

INDEX.

	PAGE.
Bill of Complaint	1
Decree of Interpleader	10
Statement of Claim of Liberty Trust Com- pany	12
Statement of Claim of Frank Schwarzwaelder, Sole Acting Executor, &c.....	15
Order of Reference	21
Conclusions of V. C. Lane	114
Decree	122
Notice of Appeal	124
Petition of Appeal	125

TESTIMONY FOR LIBERTY TRUST COMPANY.

Gottlob Kautzmann,	
direct examination	23
cross "	25
re-direct "	32
re-cross "	33
William Pennington,	
direct examination	34
cross "	35
re-direct "	38
Allan Howard Watson,	
direct examination	93
cross "	97
re-direct "	110, 112
re-cross "	111, 112

TESTIMONY FOR FRANK SCHWARZWAELDER.

George W. Clark,	
direct examination	40
cross "	43
re-direct "	44
re-cross "	44

	PAGE.
William H. Daly,	
direct examination	45
cross "	49
re-direct "	51
re-cross "	51
Mabel Daly,	
direct examination	52
cross "	54
re-direct "	56, 58, 59
re-cross "	57, 58, 59
Archibald F. Slingerland,	
direct examination	60
Frank Schwarzwaelder,	
direct examination	63
cross "	72
re-direct "	80
re-cross "	81
William Pennington,	
direct examination	85
cross "	88

REBUTTAL FOR LIBERTY TRUST COMPANY.

Gottlob Kautzmann,	
direct examination	83
cross "	84
Certificate of Special Master	91, 113

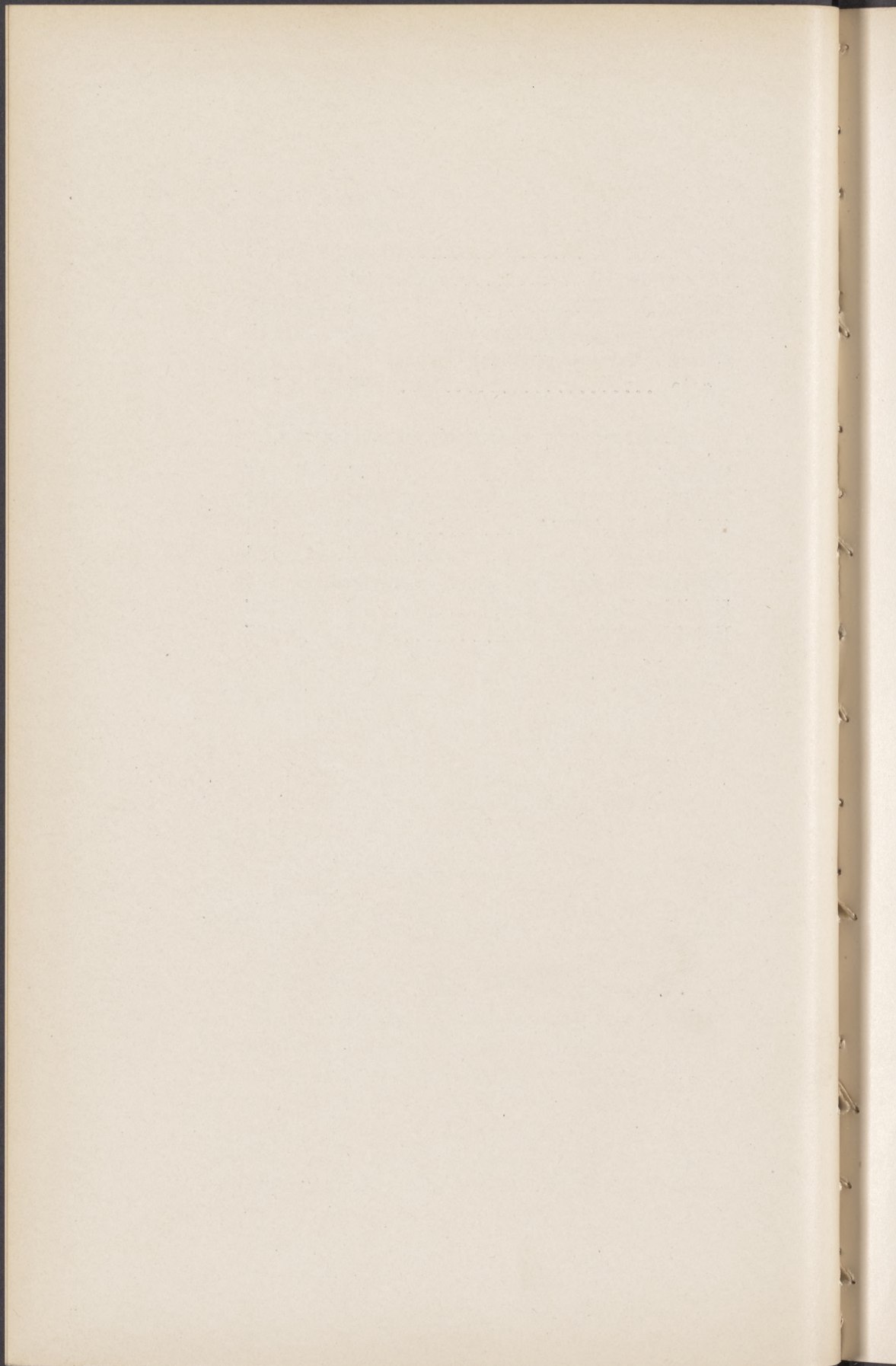
EXHIBITS FOR LIBERTY TRUST COMPANY.

	Offered.	Printed.
Exhibit D. 1	23	127
Exhibits D. 2, D. 3 and D. 4....	24	
Exhibit D. 5	34	
Exhibit D. 6	39	131
Exhibit D. 7	39	135
Exhibit D. 8	39	138

	Offered.	Printed.
Exhibit D. 9	39	142
Exhibit D. 10		145
Exhibit D. 11	84	83
Exhibit D. 12	97	145
Exhibit D. 13—Deposit Slip ...	90	146
Exhibit D. 13—Appraisal Certificate	95	146

EXHIBITS FOR FRANK SCHWARZWAELDER.

Exhibit D. 1	64	147
Exhibits D. 2, D. 3	66	152
Exhibits D. 4, D. 5	66	153
Exhibits D. 6, D. 7	66	154
Exhibits D. 8, D. 9	66	155
Exhibits D. 10, D. 11	66	156
Exhibit D. 12	66	157



Bill of Complaint.

Bill of Complaint.

Filed March 29, 1915.

In Chancery of New Jersey.

10

Between

THE STERLING LEATHER
WORKS, a corporation,
Complainant,

and

LIBERTY TRUST COMPANY, *et*
als.,

Defendants.

20

*To His Honor, Edwin Robert Walker, Chan-
cellor of the State of New Jersey:*

Complaining shows unto your Honor, your orators, The Sterling Leather Works, a body corporate existing under and by virtue of the laws of the State of New Jersey: That on or about the 14th day of January, one thousand eight hundred and ninety-five, your orators, the said Sterling Leather Works, became possessed of all the following described property in the City of Newark, County of Essex and State of New Jersey, particularly described as follows:

30

All those certain tracts or parcels of land, hereinafter particularly described, situate, lying and being in the City of Newark, in the County of Essex, and State of New Jersey:

First Tract: Beginning at a point in the west-
erly line of Frelinghuysen avenue and in the

40

Bill of Complaint.

easterly line of the Toler (or formerly Toler) property, said point being in the centre of the road known as Meadow Road; thence along the line of the Toler property and the centre of said Meadow Road sixty degrees fifty-three minutes west one hundred and forty-three feet and sev-

10 enty-four one-hundredths of a foot; thence still along the same north fifty-five degrees twenty-eight minutes west ninety-one feet to the line of lands late of Frederick F. Meyer, formerly known as the old Bound Creek dock; thence along the same south thirty-nine degrees nine-

20 teen minutes west one hundred and ten feet; thence still along the same south four degrees thirty-two minutes west eighty-three feet and eighty-two one-hundredths of a foot; thence still along the same south four degrees sixteen min-

utes east one hundred and fifteen feet to Bound Creek; thence easterly along Bound Creek to Frelinghuysen avenue; and thence northerly along said avenue one hundred and eighty-five feet to the place of beginning. Being the same premises conveyed to said Frank Schwarzwaelder by deed from Franklin L. Meyer, widower, dated December 24th, 1904.

30 Second Tract: Beginning at the easterly corner of lands now or formerly of Sills-Eddy Mica Company in the centre line of a road running in a northwesterly direction from Frelinghuysen avenue and called the Meadow Road; thence running along the line of said company's lands south forty-seven degrees fifty-seven minutes west fifty-five feet more or less to the intersection of this line with the easterly line of lands conveyed to said Frank Schwarzwaelder

40 by Meyer Scale and Hardware Company by

Bill of Complaint.

deed dated December 24th, 1904; thence along the last mentioned line south nine degrees eleven minutes west (according to a former survey) two hundred and eighty feet more or less to a stake marking the southerly corner of lands conveyed to the said Schwarzwaelder by said Meyer Scale and Hardware Company as above stated; thence in continuation of the line last run twenty-six feet more or less to Bound Creek; thence along the same easterly one hundred and five feet more or less to Two Mile Brook and to the westerly line of lands herein described as the First Tract; thence along said first tract and following up the said Two Mile Brook to a stake in the centre line of the Meadow Road distant along said centre line two hundred and thirty-four feet and seventy-four one-hundredths of a foot westerly from the westerly line of Frelinghuysen avenue; thence in the centre of said Meadow Road north sixty-eight degrees twenty-four minutes west ninety-five feet and twelve one-hundredths of a foot to the place of beginning. Being the same premises conveyed to said Frank Schwarzwaelder by deed from Frederick F. Meyer and wife dated December 24th, 1904.

Third Tract: Beginning at a stake in the westerly line of a road known as the old Meadow Road, said stake being distant south twenty-four degrees thirty-four minutes east one hundred and seventy feet and four-tenths of a foot from station 808 86 of the located centre line of the Newark and Roselle Railway; thence along the westerly line of said Meadow Road south twenty-four degrees thirty-four minutes east one hundred and sixteen feet to a stake; thence

10

20

30

40

Bill of Complaint.

along the westerly line of said Meadow Road, as the same formerly ran, south nine degrees eleven minutes west three hundred and sixteen feet and eight-tenths of a foot to a stake; thence along the lands now or formerly of Charles Hartshorne north twenty-four degrees thirty-four minutes west three hundred and seventy-seven feet to a stake; thence still along the lands of said Hartshorne north sixty-four degrees thirty-seven minutes east one hundred and seventy-six feet to the place of beginning. Excepting, however, from the portion thereof heretofore conveyed by Meyer Scale and Hardware Company to Sills-Eddy Mica Company by deed recorded in Book E-33 of Deeds for said Essex County, on pages 435, &c. Being the same premises conveyed to said Frank Schwarzwaelder by deed from Meyer Scale and Hardware Company dated December 24th, 1904.

The above described premises are conveyed subject to the right of way over said Meadow Road granted to Sills-Eddy Mica Company by Franklin L. Meyer, by deed of record in Book E-33 of Deeds for said Essex County, on pages 434, &c., and to the right of way to lay and maintain water pipes granted to Meyer Scale and Hardware Company by Frederick F. Meyer and wife by deed of record in Book E-33 of Deeds for said Essex County on pages 432, &c., and the right of way for the same purpose granted to Sills-Eddy Mica Company by Meyer Scale and Hardware Company by deed of record in Book E-33 of Deeds for said Essex County on page 435, &c. Said premises are also conveyed subject to the encumbrance of a certain mortgage made to Mary P. Butler of record in Book G-13 of Mortgages for said Essex County, on

Bill of Complaint.

page 450, &c., given to secure the payment of fourteen hundred dollars.

That the said conveyance was made expressly subject to a certain mortgage of fourteen hundred dollars, made by Franklin M. Meyer, widower to Mary P. Butler, dated May 1, 1897, and recorded May 13, 1897, in the Register's Office of Essex County in Book G-13 of Mortgages, page 450. That on or about the 28th day of January, 1905, the said Mary P. Butler departed this life testate and that Walter S. Baker and Mina A. Baker were named as executors of said Mary P. Butler and duly qualified as such, that the record shows what purports to be an assignment by the said executors to William H. Daly, recorded in Book 113 of Assignments, page 287, and also an assignment by William H. Daly to George W. Clark by assignment recorded in book 113, page 288, and what purports to be a further assignment from George W. Clark to Mabel Daly, recorded in book 113, page 289, and by Mabel Daly by what purports to be an assignment to the Liberty Trust Company recorded in book 113, page 300: That the said Liberty Trust Company claims to be the owner and rightful possessor of said mortgage. That Frank Schwarzwaelder sole acting executor and trustee named in the last will and testament of William Ronan, deceased, claims as due him and Mary Tulley, Ellen Balef, Louisa McGilleby, Michael Balef, Margaret Redmond, Susie Balef, Mary A. Rogers, Ella Pelow, Daniel R. Rogers, William Rogers, Catherine R. Dunning, James Ronan, Michael Ronan, Annie E. Crater, Elsie Tier, and Arthur Marson, are the legatees named in the last will and testament of William Ronan, deceased, claim the said mortgages of fourteen

10

20

30

40

Bill of Complaint.

hundred dollars made by said Meyer to Mary P. Butler was assigned by the executors of the estate of Mary P. Butler to William Ronan on or about the fall of 1905 or the spring of 1906 and that they insist and declare that the said mortgages by said Meyer to Mary P. Butler was
 10 assigned by an instrument in writing to said William Ronan and that one Roland D. Crocker negligently and fraudulently failed and neglected to record said assignment and said executor and legatees of said Ronan claim and insist that said Roland D. Crocker did falsely and fraudulently prepare another assignment for the said mortgages purporting to be made by the executors of said Mary P. Butler to William H. Daly and that the said beneficiaries of said Ronan claim that said Ronan paid to said Mary P. But-
 20 ler the sum of one thousand four hundred fifty-three dollars and forty-three cents in payment of said mortgage and they claim and insist that said William H. Daly did not pay any sum whatsoever for said mortgage. That on or about the 16th day of February, 1907, said William Ronan departed this life testate naming as legatees in his last will and testament and a codicil there-
 to the following: Mary Tulley, Ellen Balef,
 30 Anna Louisa McGilleby, Michael Balef, Margaret Redmond, Susie Balef, Mary A. Rogers, Jane Rogers, Ella Pelow, Daniel R. Rogers, William Rogers, Catherine R. Dunning, James Ronan, Michael Ronan, Anne E. Crater, Elsie Tier, and Arthur Marson. That his said last will and testament and codicil were afterwards proved on or about the 27th day of February, 1907, a copy of which is hereto annexed. That the interest on said mortgage was up to about
 40 the day of 1914, paid by this

Bill of Complaint.

complainant to the executors of the estate of William Ronan, deceased.

