Q. How many of them did you personally deliver to the shareholders? A. Well, quite a few that evening that they were paid out.

Q. How many were paid out? A. Well, it was quite a large series; I don't recall now.

Q. Were there a hundred shareholders paid out? A. No, sir; I don't think so. We have the book here; it will show.

40 Q. I notice, Mr. Beidelman, by the association's checkbook, and it is admitted as a fact, that there

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were thirty-three shareholders paid out in that first series. How many of those thirty-three did you personally deliver the checks to? A. I couldn't say as to that just now; I don't remember.

Q. Did you deliver them to as many as ten? A. Well, I wouldn't like to say any number at all; I wouldn't like to say. 10

Q. But whichever ones you did not deliver to the shareholders Mr. Brown did? A. Well, he didn't deliver them just—we put them in the safe, as I said before, and delivered them at such time as they wanted them.

Q. But it wasn't Mr. Brown that delivered all that you did not personally deliver? A. No, sir; I delivered a great number.

Q. Listen to my question. All those that you did not personally deliver to the shareholders Mr. Brown did? A. I delivered them all with the exception of, say, three or four, something of that kind. 20

Q. You delivered all with the exception of three or four? A. I can't say just how many.

Q. Well, will you say that all of those that you did not deliver Mr. Brown did? A. Yes, I will say that.

Q. Well, that is the fact? A. Yes, sir.

Q. Now, in looking at the check-book you could readily see that the \$2,000 check was deducted from the balance, could you not (book shown to witness)? A. Yes, sir. 30

THE COURT: You now show the witness a check-book?

MR. SCHOTLAND: I show the witness the check-book of the Parkview Building & Loan Association.

Q. I call your attention to the stub of the check-book, No. 1684, dated July 7, 1913, drawn 40

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to the order of Edwin E. Rose, \$2,000, ten shares, first series, No. 74. Now, you could tell by looking at that check-book that the balance showed that this \$2,000 was deducted as having been drawn from the bank, could you not? A. Well, as I said before, Mr. Brown kept the balance in the check-book at that time.

10 Q. And you depended upon him for all that information? A. For his bank balance, for his balance there, yes.

Q. Why is it that you did not look for and demand either the note or the check for it when you got your bank balance in August, 1913?

Objected to as not cross examination.

Objection overruled.

Plaintiff's counsel pray an exception to this ruling of the Court.

20 Exception noted as ground of appeal.

Question read.

A. Simply his balance always agreed with mine, and, as he would take back the checks, of course, I thought it was all right.

30 Q. Well, his balance agreed with yours because his balance, then, must have been made up the same as yours was by the bank after deducting this \$2,000 check, was it not? A. His balance agreed with mine; there is no question about that.

Q. Well, is there any question but what your balance was arrived at by deducting this \$2,000 check as well as all the other checks?

MR. FRAZER: The balance at what time?

MR. SCHOTLAND: The balance prior to the August, 1913, meeting of this association.

40 MR. FRAZER: Mr. Beidelman has already testified that he did not know when this check was paid. Mr. Schotland's question now

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assumes that it was paid some time during July, 1913, which is an assumption not justified by the testimony.

MR. SCHOTLAND: In calling the witness's attention to the entry in the check-book, he testified that it was deducted from the balance there.

MR. FRAZER: From the check-book balance. 10

MR. SCHOTLAND: Yes, and he testified that that tallied with the bank balance.

MR. FRAZER: Are you referring to the check balance or the bank balance?

Q. Did you not say that the balance made up by Mr. Brown tallied with the bank balance? A. He had the check-book; it tallied with my pass-book; he made it tally with my pass-book. How he arrived at it I don't know.

Q. How was your balance in your pass-book 20
gotten? Was it balanced in your book or by monthly statement? A. Monthly statement.

Q. Then it was the monthly statement of the bank that his check-book balance tallied with, was it? A. He made it tally with my pass-book; yes, sir.

Q. Well, was it with your pass-book or with the monthly statement? A. With the pass-book, my pass-book, that he made his balance agree 30
with.

Q. Did you have your balance in the bank arrived at and then entered into your pass-book by the bank officials? A. Only the deposits; only the deposits were entered in the pass-book.

Q. And how did you arrive at your bank balance? A. When he checked back the checks in his financial statement he would name the amount of the balance, which he would make agree with mine. 40

Solomon B. Beidelman—Cross.

Q. Where did you get your balance from? A. From my passbook.

Q. How could you get your balance from your pass-book? A. From the amount of moneys deposited.

Q. Well, that would show the total deposits? A. Yes, sir.

10 Q. Well, how could you arrive at your balance? A. Well, I called my balance the total amount of the money received for each month; I would make out a report of it and he would make out a report, and say "That agrees with the treasurer, and that agrees with the treasurer."

Q. How did you report the balances? A. Reported every month.

20 Q. Where did you get your information from as to your bank balance? A. From my bank pass-book.

Q. Were any of the drafts on your bank deposits entered in your pass-book? A. Yes, sir.

Q. They were? A. What do you mean, the notes and so on, and such as that?

Q. No, the checks that you issued against your deposits. A. No, no.

30 Q. Then how did you arrive at your balance from the pass-book? A. I just took the amount, and each month it would give the total amount, and then I would deduct it and show the balance.

Q. What did you deduct? A. The amount of the checks drawn.

Q. Where did you get the information with reference to the number of checks drawn? A. From the secretary.

Q. And what part of the month would you do that? A. Well, towards the latter part of the month.

40 Q. You would do it before your meeting night or the board of directors, would you not? A. Yes, sir.

Solomon B. Beidelman—Cross.

Q. When did you do that with reference to all the moneys paid out on July 7th? A. Previous to that meeting, of course.

Q. Previous to the meeting in August? A. After he got the bank statement.

Q. Previous to the meeting in August; that is so, is it not? A. Previous to the July meeting—I mean the August meeting; yes, sir. 10

Q. Previous to the August meeting? A. Yes, sir.

Q. Now, previous to the August meeting, when you made up the balance that you were going to report to your board of directors, you took the total of deposits that appeared on your pass-book, did you? A. Yes, sir.

Q. And you totalled up from the check-book the total of the checks that had been drawn? A. He did. 20

Q. He did? A. Yes, sir.

Q. You took the total that he gave you? A. Yes, sir.

Q. And deducted it from the total deposits; is that so? A. Yes, sir.

Q. And reported that you had a balance of so much money in the bank? A. Yes, sir.

Q. That is how your report and his report tallied? A. Each month he would take the amounts and— 30

Q. That is the method that you followed? A. Yes, sir.

Q. Now, how did the monthly statements sent you by the bank enter into this? A. They were received by him with the checks.

Q. Then even the monthly statements sent by the bank to show the balance that they credited the association with on their books and returned vouchers were received by Brown, as secretary? A. Yes, sir. 40

Solomon B. Beidelman—Cross.

Q. That is right? A. Yes, sir.

Q. So he knew in advance what balance he had to report, did he not? A. Yes, sir.

Q. Now, will you look at that check-book again and see whether this particular check of \$2,000, to the order of Mr. Rose, was deducted from the moneys on deposit prior to the August meeting? A. (Referring to check-book.) It might have been deducted, but the August meeting was—

Q. I cannot hear you. A. It is footed in as being deducted.

Q. It was deducted? A. Yes.

Q. Then the balance that you reported to your board of directors in August, 1913, was a balance arrived at after deducting this \$2,000 check?

A. When we took the footings of this book and deducted that from the amount of money deposited in the bank, why, of course, it agreed with his.

Q. It what? A. It agreed with his; he made it agree.

Q. Then the balance on the bank's statement, which agreed with the balance in that check-book and in your pass-book, was a balance arrived at after deducting this \$2,000 check, as well as the other checks that had been issued; was it? A. Well, it must have been; yes, sir. It shows in the other—

Q. It must have been so, you say? A. According to his figures there, yes, he deducted it; yes, sir.

Q. How is it that with that \$2,000 deducted you did not miss the \$1,800 security? A. That was in the safe?

Q. That was anywhere. A. Simply because we did not go over the securities, only at such times that they were paid off, that they were redeemed.

Q. Did you not, as treasurer, know the moment that that \$2,000. check was delivered you

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were to receive back an \$1,800 check? A. I knew that; yes, sir. I didn't know that check had left the safe.

Q. You did not know what check left the safe?

A. \$2,000 check.

Q. The balance that you reported to your association showed that that check had been deducted, did it not? A. It showed that he had deducted 10 the check; yes, sir.

Q. And you reported his balance, did you not, as your own? A. I took these footings; yes, sir.

Q. So that the balance that you reported showed that that check had been deducted, did it not?

A. Yes, sir.

Q. Well, now, if the check was deducted, where was your \$1,800 check that you were to receive back? A. I didn't think that the securities had gone out of the safe. 20

Q. Was not the \$2,000 check itself the security?

MR. FRAZER: What does that mean, may it please the Court?

MR. SCHOTLAND: Whatever he means when he uses the words that "The securities had gone out of the safe." He says he put this check in the safe. I am only taking his word for what he means.

Question read. 30

A. Yes, sir.

Q. Why did you not, knowing, as you say you knew, that Mr. Rose owed the association \$1,809.54, sign a check to his order for the difference between \$1,809.54, which he owed the association, and \$2,000, which the association owed him? A. Well, all the time that I have been the treasurer it wasn't the custom. At that time we drew all the checks for the full amount.

Q. You say that was not the custom to do that? 40

A. It doesn't appear there, not that month.

Solomon B. Beidelman—Cross.

Q. Well, do you say that that was not the custom to do that? A. Not in that month, it wasn't.

Q. Not in that month? A. No, sir.

Q. Was it the custom in any other month? A. Yes, one check; paying off a series, that showed.

Q. Let me see if I cannot show you that it
 10 was the custom in that very month, too. I call your attention to stub No. 1702 in your check-book, "July 7, 1913, Charles S. Otto, shares surrender account, \$20; fines, \$4, deducted;" leaving \$16, and the check issued for \$16 (indicating). What is the date of that? A. July 7th.

Q. That is the very same date that appears when all these other checks were issued, is it not? (No response.)

Q. Is not that the way you customarily did?
 20 A. No, sir; it doesn't appear so in that month. In that one instance there it does, yes.

Q. Will you point out to me any other stub there which shows that money was paid to somebody who owed the association money and the amount that the party owed was not deducted from the amount of the check in that month?

A. Yes. (Referring to check-book.) Here is one: "Frank Mihlon."

Q. What about Frank Mihlon? Did he owe the
 30 association any money? A. No, sir.

Q. Then nothing was deducted, of course. I want you to find one where the shareholder owed the association money and it was not deducted from the amount of the check issued to him. A. (Referring to check-book.) That seems to be the only one.

Q. The Rose check? A. Yes, sir.

Q. Then the Rose check, the one in question, is
 40 the only instance where a check was issued for the full amount and the amount of the indebtedness was not deducted? A. Yes, sir.

Solomon B. Beidelman—Cross.

Q. In all instances, then, in this association, if the association had to pay out any money to pay any shareholder, the amount that that shareholder owed was first deducted and a check given for the difference; isn't that so? A. I haven't looked it over carefully. Is that the only one?

Q. You just testified that that was the only one.

10

THE COURT: Do you wish to examine the book any further?

WITNESS: Yes, sir; I would like to.

Check-book handed to witness.

Q. Have you found any others? A. This was the shares surrendered account; this that you refer to was the shares surrendered account, not the paid up stock.

Q. You mean not the matured stock? A. Not the matured stock.

20

Q. Well, the matured stock was only paid out on just the one night, was it not? A. Yes, sir.

Q. Shares were being surrendered almost continually, were they not? A. Yes, sir. The one referred to was the shares surrendered account, and the profits so much, and the difference that was paid, and they surrendered the shares that evening—

Q. Whenever shares were surrendered? A. The others were made out to the full amount.

30

Q. When the shares were surrendered the amount due the shareholder was not paid in full, but the amount that he owed would be deducted?

A. Yes, sir.

Q. And he was given the difference? A. But not when the shares were matured.

Q. Well, this was the first series that matured, was it not? A. Yes, sir.

Q. Well, why did you not follow the same

40

Solomon B. Beidelman—Cross.

system that you followed all the time in the building and loan? A. Well, that is the first series, and they were paid off in full, and the only ones were shares surrendered account there and not the shares matured.

Q. Was there anybody else in that first series besides Mr. Rose that owed money on the stock?

10 A. Well, I can't say how many there were.

Q. Well, there were others? A. I think there were.

Q. Did you get back the money from the others?

A. Yes, sir.

Q. Who got it back, you or Brown? A. Well, it was paid into the association that evening on some; I don't know who they were.

Q. To you or to Brown? A. Well, to the secretary, who—

20 Q. Well, can you not say Brown? A. Well, to Brown.

Q. To Brown? A. Yes, sir.

Q. Now, all you know about this particular note is this, then: that Brown did not turn over to you the \$1,809.54 check, which he should have turned over to you; isn't that all you yourself know about it? A. I know that he did not.

Q. Turn it over to you? A. Until the accountant made the report.

30 Q. Well, you do not mean that, do you? A. That is, until—

Q. You do not mean that he ever turned it over to you, do you? A. No, I do not mean that he ever turned it over to me.

Q. You mean that he never did turn it over to you? A. Yes, sir.

Q. And you further mean that you did not discover it until the accountant made his report?

A. Yes, sir.

40 Q. Now, is not the reason that you did not

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discover it until the accountant made his report because you trusted everything to Brown? A. No, sir; I didn't trust everything to Brown. We worked there—

Q. If you had checked up your own checks and your own securities every month, and if you had made out your own report, would you not have seen that you paid out \$2,000 in July and should have received back \$1,809.54 at the same time? A. We never checked up our securities monthly. 10

Q. You never did? A. Not monthly; no, sir.

Q. But you checked up the checks that you issued? A. Mr. Brown checked those up.

Q. But if you had done that instead of leaving it to Brown, you would have discovered that you were \$1,809 short, would you not? A. I suppose I would; yes, sir. 20

Q. Well, would you not? A. I would; yes, sir.

Q. And the reason, then, that you did not discover it is because you did leave the checking up to Mr. Brown? A. Simply because it was customary.

Q. That is all I want to know; that is all. Then the reason that you did not discover this shortage of \$1,809.54 is because it was customary in this association for Mr. Brown to do that checking up? A. Checking the checks. 30

Q. That is your answer? A. Checking the checks back.

Q. That is your answer, is it? A. Yes, sir.

Q. If that had not been the custom of this association, and you had done it yourself, you would have immediately discovered that you paid out the \$2,000 without getting back the \$1,809.54, would you not? A. I suppose I would.

Solomon B. Beidelman—Re-Direct.

RE-DIRECT EXAMINATION BY MR. FRAZER:

Q. Now, Mr. Beidelman, do you recollect an owner of shares of stock in the first series by the name of Enos Willets? A. Yes, sir.

Q. Do you know whether he had borrowed anything against those shares or not? A. I think he had; yes, sir.

10 Q. Would you say that he had? A. Yes, sir.

Q. Now, I direct your attention to the stub of Enos Willets, "\$600, three shares in the first series, No. 69" (indicating). In that case was the check made in full to Mr. Willets? A. Yes, sir.

Q. Do you recollect an owner of shares of the first series named Asher Lambert? A. Yes, sir.

Q. Do you remember whether there was any debt against those shares? A. Yes, sir.

20 Q. Was there? A. Yes, sir.

Q. I call your attention to the check stub on the Asher Lambert check (indicating), "Asher Lambert, \$1,000, five shares of the first series, No. 27." A. Yes, sir.

Q. In that case was the check drawn for the full amount or less the amount of the indebtedness? A. Drawn for the full amount.

Q. Do you recollect a shareholder by the name of Serviss? A. Yes, sir.

30 Q. Did he owe any money to the association? A. Yes, sir.

Q. I call your attention to the check stub, "J. B. Serviss, \$400, No. 22" (indicating). Was it made out for the full amount of the shares or less the amount of the indebtedness? A. The full amount of the shares.

Q. So that there were instances besides this instance where the full check was made out? A. Yes, sir.

40 Q. Do you know what the practice is at the present time on matured shares?

Solomon B. Beidelman—Re-Cross.

Objected to as immaterial.

THE COURT: It would appear to me to be immaterial what the subsequent practice was.

Plaintiff's counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

RE-CROSS EXAMINATION BY MR. SCHOTLAND:

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Q. Mr. Beidelman, in these three cases of Enos Willets, Asher Lambert and Serviss, who received the payment of the indebtedness of the shareholders? A. I did.

Q. You did personally? A. Yes, sir; I received from Asher Lambert and from Willets.

Q. When and where? A. Why, at my office, with the Asher Lambert, having the check, being right across the street from him—

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Q. You took the check, then, to attend to it personally? A. Yes, sir.

Q. Because he is right across the street from you? A. Yes, sir.

Q. That is the reason that occurred in the Asher Lambert case? A. Yes, sir.

Q. What about the Willets case? A. Well, they called and brought their check for the difference.

Q. To whom? A. To me.

30

Q. To you or to Brown? A. To me.

Q. Where? A. At my office.

Q. At your office? A. Yes, sir.

Q. And how about Serviss? A. My mind isn't clear enough on that; I wouldn't like to say, because I am not positive; I can't just recall that now; I wouldn't like to say.

Q. Then the Serviss was probably paid to Brown? A. I think I got their check by mail, although I won't be positive.

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Solomon B. Beidelman—*Re-Cross.*

Q. Did you mail them the building and loan check? A. When I had their securities and everything properly signed, I mailed them their check.

Q. Do you remember that? A. No, I don't remember that.

Q. You are only figuring on it? A. No, I wouldn't say as to that; I don't want to commit myself.

10 Q. How did you come to have the Willets check at your office? A. They notified me that they would call there.

Q. So you took their check out of the safe and had it at your office and delivered the building loan check to Willets and took back Willets' check for the amount of the loan? A. Yes, sir.

Q. Do you remember how much that was? A. No, sir.

20 Q. You did not really have any personal recollection of these amounts, did you? A. Well, I couldn't keep track of all these transactions, year in and year out.

MR. SCHOTLAND: I have agreed with Mr. Frazer that the printed copy of the constitution of the Parkview Building & Loan Association may be used without any additional proof.

30 MR. FRAZER: I offer that copy of the constitution of the Parkview Building & Loan Association.

Marked Exhibit P-3.

Plaintiff Rests.

40 MR. SCHOTLAND: If your Honor please, I move for a non-suit on the ground that the plaintiff has not made out a *prima facie* case. The plaintiff has established in this case just this: that it, as a building and loan association, loaned to the defendant in

Motion for Non-Suit.