And your orators further show, that they have always been willing to pay the interest and principal of such money to such person or persons as should be lawfully entitled to receive the same, and to whom they could pay it with safety. And they hereby offer and tender it-
self to pay the said principal and interest into
this court. 10

And your orators further show, that they do not in any respect collude with either the said Liberty Trust Company or said executors of said Ronan touching the matters in this cause; and that they have not been indemnified by such defendants or any or either of them, but bring this suit of its free will and to avoid
being molested and injured touching the matters
contained in this bill. 20

Wherefore and as your orators can only have adequate relief in this court: To the end that said defendants, The Liberty Trust Company, Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased, Mary Tulley, Ellen Balef, Louisa McGilleby, Michael Balef, Margaret Redmond, Susie Balef, Mary A. Rogers, Jane Rogers, Ellen Pelow, Daniel R. Rogers, William Rogers, who are the legatees named in the last will and Testament of William Ronan deceased, may interplead and settle their right to the said mortgages and that your orators may be at liberty to pay the same into this court; and that the said defendants, Liberty Trust Company, Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased, Mary Tulley, Ellen Balef, Louisa McGilleby, Michael Balef, Margaret Redmond, Susie Balef, Mary A. Rogers, 30
40

Bill of Complaint.

Jane Rogers, Ellen Pelow, Daniel R. Rogers, William Rogers, may be enjoined and restrained from any proceeding in a suit at law by it against your orators; and that your orators upon payment into court of such amount, and proceeding said defendants to interplead according
 10 to the course of this court, may be decreed to be discharged from all liability to such defendants in the premises, and may have all their costs therein:

May it please your Honor to grant unto your orators not only the state's writ of injunction, issuing out of and under the seal of this honorable court, to restrain the said defendants from proceeding at law against your orators touching the matters aforesaid but also a writ or writs
 20 of subpoena also issuing out of and under said seal, to be directed to the said defendants, Liberty Trust Company, Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased, Mary Tulley, Ellen Balef, Louisa McGilleby, Michael Balef, Margaret Redmond, Susie Balef, Mary A. Rogers, Jane Rogers, Ellen Pelow, Daniel R. Rogers, William Rogers, who are the said legatees named
 30 in the last will and testament of William Ronan, deceased, therein and thereby commanding them and each of them on a certain day and under a certain penalty therein to be inserted to be and appear before your Honor in this honorable court and then and there to answer all and singular the premises aforesaid without oath and to stand to, perform, and abide such order, direction and decree therein, as to your Honor shall seem meet.

And your orators will ever pray, etc.

Bill of Complaint.

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

Frank Schwarzwaelder, of full age, being duly sworn according to law, says that he is the president of the Sterling Leather Works, the complainants, and that the said complainants have exhibited their bill of interpleader against the defendants in the aforementioned cause, without any fraud or collusion between them and the said defendants; and that said bill is not exhibited at the request of the said defendants, or any or either of them; and that the complainants are not indemnified by the said defendants, or by any or either them. And he further says that the complainants have exhibited said bill with no other intent but to avoid being sued or molested by the said defendants touching the matters contained in said bill.

FRANK SCHWARZWAELDER.

Sworn to and subscribed
 before me this 24th
 day of February, 1915.

ROY J. HARDING,
Atty. at Law of N. J.

A copy of will of Wm. Ronan is annexed to the Bill.

*Decree of Interpleader.***Decree of Interpleader.**

Filed July 2, 1915.

10 This cause coming on to be heard at the May
Term of this Court in the presence of Thomas
S. Henry of counsel with complainants and
Archibald F. Slingerland, of counsel with de-
fendant Liberty Trust Company, and Thomas J.
Lintott of counsel with the other defendants, and
after hearing the arguments of counsel and upon
pleadings and proceedings heretofore had, and
it appearing to the Court that the complainants
are indebted in the sum of Fourteen Hundred
Dollars as principal, and interest of the sum of
20 Forty Six 65/100 Dollars amounting in the ag-
gregate in the sum of Fourteen Hundred and
Forty Six 65/100 Dollars which was secured by
two certain mortgages on property of complain-
ants, and the said complainants claim no right
or interest in said mortgages and the facts set
up in the claim of the Liberty Trust Company
and in the claim of the other defendants not con-
troverting the matters set forth in said bill it is
thereupon on this 28th day of June, A. D. 1915,
30 by his Hon. Edwin Robert Walker, Chancellor of
the State of New Jersey, Ordered, Adjudged and
Decreed and the said Chancellor does by virtue
of power and authority of this court hereby Or-
der, Adjudge and Decree that said bill of inter-
pleader is brought by the complainants in this
cause and that they are entitled to relief in this
court and it is further Ordered, Adjudged and
Decreed that said complainants be dismissed
from further prosecution of this suit with their
costs to be taxed, and paid by the Clerk of this
Court out of the funds paid into the office of the
40 Clerk of this Court together with counsel fee of

Decree of Interpleader.

Thirty Dollars, and it is further ordered that upon the payment of the said principal due on said mortgage together with legal interest into court that the said mortgages be cancelled and discharged of record, and that they, the said complainants be released, acquitted and discharged from all claims or liability to either of the defendants in this suit, for upon or by reason of said fund. 10

And it is further Ordered, Adjudged and Decreed that the said defendants do interplead, settle and adjust their several claims, demands and matters in controversy in this suit as between themselves.

E. R. WALKER,
C.

Respectfully advised, 20

JOHN R. EMERY,
Vice-Chancellor.

A True Copy,
ROBERT H. McADAMS,
Clerk.

30

40

*Statement of Claim of Liberty Trust Company.***Statement of Claim of Liberty Trust Company, Defendant.**

Filed May 5, 1915.

10 The statement of Liberty Trust Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, defendant, of its claim to the bond and mortgages mentioned in the complainant's bill of complaint.

20 The bond in question was made by Frederick F. Meyer and Franklin L. Meyer to Mary P. Butler, in the penal sum of twenty-eight hundred dollars (\$2,800), was dated May 1, 1897, and was given to secure the payment of fourteen hundred dollars (\$1,400) on May 1, 1898, with interest at the rate of six per cent. per annum, payable semi-annually.

30 Two mortgages were given to secure the said bond, each in the sum of fourteen hundred dollars (\$1,400) and each dated May 1, 1897, one made by Frederick F. Meyer and Matilda A., his wife, to Mary P. Butler, which was registered in the Register's Office of the County of Essex on May 13, 1897, in Book G 13 of Mortgages on page 450, and the other made by Franklin L. Meyer, widower, to said Mary P. Butler, which was registered in said Register's office on May 13, 1897, in Book G 13 of Mortgages, on page 450.

40 Mary P. Butler died possessed of said bond and mortgages on or about January 28, 1905, leaving a last will and testament, in and by which she appointed Walter S. Baker and Mina A. Baker as executors; which said will was duly probated in the Surrogate's office of Essex

Statement of Claim of Liberty Trust Company.

County on May 10, 1905, and recorded in Book S 3 of Wills, on page 399.

The said Walter S. Baker and Mina A. Baker, executors as aforesaid, thereafter, by assignment in writing, bearing date December 20, 1905, and duly acknowledged the same date before one Roland D. Crocker, a Master in Chancery of New Jersey, assigned the mortgages above mentioned to one William H. Daly for a consideration therein expressed of fourteen hundred and fifty-three dollars and forty-three cents (\$1453 43); which said assignment was duly recorded in the Register's office of Essex County on September 2, 1913, in Book 113 of Assignments of Mortgages, on page 287. 10

The said William H. Daly thereafter by assignment in writing, bearing date August 1, 1913, and duly acknowledged the same date before the said Roland D. Crocker, a Master in Chancery of New Jersey, assigned the said mortgages to one George W. Clark; which said assignment was duly recorded in the said Register's office on September 2, 1913, in Book 113 of Assignments of Mortgages, on page 288. 20

The said George W. Clark thereafter by assignment in writing, bearing date August 1, 1913, and duly acknowledged the same date before the said Roland D. Crocker, a Master in Chancery of New Jersey, assigned the said mortgages to one Mabel Daly; which said assignment was duly recorded in the said Register's office on September 2, 1913, in Book 113 of Assignments of Mortgages, on page 289. 30

The said Mabel Daly thereafter, by assignment in writing, bearing date August 15, 1913,

Statement of Claim of Liberty Trust Company.

and duly acknowledged the same date before the said Roland D. Crocker, a Master in Chancery of New Jersey, assigned the said mortgages to this defendant as collateral security for the payment of a note of the said Mabel Daly of even date therewith, made to this defendant for
10 the payment of twenty-five hundred dollars (\$2,500) and interest on demand; which assignment was duly recorded in the said Register's office on September 3, 1913, in Book 113 of Assignments of Mortgages on page 300.

This defendant having made demand upon the said Mabel Daly for the payment of her said note of twenty-five hundred dollars (\$2,500) and payment having been refused, this defendant claimed a forfeiture of the said bond and mortgages given as collateral security as aforesaid,
20 in accordance with the terms of the said note.

This defendant claims ownership of the said bond and mortgages by virtue of the assignments above set forth, and the non-payment of the said note of Mabel Daly, and contends that the other defendants named in the complainant's bill of complaint have no right, title or interest in and to the said bond and mortgages as
30 against this defendant; that the public records in the Register's office of the County of Essex disclosed a clear title to the said bond and mortgages in the said Mabel Daly at the time of the assignment of the same by her to this defendant, and that this defendant paid full value to the said Mabel Daly for the said bond and mortgages; that this defendant had no notice, either actual or constructive, of any claim of title to the said bond and mortgages by the other de-

Statement of Claim of Frank Schwarzwaelder.

defendants to this suit, or by anyone else, and that this defendant is entitled to be paid the full amount due upon the said bond and mortgages with accrued interest.

This defendant further claims that it has in its possession the said bond and mortgages and, irrespective of assignments in writing above set forth, it has title to said bond and mortgages by reason of the delivery of the same to it by the said Mabel Daly. 10

ARCHIBALD F. SLINGERLAND,
Solicitor for Liberty Trust Company.

**Statement of Claim of Frank Schwarz-
waelder, Sole Acting Executor and 20
Trustee of the Estate of William
Ronan, Deceased, late of
the City of Newark,
et als.**

Filed June 16, 1915.

The statement of Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased, Mary Tulley, Ellen Balef, Louisa McGilleby, Michael Balef, Margaret Redmond, Susie Balef, Mary A. Rogers, Ella Pelow, Daniel R. Rogers, William Rogers, Catherine R. Dunning, James Ronan, Michael Ronan, Annie E. Crater, Elsie Tier and Arthur Marson. 30

The bond referred to in said Bill of Complaint was made and executed by Frederick F. Meyer and Franklin L. Meyer to Mary P. Butler to secure the payment of the sum of fourteen 40

Statement of Claim of Frank Schwarzwaelder.

hundred dollars, bearing date May first, eighteen hundred and ninety-seven, due May first, eighteen hundred and ninety-eight, with interest thereon at the rate of six per centum per annum, payable semi-annually.

Two mortgages were given to secure the said
 10 bond each in the sum of fourteen hundred dol-
 lars, both bearing even date with said bond, one
 made by Frederick F. Meyer and Matilda A.
 Meyer, his wife, to Mary P. Butler, which mort-
 gage was registered in the office of the Register
 of Essex County on May thirteenth, eighteen
 hundred and ninety-seven, in Book G-13, 450, and
 the other mortgage was made and executed by
 Franklin L. Meyer, widower, to said Mary P.
 Butler and was registered in the same office on
 20 May thirteenth, eighteen hundred and ninety-
 seven, in Book G-13, 450.

Mary P. Butler died possessed of said bond
 and mortgage on or about January twenty-
 eighth, nineteen hundred and five, leaving a last
 will and testament in and by which she appointed
 Walter S. Baker and Mina A. Baker, as executor
 and executrix, which will was duly probated in
 the office of the Surrogate of Essex County on
 May tenth, nineteen hundred and five, and re-
 30 corded in Book S-3 of Wills, page 399.

That on or about December twenty-first, nine-
 teen hundred and five, said Walter S. Baker and
 Mina A. Baker, executor and executrix as afore-
 said, by assignment in writing, assigned and de-
 livered the said bond and mortgages above men-
 tioned to William Ronan, now deceased, but
 formerly of the said City of Newark, for a con-
 sideration expressed in said assignment of four-
 teen hundred fifty-three dollars and forty-three
 40 cents, being the principal sum on said mort-
 gage and interest due on the same on said date.

Statement of Claim of Frank Schwarzwaelder.

That said William Ronan continued to have possession of said bond and mortgages and hold the same up to and until the time of his death, which occurred on or about February sixteenth, nineteen hundred and seven, leaving a last will and testament and codicil which were afterwards regularly probated on or about February twenty-seventh, nineteen hundred and seven, a copy of the same being annexed to the bill of complaint filed herein; that in and by said last will and testament said William Ronan, deceased, did nominate, constitute and appoint this defendant, Frank Schwarzwaelder and Roland D. Crocker as executors and trustees of the said estate and that this defendant and said Roland D. Crocker did properly qualify to act as such executors and trustees.

10

That said bond and mortgages came into the possession of this defendant and said Roland D. Crocker as executors and trustees as aforesaid, and thereafter they received from the Sterling Leather Works, the then owner of the equity of redemption of the premises embraced in said mortgage the interest whenever the same became due and payable on said bond up to December first, nineteen hundred and fourteen, when the said Sterling Leather Works refused thereafter to make any further payments of interest on said bond because of the claim of ownership made to the same by the Liberty Trust Company, one of the defendants herein.

20

30

That said Roland D. Crocker has been removed by the Orphans Court of Essex County as one of the executors of said estate of William Ronan, deceased, and that this defendant, Frank Schwarzwaelder is the sole acting executor and trustee of said estate.

40

Statement of Claim of Frank Schwarzwaelder.

That said Roland D. Crocker was an attorney and counsellor at law duly admitted to practice by the Supreme Court of the State of New Jersey and was also a Solicitor and Master in Chancery of New Jersey and in his capacity as a practicing attorney at law, did represent
10 the said Liberty Trust Company, a corporation of the State of New Jersey.

That it is claimed by said Liberty Trust Company that it is the owner of said bond and mortgages by virtue of certain assignments in writing, the first being alleged to have been given by Walter S. Baker and Mina A. Baker, executor and executrix of the estate of Mary P. Butler, bearing date December twentieth, nineteen hundred and five, to William H. Daly, but not recorded until September second, nineteen hundred and thirteen, in Book 113 of Assignments of Mortgages, page 287, but this defendant
20 charges that no consideration was ever paid by said William H. Daly to said Walter S. Baker and Mina A. Baker, executor and executrix as aforesaid for said bond and mortgages and that said William H. Daly never received or had possession of the same.

The second alleged assignment in the chain
30 of assignments under and by virtue of which the said Liberty Trust Company claims title to said bond and mortgages bears date August first, nineteen hundred and thirteen, assigned to one George W. Clark, which assignment however was not recorded until September second, nineteen hundred and thirteen, in Book 113 of Assignments on page 288 and this defendant charges that no consideration was ever given
40 by said George W. Clark to said William H. Daly for said bond and mortgages that said

Statement of Claim of Frank Schwarzwaelder.

George W. Clark never received or had possession of the same.

That another alleged assignment under and by virtue of which said Liberty Trust Company claims to be the owner of said bond and mortgages is from George W. Clark to Mabel Daly, bearing date August first, nineteen hundred and thirteen, but not recorded until September second, nineteen hundred and thirteen, in Book 113 on page 289, but this defendant charges that said Mabel Daly paid no consideration for said bond and mortgages, and that the same was never in her possession. 10

Said Liberty Trust Company claims that it has received title to said bond and mortgages under and by virtue of an assignment in writing from said Mabel Daly, bearing date August thirteenth, nineteen hundred and thirteen, which assignment was alleged to have been recorded on September third, nineteen hundred and thirteen, in Book 113 of mortgages on pages 300 and which assignment was alleged to have been given as collateral security for the payment of a note of said Mabel Daly, but these defendants charge that said Mabel Daly never received the proceeds of said note and that if said Liberty Trust Company obtained possession of said bond and mortgages it was because it was under and by virtue of a false and fraudulent act of their attorney, said Roland D. Crocker, who had possession of the same as one of the executors and trustees of the estate of William Ronan, deceased, and thereafter and to serve his own purpose permitted said Liberty Trust Company to take possession of said bond and mortgages, but which action of said Roland D. Crocker was 20 30 40

Statement of Claim of Frank Schwarzwaelder.

null and void and of no effect and did not deprive the said estate of William Ronan, deceased, of any right, title and ownership of said bond and mortgages.

10 These defendants claim ownership of the said bond and mortgages by virtue of the assignment from said Walter S. Baker and Mina A. Baker, executor and executrix as aforesaid, and therefore are entitled to be paid the full amount due upon said bond and mortgages with accrued interest.

20 LINTOTT, KAHRS & YOUNG,
Solicitors for the defendants, Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased; Mary Tulley, Ellen Balef, Louisa McGilleby, Michael Balef, Margaret Redmond, Susie Balef, Mary A. Rogers, Ella Pelow, Daniel R. Rogers, William Rogers, Catherine R. Dunning, James Ronan, Michael Ronan, Annie E. Crater, Elsie Tier and Arthur Marson.

30

40

Order of Reference.

Order of Reference.

Filed July 1, 1915.

This matter coming on to be heard in the presence of Thomas S. Henry, Esquire, solicitor for the complainant, and Archibald F. Slingerland, Esquire, solicitor for the defendant, Liberty Trust Company, and Joseph Kahrs, Esquire, solicitor for the defendant, Frank Schwarzwaelder, executor, etc. and others: 10

It is, on this 28th day of June, A. D. nineteen hundred and fifteen, on motion of Joseph Kahrs, Esquire, solicitor as aforesaid, ordered that it be referred to Nicholas W. Bindseil, Esquire, a Special Master of this Court, to take the testimony of the witnesses in this cause.

And it is further ordered that upon the completion of the testimony, either party may have leave to bring on the matter for argument, upon notice. 20

Respectfully advised,

JOHN R. EMERY, }
V. C.

I consent to the entry of the above order. 30

ARCHIBALD F. SLINGERLAND,
Solicitor for Liberty Trust Company, Defendant.

Gottlob Kautzmann, direct.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> STERLING LEATHER WORKS, <i>Complainant,</i> <i>and</i> LIBERTY TRUST COMPANY, <i>et al,</i> <i>Defendants.</i></p>	}	<i>On Bill, etc.</i>
----	---	---	----------------------

20 Transcript of testimony taken in the above entitled cause pursuant to an order of reference made by the Honorable John R. Emery, Vice-Chancellor, dated June 28, 1915, before Nicholas W. Bindseil, a Special Master in Chancery of New Jersey, at the office of Messrs. Lintott, Kahrs & Young, National State Bank Building, Newark, New Jersey, on Tuesday, July 6th, 1915, at 11 A. M.

Appearances:

Mr. Joseph Kahrs for defendant, Frank Schwarzwaelder, executor, etc., and others.

Mr. Archibald F. Slingerland for defendant, Liberty Trust Company.

30 It is stipulated and agreed by and between the counsel for the respective parties, that the testimony may be taken down in shorthand by the Master and afterwards reduced to typewriting, the signatures of the witnesses to their said testimony being waived.

Gottlob Kautzmann, direct.

GOTTLOB KAUTZMANN, sworn for Liberty Trust Company.

Direct examination by Mr. Slingerland:

Q You are the president of the Liberty Trust Company? A I am.

Q And also a director? A Yes, sir. 10

Q How long have you held office in the Liberty Trust Company? A Since December 1, 1914, as president.

Q And as a director? A Since its organization in 1913.

Q Are you familiar with the Mabel Daly loan, as it is called? A Yes.

Q That is the way it is known at the bank? A Yes.

Q I show you what purports to be a promissory note signed by Mabel Daly, and ask you if that is the note concerned in this matter? A It is. 20

Q That is a note for how much? A Originally it was for \$2,500; the present amount due on it is \$1,500.

Q A collateral note? A A collateral note.

Mr. Slingerland. I will offer the note in evidence and also the notice of protest. 30

Mr. Kahrs. I object to its being received in evidence at the present time, on the ground that the signature has not been identified.

(Marked Exhibit D. 1, L. T. Co.)

Q I also show you a bond made by Frederick F. Meyer and Franklin L. Meyer to Mary P. Butler, dated May 1, 1897, to secure the payment of \$1,400 in one year, with interest at six per cent. per annum, payable semi-annually, and ask you if you have seen that bond before? A Yes, sir. 40

Gottlob Kautzmann, direct.

Q Where? A That is part of the collateral on this so-called Mabel Daly note.

Q I also show you a mortgage made by Franklin L. Meyer to Mary P. Butler, dated May 1, 1897, for \$1,400, covering premises on the west side of Frelinghuysen avenue, in the City of Newark, and which was registered in the Essex County Register's office in Book G-13 of Mortgages for said County, on page 450; and another mortgage, made by Frederick F. Meyer and wife to Mary P. Butler, bearing the same date, and in the same amount, and covering the same premises, and being registered in Book G-13 of Mortgages for Essex County, page 450, and ask you if you have seen these two mortgages before? A Those are the two mortgages in addition to the bond given as collateral.

Q Those were given as collateral to the note which has been shown you? A Yes.

Mr. Slingerland. I offer the bond and mortgages in evidence.

Mr. Kahrs. I object to the bond on the ground that there is no record which shows that the bond was ever assigned to the Liberty Trust Company.

(Marked Exhibits D. 2, D. 3 and D. 4, L. T. Co.)

Q This bond and the mortgages have been in the possession of the Liberty Trust Company? A Yes, sir.

Q For how long? A To the best of my knowledge, since the granting of the loan; that is, not the date of the loan, but the date when the money was paid.

Q Can you state when that was? A September 4, according to our collateral loan book, 1913.

Gottlob Kautzmann, cross.

Q And they have never left your possession since that time? A Not to my knowledge.

Q Was that note paid when it became due? A It was not.

Q What was done about it, if anything? A It was protested on demand of payment, and payment being refused; later part payment was made by releasing part of the collateral, which were insurance policies, by the payment of \$1,000—I believe that is the amount—which was applied to the note, reducing it to \$1,500. 10

Q How much is due on the note at the present time? A I haven't it figured up to the present day; it was \$1,623.92 on Wednesday, the 29th.

Q At the time of this transaction, who was the counsel for the Liberty Trust Company? A William Pennington. 20

Q How long had he been counsel? A Since the organization of the bank in November, 1912.

Q And how long did he continue to act as counsel? A Mr. Pennington, I think, resigned in December, 1914; I could give you the exact date from the minute book.

Q Who had charge of the examination of titles for the Liberty Trust Company? A Our counsel, Mr. William Pennington. 30

Cross examination by Mr. Kahrs.

Q When was the Liberty Trust Company organized? A The Organization Committee, I believe organized, or the charter was granted in April, 1912, and we began business in November, 1912.

Q You have been connected with it since its organization? A Yes, sir.

Q And you were a director from the beginning? A Yes, sir. 40

Gottlob Kautzmann, cross.

Q Did you hold any other position up there?

A I was a member of the executive committee.

Q Not one of the officers? A No.

Q Who was your president? A A. Howard Watson.

10 Q Was he president up to the time you took office? A Yes, sir.

Q Was Mr. Roland Crocker associated with the Liberty Trust Company? A He was a director and chairman of the executive committee.

Q Wasn't he counsel? A No, sir.

Q At no time? A At no time.

20 Q How long or until when was he chairman of the executive committee and director? A He was chairman of the executive committee until, I think it was August of 1912, the latter part of August or early part of September; I could give you the exact dates.

Q About that time? A About that time.

Q Do you know Mrs. Mabel Daly? A I do not.

Q Did you ever see her? A I was told that the lady present at the court last Wednesday was Mabel Daly; that is the only time I have ever seen her.

30 Q At no other time have you ever seen her? A No, sir.

Q Know her husband? A No, never saw him.

Q Never had any business dealings with him? A No, sir.

Q You don't know whether this is Mrs. Daly's signature to this note, Exhibit D. 1? A The signature compares with other signatures.

40 Q Do you know of your own personal knowledge? A I do not.

Gottlob Kautzmann, cross.

Q Did Mrs. Daly have an account in your bank? A Yes.

Q When was that account opened? A I cannot tell you; that was before my time; I had no official connection with the bank until December 1, 1914.

Q Was any other money ever deposited or placed to her credit except this loan? A Oh, yes, there were other transactions. 10

Q You say you were not familiar with this transaction at the time of the granting of the loan? A I was familiar with the granting of it, but not familiar with the details of the banking; that was up to the officers.

Q You only know what transpired in the committee room or board of directors? A That is the idea; I was present when the loan was granted. 20

Q When it was acted upon by the executive committee? A Yes.

Q Or by the directors? A By the executive committee.

Q Who made application for the loan? A Mabel Daly.

Q Where is the application? A I don't know; it is not in the form of a written application; anybody can apply to a bank for a loan without filling out an application. 30

Q Wasn't there a paper of some kind presented in this matter? A No, sir.

Q You are sure there was not? A Yes.

Q Then who attended to the making of the application before the executive committee? A I think Roland D. Crocker probably presented the application verbally. 40

Gottlob Kautzmann, cross.

Q You know that was Roland D. Crocker, don't you? A I wouldn't swear to it, but I am quite sure it was.

Q It could not have been anybody else, could it?

Mr. Slingerland. Objected to.

10 A I don't know; somebody else might have; some other member of the executive committee might have put the application in, but I cannot say.

Q Were you present? A Yes, but that is over two years ago.

Q You just told us that you are familiar with the transaction. A I am familiar with the transaction as recorded in our book—Mabel Daly making application for the loan and that it was
20 granted.

Q Otherwise, you remember nothing? A I cannot remember the details, as to who made the motion, unless the book may show who made the motion.

Q Does the book show; will you look at the book? A Yes, sir, on page 103. (Book handed to Mr. Kahrs.)

Q This refers to a collateral loan? A Yes,
30 sir.

Q What was the collateral that was presented or received for this so-called Daly loan? A Two mortgages, a bond and two insurance policies.

Q What insurance policies were those? A I can tell you by looking at another book—page 71, Collateral Loan Book of the Liberty Trust Company; this shows the collateral that was offered and received.

Q This refers to an assignment of a policy in the Prudential Insurance Company, No. 645,397,
40

Gottlob Kautzmann, cross.

and another assignment of a policy in the Prudential Insurance Company, No. 861,370; do you know what policies those were? A They were on the life of one Samuel Lederer.

Q Who was Samuel Lederer? A He was a man, I believe, living in Paterson, as far as I can remember. 10

Q Do you know him? A No.

Q Those policies were for \$5,000 each? A I don't remember the amount.

Q The book shows; would that refresh your memory? A If the book shows so, that is what it was.

Q The book does show it? A Yes.

Q Did you have those policies? A I did.

Q Who gave you those policies? A The policies and all the collateral were delivered to our counsel, which was the customary rule. 20

Q By whom? A I wasn't present.

Q So you don't know? A I suppose by the party that applied for the loan.