January, 1913, by adding to previous loans, an aggregate sum of \$1,800; that it received in return for that loan ten shares of the first series of stock of its own, pledged as collateral security, and also the promissory note of the plaintiff to the defendant, as proved further by putting the interrogatories in evidence; that when these ten shares of stock matured, in July, 1913, the plaintiff issued a check for \$2,000 to the order of the defendant; that the defendant cashed that check; that the defendant received that check, first, from the secretary of the plaintiff association; that the defendant at the same time when he received that check for \$2,000 received back his note for his indebtedness, and paid to the secretary of the association, who delivered back to him the security and the amount coming to him, the exact amount owing to the association at that time, \$1,809.54, and that the transaction was closed. The plaintiff has proved all that affirmatively, and has offered the interrogatories in evidence, which give the circumstances in the answers. The plaintiff has proved further that it was the custom in this association for the secretary to transact all the business, for the secretary to receive all the money from everybody; that the treasurer did not get it except at the hands of the secretary; that it was the custom for the secretary to make out the checks; that the secretary in many instances delivered the checks to the shareholders; that the secretary had full access with the treasurer to the safe and the securities of the association; that the secretary was the only one that actually took charge of the finances and of the financial

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Motion for Non-Suit.

accounts. The oral testimony on behalf of the plaintiff, which shows the custom and shows the practice of this association, is further corroborated by the provision in the constitution, Exhibit P-3, page 13, which provides, among other things, "He shall receive all moneys paid to the association and pay the same to the treasurer, taking his receipt therefor."

Now, according to the constitution of this association, the secretary of this association is the only one that is authorized to receive, what? All moneys, moneys of every kind, paid to the association. There is no limitation. Moneys of all kinds and from any source. All moneys paid to the association the secretary is to receive, and then it is his duty to turn it over to the treasurer and get his receipt therefor.

Now, what is the evidence here? This secretary, the only authorized agent of the plaintiff association to receive the money, the one that had equal access with the treasurer to all the securities of the association, in July, 1913, carried out his duty as secretary by delivering to the defendant the plaintiff association's check, returning to the defendant his note and taking from the defendant the amount that he owed the plaintiff association, \$1,809.54. All that the plaintiff's witness testifies to, as a result of a lengthy cross examination, as to the payment or non-payment of this note, is this: "All I know about it is that Brown, the secretary, never turned that money over to me." Why, he never even discovered it until the banking examiner discovered it for him. When? Seven months after the payment had been made.

Motion for Non-Suit.

I submit, if your Honor please, under those circumstances, the plaintiff's case affirmatively shows that the duly authorized agent of the plaintiff received the moneys and delivered up the securities that were supposed to be delivered up in exchange for that payment. It is not disputed that the defendant paid the money to the secretary; that is admitted. It is shown in the interrogatories. I submit that, under those circumstances, they have made out nothing on which to hold the defendant to pay the money over again. I agree that, if they had shown that it was some other officer that should have received the money, in accordance with the constitution, that possibly a jury question might arise as to whether or not the constitution was complied with. But even that doubtful question does not appear in this case, because the constitution coincides right with the custom that was followed in this association of having the secretary take care of all that, and the secretary did. 10 20

Now, the result of the testimony is simply this: that the secretary, the duly authorized agent, received the money and delivered up the security, and he failed to turn it over to the treasurer. Who is responsible for that? The by-law provides that "He shall receive all moneys paid to the association." That is the part that is binding upon the shareholders; that is the part that is binding upon outsiders dealing with the association. The other part, "and pay the same to the treasurer, taking his receipt therefor," is the part that the association assumes when it selects a secretary and clothes him with such power. It authorizes him to receive the 30 40

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money. If he keeps it or steals it or embezzles it, without turning it over, are they going to ask the outside world to pay them over again? I submit that they cannot, under the facts in this case, and that the defendant is entitled to a non-suit.

10 I forgot to cite to your Honor the legal authority for my proposition on the facts—a case on all fours with this—and that is the case of the *Manchester Building & Loan Association vs. Beardsley*, 66 Atlantic Reporter. Counsel argue.

The Court takes a recess until to-morrow, Friday, October 22, 1915, at ten o'clock, A. M.

Friday, October 22, 1915.

20 Met pursuant to adjournment.

Present, counsel as before stated.

THE COURT: We adjourned upon a motion to non-suit. I deny the motion.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

30 EDWIN E. ROSE, defendant, sworn in his own behalf.

DIRECT EXAMINATION BY MR. SCHOTLAND:

Q. Mr. Rose, you are the defendant in this suit? A. Yes, sir.

Q. And you were a shareholder in the Park-view Building & Loan Association, I presume? A. Yes, sir.

Q. Did you ever borrow any money from the association on your shares? A. I did.

40 Q. How many times? A. I think it was three times, three different times.

Edwin E. Rose—Direct.

Q. And what did you do on each occasion when you borrowed money on your shares? A. Why, I asked Mr. Brown, the secretary of the association, what I could borrow each time, and he always told me the amount, and then he got it for me.

Q. Did you go to the meeting of the association in order to make your loan? A. No, sir; always through the secretary, Mr. Brown. 10

Q. Who prepared the note on each occasion? A. Mr. Brown.

Q. And you signed it? A. Yes, sir.

Q. Who delivered the checks to you on each occasion? A. Mr. Brown.

Q. He was the secretary of the association, you say? A. Yes, sir.

Q. To whom did you pay your monthly dues, or weekly dues? A. At Mr. Brown's house, at his home. 20

Q. How long did you continue to do that? A. Well, he used to come to the store and get it, like from several people he used to get it from, and then he told us he couldn't come any more, we would have to deliver it to his house, so we took it to his home.

Q. For how long a period did you do that? A. Oh, probably four or five years—no, not that long; probably three years, two or three years. 30

Q. For how long a period did he come to your house and receive the dues? A. Well, four or five years.

Q. Now, during the entire period that the ten shares which you had in this association were running where and to whom did you pay your dues? A. Paid it to Mr. Brown.

Q. Where? A. At his home and at the store, at my store.

Q. During the entire period? A. During the 40

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entire period, except when I opened the first series. I went down there once to a meeting, when they opened those series, when they first started the building loan.

Q. Were you ever an officer of this association?

A. No, sir.

10 Q. Mr. Rose, how much was it that you borrowed the first time that you made a loan on your shares? A. Why, that I couldn't tell; I think it was \$600. Mrs. Rose has it down, though. She done all my bookkeeping.

Q. When you borrowed the second time what became of the first note that you gave Mr. Brown on the occasion when you borrowed the first time? A. What became of the note?

Q. The first note, yes. A. When I made the second note to him, you mean?

20 Q. Yes. A. Why, I think he gave it to us each time, and made out a new one, and it was destroyed.

Q. You say "each time." Is that true of all of the occasions? A. Yes, sir; as far as I can remember.

Q. Well, was it true on each occasion when you borrowed any additional money and gave a new note? A. Yes, sir.

30 Q. Mr. Brown always returned the old note to you and made out a new one? A. Yes, sir.

Q. Who delivered the check to you? A. Mr. Brown.

Q. On each occasion? A. Yes, sir.

Q. Now, what was the last amount that you borrowed from this association? A. Well, it totalled up \$1,800, my total amount.

Q. Adding to the balance that you owed from before? A. Yes, sir.

40 Q. How much did you receive on the last occasion, was it \$1,200? A. I think it was; yes,

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it was. We had a note in there for \$600, and it was \$1,200 that we borrowed the last time, making a total of \$1,800.

Q. I show you check of the Parkview Building & Loan Association, dated January 6, 1913, to your order, in the sum of \$1,200, check No. 1577 (shown to witness). Will you look at that check and see if that is the check that you received 10 when you borrowed the last amount that you borrowed from the association? A. Yes, sir; I believe it is; yes, sir.

Q. That is the check? A. Yes, sir.

MR. SCHOTLAND: I will offer it in evidence. Check marked Exhibit D-1.

Q. Who gave you this check, D-1? A. Mr. Brown.

Q. And on the occasion when he gave you this check, D-1, what, if anything, did you give to the association; that is, to him for the association? A. I gave him a check for the balance that was due the association, eighteen hundred and some dollars. 20

Q. You do not understand my question. You are going a little too far ahead. On this occasion, on January 6, 1913, when he gave you this check for \$1,200, when you made the last loan that you made from the association, what did you give Brown for the association? A. I gave him my certificate and gave him a note. 30

Q. Well, the association had your certificate from the previous loans, did they not? A. Yes, sir.

Q. And you gave him a note, you say? A. Yes, sir.

Q. A note for how much? A. Made out to him—made out to the association.

Q. A note for how much? A. For the amount 40 that I borrowed.

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Q. For the total that you owed at that time, or just \$1,200? A. For the total.

Q. And that was how much? A. That was \$1,800.

Q. That was \$1,800? A. Yes, sir.

Q. Now, then, after January 6, 1913, how much did you continue to pay to the association? A.
10 Eighteen dollars and some cents a month; I forget just what the total was.

Q. You paid \$10 for your dues, did you? A. Yes, sir; and eight dollars and some cents interest. Mrs. Rose always done that for me; she kept my books.

Q. And you paid interest on the \$1,800, then, every month? A. Yes, sir.

Q. Until when? A. Until my shares matured.

Q. And when was that? A. That was in July.

20 Q. What year? A. 1913.

Q. In July, 1913? A. Yes, sir.

Q. How did you learn that your shares matured? A. Through Mr. Brown.

Q. Now, just tell the Court and jury what he said or did which informed that your shares had matured. A. Well, gentlemen, I was delivering coffee to his home, and he said to me, "Eddie," he says, "I have a check here from the building and loan. Your shares have matured." He says,
30 "Now, if you will simply make me out a check payable to me, to my order, and give it to me, I will leave this check to your place," he says, "and have your wife make me out a check for the amount that is coming to the building and loan." And I says, "Is that the way you do it, Mr. Brown?" And he said, "Yes, Eddie, that is the way we do it." And I heard nothing more of it—

Q. Just wait a minute. That was when? A. That was when my shares matured.

40 Q. Well, when was it that this conversation took

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place? A. Well, a day or two before he came around; it was on a Friday, I believe—the day before the Monday that the shares matured. He said he had the check.

Q. Well, when was it that the transaction was closed with relation to the Friday on which you had the conversation? A. It was on the following Monday. 10

Q. And that Monday was in July, 1913, you say? A. Yes, sir.

Q. Which Monday in July, 1913, was it? A. Why, I think it was the second Monday; I am not sure; I didn't keep track of that.

Q. Well, which member of the family will recall the date better? A. Mrs. Rose; she done all that business for me.

Q. Well, you personally had that conversation with Mr. Brown? A. Yes, sir. 20

Q. How much did he tell you to make out a check for? A. \$1,809.54, I think, something like that amount.

Q. And how much did he tell you that he had a check for you for? A. For \$2,000.

Q. What, if anything, was said about your \$1,800 note? A. What was said about the note?

Q. Yes. What, if anything, was said about the \$1,800 note that you had given the Association?

A. Nothing, only that he returned it to me. 30

Q. Did he say he would return it? A. Yes, sir.

Q. Now, pursuant to that conversation with Mr. Brown, what did you do? A. Before that?

Q. No, after that conversation on the Friday. A. Well, I went home and told Mrs. Rose—

Q. Never mind what you told her. What did you do? A. What did I do?

Q. Yes, in connection with just this transaction. Did you make out your check for \$1809.54? A. I made out the check; yes, sir. 40

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Q. And where did you leave it? A. At my store.

Q. With whom? A. With my wife, and she left it with the girl at the store; she went out that afternoon and she left it with the girl.

Q. With the girl that was in charge of the store? A. Yes, sir.

Q. And when you got back that night did you
10 find your check still there? A. No, sir.

Q. Anything instead of it? A. Yes, sir.

Q. What did you find instead of it? A. A note from the association.

Q. Your note returned? A. Yes, sir.

Q. And what else? A. My certificate and all pertaining to the papers. Mrs. Rose took care of those things.

Q. Did you get a check for \$2000? A. Yes, sir; I got the check. Oh, yes.

Q. You found the check and the note there? A.
20 Yes, sir.

Q. Of that you are sure? A. Yes, sir.

Q. And your check for \$1809.54 was gone? A. Yes, sir.

Q. Now, Mr. Rose, what did you do with that \$2000 check? A. Deposited it in our bank.

Q. And was the \$1809.54 paid out of it? A. Yes, sir; paid out.

Q. Have you the returned voucher from the
30 bank for the \$1809.54? A. Mrs. Rose has it, I believe.

Q. Do you not recall that the banking examiner took that check and gave you a receipt for it? A. Yes, sir; and he told Mrs. Rose—

Q. Never mind what he told her. You remember that the banking examiner took that check and gave a receipt for it? A. Yes, sir.

Q. Is this the receipt for that check (paper shown to witness)? A. Yes, sir; I believe so; yes,
40 sir; that is the receipt.

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MR. SCHOTLAND: I will offer the receipt in evidence. It is:

"\$1809.54. Newark, N. J., March 10, 1914. Received cancelled check No. 3981, dated July 7, 1913, payable to George Brown, Jr., or order, for \$1809.54, indorsed by George Brown, Jr., deposited July 9, 1913, in Newark Trust Company. Frederick L. Pierce, Examiner, Department of Banking & Insurance." 10

(Receipt marked Ex. D2.)

MR. FRAZER: I think, may it please the Court, that the failure to introduce into this case the documents that have been discussed might raise the same question as to why we did not do it, and we are both laboring under the same difficulty. The various papers have been turned over to the banking department, and we have been unable to locate them. The various members of the department say that they are not in their possession. That is the reason that the various checks are not offered in evidence. 20

MR. SCHOTLAND: And it is admitted on the record, for that reason, that, in lieu of the original documents, the defendant actually received the \$2000 check of the Parkview Building & Loan Association, which was signed by George Brown, Jr., as secretary, and also by the president and by the treasurer, and it is also admitted that the defendant actually gave the check described in that receipt to George Brown, Jr., and that that check was paid out, and the original was taken by the Department of Banking & Insurance. 30

MR. FRAZER: I think the stipulation should be changed a little bit, in view of your testimony. It was not given by the defendant, but the defendant drew that and it came into his possession. 40

Edwin E. Rose—Direct.

MR. SCHOTLAND: All right.

THE COURT: Does the date of that check appear?

MR. SCHOTLAND: Yes, sir; July 7, 1913, and the date of the \$2000 checks issued by the plaintiff appears on the stub of the check-book, which was used yesterday afternoon, as the same date, July 7, 1913. That is correct?

MR. FRAZER: That is correct.

Q. Now, Mr. Rose, after July 7, 1913, did you continue to pay any dues or any interest or any moneys to the Parkview Building & Loan Association or to Mr. Brown, as secretary of that association? A. No, sir.

Q. Did you continue to be a shareholder of that association? A. No, sir.

Q. You did not take out any new shares, then? A. No, sir; I did not.

Q. You made no more payments to them? A. No more.

BY THE COURT:

Q. I am not familiar with the practice. These ten shares, what became of them, were they cancelled? A. Yes, sir; they matured.

Q. Yes, but I want to know about the way of doing business in a building and loan association.

30 When a series is matured and paid off are the shares cancelled? A. Yes, sir.

MR. FRAZER: They are kept by the association and cancelled. I think I could state to the Court the practice, if Mr. Schotland has no objection.

MR. SCHOTLAND: No.

MR. FRAZER: If there is a loan made on the collateral shares not yet matured, the shares are kept with the note that is given as the

Edwin E. Rose—Direct.

evidence of the loan, as the collateral. Then when the shares are matured the check is drawn, either, as in this instance, for the full amount, or, in some associations, I understand, for the difference between the full value of the shares and the amount of the loan, and then the certificate is cancelled. That is the ordinary practice. 10

MR. SCHOTLAND: And kept by the association.

MR. FRAZER: And kept by the association.

BY MR. SCHOTLAND:

Q. Mr. Rose, you say you made no further payments of any kind to the association or to Mr Brown after July 7, 1913? A. No, sir.

Q. Now, did you receive any notice that any payments were due from you to the association after that date? A. No, sir. 20

Q. Was there any demand made upon you for any moneys on behalf of the Parkview Building & Loan Association after July 7, 1913? A. No, sir.

Q. What was the first that you heard of the Parkview Building & Loan Association did not receive or claimed that they did not receive the \$1809.54? A. After Mr. Brown had disappeared and the bank examiner came to our house.

Q. And that was when? A. Why, that was— Oh, seven months after, after my shares were matured, seven or eight months. 30

MR. SCHOTLAND: Is it agreed that the date of Brown's disappearance is February, 1914?

MR. FRAZER: Yes.

Q. February, 1914? A. Yes, sir.

Q. And this was after that? A. Yes, sir; quite awhile after that.

Q. Quite awhile after his disappearance? A. Yes, sir. 40

Edwin E. Rose—Cross.

Q. How did you come to make all your payments to Brown instead of going to the association's place of business on pay night and making payments? A. Well, he had always been used to taking the money of different people around the neighborhood there, from the drug store, and it was a custom of his to get the shares together—
 10 to get the boy's money together and take it down there.

Q. Your shares were in the first series of the association? A. First series that was started; yes, sir.

Q. And that is the way they started when the association started? A. Yes, sir.

Q. Followed that custom all the way through the eleven years? A. That is the way I always paid mine, and several other people that same
 20 way.

Q. That you know of? A. Yes, sir.

Q. Did you ask Brown to do that for you? A. I did not; no, sir.

CROSS EXAMINATION BY MR. FRAZER:

Q. Mr. Rose, how did you come to be a member of the Parkview Building & Loan Association? A. Well, just like a lot of the other members: Mr. Brown was talking about it—the secretary of the
 30 association—and different men around there, and they started this association and they asked me to take out ten shares, and I did.

Q. Mr. Brown was one of the members at the time of the organization, was he? A. I believe he was; he was the secretary, I believe, at the time.

Q. Now, on the organization night, you say, you went down there? A. Yes, sir; I was down once or twice, I can remember.

40 Q. On that night did you take the money down

Edwin E. Rose—Cross.

yourself or did you give it to Mr. Brown? A. It was given to Mr. Brown that night.

Q. It was given to Mr. Brown before you went down to the association? A. No, sir—well, that I couldn't say. That was eleven years ago. I wouldn't like to say that.

Q. Now, at the time of the organization was Mr. Brown the secretary of the association, do you know? A. I believe he was. 10

Q. Do you know whether he was or not? A. Well, now, I couldn't swear to that, no, sir.

Q. Well, now, just think back, Mr. Rose. Do you remember that when you first started in in the Parkview Building & Loan Association that Mr. Martin File was the secretary of the association? Do you remember that now? A. I do not.

Q. You would not say that he was not the secretary? A. No, sir; I would not. 20

Q. At that time you were making your payments to Mr. Brown, were you not? A. Yes, sir.

Q. That is, right from the beginning you made your payments to Mr. Brown? A. Right after that; yes, sir, right after the association was started I made my payments to Mr. Brown.

Q. And if Mr. Brown was not the secretary at that time, you made your payments to Mr. Brown, just the same as you did afterwards, when he became secretary, did you not? A. Why, yes, I made my payments to the secretary. 30

Q. No, I say, assuming that when the association started business— A. He was an officer of the association always.

Q. Now, will you let me finish my question? Assuming that when the association started Mr. Brown was not the secretary of the association, you made your payments to Mr. Brown, exactly as you afterwards made them to the secretary; that is right, is it not? A. Yes, sir; he called for them. 40

Edwin E. Rose—Cross.

Q. Now, as a matter of fact, Mr. Rose, you were a pretty good friend of Mr. Brown's, were you not? A. No, in the last four or five or six years, no, we were not very good friends.

Q. No, but in the beginning you were? A. As boys we were, yes.

Q. And it was at Mr. Brown's suggestion that
10 you took shares and became a member of the association? A. Partly, and partly because I wanted to save.