Q From your own knowledge? A I was not present; how could I say?

Q Was it Roland D. Crocker that presented it? A I don't know; counsel might tell you who delivered them to him. That is what we had a counsel for. 30

Q Did you see the bond and mortgages and insurance policies at that time? A I did not.

Q When did you first see them? A When I took office as president.

Q How did you happen to see them then? A I made myself familiar with all the assets of the bank, all securities and collaterals.

Q That was December, 1914? A Yes, sir.

Q Up until December 1, 1914, you had never seen this collateral and this note? A I never had occasion to. 40

Gottlob Kautzmann, cross.

Q You don't know whether the bank has had these papers in its possession ever since December first, 1912, do you, of your own knowledge?

A I know we have had them ever since December, 1914.

Q Have you had charge of them personally?

10 A Yes.

Q But prior to that you don't know when they actually did come into the possession of the bank? A Of my own sight and hearing?

Q Yes. A Why, no.

Q I notice that this note has some words written in longhand across it, as follows: "and assignment of insurance policies of the Prudential Insurance Co. on the life of Samuel L. Lederer." which have been crossed out; can you tell us when that was done? A I would have to refer to the receipts; I don't see the date here.

Q Who crossed those words out? A The officer of the bank who received the payment of \$1,000.

Q These words were crossed out at the time the payment of \$1,000 was received? A Yes.

Q And that was about when? A That was this year, sometime in February, I think.

Q The amount of the note has also been changed? A That was done at the same time.

Q And that was after the note became due? A Yes, it was protested, and this payment was applied on account.

Q And who do you say made the change? A The treasurer of the company who has charge of the notes.

Q He was authorized to make the change, was he? A Yes, sir.

Q How did you happen to receive \$1,000 and apply it on account of this note in about Feb-

40

Gottlob Kautzmann, cross.

ruary of this year? A In effecting a settlement with the parties interested in these insurance policies.

Q With Mr. Lederer? A Yes, sir.

Q Are you familiar with that? A Yes.

Q How was the settlement effected? A A settlement was effected by accepting \$1,000 and releasing that collateral. 10

Q Who made an offer to pay \$1,000? A Mr. Lederer.

Q Did he make it to you or in your presence?

A It came through counsel.

Q What counsel? A Mr. Slingerland.

Q Those insurance policies were in the sum of \$5,000 each? A Yes.

Q Do you know what the withdrawal value of those policies was? A I don't know the exact amount; it can be found; the record can be looked up, but I cannot remember now. 20

Q Do you remember about? A I think they were about \$1,800, if I am not mistaken.

Q How did you come to accept \$1,000 and release—? A Because we thought the balance of the collateral was ample to cover the loan.

Q That is the only reason? A Yes, I don't know whether there is any other reason; we considered it a fair proposition. 30

Q I call your attention to an endorsement on the note, giving a credit on January 6, 1915, check of the Prudential Insurance Company on the Union National Bank to the order of Samuel L. Lederer and endorsed to us for \$1,000. A That is the \$1,000 I referred to when I stated February

Q That is the correct date? A Yes; I thought there was an entry somewhere; I thought it should have been in the loan book. 40

Gottlob Kautzmann, re-direct.

Q Are you sure Mr. Lederer is from Paterson? A No, I am not sure; I don't know the gentleman; I met him in the counsel's office. That is the only acquaintance I have with him.

Q You never had any other business dealings with him? A No, sir.

10 *Re-direct* by Mr. Slingerland.

Q You know as a matter of fact, do you not, that there was a dispute as to the title to these insurance policies? A Yes.

Q Was not that the real reason for effecting a settlement?

Mr. Kahrs. I object to what the real reason was.

20 A We consider that the compromise settlement of \$1,000 on those policies was a good business proposition on account of the disputed assignments.

Q And so there wouldn't be litigation over the title to the policies? A Yes, sir.

30 Q In making loans of this kind who passes upon the collateral; for instance, if a bond and mortgage should be taken as collateral, who passes upon the bond and mortgage? A William Pennington, our counsel.

Q Can you say whether or not that was done in this case? A I have no reason to believe that it was done in any other way.

Q Did Mr. Pennington present any abstract of title to the bank, do you know? A I believe he did.

Q I show you an abstract of title and ask you if that is the abstract which was given to the bank at the time of the passing of this loan?

40

Gottlob Kautzmann, re-cross.

Mr. Kahrs. I object to that on the ground that it is immaterial whether an abstract was presented by their counsel or not, and if it was material, it is a self-serving declaration.

A This is the abstract presented by our counsel.

Mr. Slingerland. I would like to have that marked for identification. 10

(Marked Exhibit D. 5 for identification for L. T. Co.)

Re-cross by Mr. Kahrs.

Q Do you know of your own knowledge that there was a dispute over these policies of insurance? A Yes.

Q How do you happen to know that? A I have been informed so by our counsel, Mr. Slingerland. 20

Q Then you don't know of your own knowledge; you only know because of what your counsel told you? A He acted for me, he was my agent.

Q The only information you have is what you received from your counsel? A Yes, sir.

Q Mr. Lederer never presented any claims to you? A No written claims; verbally, he did. 30

Q Did he present any verbal claims to you? A Yes.

Q At what time? A I cannot tell you the exact time.

Q Was that before the settlement was made? A Before the settlement.

Q What did he say? A At one time he came and offered \$750 to settle—I believe the first offer was \$500, and after seeing counsel he also came to the bank and made a verbal proposition. I have nothing in writing from Mr. Lederer. 40

Q That is all he said, just to make an offer? A Just to make an offer.

William Pennington, direct.

Q And because of that you knew there was some dispute over the title to the policies? A He told of the character of the assignment, that he questioned the assignment, but he would rather settle than have a litigation over it, and we finally agreed on a sum, than to have litigation, to save money for both sides.

10 Q Did you return to him the assignments of those policies? A We returned the policies and the assignments to Mr. Slingerland; he attended to the legal matter.

WILLIAM PENNINGTON, sworn for Liberty Trust Company.

Direct examination by Mr. Slingerland.

20 Q You are an attorney at law of the State of New Jersey? A Yes, sir.

Q You were the attorney for the Liberty Trust Company, were you not, at one time? A I was, yes, sir.

Q How long did you act for them? A I think from the time the institution opened in November, 1912, until September, 1914.

30 Q I show you an abstract of title which has been marked Exhibit D 5 for identification, and ask you if you have seen that abstract before? A I have seen this abstract.

Q That appears to be signed William Pennington; is that your signature? A Yes, sir, that is my signature.

Q And the name William Pennington appears twice again on the last page; are those two signatures yours? A Those are my signatures.

Mr. Slingerland. I offer the abstract in evidence.

40 (Marked Exhibit D 5, L. T. Co.)

William Pennington, cross.

Q Do you recall the purpose of that abstract, why you made it? A I think it was for the purpose of granting a loan.

Q To whom, do you recall? A I think to Mabel Daly, if I am not mistaken.

Q And why was the abstract—

Mr. Kahrs. I object to this abstract being offered and received in evidence, upon the ground that it is immaterial and irrelevant. 10

A The abstract was made for the purpose of granting a loan to Mabel Daly, as I understand it.

Q Your certificate says that you find nothing affecting the title to premises described—

Mr. Kahrs. I object to counsel reading from this exhibit, because the abstract itself is objected to. If it is properly in evidence, it speaks for itself. 20

Q (Continuing)—in two mortgages, one from Franklin L. Meyer to May P. Butler, registered in G-13, page 450, and the other made by Frederick F. Meyer and wife to Mary P. Butler, registered in Book G-13, page 450, of Mortgages for Essex County, except as set forth in that abstract, and you have certified that the said mortgages were good, valid and subsisting first liens on the premises therein described; are those two mortgages mentioned in your certificates the same mortgages that have been introduced here and marked Exhibits D 2 and D 4, which I now show you? A I would have to see the record so I can compare them. (After examining search). These are the two, yes, sir. 30

Cross examination by Mr. Kahrs.

Q You were one of the directors of the Liberty Trust Company, were you not? A I was. 40

William Pennington, cross.

Q At the time of the so-called Daly loan? A Yes.

Q Were you familiar with any of the transactions leading up to the application for the loan?

A I cannot recall that at this time.

10 Q From whom did you receive these mortgages and the bond?

Mr. Slingerland. I object, because the witness has not testified that he received them.

Q Did you ever have those mortgages and the bond in your possession? A May I say this, I cannot recall that fact.

Q Do you recall ever seeing these mortgages before today? A I cannot recall it, although I believe I have seen them.

20 Q Do you recall anything regarding this so-called Mabel Daly loan? A All that I recall is the fact that the abstract that has been presented here was signed by me, and that the two mortgages presented here appear to be the ones mentioned in the abstract.

Q Otherwise, you recall nothing at all? A No.

30 Q Except for the fact that the abstract of title signed by you or bearing your signature was shown to you, you could not identify these mortgages, could you, having ever been in your possession? A Only in so far as they relate to the record on the abstract, I believe them to be the same.

40 Q Then I don't suppose you recall that the directors at any time took action on this so-called loan or the application for it? A The application was doubtless passed upon by the Board, as most applications were, but this special one I cannot recall.

William Pennington, cross.

Q Were you associated with Mr. Crocker in connection with the affairs of the Liberty Trust Company?

Mr. Slingerland. I object to the question as not proper cross examination.

A I was associated in a way with him, yes, sir. 10

Q Would you personally make an examination of the records in the Register's office of this county? A Not in all cases.

Q In this case? A In this case, I don't think I did; I am not sure; I don't think that I did.

Q Then you have no original notes relating to this application or this search? A I have no original data regarding that search.

Q Have you any data except this abstract of title? A That is all I have got. 20

Q Did you prepare that abstract of title? A That was typewritten in my office; I think I had it attended to.

Q At the instigation of yourself or anybody else? A It was my own work.

Q You dictated it? A I think it was written from notes and from dictation.

Q Whose notes? A Mr. Crocker's notes mostly. 30

Q Mr. Crocker gave you the data to prepare this abstract? A Largely.

Q Wasn't it entirely? A Not entirely, no.

Q What part of it did you create? A I think there were some parts; I cannot tell by looking at the search—that I prepared myself.

Q Can you tell by looking at anything else? A No, I think not; my general impression is that some of it I prepared, but I cannot definitely say that. 40

William Pennington, re-direct.

Q Where did you get the information from to prepare it, if you did not make the search yourself? A The information and the notes came through Mr. Crocker. That search is practically from the notes and searching done by Mr. Crocker.

10 Q It is really Mr. Crocker's search or abstract? A Yes, looked over afterwards by me.

Q And signed by you? A Yes.

Q And was it done by Mr. Crocker's stenographer? A I think it was.

Q Did you have anything to do with this loan?

Mr. Slingerland. Objected to as not proper cross examination.

20 A You mean regarding the preparation of the loan?

Q Yes, anything at all relating to the loan. A Nothing but the search.

Q Nothing but the signing of the abstract of title? A Abstract of title.

Q (Last question repeated). A Signing of the abstract of title.

Re-direct by Mr. Slingerland.

30 Q You don't recall whether you ever had these papers in your possession, I understand? A As I told Mr. Kahrs, I doubtless had them, but I wouldn't be willing to say under oath that I did have them; I believe that I had them, but when you have any number of instruments at different times two years off it is pretty hard to recall it.

Mr. Slingerland. I offer in evidence a certified copy of assignment of mortgage made by Mary P. Butler, deceased, by executors, to
40 William Daly, dated December 20, 1905, and

William Pennington, re-direct.

recorded in the Register's office of Essex County in Book 113 of Assignments of Mortgages for said County, on page 287.

(Marked Exhibit D 6, L. T. Co.)

Also, certified copy of assignment from William H. Daly to George W. Clark, bearing date August 1, 1913, and recorded in Book 113 of Assignments of Mortgages for Essex County, on page 288. 10

(Marked Exhibit D 7, L. T. Co.)

Also, a certified copy of an assignment made by George W. Clark to Mabel Daly, bearing date August 1, 1913, recorded in the Essex County Register's Office in Book 113 of Assignments of Mortgages for said County, on page 289.

(Marked Exhibit D 8, L. T. Co.) 20

I also offer in evidence assignment of mortgage made by Mabel Daly to Liberty Trust Co., bearing date August 15, 1913, and recorded in the Register's office of Essex County in Book 113 of Assignments of Mortgages, page 300, assigning mortgage registered in the Register's office of the County of Essex in Book G-13 of Mortgages, page 450, and also another mortgage to secure the same debt of the same date, made by Frederick F. Meyer and wife to Mary P. Butler, registered in the Register's office of Essex County, in Book G-13 of Mortgages, page 450, together with the bond or obligation therein described, and being the same papers marked Exhibits D 2 and D 3 and D 4 for defendant Liberty Trust Co. 30

(Marked Exhibit D 9, L. T. Co.)

Mr. Slingerland. We rest. 40

George W. Clark, direct.

GEORGE W. CLARK, sworn for defendants,
Schwarzwaelder and others.

Direct examination by Mr. Kahrs.

Q Where do you live? A East Orange.

Q How long have you lived there? A About
10 twenty years.

Q Are you the George W. Clark referred to in
this certified copy of assignment of mortgage?

A I don't know whether I am or not.

Q Did you ever receive the bond and mort-
gages offered in evidence, and marked Exhibits
D 2, D 3 and D 4 for Liberty Trust Company?

Mr. Slingerland. I object to the question
on the ground that it is immaterial, incom-
petent and irrelevant.
20

A Not that I know of.

Q Would you know, Mr. Clark? A I should
think so.

Q You say you did or did not ever receive
them? A I did not.

Q Did you ever see these papers before, re-
ferring to Exhibits D 2, D 3 and D 4 for Liberty
Trust Co.?

30 *Mr. Slingerland.* I enter a general objec-
tion to this whole line of testimony as in-
competent, immaterial and irrelevant.

A No, sir.

Q So it follows, of course, that you never had
them in your possession? A Yes, sir.

Q Did you ever purchase that bond and these
mortgages from anybody? A No, sir.

Q Then it follows that you did not pur-
40 chase them from William H. Daly? A No, sir.

George W. Clark, direct.

Q Did you ever pay any money in consideration or part with anything of value for that bond and those mortgages?

Mr. Slingerland. I object for the same reasons.

A Not that I know of.

Q You knew Roland D. Crocker? A Yes, sir. 10

Q When did you first become acquainted with him? A About twenty years ago.

Q Did you have any business dealings with him? A Yes.

Q I call your attention, Mr. Clark, to a certified copy of an assignment of mortgage, marked Exhibit D 8 for Liberty Trust Co., which bears date August 1, 1913, and the acknowledgment purports to show that on the first day of August, 1913, you acknowledged that you signed, sealed and delivered this assignment to Mabel Daly, and that you acknowledged that you made that acknowledgment before Roland D. Crocker; did you ever make such an acknowledgment? 20

Mr. Slingerland. I object to the question on the ground that it is immaterial, irrelevant and incompetent, and for the further reason that the answer might tend to indicate forgery, and that the affirmative defence of forgery has not been set up in the pleadings, as required by the rules. 30

A I don't remember ever having done that at all.

Q You would remember it if you did it? A I should think so, but I don't remember it.

Q Would you say that you did not so acknowledge it? A No, I wouldn't say that, because I don't remember. 40

George W. Clark, direct.

Q Did you ever receive anything of value from Mabel Daly on or about the first day of August, 1913, for this bond and these mortgages?

Mr. Slingerland. I object to the question on the ground that it is immaterial, irrelevant and incompetent.

10

A In what way?

Q As to the purchase price. A No, sir.

Q Did you ever own this bond and these mortgages? A Not that I know of.

Q You would know it? A I should think I would know it.

Q Would you say you had never owned them?

A I never owned them.

Q Did you execute an assignment of these mortgages at any time?

20

Mr. Slingerland. I object to the question for the reasons above set forth.

A Not that I know of.

Q And you would know if you ever sold this bond and these mortgages? A It would seem so.

Q So that you never did assign them? A Not to my knowledge.

30 Q Won't you say positively one way or the other? A I don't want to say that, because I don't know.

Q I think you did tell us, though, that you never purchased this bond or these mortgages from William H. Daly? A Yes, sir.

Q Did you ever receive any interest on this bond? A Not that I know of.

40 Q That you would know positively? A I don't know; there were certain things that transpired with Roland D. Crocker that are very mysterious to me, and if he would give me in-

George W. Clark, cross.

terest on that thing, I didn't know anything about it.

Q If you received it, it was interest that you didn't know about? A That I didn't know about.

Q You never made any demand for interest?
A No, sir.

10

Q Did you ever hear of this bond and these mortgages? A No, sir, I never knew there was anything of that kind until the present time.

Mr. Slingerland. I would like to enter a general objection to all this line of testimony as immaterial, irrelevant and incompetent.

Mr. Kahrs. I have no objection to that.

Cross examination by Mr. Slingerland.

20

Q You say you knew Mr. Crocker for twenty years? A Yes.

Q You had a great many dealings with him?
A Yes, sir.

Q Did you keep any record of your dealings with Mr. Crocker? A No, sir.

Q You entered into a great many transactions with Mr. Crocker that you probably now don't recall, isn't that so? A Yes, sir, that is a fact.

30

Q Simply because you don't remember executing the assignment of mortgage Exhibit D. 8 does not mean that you might not have executed it, does it? A I should think that it does not.

Q You might have executed it and have forgotten about it? A It might have been, but I don't remember it.

Q Mr. Crocker took care of a great many of your affairs, didn't he? A Most of them, yes, sir.

40

George W. Clark, re-direct—re-cross.

Q He bought mortgages for you? A Sometimes.

Q Took care of the collection of the interest?

A Yes, sir.

Q Took care of the collection of principal when they were paid off? A Yes, sir.

10 Q So that it is possible, is it not, that he may have purchased for you the bond and mortgages in question, and have taken the assignment Exhibit D. 7 without your remembering it? A No, sir; I had so many peculiar transactions with Mr. Crocker that I really don't believe that anything of that kind has been done.

Q It is possible, is it not? A It might be possible, yes, sir.

20 Q Did you ever keep any account of the moneys that Mr. Crocker had in his possession that belonged to you? A No, sir.

Q So that as a matter of fact, all that you can say now is that you don't remember this transaction? A That is right.

Re-direct by Mr. Kahrs.

Q But you knew what mortgages were purchased by Mr. Crocker for you? A No, sir.

30 Q You did not know that? A No, sir.

Re-cross by Mr. Slingerland.

Q You were related to Mr. Crocker? A Yes.

Q How? A As far as I can find out, he is my nephew by marriage.

William H. Daly, direct.

WILLIAM H. DALY, sworn for defendants,
Schwarzwaelder and others.

Direct examination by Mr. Kahrs.

Q Where do you live? A Great Notch,
New Jersey, 619 Upper Mountain avenue.

Q How long have you lived there? A 10
About a year and a half now.

Q Before that where did you live? A In
Watchung avenue, Montclair.

Q How long did you live there? A Two
years.

Q Before that where did you live? A In
Bloomfield.

Q How long did you live in Bloomfield? A
I was about eight or ten years there, about eight
years.

Q Did you know Mr. Roland D. Crocker? A 20
I did.

Q How long did you know him? A Since
1900, fifteen years.

Q When did you have your first dealing with
him? A I think it was in 1905.

Q When did you have your next business
dealing with him? A In 1909.

Q So until 1909 you had but one transaction
with him? A Yes. 30

Q What was that? A That was the search,
a transfer of the title to property up on Summer
avenue and Montclair avenue.

Q I show you the bond and two mortgages
marked Exhibits D. 2, D. 3 and D. 4 for Liberty
Trust Company, and ask you if you have ever
seen those instruments before?

Mr. Slingerland. I object to the question
as immaterial, irrelevant and incompetent.

A I don't remember of ever seeing them. 40

William H. Daly, direct.

Q Did you ever own that bond and those mortgages?

Mr. Slingerland. I object and enter a general objection to this whole line of testimony on the ground that it is incompetent, irrelevant and immaterial.

10 *Mr. Kahrs.* That is satisfactory.

A I think I did.

Q At what time? A That was in 1909, before 1910.

Q I show you Exhibit D. 6 purporting to be a certified copy of an assignment of that bond and those mortgages from Mary P. Butler, or the estate of Mary P. Butler, to William H. Daly, which bears date December 20, 1905, for the consideration of \$1,453.43, and ask you if you received that assignment at its date? A I don't need to look at it; I never did, not at that date.

20

Q Did you ever pay anything for that bond and those mortgages? A No.

Q You never parted with any consideration at all? A No.

Q Did you hold that bond or those mortgages in your possession or did you claim any ownership from December 20, 1905, until August 1, 1909? A No, sir.

30

Q Did you ever assign that bond and those mortgages to George W. Clark? A That I don't remember; I can tell, if I saw the paper with my signature on, whether it is mine or not.

Q Did you ever receive any consideration for such an assignment? A No, not that I remember.

Q So you never claimed actual ownership to that bond and those mortgages? A Not unless

40

William H. Daly, direct.

they were put up as security for some papers I did sign; that is the only way I would hold possession of them. No money consideration was ever given for them.

Q So you were never the real owner? A I should think not.

Q And that transaction that might have happened, took place about what time? A That could have taken place between 1909 and 1914. 10

Q Did you ever authorize Mr. Crocker or anyone else to purchase that bond and those mortgages for you in December, 1905? A I did not.

Q Did you ever make any demands for interest from the owner of the equity of redemption? A No, sir.

Q Did you ever receive any interest on account of that? A No, sir. 20

Q What was the transaction that you referred to which might have taken place? A There were several transactions that were put through, such as the giving of notes or the endorsing of notes for Mr. Crocker, on which he put up as collateral security mortgages or things of that kind.

Q And that was after 1909, was it? A That was after 1909. May I go a little further into detail and refer to what leads up to this present case, your possession of this mortgage? 30

Mr. Slingerland. Mr. Kahrs is examining you.

Witness. I know more about that than Mrs. Daly; in fact, she knows nothing about it.

Q Yes, sir, go ahead and tell us. A Mr. Crocker asked me to have Mrs. Daly make a note 40

William H. Daly, direct.

to the Liberty Trust Company for \$3,500, and he said he would secure the payment of that note with an insurance policy on the life of some party I cannot recall, and this mortgage would be assigned from George W. Clark to her as security, and after considering it I decided that
 10 they were not sufficient to cover a \$3,500 loan, so I said I would be glad to let her make a note for \$2,500.

Q Whose loan was that? A His own loan, and the two articles of security were this bond and mortgage and the insurance policy, the insurance policy at a valuation of over \$2,000 at the time, or very close to it.

Q You had no interest in the insurance policy? A None whatever.

20 Q You had no interest in this bond and these mortgages? A None whatever.

Q And this was simply an accommodation for Mr. Crocker, was it? A Exactly.

Q In other words, he was borrowing \$2,500 from the Liberty Trust Company? A Yes sir.

Q And he wanted to use the name of Mrs. Mabel Daly? A Yes.

Q That is your wife? A Yes, sir.

30 Q Did you ever receive any of that \$2,500? A No part of it.

Q Had you ever heard of this bond and these mortgages before that time? A Not that I remember.

Q So when you stated before that you may have owned them at one time, it was only in that way? A Only in that way that I would own them.

40 Q It was only through the manipulations of Mr. Crocker in making this application in Mrs. Daly's name? A Securing me in that way.

William H. Daly, cross.

Cross examination by Mr. Slingerland.

Q How was that securing you? A I felt that if the security was sufficient to cover the amount of money borrowed—

Q Who was borrowing, Mrs. Daly? A Mr. Crocker was the man who was borrowing in reality. 10

Q How did you need security? A To cover any claim that might be brought against her.

Q When did you say this was? 1909? A No, this was when Mrs. Daly made this note, in 1912 or 1913, I have forgotten which. In fact, I called up the Liberty Trust Company, he told me the loan had not been made, and I called up the Liberty Trust Company to find out for myself whether it had been made or not. 20

Q You had a great many transactions with Mr. Crocker, did you not? A Yes, I was in business with him.

Q Did you keep an account of all of your transactions? A Only in the Sterling Engineering Company.

Q What do you mean by that? A I was president of the Sterling Engineering Company and his own transactions I kept no record of whatever, because I trusted him. 30

Q There were a great many of them? A Yes.

Q He had complete charge of those transactions? A Absolutely, they were all his own deals.

Q He was acting for you during a number of years, was he not? A Yes.

Q Did Mr. Crocker have any moneys belonging to you in his possession? A Yes.

Mr. Kahrs. When? 40

William H. Daly, cross.

Q At any time? A My interest in the Sterling Engineering Company was under his control.

Q Did he buy mortgages for you? A Yes, he did.

Q And sold them? A Yes.

10 Q And collected interest for you on the mortgages? A Yes.

Q The principal when they were paid off?
A The principal also.

Q And reinvested the proceeds? A No, in some cases I took it for myself.

Q In some cases he invested the proceeds? A Yes.

20 Q During what period would you say that these transactions with Mr. Crocker occurred?
A Between 1909 and 1912, three years.

Q Any transactions prior to 1909? A Only just that one that I spoke of.

Q Will you swear positively that you did not execute this assignment of mortgage to George W. Clark, marked Exhibit D 7 for Liberty Trust Company? A Let me see it and I will tell you.

30 Q This is a certified copy. A My signature is not shown here; I cannot tell that.

Q Can you state positively that Mr. Crocker did not purchase for you this bond and mortgage from the executors of Mary P. Butler? A No, I cannot state that.

Q He might have paid Butler executors the full consideration for it? A He might have.

Q And might have received full consideration from Mr. Clark for your assignment to Mr. Clark? A Yes.

William H. Daly, re-direct—re-cross.

Re-direct by Mr. Kahrs.

Q But he could not have purchased this bond and mortgage for you prior to 1909, could he?

A No.

Q That you are positive of? A That I am positive of.

Q You would know if any such transaction had taken place? A My memory is very clear on that, that no such transaction took place prior to 1909. 10

Q Didn't you know what bonds and mortgages he purchased for you? A I did, yes, sir; he had all my papers and everything else.

Q But you knew what transactions took place? A I know of some of them offhand.

Q You would know if he had ever purchased this bond and mortgage? A Yes. 20

Q Would you say positively that he never did? A. I cannot do that.

Q Why not? A Because it might be possible that he did; my memory is not clear enough on that.

Q You never authorized him to do that? A Not that I know of.

Q You would know that, if you had authorized him to purchase this bond and mortgage? A In several cases he would say "Here is a perfectly good mortgage I have got, you can buy it for so much money" I would say "all right, I will buy it"; sometimes I never saw the mortgage. 30

Q Did he ever say that about these mortgages? A Not that I know of.

Re-cross by Mr. Slingerland.

Q He attended to the examination of titles for you? A Yes. 40

Mabel Daly, direct.

MABEL DALY, sworn for defendants, Schwarz-
waelder and others.

Direct examination by Mr. Kahrs.

Q Mrs. Daly you are the wife of William H. Daly who has just been on the stand? A Yes.

10 Q Do you know Mr. Roland D. Crocker A Yes.

Q When did you first become acquainted with him? A I think I knew him first about 1904 or 1905, I first met him.

Q Did you ever have any business transactions with him? A Long about 1905.

Q I mean your own transaction, not your husbands's. A I don't know that I did.

20 Q Did you ever have any personal business transaction with him? A No, not personally.

Q Then the transactions you referred to a moment ago were those of your husband's, when you said you had some business dealings with him? A Between my husband and myself, of course.

Q Did Mr. Crocker ever invest any of your money? A No, not that I know of.

30 Q. I call your attention to a bond and two mortgages marked Exhibits D. 2, D. 3 and D. 4 for Liberty Trust Company, and ask you if you ever purchased those mortgages?

Mr. Slingerland. I object to the question on the ground that it is immaterial, irrelevant and incompetent, and ask that this may be considered a general objection.

Mr. Kahrs. That is satisfactory.

A Not that I know of.