Q. But the inducement that made you go into the Parkview Association instead of some old association, like the Fourteenth Ward, was the fact that Mr. Brown was a friend of yours and suggested that you should go in the new one? A. I knew several of the members of the association, the young fellows that were starting it.

Q. Mr. Brown's influence was the biggest thing
20 that induced you to go in, was it not? A. The biggest influence was to save my \$10 a month.

Q. Aside from your desire to save money, the biggest influence which induced you to join the association was Mr. Brown, was it not? A. I don't know as there was any influence used by Mr. Brown for me to join it at all.

Q. Did Mr. Brown say anything to you at the
30 outset that he would take the moneys around to the association for you, or did you ask him to do it? A. No, there was nothing said about it.

Q. But the first night you went down to the association and paid your money to Mr. Brown? A. The first one or two nights I do not know whether it was paid over to Mr. Brown; it was paid over to the secretary; I don't know whether it was Mr. Brown or Mr. File now, eleven years back, but it was paid to the building loan office the one or two nights when I went down, and
40 after that it was paid to Mr. Brown.

Edwin E. Rose—Cross.

Q. After the one or two nights it was paid to Mr. Brown? A. Yes.

Q. Whereabouts was it paid to him after that? A. It was paid at Mr. Linnett's drug-store.

Q. Which Mr. Linnett? A. Mr. Frank Linnett and George Linnett's drug-store.

Q. On Pennsylvania avenue? A. Sherman avenue and Frelinghuysen avenue. 10

Q. Now, did you give the moneys there to Mr. Brown? Was he employed in the drug store at that time? A. No, sir.

Q. Did you ever leave the money at the drug store when Mr. Brown was not there? A. Did I ever leave it?

Q. Yes. A. No, I don't think so.

Q. You always waited until Mr. Brown came? A. No, I didn't wait. Sometimes the checks were left there with the books. 20

Q. You did sometimes leave the checks? A. Sometimes, yes.

Q. To whose order were those checks drawn? A. To the Parkview Building & Loan Association.

Q. And that was done during the first year of the building and loan's existence, was it not? A. Yes; I believe so.

Q. And right on continuously from that time you continued that practice, and gave to Mr. Brown checks to the order of the building and loan association? A. No, sir; not always. 30

Q. What else was done? A. Sometimes they were made out to him.

Q. Why was that done? A. Because he paid them.

Q. He had paid them? A. Yes, sir.

Q. That is to say, sometimes you would forget to pay your dues and he would pay them for you, and then you would reimburse him? A. Sometimes he wouldn't come around to the store and 40

Edwin E. Rose—Cross.

get the boys' money, and he would pay for it, give his own personal check and pay for those shares, and the next day they would pay him or he would collect it. That is the way it was done a few times.

10 Q. How did you know whether Mr. Brown was going to come around to the store or not so that you would draw your check in one way or the other? A. He always did.

Q. No, but I mean when you were taking your check around to Mr. Linnett's drug-store you would draw the check to the order of the Park-view Building & Loan Association? A. Yes.

Q. You would take that around to the drug-store before the meeting night; is that right? A. Yes, sir.

20 Q. Now, you say that in certain instances Mr. Brown did not come around before the meeting night? A. A few times.

Q. But would come down to the association without collecting the checks, and would there give his personal check? A. I don't know whether he gave his personal check or—

Q. Or he would pay it? A. He went good for it.

30 Q. In those instances what happened to a check that was drawn to the order of the association? A. It wasn't drawn to the order; it was drawn to him then.

Q. How did you know beforehand whether he was going to stop at the store or not? How did you know which way to draw the check? A. I knew because if I drew it the other way—if he didn't come around to the store and collect it that way, the next day he would call me up, or see me, and he would say, "Make this check out payable to me. I paid your loan. It is all fixed up."

40 Q. And then what did you do with the check

Edwin E. Rose—Cross.

that you had already drawn, take it back? A. Destroyed it.

Q. You went to Linnett's and tore it up? A. I can't remember that. If the check was made out to the Parkview Building & Loan and he paid it, I certainly did not give him the check.

Q. How many times was it made out to the Parkview Building & Loan? A. Lots of times. 10

Q. Is it not a fact that you made it a practice to draw it to the order of George Brown? A. No, sir; I have got my check-book here; I can show you.

Q. But on numerous occasions you would draw it to his order? A. Yes, sir.

Q. And those were occasions where Mr. Brown told you, "I have already paid this money, and so I can't use this Parkview check; make it out to my order;" that is right, is it not? A. Once or twice it happened that way. 20

Q. You would draw checks to the order of George Brown, Jr., for the purpose of reimbursing him for the advancement which he had made through failure to collect your check at the store? A. I don't know whether that is so or not.

Q. You do not know? A. I know that he said he had settled it with the building and loan, and he collected money in several instances.

Q. What did that mean to your mind when he said, "I have settled it with the building and loan"? A. He was secretary. 30

Q. Did it mean that he had paid it? A. Paid it.

Q. And when he said, "I have settled it," that meant "I have paid it to the building and loan association, and therefore I do not want your check drawn to the order of the building and loan association"? A. Yes, sir; "Make it out to me." 40

Edwin E. Rose—Cross.

Q. And on those occasions you made it out to him? A. Yes, sir.

Q. You took his word that he had paid the building and loan association? A. Yes, sir; I couldn't do anything else, and you would, too.

Q. Very likely. Well, there was one period, as I understand you to have said, when Mr. Brown
10 used to call at your store and collect the check?
A. Yes, sir.

Q. Is that right? A. Yes, sir; he has.

Q. Now, during that time to whose order was the check made? A. Made out to the Parkview Building & Loan usually.

Q. Invariably? A. Yes, sir.

Q. Invariably during that period the Parkview Building & Loan Association? A. Yes, sir.

Q. How many years did that last? A. Oh, about
20 four or five years; I can't remember. Mrs. Rosen has got them down. There is the check-book; it shows you.

Q. Well, is there anything in that check-book to show where the check was given, whether at the store or—A. They were made out at the store.

Q. I mean you cannot tell from that check-book where the delivery of the check was made, whether it was made to Mr. Brown at your store or at his house, or where? A. Sometimes we had to take
30 it to his house; if he didn't feel like coming around he would telephone—

THE COURT: You misapprehend the question. The question is whether there is anything in the check-book to show the place where the checks were drawn.

A. No; there was not.

Q. Then came a period when Mr. Brown got busier and he did not have time to drop around
40 and collect the checks from the house; that is a

Edwin E. Rose—Cross.

fact, is it not? A. No, he said he couldn't come down, to take it up to his house.

Q. And then you would take it up to the house?

A. Yes, sir.

Q. That was up on Clinton avenue? A. Elizabeth avenue.

Q. 84 Elizabeth avenue? A. Yes, sir; where he lived after he was married. **10**

Q. With whom did you leave it there? A. Left it with his wife frequently.

Q. You did not wait for Mr. Brown's return? A. No.

Q. If he did not happen to be there? A. No. I would have a long wait.

Q. You left it with anybody that happened to be at the house? A. I left it with Mrs. Brown or somebody in authority, that was the head of the house. **20**

Q. Somebody in authority at the house? A. Yes, sir.

Q. You do not mean a representative of the building and loan association? A. I knew that Mr. Brown would get it.

Q. You felt confident that he would get it? A. Yes, sir.

Q. But you did not make any effort to see that the person was an officer that would get the check? A. He was the secretary. **30**

Q. If he was not there? A. I knew that he got it—

Q. No. When he was not there you did not make any effort to see that the check was put in the hands of an officer of the building and loan association? A. No, but I would have heard about about it the next day if hadn't got it.

Q. Maybe you would and maybe you would not. A. Certainly I would.

Q. Now, when did you first start borrowing **40**

Edwin E. Rose—Cross.

upon your stock, do you remember? A. I can't tell you. Mrs. Rose can tell you all that; she has got it down in a book.

Q. Well, in a rough way, do you remember? A. I can't tell you; I think the first loan was \$800 that we borrowed.

Q. You do not remember how long ago that was? A. No. Mrs. Rose done all my bookkeeping.

Q. You wanted this loan for your business? A. Yes, sir.

Q. How was it brought up with Mr. Brown? A. I asked Mr. Brown how much I could get on those shares, so he told me the amount that I could get.

Q. What did he say? He told you that, but he didn't do it right offhand at that time, did he?

20 A. No.

Q. He said he would figure it up and let you know? A. Yes, sir; he would figure it up and let me know.

Q. And then he reported to you? A. And then he reported to me.

Q. And then he told you that perhaps you could have the \$800, or something like that? A. Yes, sir.

Q. Whatever the sum might have been? A. Yes, 30 sir.

Q. And then what did you do? You said you would like it? A. I said I would like to have that amount.

Q. Did he have the note with him at that time or did he come again and get the note? A. When he brought me the check—

Q. No, when he first produced a note to you. When did you first see the note that you signed, the original note that you gave to the Parkview 40 Building & Loan Association for the first loan that

Edwin E. Rose—Cross.

you made from that association? A. When did I see it?

Q. Yes. A. When I got my check.

Q. You mean to say you got the check in advance of signing the note? A. No.

Q. You got it some time? A. Brought it together to me.

Q. And you signed a note at that time? A. I 10 signed a note—

Q. Just think a moment. Who was there when this note was turned over to you? A. The first note?

Q. Yes. A. Well, that I couldn't say.

Q. Where was it delivered to you? A. It was delivered at my home.

Q. At your home? A. I believe so, the first loan, yes, sir.

Q. You are sure of that, are you? A. I believe 20 so.

Q. You never went down to the association to get it? A. No, I never went to the association to get any moneys.

Q. Now, the second time you had borrowed \$800, we will assume? A. Yes, sir.

Q. And then later you wanted more money? A. Yes, sir.

Q. And how much did you borrow that time? A. I think I borrowed—it made up the \$1800. 30

Q. Did you ever pay down any part of the \$800 loan? A. Yes, sir; we paid part of it down, that \$1200—

Q. I wonder whether this is not the loan that you made, when you say \$800. There is a check to E. E. Rose, \$1000, in August, 1910 (shown to witness). Was that the first or second loan? A. I think that was the second loan; but we paid back some of that; we paid back different times.

Q. What happened when you paid back the 40 loan, how did you do that? A. What happened?

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Q. Yes. A. You mean how did we pay it back?

Q. Yes. A. That I can't remember, how we paid it back. I can remember now, it was paid back when we paid our dues. We reduced it \$100 or \$200 at a time.

Q. And you would send down through Mr. Brown a check including your dues and the amount that you made up to reduce the note by?
 10 A. Yes, sir; and my payments were reduced at the next meeting.

Q. You did not get the notes in those cases? A. No, sir; that was not the custom, I don't believe.

Q. What did they do, credit it on the note? A. That is what they were supposed to do, I believe; credit it on my book.

Q. Well, you never had any claim made against you for any amount more than you ought to have paid?
 20 A. No, sir.

Q. Now, those checks would ordinarily be made to the order of the Parkview Building & Loan Association, I suppose? A. Yes, sir.

Q. In the reduction of the note? A. Yes, sir.

Q. And then given to Mr Brown to take down?
 A. Yes, sir.

Q. Now, Mr. Rose, to go back to a line of examinations which I left a little while ago; Mr. Schotland has very kindly called my attention to a check, No. 3732, dated December 2, 1912, to the order of the Parkview B. & L., and above it the note, "Check made out to George Brown, as he paid it," and the former entry scratched out (shown to witness).
 30 A. Yes, sir; that was an instance.

Q. That is an intsanse of what you have said about sometimes drawing a check and then cancelling it and drawing it to Mr. Brown? A. Yes, sir.

40 Q. And check No. 3735, of the same date, to the

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order of George Brown, Jr., paying Parkview B. & L. dues for December (shown to witness). That represents the check that you gave to Mr. Brown for the payment that he had already made for you? A. I don't know whether he had paid it or not.

Q. Well, the one that he said he had paid or that he had taken care of? A. Yes, sir; that he had taken care of—the secretary. 10

Q. Now, when you came to borrow more money what did you do? A. The same thing.

Q. Well, did you make out a stock note? A. He made out the note.

Q. Well, you signed it, did you not? A. Yes, sir.

Q. That is what I mean? A. Yes, sir.

Q. You executed a new note? A. Yes, sir.

Q. Now, did you make out the new note for the full amount of the combined loans, or did you make out a note for just the additional amount that you borrowed? A. For the full amount. 20

Q. The full amount? A. The full amount; yes, sir.

Q. In every instance? A. I believe so, so far as I can remember.

Q. Well, do you remember very well? A. Well, Mrs. Rose done all that work for me.

Q. But you signed the notes; she did not sign the notes? A. No, I signed the notes. 30

Q. She may never have seen the notes at all; you just told Mrs. Rose that you had borrowed so much money, and she entered it in your books, or something of that sort? A. She knew all my business.

Q. But you actually executed the note? A. Yes.

Q. Just stop and think. This was not so long ago. Take the first time that you increased your 40

Edwin E. Rose—Cross.

loan. Did you or did you not execute a new note for the full amount of the combined loans, or did you execute one only for the additional sum? A. I suppose we had to increase it to the full amount, so far as I know.

Q. Well, you do not remember? A. Well, it was customary to do that; I am sure it must have been done.

BY THE COURT:

Q. Do you remember whether you took up the earlier note? A. Yes, sir.

Q. Then if you took up the earlier note, you undoubtedly gave a note for the full amount? A. Yes, sir.

BY MR. FRAZER:

20 Q. Now, coming back to this last payment. You say you were down at George Brown, Jr's. house delivering coffee on a Friday? A. Yes, sir.

Q. What makes you remember that date so clearly? A. I remember the instance because my shares had matured in the Parkview Building & Loan, and I needed that money for some business.

30 Q. I understood you to say that the shares did not mature until the next week? A. Well, they matured the next Monday. It was on a Friday he said he had a check there with him.

Q. He brought the check with him on Friday? A. Yes, he said he had it with him.

Q. Did he show it to you at that time? A. No, sir; he says, "I have the check for you from the Parkview Building & Loan."

Q. Well, was that the time that he said to you, "I have already paid off your note"? A. No, sir.

40 Q. When did he say that? A. Why, when he brought the money to me, when he brought the

Edwin E. Rose—Cross.

check, he said that he had settled with the building and loan.

Q. He said that he had paid your note, did he not? A. Yes, sir; he said he had paid the note.

Q. Now, when did he tell you that? A. Why, I think it was on the Friday.

Q. That was Friday, about the 4th of July? A. I can't just recollect the date. 10

Q. Well, the 7th was on a Monday and the 6th would be Sunday and the 5th would be Saturday, and the other was the 4th of July? A. Yes, sir.

Q. Were you delivering coffee on the 4th of July? A. I was delivering coffee, yes, on Thursday or Friday.

Q. Well, you do not think it was Friday, then, do you? A. Well, I usually try and get my work done up if a holiday came.

Q. So that it was the Thursday preceding the maturing that you had this conversation with him? A. It was Thursday or Friday; yes, sir. 20

Q. Well, you do not think it was Friday; you are not as certain as you were on direct examination that it was Friday, are you? A. Did the 4th of July fall on a Friday?

Q. I understand so. A. I didn't work on the 4th of July, because I worked a day ahead on all holidays.

Q. Well, if it was on the 4th, it was on Thursday that this conversation took place? A. Yes, sir. 30

Q. Now, on Thursday, the 3rd of July, 1913, Mr. Brown told you that he had already paid off your note, did he? A. Not in those words, no.

Q. Well, what did he say? A. He said, "Eddie, your shares are matured and I will have your check ready for you."

Q. When was it that he said he had paid your note? A. Well, he said it right at that time, I 40

Edwin E. Rose—Cross.

believe. That is the way he insinuated that he had paid it, that it was all settled up.

Q. Did he say, "I paid your note, Eddie"? A. I can't remember if he said it in so many words. He said to me, "I have that check from the Park-view Building & Loan made out to you for \$2000." He says, "Now, you have a check made out to me,
 10 to my order, to George Brown, Jr., for \$1809," and, I think it was, "54 cents," or some cents. }

Q. That is right. A. And he said, "I will straighten it out with the building and loan." Those were his words, and he brought that check around to my store.

Q. When did he bring that check around? A. The following Monday after the Thursday or Friday that he was talking to me.

Q. What time of night? A. It was in the after-
 20 noon.

BY THE COURT:

Q. What check was it that he brought? A. The \$2000 check.

BY MR. FRAZER:

Q. Now, just think of that carefully, Mr. Rose, will you? I do not want to get you wrong here. Monday was the night of the association's meet-
 30 ing, was it not? A. Yes, sir.

Q. And you say that Mr. Brown brought around a check for \$2000 in the afternoon of that day? A. I think so.

Q. Now, are you sure of that? Just think a moment. Are you sure of that? A. I think it was that following Monday.

Q. Well, do you know? A. Yes, sir.

Q. Now, do not say it if you do not know. A. It was on a Monday or the following Tuesday.

Q. It might have been Tuesday? A. It might
 40 have been Tuesday; yes, sir.

Edwin E. Rose—Cross.

Q. It might have been after the meeting night?

A. No, sir; because it was the next—

Q. It might have been after the meeting night?

A. Well, I couldn't swear to that.

Q. Now, you are not sure it was on Monday?

A. Well, pretty positive it was on a Monday afternoon.

Q. When you say "a Monday afternoon" do you mean the Monday afternoon that we are speaking about or the next Monday? A. No, I know it was the next Monday, or the next business day, after the Thursday or Friday I was talking to him. 10

Q. If you were talking to him on Thursday, the 3rd of July, then he handed you a check for \$2000 of the Parkview Building & Loan Association, properly signed by all its officers, on—A. The next business day.

Q. —Saturday? A. No, Monday. 20

Q. The next full business day? A. Yes, sir.

Q. On Monday, July 7th, some time before dark? A. Yes, sir; it was either Monday or Tuesday; I couldn't swear to that, Mr. Frazer.

THE COURT: The witness has already said that he is uncertain about the day.

WITNESS: I couldn't swear to that, anyway, not that long ago. I wouldn't perjure myself.

Q. Now, on that Thursday, however, was the time he said, "I have paid your shares?" A. He insinuated. 30

Q. Did he insinuate or did he say? A. He said he would straighten it out—straighten it out with the building and loan.

Q. In answer to the interrogatories you used these words—You were not on the stand and you were not confused then? A. No.

Q. You had plenty of time to think over these answers that you were going to give to the inter- 40

Edwin E. Rose—Cross.

rogatories—perhaps a little fairer than it is now, when you are perhaps a little excited. A. Of course. You would be, too.

Q. At that time you said he notified you, or, to put it just as it says here, "That my shares had matured." A. Yes, sir.

10 Q. "And that instead of making out a check to me for \$190.46, which was the balance due me"—
A. That is all I wanted.

Q. "—he paid the association the \$1800." A. Yes, sir.

Q. "He paid?" A. Yes, sir.

Q. Now, did he say that? A. Yes, sir.

Q. And that he told you on Thursday, July 3, 1913, as nearly as you can remember? A. As near as I can remember.

20 Q. And you believed it, did you not? A. I had no reason to doubt it.

Q. And about Monday, July 7th, you drew your check to his order? A. Yes, I did.

Q. Why did you draw it to his order? A. Because he told me to.

Q. Because he told you to? A. Yes, sir.

30 Q. And because he said he had already paid it? A. I understood that he had taken it up with the building and loan association, and he was an officer of the association, and I thought he had that right.

Q. And when you paid him the check for \$1809.54 you expected that George Brown, Jr., was going to use the check, because he had already paid the building and loan association, and it was meant for him? A. I thought he was going to turn it over to the building and loan association.

Q. Why? A. Because he was their secretary.

40 Q. He said that he had already paid it, did he not? A. Not in those words; he said he had straightened it out.

Edwin E. Rose—Cross.

Q. Why did you say in your interrogatories that he had already paid the note? A. He said that he had straightened it out in the building loan, insinuating that.

THE COURT: I think you have not quoted the language exactly. He did not say that he had already paid it; he said that he paid.

10

Q. "He said he paid the association the \$1809.54 which I owed on my note." A. I couldn't answer it any other way, only the way you have got it written there.

Q. What? A. I couldn't answer it any other way.

Q. What? A. In the interrogatories.

Q. Well, I will read you the interrogatories: "If you received a check as mentioned in the seventh interrogatory, when and where and under what circumstances did you receive it?" That would let you answer it in any way that was true, would it not, Mr. Rose? A. Yes, sir.

20

Q. Therefore, the way that you did answer it was true, was it not? You answered then under oath. That was true, was it not? A. Yes, sir.

Q. Now, to supplement your answers to the interrogatories: so that you were notified on July 3, 1913, that Mr. Brown had paid your note to the association; that is right, is it not? A. Yes, sir; I thought he had.

30

Q. So that when you drew the check for \$1809.54 to the order of George Brown, Jr., you intended George Brown, Jr., to use that money himself? A. I didn't know about that.

Q. You did not know about it? A. No.

Q. What did you think he was going to do with it, Mr. Rose? A. I thought as an officer of the association that he had a right to do that.

Q. What did you think he was going to do with that, pay it over to the association? A. No.

40

Edwin E. Rose—Cross.

Q. Is that what you thought he was going to do? A. I thought he was going to pay the association.

Q. You thought he was going to pay that check over to the association? A. Certainly.

Q. Then, why did you not make it to the order of the association, as you did in these cases? A.
 10 Because he requested me to make it to his order.

Q. Why did you not make it to the order of the Parkview Building & Loan Association, like that check (shown to witness)? A. Because he told me to make it to his order and he would straighten it out with the building and loan.

Q. That he had straightened it out? A. That he had or would straighten it out with the building and loan.

Q. Well, when you were not confused you said
 20 that he had paid it, did you not? A. That he had or would; I can't remember which; I can't remember whether he said he had or would straighten it out with the building and loan, and as an officer of the association, I thought he had that authority.

Q. Now, the way you ordinarily made out your checks was like this check, December 2, 1912, was it not (shown to witness)? A. Mrs. Rose made that out.

30 Q. Well, that was your custom, was it not? A. Yes, sir.

Q. To make out the checks to their order? A. Yes, sir.

Q. But when Mr. Brown reported that he had taken care of you in some way, you cancelled the check to the order of the Parkview Building & Loan? A. Yes, sir.

Q. And drew one to the order of George Brown, did you not? A. That is all I could do; yes, sir.

40 Q. Now, when you drew the checks to the order

Edwin E. Rose—Cross.

of George Brown, Jr., you expected George Brown, Jr., to use those checks for his own use, or you would never have cancelled the checks to the order of the building and loan association? A. I thought he had turned the money in to the building and loan association.

Q. You thought he had already done it, did you not? A. Yes, sir. 10

Q. Now, Mr. Rose, is there any reason under the sun why, if you drew a check to the order of the Parkview Building & Loan Association and the money which was represented by that check had never been paid to the association, that you should cancel that check and draw one to the order of George Brown? A. Because he would straighten it out with the building and loan.

Q. But the only time that you did that was when he said he had already straightened it out with the building and loan? A. He said he had paid it for me. 20

Q. That he had paid it for you? A. Yes, sir.

Q. And therefore you had to reimburse Mr. Brown for the money that he had advanced for you? A. Yes, sir.

Q. That is true? A. I suppose so.

Q. And therefore you cancelled the check which had already been drawn to the order of the Parkview Building & Loan Association, because that association was no longer entitled to that money; that is right, is it not? A. They would not expect it the second time. 30

Q. They were no longer entitled to that month's dues, because they had already been paid? A. Yes.

Q. And for that reason you cancelled that check and issued a check to the order of George Brown, Jr.? A. Yes, sir.

Q. And when you executed that second check 40

Edwin E. Rose—Cross.

to the order of George Brown, Jr., you intended that George Brown, Jr., should use that money himself? A. As secretary. He had paid my shares.

Q. I ask you whether you did not intend that George Brown, Jr., should use that money as an individual? A. I don't know what he did with
10 it.

Q. Well, it would not have shocked your conscience to look at the return check and see that George Brown, Jr., instead of indorsing it over to the Parkview Building & Loan Association, actually deposited it in his own bank? A. No.

Q. Well, if he deposited it to his own account you knew that the association was not going to get the proceeds of it? A. Not after they got it once.

20 Q. And the check was given for that purpose, to give Mr. Brown back the money that he had advanced; that is right, is it not? A. I suppose it is.

Q. Now, that is the reason, or that is exactly the situation with this \$1,800 check, is it not? Mr. Brown said, "I have already fixed it up," or "I have paid it," whatever language he may have used? A. He would straighten it up with the building and loan; those are the words that he
30 used.

Q. And you thought that he had done so? A. I had no reason to doubt it. He was the secretary, and I thought he was the right man to pay it to.

Q. And you thought that he had already paid it, did you not? A. I thought he would pay it.

Q. You thought he had paid it? A. I thought he would pay it.

40 Q. You did not think he had paid it? A. I didn't know whether he had paid it; I thought he would pay it.

Edwin E. Rose—Cross.

Q. If you thought he had not paid it; but would pay it, why did you not draw the check of \$1800 to the order of the association, as you had been in the habit of drawing these little checks to the association? A. I done as the officer of the association instructed me to do, and had they given me my money that was coming to me, that was all I was after.

10

Q. Now, you felt that Mr. Brown in all these years, on the occasions when he paid money for you, before he got your check, did that as an officer of the association, did you? A. Yes.

Q. You thought that that was part of the secretary's duties, to advance money to all shareholders who did not happen to get the money down to the association, to save them from being fined; is that the idea? A. Well, he did it for some people.

Q. Did you think that was the general duty of the secretary, to assume the liability of all shareholders and make payments? A. No.

20

Q. And when he did that in your peculiar instance did you think he was doing it because he was a friend of yours or for the benefit of the association? A. No, I thought he was doing it for the benefit of the association.

Q. Did you not think he was doing it as a friend of yours? A. He was a friend of mine in a way. He was not as much a friend of mine as he was of yours the last five years.

30

Q. I think that is probably true. I saw more of Mr. Brown than you did probably, Mr. Rose. A. You know his doings.

MR. SCHOTLAND: Just answer the question.

Q. Now, Mr. Rose, as a matter of fact, in all the instances in which you issued the checks to George Brown, Jr., you believed that Mr. Brown had already taken care of the building and lean dues, did you not? A. Yes, sir.

40

Edwin E. Rose Re-Direct.

Q. And in the last instance you believed that he had already taken care of the debt? A. I did.

RE-DIRECT EXAMINATION BY MR. SCHOTLAND:

10 Q. Did the fact that Mr. Brown told you that he had the \$2000 check, instead of a check for the difference, have anything to do with your belief that he had taken care of the debt? A. I don't just catch that, Mr. Schotland.

Q. Did the fact that Mr. Brown informed you that he had the check for you for the full amount of the \$2000, instead of for the difference between what you owed the building and loan association and what they owed you, have anything to do with your believing that he had taken care of the debt? A. I thought he had taken care of it, yes.

20 Q. Did you believe that he would give you a \$2000 check if he had not taken care of the debt? A. No; I didn't think so; I thought he could do anything as the secretary of the association; I thought he was the head man.

Q. What did you believe that he could give you a check for \$2000 if he had not taken care of the debt to the association?

Objected to.

30 THE COURT: I think it is competent. Understand the question first.

Q. Understand the question first before you answer. Did you believe that he could give you a check of the association's for \$2000 if he had not taken care of the debt of \$1809.54? A. I thought he had.

Q. You thought he had what? A. That he had taken care of that.

40 Q. Yes, but that is not answering my question. Did you think that he could pay you \$2000 by the association's check if he had not paid the associa-

Edwin E. Rose—Re-Cross—Re-Direct.

tion the \$1809.54 before he gave you that check?

A. No, I don't think he could have.

RE-CROSS EXAMINATION BY MR. FRAZER:

Q. Then you believed that Mr. Brown, as secretary, had no authority to bring this note down to you except as it had been paid? A. I thought he had all authority. 10

Q. You thought that he did? A. Yes.

FURTHER DIRECT EXAMINATION BY MR. SCHOTLAND:

Q. Authority for what? A. To do that kind of work that he was doing.

Q. What kind of work? A. He was the secretary of the association. |

Q. Did you think he had authority to give you back the note without receiving the money for it? 20
A. Did he have the authority to receive— I don't quite catch that question.

MR. SCHOTLAND: You are thinking now of one thing and answering another.

THE COURT: Remember that this \$2000 note was an association note, signed by the president and the secretary and the treasurer.

WITNESS: Yes, sir. 30

THE COURT: Now, having that in mind answer the question.

Q. Did you think that he had authority to give you back the \$1,800 note and to deliver to you a \$2,000 check besides, if the building and loan association did not first receive the \$1,800 in money? A. I thought he had that authority.

Q. You thought that he had authority, then, to give you back your note without paying the 40

Edwin E. Rose Re-Direct.

association for it? A. No, I thought that he had that authority to do that.

Q. To do what? A. To pay me back that money, the way he did.

Q. Yes, that is what I supposed you were answering. Now stop and pay attention to the question. You supposed that he had authority
10 to do what? Just explain what you thought he had authority to do. A. Do what he did, to give me that check and receive mine for the balance.

Q. But did you think that he had authority to deliver to you the \$2,000 check of the building and loan and deliver to you the note that you had previously given the building and loan without first paying the building and loan the money that you owed them? A. Did I—

Q. Do you understand me? A. Yes, I thought
20 he did, yes.

Q. You thought he did? A. Yes, sir.

Q. Then, as far as your knowledge of his powers is concerned, you thought that he could have given you the note without having paid it at all? A. No, I don't know. I thought that as secretary he would do that.

Q. Would do what? A. Would pay it off.

Q. Now, just stop and think of the question. Did you think that, as secretary of the association, at the time when you owed the \$1,809.54 to
30 the association, that he had authority to go and cancel the debt without paying the association for it—to cancel the debt without getting the money for the association? A. That he had the right to do that?

Q. Yes, that is what I mean by "authority."
A. I certainly did, yes.

Q. Had a right to do what? A. Cancel that note.

Q. Without getting the money for it? A. Well,
40 I gave him the money.

Edwin E. Rose Re-Direct.

Q. I am not talking about whether you gave him the money or not. A. I can't get it through my head.

Q. Stop thinking of what you did and just think of the question alone. Did you think that Brown, as secretary of this association, had the authority to cancel this \$1,809.54 note by giving it back to you without getting the money for it? 10
A. I did.

Q. Without getting the money for it? A. Not without getting the money for it, no.

Q. Well, that is what I want to know; whether it was without getting the money for it? A. No, not without getting the money for it, certainly not. I couldn't get what you were driving at.

Q. Well, now, did you think that Brown had a right to deliver to you this check for \$2,000 and also the note for \$1,800 unless he had first 20 paid the association the amount of that note and interest? Do you understand what I mean? A. Yes, sir.

Q. You understand me, do you? A. Yes.

Q. Now, answer it, then. Did you think he had that right? A. Yes, sir.

Q. Now, what is it that you understand he had the right to do? A. That he had the right to make out the checks—he did make out the checks—and deliver them to the borrower, and 30 to receive all moneys; I thought as secretary,—if I had taken the check down to the association I would have paid Mr. Brown, anyway, if I had gone down to the association.

MR. SCHOTLAND: That is very true, but that is not answering my question. I think I will have to let it go. The witness does not seem to be able to grasp it.

WITNESS: I must be awfully stupid not to be able to grasp it. 40

Clara M. Rose—Direct.

CLARA M. ROSE, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCHOTLAND:

Q. Mrs. Rose, you are the wife of Edwin E. Kose, the defendant in this suit? A. Yes, sir.

Q. And you kept the books for your husband, did you? A. Yes, sir.

10 Q. Made out all the checks? A. Yes, sir.

Q. Did you draw the checks in payment of the dues and interest on the various loans from the Parkview Building & Loan Association? A. Always.

Q. You drew all of them? A. Yes, sir.

Q. Did you keep an account of the various loans that were made from the Parkview Building & Loan Association? A. Well, they were all recorded, and since this happened I have made a
20 list of them for your benefit, yes.

Q. You made a memorandum for my benefit? A. Yes.

Q. But do you remember the loans without referring to the memorandum you made? A. Well, I can remember about. I remember one was about 1907, I think—

MR. FRAZER: I have no objection to her using the memorandum, if she made it herself, Mr. Schotland.
30

Q. Mr. Frazer hasn't any objection to your referring to memorandum. When was the first time that you borrowed from the association (handing paper to witness)? A. That was August or September, 1907, we borrowed.

Q. How much did you borrow? A. It doesn't say here. This was paid back gradually during 1908.

Q. You do not remember the amount? A. No.

40 Q. You paid that back, did you? A. Yes, paid

Clara M. Rose—Direct.

that back during 1908. The stubs will show that.

Q. Have you the 1908 check-book here? A. I don't know; maybe. No.

THE COURT: Your checks, if you have them, would show what the amount of the loan was, would they not?

MR. SCHOTLAND: This started with November, 1912. 10

WITNESS: No, then I just made a memorandum of this from other books.

Q. Were you present when the loan was procured?

THE COURT: Which one, Mr. Schotland, the last one?

MR. SCHOTLAND: The first loan, in 1907.

Q. Were you present when that was arranged for and gotten? A. I remember when it was arranged for, but I don't remember whether I was present just when it was asked for, but I know what we wanted to use it for, and I know it was in 1907. 20

Q. Were you present when the check was delivered for that loan? A. I remember using the check; yes, I was present. On Saturday morning it was delivered.

Q. Who delivered it? A. Mr. Brown, at our store. 30

Q. And then on the occasion of the first loan Mr. Brown personally brought the check to you? A. Yes, I remember it very well.

Q. And what about the second loan? When was that made? A. This says August, 1910, we borrowed \$1,000, paid back March 4th, \$300, and paid back August 5th, \$100.

Q. When you borrowed that \$1,000, were you present when that was requested? A. I couldn't 40

Clara M. Rose—Direct.

say whether I was present or not; I probably was.

Q. You do not remember? A. But I don't remember it.

Q. Were you present when you received the \$1,000—that is, when you or Mr. Rose—whoever received it? A. I couldn't remember about that
10 either. It was probably left at the store.

Q. You don't remember that? A. I don't remember the second one, no.

Q. Now, you paid back \$300 and \$100? A. Yes, sir.

Q. To whom? A. Paid back when we paid our dues; I would make out a check when we could spare the money to the building loan, either with the dues or a separate check.

Q. Where were those checks left? A. Probably
20 in 1910, Mr. Brown was still calling for them; that was before he got so busy.

Q. He would call for them and get them at your store? A. Called for them regularly; he had a regular routine all through the neighborhood there where he stopped for checks.

Q. When was the next loan? A. That was in January. We inquired what we could loan.

Q. January of what year? A. January, 1914. Wasn't that the date?

30 MR. SCHOTLAND: 1913.

WITNESS: 1913. Yes. We inquired what our full loan value was.

BY MR. SCHOTLAND:

Q. Who inquired? A. I believe Mr. Rose inquired from Mr. Brown.

Q. Were you there? A. I remember him inquiring, but I think it was at Mr. Brown's house that we inquired.

40 Q. Were you there? A. Yes, sir.

Clara M. Rose—Direct.

Q. And then the inquiry was made from whom?
 A. Mr. Rose, I think, inquired; Mr. Rose inquired.

BY THE COURT:

Q. From whom? A. Mr. Brown.

Q. He asked Mr. Brown? A. Yes, sir.

BY MR. SCHOTLAND:

10

Q. And what did Mr. Brown say? A. Why, Mr. Rose asked him what his shares were worth now, the loan value, and he said, "I guess they are worth about \$1,800, I should imagine," he said; and we inquired when they would mature, and he said, "We are doing very nicely. Probably in June or July of this year." Because we considered whether we should borrow or draw out.

Q. And you decided to borrow? A. Yes, sir; we considered that we would come ahead of the game a little by borrowing and paying the interest for those few months. We told him we would like to borrow all we could, and he said \$1,800, but we since found out we were not entitled to \$1,800, but of course, Mr. Brown made it whatever he wanted to, we since found out.

20

MR. FRAZER: I object to that and move that it be stricken out.

THE COURT: Strike it out.

30

Q. He informed you that you could borrow up to \$1,800? A. Yes, sir.

Q. How much did you owe the association at that time? A. That was \$600.

Q. And then you received \$1200 additional? A. Additional, yes.

Q. Were you present when the \$1200 check came in? A. No, I wasn't present when it was left at the store; I just happened to be out.

Q. You did not receive it yourself, then? A. No.

40

Clara M. Rose—Direct.

Q. Did you make out the check in payment of this \$1800 loan? A. Yes, sir.

BY THE COURT:

Q. Does that mean that you drew the check? A. Yes, sir.

10 Q. For your husband to sign? A. Yes, sir; either one of us could sign, but I believe Mr. Rose signed them. We have joint accounts.

BY MR. SCHOTLAND:

Q. You drew the check for that \$1,809.54? A. Yes, sir.

20 Q. I show you a check stub, 3981, July 7, 1913, "George Brown, Jr. We gave this check to George, and he gave us one for \$2,000 balance due from Parkview B. & L., \$1,809.54." Is that stub in your handwriting? A. Yes, sir.

Q. Is that the date when you drew the check? A. Yes, sir.

Q. July 7, 1913? A. Yes, sir.

Q. Was the check No. 3981, that you drew at that time, returned to you from the bank? A. Yes, sir.

Q. When you balanced your book? A. Yes, sir.

Q. Had it been paid out? A. Yes, sir.

30 Q. What became of the original, what became of the check itself, where is it? A. The examiner called one evening and took it—asked me if he could have it. He said he was examining the Parkview Building & Loan books, and so far they hadn't found this \$1,800 record; they wouldn't put anything against Mr. Brown except what really happened, and could he have this check, and I saw no reason—

Objected to.

40 Q. I am not asking for the conversation? A. Well, he took it that night.

Maud March Brown—Direct.

Q. And gave you a receipt for it? A. And gave me a receipt for it.

BY THE COURT:

Q. Who was it that took it? A. The examiner.

MR. SCHOTLAND: The examiner from the Department of Banking & Insurance.