40 Q You would know if you ever bought these mortgages, wouldn't you? A I never bought them, no, sir.

Mabel Daly, direct.

Q You never paid anything for those mortgages, did you? A No.

Q And you never received any money for them? A No.

Q Did you ever assign them or sell them to anybody? A No.

Q In other words, you never owned them at all, did you? A What are these mortgages on? 10

Q They are on some property in Newark, on Frelinghuysen avenue; did you ever own them? A No.

Q And never sold them? A No.

Q Do you recognize your signature to this assignment, Exhibit D. 9 for Liberty Trust Company? A Yes.

Q How did you come to sign this paper? A I understood that was to be given as security for this note to the Liberty Trust Company. 20

Q Where did you sign this paper? A I don't remember.

Q Don't you remember whether you signed it at your home or not? A I cannot remember distinctly, no, sir.

Q How did you happen to assign it? A Only that I understood it was to be given as security for this note.

Q For this loan? A Yes. 30

Q What loan was that? A That was this loan that was given on the note of \$2,000.

Q And whose loan was it? A It was a loan to Mr. Crocker.

Q Was it your loan? A I am sure I don't know; I didn't make out the application for it.

Q You never made an application for a loan, to the Liberty Trust Company? A No, sir.

Q Did you receive any money from the Liberty Trust Company during August or September, 1913? A Nothing whatever. 40

Mabel Daly, cross.

Cross examination by Mr. Slingerland.

Q You had a great many dealings with Mr. Crocker, did you not? A I don't know as I would say a great many, I had a few.

Q It was a great many, was it not? A I don't think so; not as I remember.

10 Q Didn't he use your name a great deal in his real estate transactions? A He used it some.

Q A great deal, a great many times, didn't he? A I don't think I would call it a great many times.

Q How many times do you suppose? A I cannot count.

Q Was it fifty times? A Oh, no.

20 Q Are you sure about that? A Quite positive.

Q Twenty-five times? A I don't think it was that many times.

Q How many would you say? A I may have gone to his office in Newark a dozen times, but I don't think it was any more. I don't know that it is that many times.

Q Did he take title to any properties in your name? A He may have, I don't remember.

30 Q Did he buy any mortgages in your name? A I am not certain.

Mr. Kahrs. Of course Mrs. Daly wouldn't know.

Witness. I really know nothing of Mr. Crocker's transactions.

40 Q How is it that you allowed your name to be used by Mr. Crocker? A Mr. Crocker was our attorney and we trusted him as an honest man and simply done it as an accommodation for him, nothing for me.

Mabel Daly, cross.

Q And he may have purchased this bond and mortgage in your name, may he not? A He may have, for all I know.

Q When you executed this assignment Exhibit D. 9, did you ask him what it was? A He always read over a little bit, but it was just like Greek to me. I don't understand anything about these business transactions. 10

Q You don't recollect what he said about this particular transaction? A No, I do not.

Q He was acting as your attorney and you trusted him and believed that it was all right? A Certainly.

Q Why did you say that you didn't own it? A I know I had no money in it.

Q You were not in the habit of selling things that you didn't own, were you? A I wasn't interested in it; of course, as I said, I signed it for him, but I know nothing about it. 20

Q Did you ever have any of your money in Mr. Crocker's hands? A No, not that I know of.

Q You never kept any account of your transactions at all with him? A Nothing at all.

Q Simply allowed him to use your name without inquiring any further about it? A As I said, I trusted him; I thought he was honorable. 30

Q. So far as you know he received this money from this loan for you? A Not for me.

Q He may have received it, so far as you know? A Why, yes.

Q Why do you say he didn't receive it for you? A Well, I received nothing from it; I had no interest in it; he received it himself, I suppose.

Q But it was your note, wasn't it? A Yes. 40

Mabel Daly, re-direct.

Q It was your loan wasn't it? A Well, it was made in my name, I believe, but I had no interest in it.

Q And as security you assigned these bond and mortgages to secure that loan? A Yes.

10 Q Mr. Crocker may have kept the money for you? A He certainly did, because I had nothing to do with it. I know I didn't receive any of it.

Mr. Kahrs. You were not supposed to receive anything, were you?

Witness. No, sir.

20 Q Did you tell the Liberty Trust Company that it wasn't your loan? A No, I never spoke to anyone in the Liberty Trust Company that I know of.

Q You knew it wasn't for you, you say? A Yes.

Q Then why didn't you tell the Liberty Trust Company that it wasn't for you? A I trusted Mr. Crocker, he wished me to sign it, and he was willing to secure it.

30 Q Did you sign anything that he wished you to sign? A Not always, anything that was all right.

Q Did you speak to Mr. Daly about this transaction? A He knew that there was a mortgage to be signed, as far as I recall; I don't even remember signing that paper, not that particular one.

Re-direct by Mr. Kahrs.

40 Q This entire transaction regarding the loan was for Mr. Crocker's benefit, wasn't it? A Certainly.

Mabel Daly, re-cross.

Q And you never received anything from the Liberty Trust Company? A Nothing.

Q On account of this note?

Mr. Slingerland. I object to that question.

A No sir.

Q You never received anything on account of this note or in any other way? A No. 10

Q So that there is nothing due from you to the Liberty Trust Company, is there? A Nothing that I know of.

Q Did you ever make application to the Liberty Trust Company for a loan? A No, sir.

Q Did you ever speak to anybody in the Liberty Trust Company except Mr. Crocker? A No one at all.

Re-cross by Mr. Slingerland. 20

Q This is your note Exhibit D. 1? A Yes.

Q Then why do you say that you don't owe the Liberty Trust Company anything? A I don't suppose I do.

Q This note isn't paid, is it? A I am sure I don't know.

Q Look at it.

Mr. Kahrs. Mrs. Daly doesn't know. 30

A I know nothing about the transaction.

Q Are you in the habit of signing notes promiscuously and then denying liability? A I don't know as I remember signing any other note.

Mabel Daly, re-direct—re-cross.

Q Then you may owe this money? A I suppose I may; I am sure I don't know.

Q Did you pay any interest on it? A I don't know what Mr. Crocker paid.

Q Mr. Crocker took care of paying interest on your loan? A He certainly did.

10

Re-direct by Mr. Kahrs.

Q Do you mean that, that he took care of paying interest on your loans? A I don't know as he made any other loans for me.

Q As a matter of fact, he didn't, did he? A No, not that I know of.

Q He never had any of your money to pay interest with, did he? A No.

Re-cross by Mr. Slingerland.

20

Q Did you ever have any mortgage loans? A Not from Mr. Crocker, I don't think.

Q Didn't you get a loan from the Liberty Trust Company for \$6,000 on Orange Street property? A Not that I know of.

Q If interest was paid on this particular loan, Exhibit D. 1, it was done by Mr. Crocker for you, was it? A Certainly.

30

Re-direct by Mr. Kahrs.

Q Did you ever authorize him to pay interest on this particular loan? A No, I had nothing to do with it after it was signed.

Q Where did you sign that note? A In my own home.

Q Don't you think that you also signed this assignment in your own home at the same time?

A I don't remember.

40

Q Was Mr. Crocker present when you signed this paper? A I don't remember. I supposed

Mabel Daly, re-direct—re-cross.

Mr. Crocker witnessed it, was he a witness; does it say there?

Q Do you remember Mr. Crocker being present when you signed this? A I really don't remember when that particular paper was signed; I signed a paper about that time, about the fifteenth of August, 1913.

10

Q And after you signed that note, what did you do with it? A I am not positive whether it was mailed to him or whether Mr. Daly took it to him.

Q Don't you remember you gave it to Mr. Daly? A I don't really know.

Re-cross by Mr. Slingerland.

Q I show you a check dated September 4, 1913, drawn on the Newark Trust Company to your order for \$8,500, which purports to have been signed by William Pennington, attorney, and which purports to bear the signature of Mabel Daly, and ask you if that is your signature on the back of that check? A Yes.

20

Mr. Slingerland. I would like to have that marked as an exhibit.

(Marked Exhibit D. 10, L. T. Co.)

Re-direct by Mr. Kahrs.

30

Q Do you remember endorsing that check? A I don't remember it.

Q Have no recollection of it at all? A Not at all.

Mr. Kahrs. I desire to call Mr. Pennington again at the next session.

Re-cross by Mr. Slingerland.

Q You said you had never received any moneys in any of these matters? A Anything I

40

Archibald F. Slingerland, direct.

signed for Mr. Crocker, I never received any money for.

Q Did you sign that check for Mr. Crocker?

A Yes, that is my signature; I don't remember signing it. (Referring to Exhibit D 10, L. T. Co.)

10 Adjourned to Friday, July 9th, 1915, at 9:30 A. M.

Continuation of testimony in the foregoing cause, before Nicholas W. Bindseil, a Special Master in Chancery, at the office of Lintott, Kahrs & Young, National State Bank Building, Newark, New Jersey, on Friday, July 9th, 1915, at 9:30 A. M., in the presence of counsel as before stated.

20 ARCHIBALD F. SLINGERLAND, called and sworn on behalf of defendants, Schwarzwaelder and others.

Direct examination by Mr. Kahrs.

Q Mr. Slingerland, you are an attorney and counsellor at law of New Jersey? A Yes.

Q Practising in Newark? A Yes.

30 Q And you are counsel at the present time for the Liberty Trust Company? A Yes, sir.

Q How long have you been counsel for the Liberty Trust Company? A Since the latter part of September, 1914.

Q You have in your possession at the present time Exhibits offered at the last hearing, marked Exhibits D 2, D 3 and D 4? A I have.

40 Q How long have you had those documents in your possession? A I have had them in my possession, since last September, I think on two different occasions.

Archibald F. Slingerland, direct.

Q Let me interrupt that answer, if you will, by making clearly my question. For how long have you had them continuously in your possession? A Since, I think, June 28th of this year.

Q From whom did you receive them? A From the Liberty Trust Company. 10

Q Did you ever see these documents before June 28th? A Yes, sir.

Q When and where? A In the possession of the Liberty Trust Company, subsequent to September, 1914; I don't remember the exact date.

Q Did you have them in your possession at that time? A Yes, sir.

Q Where did you receive them from? A From the Liberty Trust Company.

Q And how long at that time did you have them in your possession? A I don't recall; probably two or three weeks. 20

Q Had you seen them prior to that? A No, sir.

Q And who in the Liberty Trust Company gave them to you on the first occasion? A As I recall it, Mr. Kautzmann, the present president, brought them to my office.

Q Was that about the time that you had occasion to look into the affairs of Roland D. Crocker? A It was. 30

Q You made an examination of the papers and other instruments in Mr. Crocker's office, didn't you? A To a certain extent.

Q To quite an extent? A Not personally.

Q Who did, under your direction? A Some members of the Liberty Trust Company; I think Mr. Kautzmann was one.

Q Who else that you know of? A Mr. Howard S. Kinney. 40

Archibald F. Slingerland, direct.

Q Was he associated or connected with the Liberty Trust Company? A He was a director and is still.

Q He is an attorney at law? A Yes.

Q Who else, under your direction, made an examination of the papers? A William B. Powell.

10 Q Was he employed by the Liberty Trust Company? A He was a director of the Liberty Trust Company at that time.

Q What is his address? A I don't know.

Q Is he now with the Liberty Trust Company? A I think he has resigned as a director.

Q Is he a Newark man? A I believe he resides in East Orange, although I think he is in business here in Newark.

20 Q Did anybody else make a search or examination of the Crocker papers? A Yes, Mr. Rensselaer H. Ismon, another director, and Mr. John W. Phillips and Mr. William B. Self, I think it is, all directors of the Liberty Trust Company.

Q Do you know whether those papers marked Exhibits D 2, D 3 and D 4, were found by any of the people who were working or searching on behalf of the Liberty Trust Company, with the other effects of Roland D. Crocker? A I know that they were not.

30 Q What do you know about that? A Only what I have been informed.

Q Let us have that. A I have been informed by the officers of the Liberty Trust Company, that these papers have been in their possession—

40 Q By what officers? A By Mr. Kautzmann— have been in the possession of the Liberty Trust Company since the granting of the loan to Mabel Daly, in August or September, 1913.

Frank Schwarzwaelder, direct.

Q But you only know that because of what Mr. Kautzmann told you? A Yes, I had no connection with the Liberty Trust Company prior to September, 1914.

FRANK SCHWARZWAELDER, sworn for defendants, Schwarzwaelder and others.

10

Direct examination by Mr. Kahrs.

Q Where do you live? A Murray Hill, New Jersey.

Q What business are you in? A Manufacturer of leather.

Q You are one of the directors and officers of the Sterling Leather Works? A The president.

Q And one of the directors? A Yes, sir.

Q That is a corporation of New Jersey. A Yes.

20

Q Having its principal office where? A 329-341 Frelinghuysen avenue, Newark.

Q How long have you been associated with the Sterling Works? A Since its incorporation December 1904—the fall of 1904.

Q Did you know Mr. William Ronan during his lifetime? A Ycs.

Q What business was he in? A Director and treasurer of the Sterling Leather Works until the time of his death.

30

Q And for how long previous to that? A From the time of the incorporation until his death; he died in 1907.

Mr. Kahrs. I offer in evidence certified copy of the will of William Ronan, bearing date November 22, 1906, probated in the office of the Surrogate of Essex County.

Mr. Slingerland. I object to the admission of this document in evidence on the

40

Frank Schwarzwaelder, direct.

ground that it is immaterial, irrelevant and incompetent.

(Marked Exhibit D 1, Schwarzwaelder and others.)

10 Q You are one of the executors under the will of William Ronan, deceased? A Yes, sir.

Q Who is the other executor? A Roland D. Crocker.

Q Do you recall when you qualified as executor of that estate? A It was shortly after that—somewhere in April or May, 1907; it might have been a little earlier; it was shortly after his death; he died in February, 1907, and it was between February and May—I don't recall the exact date.

20 *Mr. Kahrs.* It is admitted that the Sterling Leather Works is now the owner of the equity of redemption embraced in these mortgages marked Exhibits D. 3, D. 4?

Mr. Slingerland. Yes.