Q. Did you see the \$1,800 note? A. Yes, sir. 10

Q. And the \$2,000 check? A. Yes, sir.

Q. What did you do with the \$1,800 note? A. Well, it was around for awhile, and then it was afterwards destroyed.

Q. And what did you do with the \$2,000 check? A. I deposited it July 9th, I believe.

Q. And got the money on it? A. Yes, sir.

Q. Could the \$1,809.54 check have been paid out of your balance without the \$2000 check? A. No, sir. 20

Objected to as immaterial.

WITNESS: Not at all.

THE COURT: I will let the answer stand. I do not see that it makes any difference.

Cross Examination Waived.

MAUD MARCH BROWN, sworn in behalf of defendant. 30

DIRECT EXAMINATION BY MR. SCHOTLAND:

Q. Mrs. Brown, are you the wife of George Brown, Jr.? A. Yes, sir; I am.

Q. Do you know that he was secretary of the Parkview Building & Loan Association? A. Yes, sir, I do.

Q. Did you ever assist him in any of his work as secretary? A. I did. 40

Q. How many years have you known Mr. Brown as secretary of the Parkview Building &

Maud March Brown—Direct.

Loan Association? A. Well, about ten or eleven.

Q. How many years prior to his disappearance were you married to him? A. Well, I have been married since 1909.

Q. Married in 1909? A. Married in 1909.

Q. Now, did Mr. Brown do any of the building and loan work connected with the Parkview Building & Loan at home? A. Yes, sir; most of it.

Q. Do you know whether or not Mr. Brown received moneys from the shareholders for the association at home? A. Yes, sir; he did.

Q. What do you know about that, what was the practice? A. Why, they used to come there any time between two days before, and even days after the building and loan, and I would receive money, and I would call up the treasurer of the building and loan, telling him there was money here at my home, would I send it down to his office before he deposited at the bank for the association's deposit?

Q. Were there many shareholders of the Parkview Building & Loan Association that paid at your home? A. Yes, sir.

Q. Mr. Brown received the payments there? A. I would accept them, and then I would give them to Mr. Brown.

Q. Was Mr. Brown ever there when they would come with payments? A. Yes, sir.

Q. Did you ever see any of the building and loan association's notes or checks handled at the house? A. I did.

Q. In what way? A. Well, they would come right to the house and sign notes.

Q. Sign notes? A. Yes, sir.

Q. And receive checks? A. Yes, sir.

Q. Who would give them the checks? A. Mr. Brown.

Q. And who would take the notes from them? A. From Mr. Brown?

Maud March Brown—Direct.

Q. No, from the people that came. A. Well, Mr. Brown would take them.

Q. Who made out the notes? A. Mr. Brown.

Q. Did Mr. Brown deliver many checks to different shareholders of the association? A. Yes, sir; paid up stock notes when they were due, the interest.

Q. Was that a rare occurrence or the regular practice? A. The regular practice. 10

Q. About how many times a month was that done on an average? A. Well, always around the first of the month, or the meeting night of the building and loan.

Q. About how many instances in a month did Mr. Brown take payments and deliver checks and notes of the building and loan at your home?

MR. FRAZER: She did not "deliver notes." 20

MR. SCHOTLAND: Well, receive payments, and so on.

A. Well, I guess there were many more people came to the house than there were to the association, as far as I can understand.

Q. Have you ever been to the association? A. Yes, sir.

Q. And you think more people came to the house than to the association? A. Of course, I can't say that. I know I complained of the trouble very often, and I know I worked pretty hard for the Parkview Building & Loan. 30

Q. Well, would you say that Mr. Brown would deliver ten checks a month to different shareholders from the house? A. Well, if he had anyone—if he had checks to deliver to anyone he would deliver them at my home or leave them at their place of business.

Q. But I want to get at the volume. A. The number? 40

Maud March Brown—Direct.

Q. Yes. A. Well, I couldn't say how many.

Q. Well, were there as many as ten a month?

A. No, sir; I don't think there was as much as that.

Q. Were there as many as three or four a month? A. Yes, sir.

Q. On an average? A. Yes, sir.

10 Q. During all these years? A. Yes, sir; since I have been married to him.

Q. Since you have been married to him? A. Yes, sir.

Q. How did Mr. Brown get the checks to the house, do you know? A. Why, he brought them from the building and loan, or else sent for them. I have 'phoned to the building and loan meeting when they held their meeting, and Mr. Beidelman, the treasurer of the building and loan, 20 would call up my home and ask if Mr. Brown was there—that would be during the month—and say so and so—I can't just mention names—wanted their check, would Mr. Brown go to the association and get the check? I have 'phoned the building and loan rooms asking the man, the saloonkeeper, where the building and loan was held—in fact, the bartender would answer the 'phone. Then Mr. Roever wouldn't be up yet; he would get him; he would come to the 'phone, 30 and I would ask him if he would please get a Parkview check from the safe and give it to my father. My father would go down for it—

MR. FRAZER: I do not see the materiality of this, may it please the Court.

WITNESS: —showing that if he had access to the safe.

MR. SCHOTLAND: Never mind that.

WITNESS: Everybody had access to the safe.

40 THE COURT: I do not want to interrupt

Maud March Brown—Direct.

any testimony that will tend to show the usage of the association.

MR. SCHOTLAND: That is just the purpose of it.

THE COURT: Go on.

WITNESS: My father would go down to the association and come back with a blank check, which this saloonkeeper drew; he was a director of the association. 10

BY THE COURT:

Q. May I ask who your father was? A. John W. March. And my father would go to the treasurer and to the president—to Mr. Beidelman, and to Mr. Drake, the president—and get his signature to that check.

BY MR. SCHOTLAND:

Q. And then turned it over to Mr. Brown? A. Yes, sir. 20

Q. And he would deliver it to the— A. Yes, sir; he would deliver it to the parties.

Q. Where were the books of the building and loan kept? A. Well, they were in my home a great many times, specially when a state examiner was coming. Mr. Beidelman has called at my residence when the building and loan examiner was coming and would ask for the—rather, Mr. Brown would call Mr. Beidelman and ask him for the bank book of the Parkview Building & Loan Association, and Mr. Beidelman would call the bank, where the book was left for deposit, and my father went down and got it after banking hours and brought the book back to Mr. Brown. 30

Q. Was the bank book in Mr. Brown's possession all the time? A. Not all the time, but any time he wished it he could have it.

Q. Do you know where the notes that Mr. Brown received from the shareholders were kept? A. Why, I often saw them on his desk. 40

Maud March Brown—Direct.

Q. What is that? A. I have seen them on his desk, on the pad of his desk.

BY THE COURT:

Q. You mean at your house? A. Yes, sir.

Q. Did he have a desk down at the office of the association? A. No, they had tables down there where they used to eat.

10 Q. I am asking you whether your husband had any desk down at the office of the association?

A. No; he did not.

BY MR. SCHOTLAND:

Q. Did you ever receive checks for the payment of dues to the order of Mr. Brown himself?

A. Yes, sir.

Q. How often? A. Well, I know one instance; I couldn't tell you how many times.

20 Q. Well, did you receive checks many times?

A. Yes, sir.

Q. I mean in payment of dues or something owing to the Parkview Building & Loan Association? A. Well, there were more people paid by money at my home than by check, although they did leave checks also with their pass-book, and oftentimes bring their slips, and I have made out their slips many a time, filling in the amount and the date and the name of the person that it was for.

30 Q. That was the regular practice during those years? A. Yes, sir; it was.

Q. Now, when they left checks, can you recall to whose order the checks were made out? A. No, sir; I can't do that, because there were too many things about the building and loan affairs to remember, so that I couldn't tell you.

Q. Do you know whether any of them were made out to the order of George Brown, Jr? A. 40 Yes, sir.

Francis M. Linnett—Direct.

Q. You do know that? A. Yes, sir; I do know.

Q. Did you ever talk to Mr. Beidelman, the treasurer of this association, as to whether there was any money short?

Objected to.

A. Yes, sir; I did.

Objected to as immaterial. 10

Objection sustained.

Cross Examination Waived.

FRANCIS M. LINNETT, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCHOTLAND:

Q. Mr. Linnett, what is your business? A. 20
Druggist.

Q. And were you a shareholder of the Parkview Building & Loan Association? A. At that time, yes.

Q. Are you at the present time? A. No, sir.

Q. Did you know George Brown, Jr.? A. Yes, sir.

Q. When did you cease being a shareholder of the Parkview Building & Loan Association? A. I haven't a record of it; probably about eight years old the shares were. 30

Q. When did you withdraw from the association? A. When it was eight years old, when its full value was—

MR. FRAZER: About 1908, somewhere along there?

WITNESS: Yes, sir; somewhere about there.

Q. You withdrew in 1908 or 1909? A. Yes. I wasn't a member at that time, if that was the question. 40

Q. Yes. A. No, I wasn't a member.

Francis M. Linnett—Direct.

Q. When were you a member? A. Well, 1908 would be when I was through with the association.

Q. After you withdrew did you have anything to do with the payment of any dues or— A. Only leaving them at my store.

THE COURT: I did not hear that.

10 WITNESS: Only leaving them at my store for collection.

Q. And who collected them from your store? A. Mr. Brown.

Q. About from how many shareholders? A. I should judge about twenty, I should think, probably—a fair number.

Q. About twenty shareholders? A. I should think so. My drawer had about twenty books in.

20 BY THE COURT:

Q. Where was your store, Mr. Linnett? A. On Frelinghuysen avenue.

BY MR. SCHOTLAND:

Q. Who would collect them at your store? A. Mr. Brown and Mr. March also.

Q. Mr. Who? A. Mr. March, Mrs. Brown's father.

30 Q. That has been going on how many years? A. Well, I don't remember. It isn't being done now. I should judge for about a couple of years it hasn't been going on.

Q. Did it continue up to the time of Brown's disappearance? A. No, I should judge—I wouldn't want to say when.

40 Q. That went on until he got too busy to call for them? A. Well, it was so, because towards the end Mr. March did all the collecting, you might say, because George put it all over onto him, and he would come around and get the books.

Francis M. Linnett—Direct.

Q. Mr. March? A. Yes, sir.

Q. While you were a member of the association did you borrow any money on your shares? A. No.

Q. To whom did you pay all your dues? A. Mr. Brown.

Q. You say you withdrew after your shares were eight years old? A. Yes. 10

THE COURT: You said you were through in 1908?

WITNESS: Yes, I think that was the date when the shares matured, when we all asked Mr. Brown when we could get our best money out, and he suggested that, and we withdrew.

MR. FRAZER: It was agreed by counsel that it was 1910. 20

WITNESS: 1910?

MR. FRAZER: Yes.

WITNESS: Well, I guess that was it, then.

Q. When you withdrew how did you get your money? A. I can't recall.

Q. You do not remember just the particular manner? A. No. George used to be our broker, you know, and we would all borrow from him and pay back and I can't tell just how my shares were matured. 30

Q. Well, did you go to the association and receive the money? A. No, I don't know where the rooms are.

Q. You never were there? A. No.

Q. Then from whom did you receive the value of your shares? A. From Mr. Brown.

Q. He is the one that delivered the check to you? A. Yes.

Q. Not the treasurer? A. No.

Cross Examination Waived. 40

Mary Kelly—Direct.

MARY KELLY, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCHOTLAND:

Q. Miss Kelly, in July, 1913, where were you employed? A. E. E. Rose.

Q. And did you know George Brown Jr.? A. Yes, sir.

10 Q. And do you remember delivering a check to Mr. Brown and receiving something else from him? A. I do.

Q. When was that? A. Well, about two years ago, I guess, the first time Mr. Brown ever returned the check to me and the one that I gave him. There was a check and some papers.

Q. Do you know what check you gave him? A. Well, no, I don't know; I never looked. Mrs. Rose gave it to me in the afternoon, and she told me that Mr. Brown would call for it and he would give me one in return.

20 Q. What did you receive from Mr. Brown in return? A. I received a check and some papers, but what they were I don't know.

Q. You did not look? A. No, sir.

Q. Well, now, do you remember what day of the week that was? A. Well, it was around the first part of the week; I remember that.

30 Cross Examination Waived.

Samuel A. White—Direct—Cross.

SAMUEL A. WHITE, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCHOTLAND:

Q. Mr. White, were you a shareholder of the Parkview Building & Loan Association? A. Yes, sir.

Q. Do you know who was the secretary during the time that you were shareholder? A. Geo. Brown, Jr. 10

Q. Did you ever borrow any money on your shares while a shareholder? A. No, sir.

Q. Did you surrender your shares? A. Yes, sir.

Q. And get back your money? A. Yes, sir.

Q. To whom did you surrender them and from whom did you receive the money? A. George Brown, Jr. 20

Q. George Brown? A. Yes, sir.

Q. Who delivered the check to you? A. George Brown.

Q. And to whom did you give the certificate? A. Mr. Brown.

Q. Did you attend the meeting of the Board of Directors, or at the office of the building and loan at any time? A. No, sir; my wife did once or twice take my dues down.

Q. Once or twice during a period of how many years? A. Probably seven. 30

Q. Probably seven years? A. Yes.

Q. That you are a member? A. Yes.

Q. You transacted the entire business through Mr. Brown? A. Yes, sir.

CROSS EXAMINATION BY MR. FRAZER:

Q. How did you make your payments, in the form of checks? A. Yes, sir; sometimes. After July or June 19th, 1911, I went into business for myself, and after that I made out the checks. 40

Q. Before that you had given cash? A. Yes, sir.

Samuel H. Gluckman—Direct.

SAMUEL H. GLUCKMAN, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCHOTLAND:

Q. You are a dentist in this city? A. I am.

Q. Were you a shareholder of the Parkview Building & Loan Association? A. I was.

10 Q. Did you know George Brown, Jr.? A. I did.

Q. Did you ever borrow any money on your shares from the association? A. I did not.

Q. Did you withdraw from the association? A. I did, sir.

Q. With whom did you transact the business when you withdrew your shares? A. Well, with an outside party, a Mr. Phillips, W. V. Phillips. He is a director.

20 Q. From whom did you receive the check? A. From Mr. Phillips. My shares didn't mature; I sold them just previous—

Q. Oh, you sold your shares? A. I did.

Q. I thought you said you withdrew from the association? A. No, sir.

Q. How long were you a member? A. About four years.

Q. To whom did you pay your dues during those four years? A. To Mr. Brown, at Mr. Linnett's store.

30 Q. Did you ever pay to him at any other place in any other way? A. I did not.

Q. Did you ever go to the meeting place of the association to pay your dues? A. No.

Cross Examination Waived.

Solomon B. Beidelman—Direct.
Solomon B. Beidelman—Direct—Cross.

SOLOMON B. BEIDELMAN, recalled in behalf of defendant.

DIRECT EXAMINATION BY MR. SCHOTLAND:

Q. Mr. Beidelman, were you present at all the pay nights of the Parkview Building & Loan Association? A. Yes, sir. 10

Q. Did you notice whether or not Mr. Brown would bring in the dues for a large number of the shareholders? A. He would bring in dues; sometimes it would amount to from \$60, \$50, maybe \$80 a month, and sometimes a little more.

Q. For other shareholders? A. For other shareholders. Well, he would bring oftentimes in his own check with the deposit slips of the different shareholders.

Q. And he did that regularly? A. Yes, sir. 20

Cross Examination Waived.

DEFENDANT RESTS.

SOLOMON B. BEIDELMAN, recalled in behalf of plaintiff in rebuttal.

DIRECT EXAMINATION BY MR. FRAZER:

Q. Mr. Beidelman, you have been a member of the association from its start, have you not? A. Well, shortly after it started. 30

Q. Well, when you became connected with the association who was the secretary? A. Martin File.

CROSS EXAMINATION BY MR. SCHOTLAND:

Q. When did Brown become secretary? A. I couldn't just recall the date, but I think about 1904 or 1905. 40

Motion for Direction of verdict.

Q. Well, how long was File secretary? A. Well, he was there from the time that they organized, I think, until up to that time.

Q. Was he secretary for three years? A. Well, I think he was for about three years.

Q. What officer was Brown when it was organized? A. He was a director at that time.

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 PLAINTIFF RESTS.

MR. SCHOTLAND: I move for a direction of a verdict on the same grounds urged on the motion for non-suit, on the same authorities and for the same reasons.

THE COURT: I will deny the motion. It has practically already been considered.

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Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

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MR. FRAZER: I desire to move for the direction of a verdict, may it please the Court, for the defendant, on the ground that it appears conclusively in this case from the testimony of the defendant himself that the payment made to Mr. Brown of \$1,809.54, or the check drawn for that sum, was drawn to Mr. Brown and for Mr. Brown; that there was no intent at the time of its drawing that Mr. Brown was to turn it over to the association, but that it was intended as the property of Mr. Brown, to reimburse him for an alleged payment.

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In the second place, I would move for the direction of a verdict on the ground that, where the facts are not in dispute, the question of agency is one for the Court to determine, and upon the ground that if a debtor of a corporation draws a check to the individual

Motion for Direction of verdict.

order of an officer of the corporation, a paper which cannot be used by the corporation, in doing that he necessarily constitutes that officer his agent, if he intends the money to get into the treasury. In other words, when Mr. Rose drew a check to the order of George Brown, Jr., even though he assumed that by that check he intended to pay the association, and did not assume that the association had already been paid, assuming that he intended to pay the association when he drew that check to the order of George Brown, Jr., it became necessary for George Brown, Jr., to act in an individual capacity, as a conduit from Mr. Rose to the association, and when Mr. Rose put that burden upon Mr. Brown he constituted Mr. Brown his agent for the purpose of making that payment.

I would like to move for the direction of a verdict on the further ground that a check is not a payment; it is merely a means of payment; and unless it can be shown that the means of payment have resulted in an actual payment to the person entitled, that person is able to set up the fact that the means failed in accomplishing their end. In this case it is conclusively proven that the moneys represented by Mr. Rose's check never came into the hands of the association; they went into Mr. Brown's bank account, and were not received by any officer in any official capacity.

I would therefore respectfully move on those grounds, may it please the Court, that a verdict be directed for the amount of the debt with interest.

(Counsel argue.)

Motion for Direction of verdict.

THE COURT: I have examined the cases cited by counsel on both sides.

I think that this motion should prevail, and that the Court should direct a verdict in favor of the plaintiff and against the defendant.

10 The plaintiff is a corporation known as the Parkview Building & Loan Association. The defendant owned ten shares of stock in the first series of the association, of a maturity value of \$2,000. These shares matured at a meeting of the association held on the first Monday of July, 1913. The defendant had borrowed of the association on account of those shares, which he pledged as collateral security, sums amounting in all to \$1,800, and had given to the association a promissory note in the sum of \$1,800, payable to the order of the association, bearing six per cent. interest and subject also to fees as premiums, amounting to the further sum of sixty cents per month. On the maturity of the first series the defendant would be entitled to receive from the association the value of his ten shares of stock, which was \$2,000, less the amount of his debt to them, which is said to have been \$1,809.54.

30 The natural way of settling this account would have been for the association to pay to the defendant the difference between the value of the shares and the amount of his debt, evidenced by his note. What actually was done was this. George Brown, Jr., secretary of the association, who turned out to be dishonest, pursued a plan with the result, and no doubt with the intention, of making for himself the sum of \$1,809.54, at the expense either of the association or of the de-

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Motion for Direction of verdict.

fendant. This plan was carried out. Mr. Brown got the money and deposited it in his own account. The association never received it. The question now is, Who shall bear the loss?

Interrogatories have been addressed by the plaintiff to the defendant, and I think his testimony on the stand is entirely consistent with his answers to the seventh and eighth interrogatories, which I shall read. The seventh interrogatory is: "Did you receive a check of the Parkview Building & Loan Association in the sum of \$2,000, the maturity value of ten shares in the first series of said association?" To which Mr. Rose answered: "I received check from the secretary of the plaintiff association." This is the eighth interrogatory: "If you received a check as mentioned in the seventh interrogatory, when where and under what circumstances did you receive it?" That was answered as follows: "I was notified by George Brown, Jr., secretary of the plaintiff association, on or about the first Monday in July, 1913, that my shares had matured, and that instead of making out a check to me of \$190.46, which was the balance due me, he paid the association the \$1,809.54, which I owed on my note, and then made out a check to my order for \$2,000 and that he would deliver the \$2,000 check, together with my note, at my store, and if I or my wife would not be in we should leave check for him for the \$1,809.54. This was done, and I received the \$2,000 check, together with my note."

The personal dealings of the defendant were with George Brown, Jr., the secretary, in matters concerning the association, except perhaps at the very first.

Motion for Direction of verdict.

10 The loan from the association was effected through the secretary. The defendant did not appear before the association at any meeting. On or about the first Monday in July, 1913, the secretary notified the defendant that the shares had matured; that he, the secretary, had paid to the association the defendant's debt of \$1,809.54, and would return to him his note and deliver to him the check of the association, if the defendant would reimburse him for paying his note. The statement of the secretary that he had paid the defendant's note was untrue. He had paid nothing to the association. Brown returned to the defendant the defendant's note for \$1,800 and delivered to him the check of the association for \$2,000, which acts were in fraud of the association, for they were without equivalent, and received from the defendant the check of the defendant for \$1,809.54, payable, not to the order of the association, but to the order of George Brown, Jr. The defendant destroyed the note that was returned to him, as he had a right to do. The association, which has been thus defrauded by its secretary, now sues to recover the amount of the loan.

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30 The question is whether these transactions between the defendant and George Brown, Jr., were binding on the association, as the acts of an authorized agent. The answer, I think, must be No. It was no part of the real or apparent authority of the secretary to furnish funds to a stockholder with which to pay a debt due from him to the association, for which, by arrangement with the debtor, he was to be afterwards reimbursed. It was no part of his official duty as the secretary of the association to furnish funds

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Motion for Direction of verdict.

with which to pay a debt due from a stockholder to the association. Of course, those must be either his own funds or funds which he had procured from outside. He could not pay a debt to the association with the association's money; that would be no payment. I say it was no part of his duty as an officer of the association to do that—to thus furnish funds, for which, by arrangement with the debtor, he was afterwards to be reimbursed. This transaction had no official character. It was competent for the parties to make this arrangement, but it was an arrangement between individuals and in no sense official. It was a dealing between two unofficial individuals: on the one side a debtor of the association, and on the other side a man who advances money, or assumes to advance it, to pay the debt, and so, on that pretense, which is a false one, obtains possession, for return to the defendant of his note, of the check of the association for \$2,000, for delivery to the defendant as stockholder. It is true that the man who agreed to make this advance was secretary of the association, and that all payments of money to the association, according to the constitution, were made to him as secretary. It is true also that he had much to do with keeping the accounts. He had access to the safe of the company. All this made it possible for him to consummate the fraud which he designed. He could possess himself and did possess himself of the check of the association for \$2,000, which was in the safe ready for delivery to Mr. Rose whenever he should pay his note. He could possess himself and did possess himself of Mr. Rose's note, which was also in the safe of the association, and when he pro-

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Motion for Direction of verdict.

duced and exhibited to Mr. Rose the check and note which he had thus abstracted from the safe of the company, Mr. Rose, who suspected no deceit, naturally supposed that Brown had carried out his agreement to pay the note, and that he, Rose could safely reimburse him for his advance. But all this did not change the essential character of the transaction between Brown and the defendant. It only shows that Brown's official position enabled him to deceive Mr. Rose and to purloin papers from the safe of the association—purloin in the sense of taking them without warrant, improperly. It did not clothe Brown's promise to pay the defendant's debt with any official character or in any way bind the association, for it was merely a dealing between individuals, and was not within either the real or apparent scope of Brown's agency or authority as secretary.

There should therefore be a judgment in favor of the association and against the defendant, Mr. Rose, who has apparently acted in entire good faith, and is unfortunate because he was deceived by a man whom he thought he could trust. If you will figure out the amount which you claim, I will direct the verdict for that sum.

MR. FRAZER: I think the amount would be \$1,949.78; that is including interest from the 7th day of July, 1913.

MR. SCHOTLAND: May I suggest to your Honor that all this was seven months after this transaction was apparently closed. The testimony is that Mr. Rose paid no more dues and paid no interest; he thought it was closed. The association made no further demand on him. They paid out that check.

Exhibit D-2.

They were bound to know it. They ratified the action of the secretary.

THE COURT: Are you calling attention to the interest or to the merits of the case?

MR. SCHOTLAND: To the merits. I forgot to call your Honor's attention to that: that they let all that time go by without discovering it. 10

THE COURT: I have already passed on that part of the case.

Gentlemen, you may render a verdict in favor of the plaintiff and against the defendant for the sum of \$1,949.78.

(Verdict accordingly.)

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal. 20

Exhibit D-2.

Newark, N. J. March 10th, 1914.

\$1,809 54/100

Received cancelled check No. 3981, dated July 7th, 1913, payable to Geo. Brown, Jr., or order for \$1,809 54/100. Endorsed by George Brown, Jr. Deposited, July 9, 1913, in Newark Trust Co.

FREDERICK L. PIERCE, Examiner, 30

Department of Banking & Insurance.

No. 1577 Newark, N. J., January 6, 1913.

Treasurer of the Park View Building & Loan Association of the City of Newark.

Pay to the order of E. E. Rose, \$1200.00

Twelve Hundred, 00/100 Dollars,

account of Stock Loan

Payable at the Essex County National Bank.

Edgar R. Drake, President.

George Brown, Jr., Secretary. 40

S. B. Beidelman, Treasurer.

Exhibit P-3.

by public notice conspicuously placed and by advertisement in a newspaper published in the neighborhood (at the expense of the Association). He shall be prepared at all times to inform the shareholders of the state of the financial concerns of the Association, and at yearly meetings shall furnish a detailed statement of the finances of the Association. He shall receive such compensation for his services as the Board of Directors may determine. He shall give bond to the Association for the honest performance of his duties as approved by the Board of Directors. At the expiration of his term of office he shall deliver all books, papers and property belonging to the Association in his possession to his successor in office. |

Sec. 3. Each and every shareholder, trustee, guardian or representative for a minor, for each and every share of stock held by him or her in this Association, shall pay the sum of one dollar as installments on the first Monday of each and every month (unless the first Monday shall be a legal holiday, when the payments shall be made at the time hereafter mentioned); *these payments shall be made to the Secretary or such other person or persons as shall from time to time*, by the laws and regulations of this Association be authorized to receive the same, at such hours as provided for in this constitution and at 387 Elizabeth avenue, or at such place as the shareholders shall provide; the said payments to continue until it shall be ascertained that the value of the whole stock of their respective series be sufficient to divide to each share of stock in such respective series the sum of two hundred dollars. The time for payments for each month shall terminate as soon as the Secretary shall have waited on all present, between eight and nine P. M., on the first Monday of each month. In the event of the first Monday in any month being a legal holiday, the

Exhibit P-3.

stockholders' meeting above provided for shall be held and all dues and installments of premiums and interest shall be due and payable on the next succeeding business day, at the time and place before stated.

* * * * *

Article XIV.

FINES.

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* * * * *

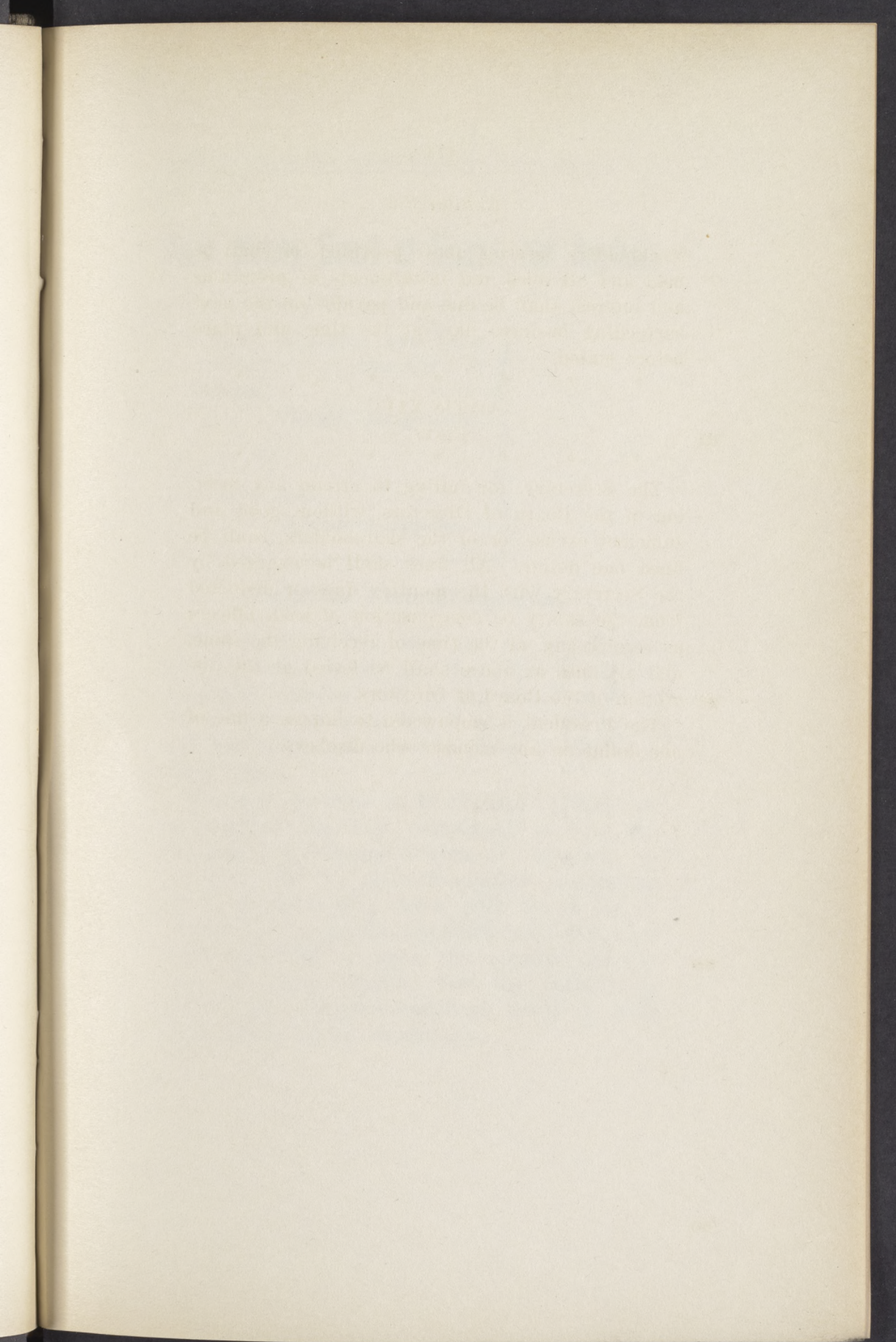
The Secretary, for failing to attend any meeting of the Board of Directors, without good and sufficient excuse, or of the shareholders, shall be fined one dollar. All fines shall be charged by the Secretary with the monthly dues or deducted from the salary or compensation of such officers as receive any, at the time of receiving the same, and all fines as above shall be levied at the discretion of the Board of Directors.

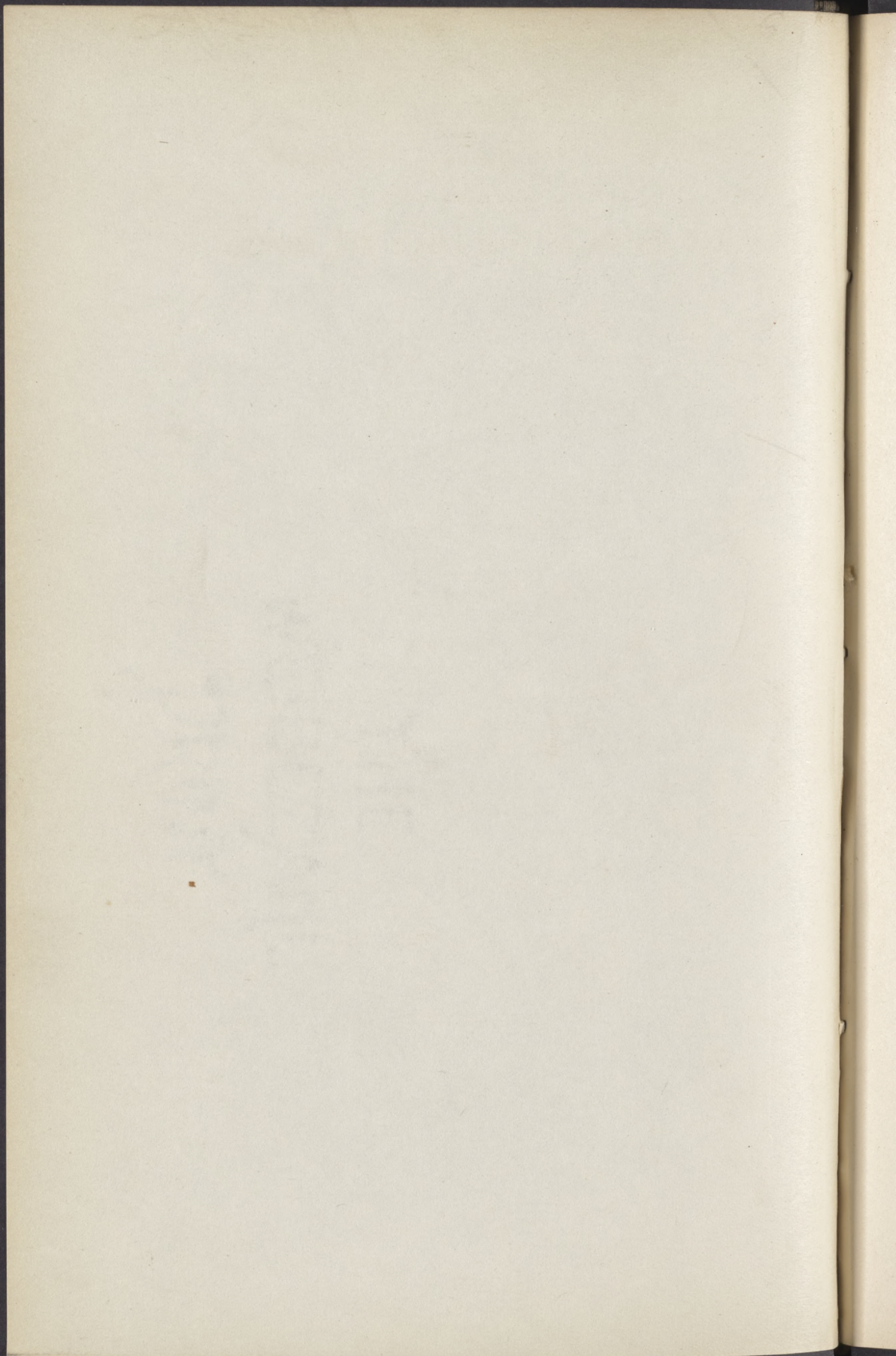
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The President is empowered to impose a fine of one dollar on any member who disobeys.

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New Jersey Court of Errors and Appeals

PARKVIEW BUILDING AND LOAN
ASSOCIATION OF THE CITY OF
NEWARK,

Plaintiff-Respondent,

vs.

EDWIN E. ROSE,

Defendant-Appellant.

Brief for Plaintiff-Appellee.

The facts in this case are not in dispute, and we would merely add that their interpretation was definitely left to the Court itself by the motions made on behalf of both the plaintiff and defendant below to direct a verdict in their favor.

The sole question to be decided in this case is whether the loss occasioned by the embezzlement by George Brown, Jr., who was the secretary of the plaintiff-appellee association, of the proceeds of a check made out to his individual order by the appellant shall fall upon such appellant or upon the appellee association; it being admitted that the plaintiff-appellee and defendant-appellant acted in good faith in the entire transaction.

Argument.

THE COURT BELOW PROPERLY DIRECTED A VERDICT FOR THE PLAINTIFF.

In this case not only did the Court below in directing a verdict for the plaintiff render a long opinion setting forth its reasons for concluding that the loss should fall upon the appellant (C. pp. 106 to 110), but such Court, in order to be quite sure that as between these two innocent parties exact justice was done, of its own motion made a rule to show cause why such verdict should not be set aside. Under such rule the attorneys for the respective parties made extensive arguments before the Court below and such Court thereafter with the printed book of evidence before it, after again weighing the matter most carefully, decided that its previous decision was correct, dismissed the rule and rendered a further opinion going into both the facts and the law at some length. This opinion is printed herewith inasmuch as it not only gives a clear, concise and accurate statement of the facts of the case, but in view of the fact that such decision was twice given after two very full considerations of the matter by the Court who actually heard the evidence, and by a Court whose learning, care and judicial experience is well-known, it is felt that this Court would desire to give such opinion its most careful consideration.

We would add that the references to the pages of the book as given in Judge Adams' opinion have been changed to accord with the paging in the printed book on appeal in this Court, such being done for the convenience of this Court.

Such opinion is as follows:

ADAMS, J.

The Court directed a verdict for plaintiff, and afterwards, of its own motion, made a rule to show cause why the verdict should not be set aside as against the weight of the evidence.

On re-examining the matter, the facts of which are substantially admitted, the inquiry has been whether the case is within the rule laid down in *Manchester Building & Loan Association v. Beardsley*, 72 Eq. 714, and *Schaufele v. Balscher*, 83 Eq. 117, affirmed January 27, 1915, 93 A. R. 1086. If the case is within that rule, the loss occasioned by the fraud of the secretary of the association should not fall upon the defendant.

The essential facts are these. The plaintiff is a corporation known as the Parkview Building and Loan Association. The defendant, Edwin E. Rose, owned ten shares of stock in the first series of the association of a maturity value of \$2,000. These shares matured at a meeting of the association held on the first Monday of July, 1913. The defendant had borrowed of the association on account of those shares sums amounting in all to \$1,800, and had given to the association a promissory note in the sum of \$1,800, payable to the order of the association, and subject also to fees, amounting to the further sum of sixty cents per month. On the maturity of the first series the defendant would be entitled to receive from the association the value of his ten shares of stock, which was \$2,000, less the amount of his debt to it, which is said to have been \$1,809.54.

One way of settling this account would be for the association to give to the defendant its check for the difference between \$2,000, the

value of his shares, and \$1,809.54, the amount of his debt to the association, at the same time surrendering the note and cancelling the shares. Another way of settling the account, less simple than that just mentioned, would be for the defendant to give to the association his check for \$1,809.54, thus paying his debt, and for the association to give him its check for \$2,000, at the same time surrendering the note and cancelling the shares. According to the statement of counsel, some associations adopt one method and some associations the other. It resolves itself into a mere matter of bookkeeping. (Book, p. 58.)