Q I show you a bond and two mortgages offered in evidence at the last hearing, marked Exhibits D. 2, D. 3 and D. 4, and ask you if you ever saw these papers before?

30 *Mr. Slingerland.* I object to the question on the ground that it is immaterial, irrelevant and incompetent.

A Yes sir.

Q When did you first see them? A After the death of Mr. Ronan, at the time of the taking of the inventory of his effects.

40 *Mr. Slingerland.* Objected to and to all questions respecting the witness's knowledge of the bond and mortgages for the same reason.

Frank Schwarzwaelder, direct.

Q Taking inventory as executor of his estate, you mean? A Yes, there were two appraisers and the executors.

Q Did the Sterling Leather Works at any time pay interest on that bond and those mortgages? A Yes, sir.

Q To whom? A Prior to Ronan we paid it to Dr. Baker as administrator, and afterwards to the estate of William Ronan. 10

Q I show you a voucher of the Sterling Leather Works, bearing date July 1, 1905, drawn on the West Side Trust Company, to the order of Dr. Walter S. Baker, administrator, for \$42, signed by you as president; William Ronan treasurer, and endorsed "Dr. Walter S. Baker administrator", and ask you if that was drawn by the Sterling Leather Works? A Yes, sir. 20

Q And to whose order. A Dr. Walter S. Baker.

Q What was that check given for?

Mr. Slingerland. I object to this entire line of testimony respecting the payment of interest, and ask that my objection may apply to all testimony along that line.

Mr. Kahrs. That is satisfactory.

A Interest on the mortgage of \$1,400. 30

Q Interest on the mortgage in question in this suit? A Yes, sir.

Q Thereafter did the Sterling Leather Works pay interest on this mortgage? A Yes, sir.

Q To whom? A To the estate of William Ronan.

Q From what time, do you recall? A I think it was the spring of 1907, May or June, I forget now. 40

Frank Schwarzwaelder, direct.

Q Until what time did the Sterling Leather Works pay interest to the estate of William Ronan? A November, 1914, I think was the last we paid.

10 Q I show you ten vouchers of the Sterling Leather Works, Numbers 1192, 1708, 2018, 3223, 2192, 4297, 4598, 4878, 5190 and 5518, all drawn on the West Side Trust Company, to the order of the estate of William Ronan, and ask you if you can tell us what those checks were given for?

Mr. Slingerland. Same objection.

A Yes, sir, they are drawn for the payment of interest to the William Ronan estate, on the mortgage in question for \$1,400.

20 *Mr. Kahrs.* I offer those ten vouchers in evidence, and also the check to Dr. Walter S. Baker.

(Marked Exhibits D. 2, D. 3, D. 4, D. 5, D. 6, D. 7, D. 8, D. 9, D. 10, D. 11 and D. 12, Schwarzwaelder and others.)

Mr. Slingerland. I object to the admission for the same reason.

30 Q From the date of the payment of the interest to Dr. Walter S. Baker, administrator, up until the time of the date of the first check offered in evidence, drawn to the estate of William Ronan, did the Sterling Leather Works pay any interest on account of this bond and these mortgages in question? A Yes.

Q To whom? A To Mr. Ronan.

Q Was the interest paid regularly? A Yes, sir.

40 Q Was the interest rate ever reduced on that bond? A Yes, sir.

Frank Schwarzwaelder, direct.

Q At what time and from what rate to what rate? A When Mrs. Butler died and Dr. Walter Baker wanted to close the estate, he called in the mortgage and they were paying six per cent., and Mr. Ronan asked me whether he couldn't take that mortgage, that he had a little money, and that he would leave it with the company, at five per cent., and that we had to go to the bank and borrow at six per cent., and we could make the one per cent., and I said we would take the mortgage, and we have paid interest on it ever since. 10

Mr. Slingerland. I move to have the answer stricken out as hearsay.

Q It was at that time, was it, that Mr. Ronan purchased the mortgage? A Yes, sir. 20

Q From whom did he purchase it? A From Dr. Baker.

Mr. Slingerland. I object to the question as immaterial, irrelevant and incompetent.

Mr. Kahrs. I would like to have it noted that the objection is made after the question is answered. Have you any other objections, than that it is immaterial, irrelevant and incompetent; otherwise, it can be understood on the record that the entire examination is objected to on those three grounds. 30

Q Where did you see this bond and these mortgages on the occasion you just referred to? A At Roland D. Crocker's office.

Q And where is his office? A 776 Broad street, Newark, New Jersey.

Q Is Mr. Crocker now acting as executor of this Ronan estate? A No, sir. 40

Frank Schwarzwaelder, direct.

Q When did he cease to act? A We filed some sort of a petition to have him removed, shortly after he left, somewhere in the—

Q And he was removed as executor? A Yes.

10 Q About what time? A Either in the fall of 1914 or early in the spring of 1915, I don't quite recall the date; it was at the suggestion of Judge Henry that we thought it best to do that.

Q Going back to the time in Mr. Crocker's office, when you saw these documents, you say that was when you were preparing your inventory? A Yes.

Q And in whose possession were they? A Roland D. Crocker's.

20 Q When was that? A That was in 1907.

Q Did you see any other papers relating to this bond and these mortgages? A There was an assignment of a mortgage from Dr. Baker to William Ronan.

Q Do you know where that assignment is at the present time? A No, sir.

Q Did it come into your possession as executor after Mr. Crocker was removed as co-executor? A No, sir.

30 Q Did you make any search for the same? A Yes, sir.

Q Will you tell me where you searched? A When we learned that Mr. Crocker had left town—I think it was on a Friday morning in September, the 13th or 14th, I went up to the office—we had a number of other papers there—and when I reached there the office was full of people there taking papers out.

40 Q Most of them from the Liberty Trust Company? A Yes, sir.

Frank Schwarzwaelder, direct.

Q What did you? A I tried to get access to the safe, but Mr. Slingerland told me at that time that the sheriff had possession of it then, that I couldn't take anything out until the matter was adjusted, and I never got permission to make that search; that is, Judge Henry finally went there and he got a few of the papers that remained there. 10

Q Did you personally ever make any further search? A At Judge MacMahon's office.

Q Did you personally make a search at Judge MacMahon's office? A In that way, he said what Mr. Bernhard had there, he would turn all the papers he had there over to Judge Henry.

Q That is the extent of your personal search?
A Yes, sir. 20

It is admitted that a complete and thorough search was made in the office of Roland D. Crocker, and further among the papers of Roland D. Crocker in the office of Cecil MacMahon, who was appointed trustee in bankruptcy of Roland D. Crocker and took over his assets; in every place where the assignment heretofore described would properly be, and that such search does not disclose such an assignment, the search being made on behalf of Frank J. Schwarzwaelder, as executor of the estate of William Ronan; the examination having been made by Judge Thomas S. Henry, Cecil H. MacMahon, John A. Bernhard, J. Henry Hennigan and Thomas J. Lintott. 30

Q Will you describe that assignment to William Ronan of this mortgage, which you saw first at the time you made an inventory of his estate? A In what way? 40

Frank Schwarzwaelder, direct.

Q Its physical appearance, from whom to whom, and the date, and anything else, just as if you were describing a paper fully. A I don't know as I can remember the date fully, but I examined all the papers at that time, and among those were this bond and the assignment
 10 of Dr. Baker to William Ronan for \$1,400, bearing interest at five per cent.

Q You don't recall the exact date? A No, sir.

Q Was that with this bond and these mortgage? A Yes, sir.

Q By whom was it executed? A It was signed by Dr. Baker as administrator.

Q And was it acknowledged? A Yes, sir.

Q Before whom? A Roland D. Crocker.

20 Q Do you recall the date of the acknowledgment? A I do not, no, sir.

Q Did that assignment appear to have been recorded? A Yes, sir.

Q How do you know that? A The papers in general all bore the stamp of record that we looked over.

Q Did you examine this assignment specially? A Not especially; we examined them all.

30 Q Do you know whether this assignment appeared to have been recorded? A Yes, it had the register's endorsement.

Q Did you ever see the bond and mortgage and this assignment that you described, on any other occasion? A Yes, sir, when we made the first accounting, I think it was in 1909.

Q Was it the same assignment that you saw at the time of making the inventory? A Yes, sir.

40 Q During all of that time in whose possession was it? A Mr. Roland D. Crocker's.

Frank Schwarzwaelder, direct.

Q Did you exercise any control over it? A No, sir, no more than we were co-executors.

Q You left it with your co-executor? A Yes, sir, Mr. Crocker.

Q Were these mortgages and this bond and that assignment in the same condition when you saw them the second time? A Yes, sir. 10

Q Mr. Schwarzwaelder, were any demands ever made upon you, on behalf of the Sterling Leather Works, or on the Sterling Works, for the payment of interest on this bond, to any body except the executors of the estate of William Ronan? A Never.

Q Had you ever received any notice that the bond and mortgages were claimed to be owned by the Liberty Trust Company? A Yes, sir.

Q When? A November, 1914. 20

Q But not prior to that? A No, sir.

Q Did you ever receive notice that the bond and mortgage was alleged to have been assigned to either Mabel Daly or William H. Daly or George W. Clark?

Mr. Slingerland. Objected to as immaterial, irrelevant and incompetent.

A No, sir.

It is admitted, subject to objection by Mr. Slingerland as to the competency, relevancy and materiality of the same, and providing the court considers the offer proper, waiving the production of the original inventory or certified copy of the same, that the inventory filed by the executors of the estate of William Ronan, bearing date May 16, 1907, contains among other assets, the bond and mortgage "F. L. and Franklin L. Meyer, \$1,400." 30 40

Frank Schwarzwaelder, cross.

Q Can you give us the date when you last saw this bond, these mortgages and that assignment in the office of Roland D. Crocker? I refer to the time you prepared the account. A It was in 1909, when we prepared the account; that is the last time I saw them.

10 Q As sole acting executor of the estate of William Ronan, and Trustee, do you claim this bond and these mortgages? A Yes, sir.

Cross examination by Mr. Slingerland.

Q Did you assist in preparing that account as you have testified about in 1909? A I checked it off; Mr. Crocker prepared it and we checked off the papers and the accountings, to verify his statement.

20 Q Did you examine every paper? A Every paper, yes, sir.

Q Won't you describe for us a little more fully the appearance of that document which you have spoken about; was it typewritten? A I think it was; I am not positive about that, but I think it was. As a rule, that was the way Crocker made all his assignments.

30 Q You don't know whether that was typewritten or written in longhand? A No, not positively I wouldn't .

Q Did you notice how the name of the alleged assignor was set forth in the assignment? A In what way?

Q How was his name set out, the assignor, at the beginning of the instrument? A I don't recall that.

Q Do you remember whether the name of the assignee was filled in? A Who is he?

40 Q The man who bought it? A William Ronan?

Frank Schwarzwaelder, cross.

Q If he was the assignee, was his name filled in? A Yes, sir.

Q In typewriting or in longhand? A It was the same as the rest of the instrument.

Q How do you remember that his name was filled in; what makes you remember that? A Because I knew positively, not only that the mortgage and assignment existed, but also the fact that I saw it, that it was there. 10

Q Did you look inside of the paper? A That is, just opened it up, and I didn't read it all through.

Q You are sure you read the name of the assignee? A The person—the one from whom it was bought and transferred.

Q And yet you cannot remember whether that was typewritten or in longhand? A No. There were a number of other papers and most of them were typewritten. 20

Q Were there other assignments among those papers—among the assets of this Ronan estate? A Odds and ends.

Q There were assignments? A Yes.

Q Do you remember the names of some of those assignees? A I think one was a Clancey mortgage. 30

Q Assigned to whom? A I forget the name of the person—to Ronan; it was an odd name.

Q That was also assigned to Ronan, was it? A Yes, sir.

Q You saw that assignment? A Yes, sir.

Q I think you testified that you don't recall whether the date was filled in this alleged assignment? A The date was filled in, but I don't recall the date.

Q You are sure it was filled in? A Yes. 40

Frank Schwarzwaelder, cross.

Q Typewritten or longhand? A It all appeared to be either writing or typewriting, whichever the assignment.

Q Did the assignment say inside what mortgages were assigned? A It did, but I don't know as I read it.

10 Q So you don't know whether as a matter of fact it assigned these two mortgages or not? A Yes, I do.

Q How do you know that? A Because I was with Ronan at Mr. Crocker's office when this assignment was made.

Q You were at Mr. Crocker's office when this assignment was made? A Yes, when Mr. Ronan went up there.

20 Q Was Mr. Baker there? A No, he wasn't there at the time.

Q How could it be made without Mr. Baker being there? A I suppose that was signed afterwards, but I went with Mr. Ronan to Mr. Crocker's office to arrange the assigning of this mortgage, after Mr. Baker demanded the money, to Mr. Ronan.

30 Q You didn't read all that assignment, did you? A I don't recall; I wouldn't say positively.

Q You simply assume that it had assigned these mortgages? A In a measure.

Q You don't remember that it did not? A Not at the time when it was made, no, sir.

Q Did you notice the back of it; was it folded up? A When?

Q At the time you saw it. A When it first was made, no, then it was flat.

40 Q Did you look at the back of it, the endorsement? A I don't recall that.

Frank Schwarzwaelder, cross.

Q The second time, did you look at the back of it? A That was when we made the inventory then it was folded.

Q The second time wasn't when you made the inventory? A The second time I saw it.

Q I thought the first time you saw it was when you made the inventory? A That was at the time after the execution, but prior to that Mr. Ronan was at Crocker's office and Crocker was preparing the assignment for Mr. Ronan. 10

Q You were there? A Yes, sir.

Q Did you read it at that time? A No, sir.

Q The first time that you saw it after Mr. Ronan's death was when you made the inventory? A Yes, sir.

Q Was it flat then? A No, folded.

Q Did you look at the back? A I don't remember. 20

Q The second time you saw it was when? A When we made the first accounting, in 1909.

Q It was folded then? A Yes, sir.

Q You opened it up? A I don't think I opened it up, not the second time; no, sir, I merely looked at the face of it then.

Q You looked at the back of it the second time? A I might have looked at the back; I probably did. 30

Q You don't know whether you did or not? A I couldn't help seeing it, in turning it over.