The Parkview Building & Loan Association seems to have been a small organization. The shareholders were young men, acquainted with one another. At the time of the maturity of the first series of the stock, in July, 1913, Mr. Solomon B. Beidelman was treasurer, and had held that office since July, 1904. A Mr. Drake was president. The secretary was George Brown, Jr., an active man, who was the usual channel of communication between the shareholders and the association. Brown had been secretary for several years. He would go about and collect the dues, or the shareholders would leave them at his home or at Linnett's drug store, where he would call and get them. On pay night Brown would turn the money in to the association and take the receipt of the treasurer. Sometimes, if a shareholder had not paid his dues, Brown would advance the money to the association by giving his own check, and collect afterwards from the shareholder. In this way the secretary came to be an habitual go-between and intermediary. The recognized practice was for the secretary to receive the

moneys in the first instance, as just stated, and even on pay nights. (Beidelmann, pp. 18, 19.) Mr. Rose was not an officer, and hardly ever went to the office of the association. Brown saved him the trouble.

Mr. Rose was asked on direct examination and answered as follows:

“Q How did you come to make all your payments to Brown instead of going to the association’s place of business on pay night and making payments? A Well, he had always been used to taking the money of different people around the neighborhood from the drug store, and it was a custom of his to get the shares together—to take the boys’ money together and take it down there.”

Mr. Rose says that he was in the habit of paying his dues by checks to the order of the association, which Brown would turn in. On a few occasions Brown advanced the money and afterwards took Mr. Rose’s check to himself personally. (Rose, p. 63.) It does not appear that in any case Brown turned in to the association a check which a shareholder had drawn to the order of Brown.

Coming now to the loans which Mr. Rose got from the association, I quote from pages 52 to 56:

“Q Mr. Rose, how much was it that you borrowed the first time that you made a loan on your shares? A Why, that I couldn’t tell; I think it was \$600. Mrs. Rose has it down, though. She done all my bookkeeping.

Q When you borrowed the second time what became of the first note that you gave Mr. Brown on the occasion when you bor-

rowed the first time? A What became of the note?

Q The first note, yes? A When I made the second note to him, you mean?

Q Yes. A Why, I think he gave it to us each time, and made out a new one, and it was destroyed.

Q You say 'each time'. Is that true of all of the occasions? A Yes, sir; as far as I can remember.

Q Well, was it true on each occasion when you borrowed any additional money and gave a new note? A Yes, sir.

Q Mr. Brown always returned the old note to you and made out a new one? A Yes, sir.

Q Who delivered the check to you? A Mr. Brown.

Q On each occasion? A Yes, sir.

Q Now, what was the last amount that you borrowed from this association? A Well, it totaled up \$1,800, my total amount.

Q Adding to the balance that you owed from before? A Yes, sir.

Q How much did you receive on the last occasion, was it \$1,200? A I think it was; yes, it was. We had a note in there for \$600, and it was \$1,200 that we borrowed the last time, making a total of \$1,800.

* * * * *

Q And you gave him a note, you say? A Yes, sir.

Q A note for how much? A Made out to him—made out to the association.

Q A note for how much? A For the amount that I borrowed.

Q For the total that you owed at that time, or just \$1,200? A For the total.

Q And that was how much? A That was \$1,800.

Q That was \$1,800? A Yes, sir.

Q Now, then, after January 6, 1913, how much did you continue to pay to the association? A Eighteen dollars and some cents a month; I forget just what the total was.

Q You paid \$10 for your dues, did you? A Yes, sir; and eight dollars and some cents interest. Mrs. Rose always done that for me; she kept my books.

Q And you paid interest on the \$1,800, then, every month? A Yes, sir.

Q Until when? A Until my shares matured.

Q And when was that? A That was in July.

Q What year? A 1913.

Q In July, 1913? A Yes, sir.

Q How did you learn that your shares matured? A Through Mr. Brown.

Q Now, just tell the Court and jury what he said or did which informed that your shares had matured? A Well, gentlemen, I was delivering coffee to his home, and he said to me, 'Eddie,' he says, 'I have a check here from the building and loan. Your shares have matured.' He says, 'Now, if you will simply make me out a check payable to me, to my order, and give it to me, I will leave this check to your place,' he says, 'and have your wife make me out a check for the amount that is coming to the building and loan.' And I says, 'Is that the way you do it, Mr. Brown?' And he said, 'Yes, Eddie, that is the way we do it.' And I heard nothing more of it—

Q Just wait a minute. That was when?

A That was when my shares matured.

Q Well, when was it that this conversation took place? A Well, a day or two before he came around; it was on a Friday, I believe—the day before the Monday that the shares matured. He said he had the check.

Q Well, when was it that the transaction was closed with relation to the Friday on which you had the conversation? A It was on the following Monday.

Q And that Monday was in July, 1913, you say? A Yes, sir.

Q Which Monday in July, 1913, was it?

A Why, I think it was the second Monday; I am not sure; I didn't keep track of that.

Q Well, which member of the family will recall the date better? A Mrs. Rose; she done all that business for me.

Q Well, you personally had that conversation with Mr. Brown? A Yes, sir.

Q How much did he tell you to make out a check for? A \$1,809.54, I think, something like that amount.

Q And how much did he tell you that he had a check for you for? A For \$2,000.

Q What, if anything, was said about your \$1,800 note? A What was said about the note?

Q Yes. What, if anything, was said about the \$1,800 note that you had given the association? A Nothing, only that he returned it to me.

Q Did he say he would return it? A Yes, sir.

Q Now, pursuant to that conversation with Mr. Brown, what did you do? A Before that?

Q No, after that conversation on the Friday. A Well, I went home and told Mrs. Rose—

Q Never mind what you told her. What did you do? A What did I do?

Q Yes, in connection with just this transaction. Did you make out your check for \$1,809.54? A I made out the check; yes, sir.

Q And where did you leave it? A At my store.

Q With whom? A With my wife, and she left it with the girl at the store; she went out that afternoon and she left it with the girl.

Q With the girl that was in charge of the store? A Yes, sir.

Q And when you got back that night did you find your check still there? A No, sir.

Q Anything instead of it? A Yes, sir.

Q What did you find instead of it? A A note from the association.

Q Your note returned? A Yes, sir.

Q And what else? A My certificate and all pertaining to the papers. Mrs. Rose took care of those things.

Q Did you get a check for \$2,000? A Yes, sir; I got the check, Oh, yes.

Q You found the check and the note there? A Yes, sir.

Q Of that you are sure? A Yes, sir.

Q And your check for \$1,809.54 was gone? A Yes, sir.

Q Now, Mr. Rose, what did you do with that \$2,000 check? A Deposited it in our bank.

Q And was the \$1,809.54 paid out of it? A Yes, sir; paid out."

Interrogatories were addressed by the plaintiff to the defendant. I quote the seventh and eighth interrogatories and his answers thereto:

“Seventh interrogatory: Did you receive a check of the Parkview Building & Loan Association in the sum of \$2,000, the maturity value of ten shares in the first series of said association? *Answer:* I received check from the secretary of the plaintiff association.

Eighth interrogatory: If you received a check as mentioned in the seventh interrogatory, when, where and under what circumstances did you receive it? *Answer:* I was notified by George Brown, Jr., secretary of the plaintiff association, on or about the first Monday in July, 1913, that my shares had matured, and that instead of making out a check to me of \$190.46, which was the balance due me, he paid the association the \$1,809.54 which I owed on my note, and then made out a check to my order for \$2,000, and that he would deliver the \$2,000 check, together with my note, at my store, and if I or my wife would not be in we should leave check for him for the \$1,809.54. This was done, and I received the \$2,000 check, together with my note.”

Mr. Rose's testimony in other parts of his evidence is somewhat uncertain as to whether Brown said that he had paid defendant's debt or that he would settle it. It is plain that one

of two things was true. Either Brown told him that he had paid the debt, which was a lie, and so got Mr. Rose's check for \$1,809.54, drawn to Brown's order, under the pretense that it was to reimburse Brown for his advance, or Brown told him, not that he had paid Mr. Rose's debt, but that he would settle the matter if Mr. Rose would give him his check for \$1,809.54. Brown asked that the check be drawn payable to his own order, and Mr. Rose, a confiding and unsuspecting man, did as he was asked, and thus put it in Brown's power to divert to his own use the payment which should have gone to the association.

It appears from the testimony of Mr. Beidelman, the treasurer, that he was not always at the office of the company, but went there on notice. His testimony is as follows:

“Q Were you there at any time? A Well, not always; I was there at such time as the people would make an appointment that had a check due, and I would go there with them and make the settlement.

Q Do you mean to say that you made it a practice of personally making the settlement with the shareholders as a rule? A Yes, sir.

Q But you did not make it the practice of letting Mr. Brown attend to that part of it? A No, sir.

Q The checks were never turned over to him to attend to it? A There has been checks turned over to him.

Q To attend to the settlement? A When the proper papers were brought there, the proper securities.” (Beidelman, p. 22.)

A check of the association for \$2,000 was drawn by Brown, the secretary, to the order of Mr. Rose, in anticipation of settlement, was signed by the president, secretary and treasurer, and was put in the safe of the association along with the stock certificate and Mr. Rose's note for \$1,800. Similar action was taken in other cases. Brown, as secretary, had access to the safe, and was thus enabled to obtain possession of the check of the association for \$2,000 and of Mr. Rose's note for \$1,800, and to produce them when he carried out the pretended settlement. The treasurer did not miss the papers which Brown had taken from the safe, and did not discover until months after, when Brown had absconded, that the \$2,000 check had been charged against the association by the Essex County Bank, where its account was, and that Mr. Rose's debt of \$1,809.54 was still unpaid. Mr. Beidelman was not vigilant. I quote from pages 24, 25, 26:

“Q Your check for the \$2,000 was issued when? A In July.

Q 1913? A 1914—1913, yes.

Q Your check for the \$2,000 went through the bank shortly after it was issued, did it not? A Yes, sir; I guess it did.

Q Well, you had charge of your bank balance, did you not? A Yes, sir.

Q You knew whether that check went through or not, did you not? A No, sir.

Q Well, who kept your book for you? A Mr. Brown kept the check book.

Q You were the treasurer? A Yes, sir.

Q But Mr. Brown kept the check book; is that true? A He wrote the checks.

Q And he kept the check book? A Yes, sir; he had charge of it.

Q And he kept account of the bank balance? A The returned checks; yes, sir.

Q So that you, as treasurer, did not know that this \$2,000 check of the association had gone through the bank and been deducted from its funds? A I didn't receive the returned checks; he received those.

Q What is that? A He handled the returned checks.

Q Did you not keep a treasurer's book? A I kept it from the bank book; yes, sir.

Q You kept the bank book, that is, the deposit book? A Yes, sir.

Q Did you not keep a treasurer's book, keeping an account of what money you received and what checks were drawn against it? A Yes, just the money deposited.

Q Do you mean to say that the only book you had was the pass-book in which the bank entered the deposits that you made? A Yes, sir; I kept the deposits.

Q That is the only book you had? A Yes, sir.

* * * * *

Q Then, Mr. Beidelman, the only man connected with the Parkview Building & Loan Association who kept an account of the moneys received by the treasurer and of all the drafts against those moneys was the secretary; is that so or not? A No, sir.

Q Who else kept that account? A The treasurer kept all the securities. Isn't that what you asked?

Q [Former question read.] A No, sir.

Q Well, who kept the account of all the moneys received by the treasurer and of all the drafts drawn against those moneys, who kept that account? A The secretary kept that account.

Q The secretary did? A Yes, sir."

More testimony might be quoted, but the foregoing extracts seem to present the matter fairly. The question is whether the association, by its mode of doing business, made itself liable for this fraud of its secretary?

The general proposition will be admitted that it is no part of the official duty of the secretary of a building and loan association to furnish funds with which to pay a debt due from a shareholder to the association. In order to bind the association a course of dealing must be proved, with knowledge of which the association is chargeable, from which authority or ratification by the association might reasonably be inferred.

An illustrative case is *Manchester Building & Loan Association v. Beardsley*, 72 Eq. 714. The opinion is by Vice-Chancellor Garrison. Beardsley, the defendant, applied to the Manchester Building & Loan Association for a loan of \$1,800. His application was granted and he became a shareholder, and executed a bond and mortgage to the association to secure \$1,800. All of this business was done with William H. Belcher, the president of the association. Belcher practiced law in Paterson, and in his office there was also an office of the building and loan association. Its name was on the door and its safe was in Belcher's private office. About two years later Beardsley borrowed money from one Baker, expecting with the money thus borrowed to pay off the building and loan association's mortgage. Having been

informed by Belcher that if he came to the office in Paterson on a certain day the business could be transacted, Beardsley, Baker and Baker's attorney attended there upon that day. Baker gave his check to Beardsley for the amount due on the mortgage, which check Beardsley indorsed and turned over to Belcher, who tore the seals off the mortgage and indorsed upon it an authorization to the clerk of Passaic county to cancel the same of record. The mortgage was accordingly cancelled, and was subsequently reinstated and foreclosed, the Court holding that the transaction was binding on the association. The language of Vice-Chancellor Garrison is this:

"Of course, such payment must be made to some one who is either specifically or impliedly authorized to receive it. As all of Beardsley's dealings with the association were had through Belcher, as he received the money from Belcher when he gave the bond and mortgage and received from Belcher the word as to when he should attend to pay the same off, and, upon going to the Paterson office of the association, found Belcher there with the bond and mortgage, I think that the only proper conclusion is that he was justified in believing that Belcher was authorized by the association to receive the debt due upon that bond and mortgage."

In *Schaufele v. Banscher*, 83 Eq. 117, opinion by Vice-Chancellor Leaming, the case was this:

Banscher borrowed \$950 from a building and loan association and secured it by stock and a deed which was virtually a mortgage. Subsequently, when his indebtedness had been reduced to \$87.10, he borrowed \$800 more, to be

secured by new stock and a mortgage on the same real estate. Certain indebtedness of Banscher also existed which it was necessary to have paid before the proposed \$800 loan could be put through. A warrant, or order, was drawn in favor of Banscher for \$800, the amount of the proposed loan, and was signed by the president and secretary of the association and accepted by the treasurer. The warrant was presented by Adamson, the secretary and solicitor of the association, to Banscher for his indorsement and retained by Adamson, to the end that the prior liens could be paid by Adamson out of the amount represented by the warrant, and the balance be then paid to Banscher. Instead of pursuing this course, Adamson appropriated the proceeds of the warrant to his own use, except as to \$100, which he subsequently paid to Banscher. The Vice-Chancellor put the loss on the association, saying:

“To charge the illiterate borrower, who did no more than submit to the business methods required by the association, with liability upon the theory that he constituted the officers of the association his agents by the act of indorsing the warrant to enable the business of the association to be conducted in accordance with its established methods, is contrary to the plainest principles of justice.”

These two decisions seem much stronger than the case in hand. In *Manchester Building & Loan Association v. Beardsley* the conclusion that Belcher was empowered to do what he did was most natural—almost inevitable. In the *Schaufele* case the statement just quoted from the Vice-Chancellor's opinion is conclusive. In

the *Rose* case, now before the Court, it does not appear that Secretary Brown had ever before used the trick by which he cheated the defendant. He had never presented to the association any check of a shareholder to his (Brown's) order, and indorsed by him, in payment of a note to the company, or even of dues. The experience of years gave the other officers of the association no reason to expect or apprehend anything of the kind. It is true that he had at times given his own check to the company for some dues of other shareholders that were in arrears and which were subsequently paid by the shareholders to him. But that gave no warning that he might resort to the fraud which he employed in Mr. Rose's case. There was no express authority to do this act, and the situation did not have the elements from which an authority can be fairly and reasonably implied. In doing what he did—that is, in inducing a shareholder to draw to the order of Brown a check which should have been drawn to the order of the association—Brown followed no established rule or usage of the association, nor did he act in pursuance of any practice of his own of which the association had notice. It is not a badge of fraud for the secretary of such an association to maintain friendly and even intimate personal relations with the shareholders and to do for them acts of accommodation. Indeed, it seems that in an institution much better managed than the Parkview Building and Loan Association an adroit and fraudulent secretary might impose on a confiding shareholder in the same way, though in that case discovery might come sooner.

The fraud was a lamentable abuse of confidence. The Court has felt strongly the hardship of the case to the blameless defendant, and for that reason has given it more careful examination than was possible in the hurry of the trial.

The conclusion, however, is that the verdict should stand. The rule to show cause is discharged.

It would seem that very little could be added to this doubly carefully considered opinion by Judge Adams, a former Justice of this very Court, which opinion considers every point advanced by the defendant-appellant not only in the Court below, but in his brief in this Court.

The defendant-appellant relies upon three cases, namely:

Manchester Building and Loan Assn. v. Beardsley, 72 N. J. Eq., 714.

Schaufele v. Banscher, 83 N. J. Eq., 117;

and

Bank of Batavia v. New York L. E. & W. R. Co., 12 N. E., 443;

and particularly rests his case on the Manchester Building and Loan Association case, the others being of but minor importance.

As has been noted, Judge Adams very clearly distinguished said Manchester Building and Loan Association case from the case at bar, by calling attention to the fact, as stated in the opinion of Vice-Chancellor Garrison, that President Belcher of the Manchester Association was impliedly authorized to receive the payment by check indorsed in blank and handed to him at the office of the association for the bond and mortgage, which he, in the presence of the

borrower, immediatly cancelled. But this is, of course, very different from the case at bar.

In the Manchester case everything was apparently done in the usual course of business and for the direct benefit of the association.

In the case at bar everything was done in a manner exactly contrary to the usual course of business. "Brown followed no established rule or usage of the association, nor did he act in pursuance of any practice of his own of which the association had notice. * * * It does not appear that Secretary Brown had ever before used the trick by which he cheated the defendant (appellant). He had never presented to the association any check of a shareholder to his (Brown's) order, and indorsed by him, in payment of a note to the company, or even of dues. The experience of years gave the other officers of the association no reason to expect or apprehend anything of the kind." (Opinion of Adams, *J.*, *supra*).

In the case at bar Brown's action was not taken for the benefit of the association, but as an accommodation or favor to the appellant. It appears that Brown had formerly advanced the appellant's dues for him in cash when the appellant had failed to pay his dues on time, and had later been reimbursed by the appellant. Such was, of course, not done as the agent of the association, for he could not pay Rose's dues to the association with the association's own money, but was done as the agent of Rose, and for the latter's benefit.

In like manner on this particular occasion Brown's statement that he had already himself paid Rose's indebtedness to the association (see answer to Eighth Interrogatory (C. p. 11), which statement was, of course, false, stated a sup-

posed action not done for the benefit of the association and within his expressed or implied authority as secretary of such association inasmuch, as has been seen aforesaid, he could not pay Rose's debt to the association with the association's own money. He, therefore, must have advanced his own money, and in advancing his own money he was, therefore, acting as an individual, not as an officer of the association, and in seeking repayment from Rose was, therefore, seeking repayment to himself as an individual and not as an officer of the association. (C. p. 108.)

Nor does the fact that the constitution of the association provides that the secretary is to receive all moneys paid to the association in any way alter the situation, for Brown's statement of his having paid Rose's debt to the association is a statement of an action taken by him (Brown) as an individual and not as secretary of said association. Therefore, the repayment to him (Brown) was a repayment to him as an individual, and not a payment to the association, so that he was not by the constitution authorized as secretary to receive such repayment from Rose.

Furthermore, it is to be noted that in the Manchester case the transaction took place at the office of the association, while in the case at bar the transaction took place either at Mr. Rose's home, or his store, which would show more clearly than ever that the action taken by Brown was taken for the benefit of and as agent for Rose.

Again, in the Manchester case the payment to the president of the association was made by a check endorsed in blank, so that such check could either have been deposited as cash to the

account of the association, or misappropriated by Belcher, and since such equivalent of cash was given at a time when Belcher was carrying out his ordinary functions as president in cancelling the bond and mortgage at the office of the association, the borrower was justified in assuming that such cash equivalent was received for the association. On the other hand, in this case the payment was not in cash or its equivalent, but was a check payable to the order of "George Brown, Jr."

On the bottom of page 8 of the brief for the defendant-appellant, it is stated that such check was "directly payable to the secretary." We submit that this is not strictly accurate, for although Brown was the secretary, nevertheless the check was not payable to "George Brown, Jr., secretary," but to "George Brown, Jr.," personally.

This added to the fact that such check was given upon the representation by Brown that he had been acting for the benefit of, and as agent for Rose in paying Rose's debt to the association, shows clearly that such payment was made by Rose to him (Brown) not as secretary, but personally, to reimburse Brown personally for the advance supposed to have been made by Brown personally to pay Rose's debt.

This is the crux of the whole matter.

Nor does the mere fact that Brown transacted most of the business for the association in any way alter the case. Even the utmost implied authority to transact business for the association could in no way authorize him to pay Rose's debt to the association with the association's own money.

This has been well stated by Judge Adams in his opinion in first directing a verdict for the plaintiff (C. p. 108), as follows:

“It was no part of the real or apparent authority of the secretary to furnish funds to a stockholder with which to pay a debt due from him to the association, for which, by arrangement with the debtor, he was to be afterwards reimbursed. It was no part of his official duty as the secretary of the association to furnish funds with which to pay a debt due from a stockholder to the association. Of course; those must be either his own funds or funds which he had procured from outside. He could not pay a debt to the association with the association's money; that would be no payment.

* * * It was competent for the parties to make this arrangement, but it was an arrangement between individuals and in no sense official. * * * It is true that the man who agreed to make this advance was secretary of the association, and that all payments of money to the association, according to the constitution, were made to him as secretary. It is true also that he had much to do with keeping the accounts. * * * But all this did not change the essential character of the transaction between Brown and the defendant (appellant). * * * It did not clothe Brown's promise to pay the defendant's (appellant's) debt with any official character or in any way bind the association, for it was merely a dealing between individuals, and was not within either the real or apparent scope of Brown's agency or authority as secretary.”

This excerpt clearly covers as well the point sought to be made by the defendant-appellant that Brown's receipt of the check to his own personal order from Rose was within the apparent scope of his authority as secretary of the association. Such *could* not have been a fact.

The defendant-appellant further, on page 11 of his brief, says that there was "a question of fact to be decided by the jury."

We do not understand this contention, because since there was a motion to direct a verdict in favor of both the plaintiff and defendant below, both parties must be taken to have admitted the facts, and to have withdrawn the case from the jury.

See the cases of

Hayward v. North Jersey St. Railway Co. (Ct. of Errors), 74 N. J. L., 678.

Insurance Co. of North America v. Wisconsin Railway, 134 Fed., 794.

Beuttell v. Magone, 15 Sup. Ct. Rep., 566, opinion by present Chief Justice.

Sigua Iron Co. v. Brown, 64 N. E., 194 (N. Y.).

Since the facts are, therefore, admitted, and the case was voluntarily withdrawn by both parties from the jury, it was, of course, the function of the Court alone to determine the whole matter. This it has done on two separate occasions, reaching the same conclusion both times, and it is submitted that to cause the reversal of this decision not only must this Court find that there was some disputed evidence to go to the jury, but that there was no evidence

at all to support such decision of the Court below. See the cases of

Beuttel v. Magone, (*supra*).

Lehman v. Dickson, 13 Sup. Ct. Rep., 481.

Runkel v. Burnham, 14 Sup. Ct. Rep., 837.

We thus find that in a case where one of two innocent parties must suffer, the facts are undisputed, have been voluntarily submitted by both parties to the Court, and that such Court after two full considerations of the matter has twice decided that Brown's alleged payment of the defendant-appellant's debt to the association could not have been with the association's own money, that the repayment to Brown was; therefore, a repayment to Brown as an individual, and that the whole transaction between Brown and the defendant-appellant "was merely a dealing between individuals, and was not within either the real or apparent scope of Brown's agency or authority as secretary."

Under these circumstances it is respectfully submitted that the judgment of the Court below should be affirmed.

RIKER & RIKER,
Attorneys for Plaintiff-Appellee.

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New Jersey Court of Errors and Appeals.

PARKVIEW BUILDING & LOAN AS-
SOCIATION OF THE CITY OF
NEWARK,

Plaintiff-Appellee,

vs.

EDWIN E. ROSE,

Defendant-Appellant.

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Action at
Law.
On Appeal.

DEFENDANT-APPELLANT'S BRIEF. 20

Facts.

The plaintiff is a corporation known as The Parkview Building and Loan Association. The defendant, Edwin E. Rose, owned ten shares of stock in the first series of the Association of a maturity value of \$2000. These shares matured at a meeting of the association held on the first Monday of July, 1913. The defendant had borrowed of the Association on account of those shares sums amounting in all to \$1,800, and had given to the association a promissory note in the sum of \$1,800 payable to the order of the Association. On the maturity of the first series the defendant would be entitled to receive from the association the value of his ten shares of stock, which was \$2000 less the amount of his debt to it, which was \$1,809.54.

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At the time of the maturity of the first series of the stock, in July, 1913, Mr. Solomon B. Beidel-

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man was treasurer, and had held that office since July, 1904. A Mr. Drake was president. The Secretary was George Brown, Jr., an active man, who was the usual channel of communication between the share-holders and the association. Brown had been secretary for several years. He would go about and collect the dues, or the share-holders would leave them at his home or at Linnett's drug store where he would call and get them. On pay night Brown would turn the money into the association and take the receipt of the treasurer. Sometimes, if a shareholder had not paid his dues, Brown would advance the money to the association by giving his own check and collect afterwards from the shareholder. In this way the secretary came to be an habitual go-between and intermediary. The recognized practice was for the secretary to receive the moneys in the first instance, as just stated; and even on pay nights, the Secretary was the officer who received all payments from the shareholders.

(See State of the Case page 19, lines 10 to 23).

The defendant Mr. Rose was not an officer and had only been to the Association's meeting on one occasion during the entire time that he was a member. He was in the habit of paying his dues by checks to the order of the Association, which Brown would turn in. On a few occasions Brown advanced the money and afterwards took Mr. Rose's check to himself personally.

(See page 51 of the State of the Case.)

On all the occasions that the defendant borrowed money from the association he made the applications for a loan to the Secretary Brown, delivered his notes to the Secretary Brown, and received the association's checks from Brown.

(See pages 52-53 and 54 of the State of the Case.)

On the Friday preceding the first Monday in July, 1913 the Secretary informed defendant that his shares had matured and that he had a check for him for \$2000; that he made out the check for \$2000 because he had paid the Association the \$1809.54 which the defendant owed on his note and asked the defendant upon receipt of the note and the \$2000 check to pay him, the Secretary, back the \$1809.54 by leaving a check to his order for that amount. On July 7, 1913, the defendant received the \$2000 check for the matured value of his shares through the Secretary and received back his promissory note for \$1800 which was cancelled, and turned over to the Secretary his check for \$1809.54. The defendant did not pay any more dues or interest to the association after the above transaction and the Secretary George Brown, Jr., remained Secretary of the association for a period of seven months after the above transaction. Defendant received no notice whatsoever from the Building & Loan Association that his note had not been paid or that he owed the association anything. The \$2000 check of the association had been paid out and went through the bank in July, 1913 a day or two after the seventh (7th). In February, 1914 the Secretary of the plaintiff association absconded and shortly thereafter an examination by the Department of Banking and Insurance disclosed the fact that the Association had surrendered its note to the defendant and had paid the defendant the full matured value of his shares but that the Secretary had not turned in the \$1809.54 which was the amount of the indebtedness on defendant's note. Thereupon the plaintiff association brought suit against the defendant to have him pay again the \$1809.54 which the Secretary evidently embezzled. The facts are not really in dispute. The plaintiff's constitution and by-laws provide that the Secretary shall receive *all* moneys paid to the as-

sociation and also in another part provide that the instalment payments shall be made to the Secretary. The Secretary was allowed and did have equal access with the treasurer to the securities of the association. On these facts the Circuit Court directed a verdict in favor of the plaintiff and against the defendant for the amount of the note with interest and from this direction and from the Court's refusal to grant the defendant's motion for a non-suit and for a direction of a verdict in favor of the defendant and on the ground that the facts did not support the verdict directed, the defendant brings this appeal.

Argument.

The Court erred in directing a verdict for the plaintiff.

In *Manchester Building and Loan Association vs. Beardsley*, 72 N. J. E. 714; 66 Atl. 1.

Beardsley, the defendant applied to the Manchester Building & Loan Association for a loan of \$1800. His application was granted and he became a shareholder, executed a bond and mortgage to the association to secure \$1800. All of this business was done with William H. Belcher, the president of the association. Belcher practiced law in Paterson, and in his office there was also an office of the Building and Loan Association. Its name was on the door and its safe was in Belcher's private office. Later, Beardsley borrowed money from one Baker, expecting with the money thus borrowed to pay off the Building and Loan Association's mortgage. Having been informed by Belcher that if he came to the office in Paterson on a certain day the business could be transacted, Beardsley, Baker and Baker's attorney attended there upon that day. Baker gave his check to Beardsley for the amount due on the mortgage, which check Beardsley indorsed and

turned over to Belcher, who tore the seals off the mortgage and indorsed upon it an authorization to the Clerk of Passaic County to cancel the same of record. The mortgage was accordingly cancelled of record. Belcher did not pay the money over to the Association but continued to make the monthly payments to the Association and substituted a forged Bond and Mortgage among the Association's securities for the original. In July, 1905, Belcher absconded and upon failure of any one to continue to pay dues and interest to the Association, it sued to foreclose the Bond and Mortgage and then the forgery and embezzlement was discovered. Vice Chancellor Garrison held that the defendants Beardsley and Baker were justified in assuming that Belcher, as President, was authorized to receive the money and to cancel the bond and mortgage and directed that the Bill be dismissed. The case at bar is on all fours with the above case, except that the facts are stronger in favor of the defendant than in the Manchester Building and Loan case, as a comparison of the facts will show. In the first place, the complainant there and the plaintiff here are both Building and Loan Associations. In the second place, the money that has been lost was embezzled by a trusted officer of both Associations, the President and Counsel in the one case, and the Secretary in the other. They differ in favor of the defendant in this case, in the following particulars: In the Manchester case, it was necessary to prove that the Association had acquiesced in the President transacting its business, while in the case at bar, the Constitution of the Plaintiff, the extracts from which appear on pages 112, 113 and 114, of the State of the Case, provide that the Secretary is to receive all moneys paid to the Association in one part, and in Section 3 provided also that the monthly payments are to

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be paid to the Secretary, so that separate and apart from the custom that prevailed in the plaintiff Association in the case at bar, the defendant was required by the provisions of the plaintiff's constitution to make all payments to the Secretary.

The case at bar differs further from the Manchester case and in favor of the defendant in this case, in that, in the Manchester case the
10 testimony was that the Treasurer alone had access to the securities, and it was unexplained how Belcher, the absconding President, secured possession of the bond and mortgage in order to be able to deliver it, while in the case at bar, the Secretary was given equal access to all the securities with the Treasurer by the Association itself.

20 See testimony of the Treasurer for the plaintiff, page 29 of the State of the Case lines 8 to 14 as follows:

“Q. And did the Secretary have access to these securities and the checks and the notes?
 A. Yes, sir.

“Q. He had equal access with you, did he not? A. Yes, sir.”

The case at bar is stronger in behalf of this defendant than the Manchester case was, because the plaintiff in this case made it a practice of
30 permitting the Secretary to transact all of its business, to handle all of its accounts, to deliver its checks to its borrowers, and to return securities when payments were made, and receive securities for the Association during the entire time that he was Secretary.

See testimony of the wife of Brown, pages 91-97.

See testimony of the defendant and his wife, as to all of their transactions from bottom of page 51, to 56.

40 Also testimony of Francis M. Linnett, bottom of page 99.

Testimony of Samuel A. White, page 101.
 Testimony of Samuel H. Gluckman, bottom of page 102.

Mr. Beidelman, the Treasurer of the plaintiff, page 103.

to the effect that Mr. Brown "would bring often times in his own check with the deposit slips of the different shareholders".

The case at bar is stronger in behalf of the defendant here than the Manchester case in this particular, that after this defendant paid his indebtedness to the Association, to the Secretary, as required by the Constitution he did not continue to pay any dues or interest on the loan to the Association, neither did anyone for him and during the entire seven months that the Secretary continued to act as Secretary, after the Association's check for \$2,000. had been cashed, and no return made to the Association, no demand was made upon the defendant for payment of his note or interest on the debt, and no notice given to him that his note, although surrendered to him, had not been paid. If the Association had notified the defendant while the Secretary was still acting, he might have had an opportunity to compel Brown to make good the amount he had embezzled. In the Manchester case, the defendants were not notified because Belcher to allay suspicions had actually made the payments. In the case at bar, the Association permitted and by acquiescence to say the least, authorized Brown to transact all of the financial business of the Association as is shown by the testimony of the Treasurer, Solomon B. Beidelman, which appears in the State of the Case, beginning with page 20, and ending with page 46 and which testimony shows that the Secretary received all money, that the Secretary made out all checks, that the Secretary kept custody of the check book, had access to the

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securities and kept all of the accounts, even the Treasurer's accounts, and also received the statements of the bank balance from the bank, the Treasurer keeping custody only of the Pass Book and accepting the figures given by the Secretary. It especially appears that this was the custom of the association on page 43, lines 15 to bottom of page as follows :

10 "Q. But you checked up the checks that you issued? A. Mr. Brown checked those up.

"Q. But if you had done that instead of leaving it to Brown, you would have discovered that you were \$1,809. short, would you not? A. I suppose I would; yes, sir.

"Q. Well, would you not? A. I would; yes, sir.

"Q. And the reason, then, that you did not discover it is because you did leave the checking up to Mr. Brown? A. *Simply because it was customary.*

20 "Q. That is all I want to know; that is all. Then the reason that you did not discover this shortage of \$1,809.54 is because it was customary in this association for Mr. Brown to do that checking up? A. Checking the checks.

"Q. That is your answer, is it? A. Yes, sir.

30 "Q. If that had not been the custom of this association, and you had done it yourself, you would have immediately discovered that you paid out the \$2,000 without getting back the \$1,809.54, would you not? A. *I suppose I would.*"

40 Defendant submits that endorsing over a check so that Belcher could use it personally if he saw fit, as was done in the *Manchester* case, and making a check directly payable to the secretary, as was done in the case at bar, cannot be distinguished especially where this defendant was required to make his payment to the secretary by the constitution of the plaintiff association.

By analogy, although the facts are not quite the same the case of

Schaufele vs. Banscher, 83 Eq., 117; 89 Atl., 767,

is also authority for the proposition that the plaintiff association should suffer the loss, the secretary having been its agent and not the agent of this defendant.

In

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Bank of Batavia v. New York L. E. & W. R. Co., 12 N. E. Rep., page 433,

the facts were as follows:

One Weiss was the freight agent of the defendant corporation at Batavia, whose duty and authority it was to receive and forward freight over the defendant's road, giving a bill of lading therefore, specifying the terms of the shipment, but having no right to issue such bills, except upon the actual receipt of the property for transportation. He issued bills of lading for sixty barrels of beans to one Williams, describing them as received to be forwarded to one Comstock, as consignee, but adding with reference to the packages that their contents were unknown. Williams drew a draft on the consignee, and procured the money upon it of the plaintiff, by transferring the bills of lading to secure its ultimate payment. It turned out that no barrels of beans were shipped by Williams or delivered to the defendant, and the bills of lading were the product of a conspiracy between Williams and Weiss to defraud the plaintiff, or anyone else, who could be induced to advance upon the face of the false bills of lading. On this state of facts, the New York Court of Appeals unanimously held that the bank was entitled to rely upon the representations in the

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bills of lading, that the goods were actually shipped and that the railroad company was estopped to deny the authority of the agent to issue the bills since the act was within the *apparent scope of his authority*. Applying the principle of the above case to the case at bar, we find that the secretary of the plaintiff association evidently planning to procure money by fraud instead of following the system that had always been employed by the association of deducting everything owing to the association, and issuing its check for the balance to its shareholders, did with the consent of the Board draw checks for the full amount of the matured value of the shares, and as the constitution provided that any moneys owing to the association were to be paid to him, it certainly was not only within the apparent scope of his authority, but within the actual scope of his authority to receive the \$1,809.54, paid by the defendant and to bind the plaintiff association by that payment.

Defendant submits on the authority of the above cases as applied to the facts of the case at bar, as well as on the peculiar circumstances of this case, to-wit, that Brown, the plaintiff's secretary, was clothed with all the apparent authority to cancel the note, and receive payment for it, clothed with the ability to deceive this defendant by being given access to the securities, so as to be able to deliver same, claiming that he had reimbursed the association, that the loss of the moneys embezzled by Brown should fall on the association that selected him, clothed him with these powers, and entrusted him with its securities, and not on the innocent shareholder who was deceived into paying Brown the money through the acts of the association which enabled Brown to deceive him, and that the Court below erred in directing a

verdict in favor of the plaintiff, even if the Court was right in refusing to direct a verdict in favor of the defendant, because there was at least a question of fact to be decided by the jury, as to what made the loss possible. Was it Brown's access to the securities, his right to collect money on behalf of the association, his being entrusted with the entire management of the financial business of the association, so that no one, not even the treasurer knew whether moneys were received or paid out or not, or was it the fact that this defendant made his check payable to the order of Brown? And in that respect defendant submits that if the association, having acquiesced in Brown's preliminary scheme for embezzlement, by issuing the check for the full amount, defendant had gone to the bank with the \$2,000 check of the association and drawn United States currency and turned same over to Brown, the result would not have been any different than making the check payable to Brown, and certainly the same loss would have occurred, because Brown would then be in the stronger position of being able to deny having received the check after embezzling it. Is there any difference between the freight agent's false representation that goods had been shipped and Brown's representation that the note had been paid and, therefore, he would return it with a check for the full amount.

Defendant, therefore, respectfully submits that the direction of a verdict in favor of the plaintiff should be set aside and either a new trial ordered or a judgment directed in favor of the defendant.

Respectfully submitted,

PHILIP J. SCHOTLAND,
Attorney for and of Counsel
with Defendant-Appellant.

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