Q How do you know that it bore the register's mark? A You could plainly see that.

Q Where was that mark? A On the face of it.

Q What do you mean by "the face of it?" A The front, and giving the date and hour.

Q You mean the endorsement, the paper was folded up? A Yes. 40

Frank Schwarzwaelder, cross.

Q Where did this register's mark appear that you speak of? A It must have appeared on the outside, whether it was on the front or back, I don't recall.

Q You don't remember? A No.

10 Q Do you remember the name of the register? A I do not just now; I don't know as I paid attention to that.

Q You don't remember that the register's stamp was on there at all? A Yes, sir, I do.

Q Were there spaces in the stamp filled in? A Yes, sir.

Q Typewriting or longhand? A I think that was written.

Q Do you remember the name of the register? A I do not.

20 Q Do you remember the date when it was said to be recorded? A I don't recall it, no, sir.

Q Was it at the top or bottom of the page? A I am not sure; I think it was the bottom; I am not positive about that.

Q Your recollection is not very clear about that? A Yes, it is clear enough to see the register mark on it, wherever he put it; it was on that paper.

30 Q This was shortly after Mr. Ronan's death, was it? A Yes, sir.

Q Did you notice the date when it was recorded? A I do not, not now.

Q You say this bond and mortgage were purchased by Mr. Ronan? A Yes, sir.

Q When, do you remember? A I forget now whether it was in 1905 or 1906; I am not quite sure about that; it is either 1905 or 1906.

40 Q Mr. Ronan died in 1907? A Yes, in February, 1907.

Frank Schwarzwaelder, cross.

Q Can you tell us whether that stamp of the register, which you say was on that paper, showed that the instrument had been recorded during Mr. Ronan's lifetime or after his death?

A During his lifetime.

Q You are sure of that? A Yes.

Q What was the date? A I don't recall the date. 10

Q How do you know it was during his lifetime? A Because from general observation I imagine it was so.

Q In fact you are imagining this whole thing?

A No, sir. If I knew that I had to go to work and keep track of these dates, I would have had them down, you can gamble on that all right; if everything on my mind was as clear as the Ronan mortgage, it would be all right. 20

Q Was the signature to the Ronan assignment witnessed? A It was acknowledged before Roland D. Crocker.

Q Was it witnessed? A I don't remember.

Q You say it was acknowledged? A Yes, sir. When I look at those papers, what I look at is, from whom it is made, by whom acknowledged, and the signature, I principally looked at when I examine papers, and these parties were all there. 30

Q You look at the name of the maker and the name of the man who is buying it? A Yes, sir.

Q And the acknowledgement and the date? A Yes, sir.

Q Did you do that in this case? A Yes, sir.

Q How do you know you did? A It was my business to do it.

Q But did you do it? A Yes, sir.

Q In this case? A Yes, sir, in all cases. Not only this, but all cases. 40

Frank Schwarzwaelder, cross.

Q You had other papers there to do the same thing with? A Yes, sir.

Q That was in 1909, the last time that you saw this paper? A Yes, when we made the first accounting.

10 Q Did you ever see it again? A Since then, no, sir.

Q Where did you keep the assets of the Ronan estate? A At Mr. Crocker's office.

20 Q And you never investigated to see whether the assets were there from 1909 to the present time, or until Crocker went away? A No, sir, I wouldn't say that; I was after Crocker for several years, I was led to believe that this accounting that it was said wasn't filed, was filed, and I was after him to make another accounting, and I have letters to show that he told me that the estate isn't very large and the law does not require the executors to make an accounting again in five years, but I insisted that he should have an accounting, and he put me off and said he was busy.

Q Did you ever go to the surrogate's office to see if this account was filed? A No, sir.

Q You took Crocker's word for everything? A No, sir, I didn't.

30 Q What did you do; did you investigate on your own account? A He was the attorney; at the same time he had Mr. Pennington as an attorney he handed in a bill making the proper arrangement of some six hundred and odd dollars, and I imagined the account was all right.

Q You took Crocker's word for it? A Mr. Pennington's also.

40 Q Was Mr. Pennington representing the Ronan estate? A Mr. Crocker told me that he being the executor, it wasn't proper for him to

Frank Schwarzwaelder, cross.

prepare the account, and that he had engaged Mr. Pennington. Mr. Pennington put in a bill for some six hundred and some odd dollars for preparing the statement, and was paid, I imagine, for that.

Q Crocker attended to the whole thing? A I found that out since, but I didn't know it at that time. 10

Q Did you ever ask Mr. Crocker to let you see the assets of the estate since 1909? A No.

Q Never bothered to do that? A No, I never questioned but what they were all there.

Q How do you know that the interest on this bond and mortgage was paid to Mr. Ronan during his lifetime? A It was deposited in his account to the estate of William Ronan.

Q You haven't any voucher showing that? 20

Mr. Kahrs. The question related to during Mr. Ronan's lifetime.

A No, sir.

Q How do you know the interest was paid to him? A It was about the time we started business and Mr. Ronan in paying in his share to the estate, that is, to the business, wasn't able to pay it in all at once, and when we adjusted it afterwards, the interest was due him there for a short period of time—I think only six months, but it was adjusted in the settlement of the moneys advanced in the meantime to offset this interest on this mortgage for the first payment. 30

Q You and he were both officers of the Sterling Leather Works? A Yes, sir; he was treasurer.

Q And you and Crocker were executors of Mr. Ronan's estate? A Yes, sir. 40

Frank Schwarzwaelder, re-direct.

Q Going back to this alleged assignment, how was it signed? A The assignment to Ronan, Dr. Baker.

Q How did he sign his name? A That is pretty hard for me to tell positively; it is Walter S. Baker, anyhow.

10 Q Anything else? A I don't recall it now, but "Administrator" I think was on the back of it.

Q On the back of the paper? A At the signing on the bottom; I don't know if he had "Dr." or Walter S. Baker; I remember it was Walter S. Baker, Administrator.

Q Did it say administrator of what estate? A Yes, I think it was Mary Butler.

20 Q Did it say that on the paper? A I think it did.

Q You are not sure about that? A Not positive, but I am quite sure it was.

Q It was acknowledged before whom? A Roland D. Crocker.

Q In what capacity, do you remember, did Crocker take that acknowledgment, as what officer? A Master in Chancery, I think it was.

Q Are you sure about it? A I am quite positive.

30 Q Isn't it a fact that you are simply guessing at that? A If I did, I wouldn't say so. There is no guessing about it.

Q Do you remember distinctly that his name appeared there as Master in Chancery? A Not positively; he had a title there.

Re-direct by Mr. Kahrs.

40 Q Mr. Schwarzwaelder, was the assignment that you saw prepared in Mr. Crocker's office by him at the time of the purchase of this bond and

Frank Schwarzwaelder, re-cross.

mortgage by Mr. Ronan, the same instrument that you saw subsequently on two occasions?

A Yes, sir.

Q On the two occasions referred to? A Yes, sir.

Q Was it a printed form filled in in typewriting or longhand, or was it all in typewriting? 10

A It occurs to me it was all in typewriting.

Q You have referred to the front of it and to the back of it; what do you mean by the front of it? A In folding it up, when you open it up, the double fold comes on the front; there is some writing on the face of that.

Q That is what you call the front? A Yes, sir.

Q What would you call the back of it? A Where the fold—that is what I call the front 20 (indicating the usual endorsement on the outside), and by the back I mean the blank sheet.

Re-cross by Mr. Slingerland.

Q You say that the assignment that was prepared in Crocker's office at the time of the alleged purchase was the same that you saw afterwards? A Yes, sir.

Q I thought you didn't read that when it was prepared? A I said only the names. 30

Q You said you didn't read it at all.

Mr. Kahrs. I object to the question.

Q Did you read it at the time it was prepared? A Not entirely; I only looked at the names mentioned in the instrument; that is, from Dr. Baker to William Ronan.

Q You saw that when? A When it was lying on Mr. Crocker's desk.

Q At the time of its preparation? A Yes. 40

Q It was typewritten? A Yes.

Frank Schwarzwaelder, re-cross.

Q All filled in? A It wasn't signed or no dates to it; it was merely setting forth what the assignment was for; it was the assigning of these mortgages.

10 Q How do you know that that was the same instrument that you saw later? A It was the same instrument in every form and shape that I saw afterwards.

Q Simply because the names were there?
A Yes, sir.

Q There might have been another paper drawn with the same names in it? A It wouldn't be possible.

Q You don't know whether that paper that was drawn that day was ever executed, do you?

20 A That I don't know; I don't know as it made any difference, because it wasn't signed.

Q (*By Mr. Kahrs.*) Did the paper that you saw on all three occasions appear to be the same paper? A Yes, sir.

Q Even the front of it, as you call it? A No, the front wasn't the same, because I don't know as I examined the front the first time. Mr. Crocker merely read this thing to Mr. Ronan.

Adjourned to a day to be fixed.

30

40

Gottlob Kautzmann, direct.

Continuation of testimony in the foregoing cause, taken before Nicholas W. Bindseil, a Special Master in Chancery, at the office of Messrs. Lintott, Kahrs & Young, National State Bank Building, Newark, New Jersey, on Thursday, November 4th, 1915, at 10 A. M., in the presence of Mr. Joseph Kahrs for defendant, Frank Schwarzwaelder, executor, &c., and others, and Mr. Archibald F. Slingerland for Liberty Trust Company.

GOTTLOB KAUTZMANN, recalled in rebuttal for Liberty Trust Company.

Direct examination by Mr. Slingerland.

Q Mr. Kautzmann, referring to the collateral loan book which you referred to in your previous examination, can you tell us from the entry of this Mabel Daly loan in that book whether any interest was paid to the Liberty Trust Company on this collateral loan? A Yes.

Q From what date to what date? A According to the records here, from October 1st, 1913, to August 14, 1914; that is, when they were paid, but the interest was paid to July 1st, 1914.

Q Will you read the entries in the collateral loan book referring to this Mabel Daly loan?

A (Reading):

DEMAND		MABEL DALY		MADE SEPT. 4, 1913		
Date	Borrower	Amt. of Loan	Rate	No. Shares	Collateral Rate	Total
Sept. 4, 1913	Mabel Daly	2500	6%	Bond—Frederick F. Meyer to Mary P. Butler, May 1, 1897		1400
				Mort.—Franklin L. Meyer to Mary P. Butler, May 1, 1897		
				Mort.—Frederick F. Meyer to Mary P. Butler, May 1, 1897		
Oct. 1, 1913	Int. Paid to	Oct. 1/13	\$12.50	Appraisal Cert.—Aug. 25/13		
Nov. 1, 1913	"	Nov. 1	12.92	R. D. Crocker, J. W.		
Dec. 1, 1913	"	Dec. 1	12.50	Phillips, Wm. Pennington		
Jan. 2, 1914	"	Jan. 1/14	12.92	Assignment & Policy of Prudential Ins. Co. #645397		5000
Apr. 1, 1914	"	Apr. 1	37.50	Assignment & Policy of Prudential Ins. Co. #861370		5000
Aug. 14, 1914	"	July 1	37.92	Abstract of Title of Franklin L. & Fred. F. Meyer.		
				Assignment of Mort.—Mabel Daly to Liberty Trust Company		2500

Gottlob Kautzmann, cross.

Mr. Slingerland. I offer in evidence page 71 of the collateral loan book of the Liberty Trust Company just read into the record by the witness.

(Marked Exhibit D. 11, L. T. Co.)

10 *Cross examination* by Mr. Kahrs.

Q You only know that this interest was paid by virtue of what you see in this book, is that so? A No, our receipts daily must correspond,

Q When did you become president of the bank? A On December 1, 1914.

Q In whose handwriting are these entries? A Those are in the handwriting of Mr. Watson.

Q He was formerly connected with the bank? A Yes.

Q Did you see these entries made? A No.

Q Do you know who paid these interest payments? A I assume that they were paid by Mabel Daly.

Q If you know? A No, I do not know.

Q When you say that you assume they were paid by Mabel Daly, it is only because they were entered in this account of hers? A Because it was paid on her loan.

30 Q But the payments may have been made by someone else? A Yes.

Q Did you ever see Mabel Daly at the bank? A I never did.

Q Did she have any account at your bank except this one? A I don't know; I am not sure.

Q Have you ever made any investigation to find out? A I am trying to strain my recollection with that; I think I made a statement at my last examination that she did have an account there, but I had this loan in mind, and I have

40

William Pennington, direct.

since made an examination and I find she has no checking account, bank account.

Q And there is no other account on any of the books of the Liberty Trust Company with Mabel Daly except this account, isn't that so?

A There are other loan matters, mortgage loans. 10

Q Only mortgage loans? A Yes.

Q And no checking account? A No.

Q And no deposit account of any kind? A I am quite sure there is not.

Q Do you recollect when any of these interest payments were made? A I was a director at the time and that would not be called to the attention of the board unless there was past due interest.

Q Do you recall them? A I do not. 20

WILLIAM PENNINGTON, recalled for defendants, Schwarzwaelder and others.

Direct examination by Mr. Kahrs.

Q I show you a check of the Liberty Trust Company to your order as attorney, bearing date September 4, 1913, for \$2,500, and endorsed for deposit only William Pennington, Attorney; I ask you now whether that is your signature on the back of the check? A It looks like it; I believe it is. 30

Q Do you recollect receiving this check? A I cannot recall the circumstances of receiving it; I see the check there and that is my signature.

Q From the fact that it is endorsed that way, what would you say you did with it after receiving it? A That would indicate that it was deposited.

Q In what account? A Attorney account, according to that. 40

William Pennington, direct.

Q You had an attorney account, did you?

A I kept an attorney account.

Q In what bank? A In the Newark Trust Company.

Q Have you still that account in the Newark Trust Company? A No.

10 Q When did you discontinue it? A Some-time ago, I cannot say.

Q About how long ago? A It must be four or five months ago.

Q Up to that time you had this same attorney account in the Newark Trust Company?

A Oh, yes, I had an attorney account.

Q There has been offered in evidence and marked Exhibit D. 10 your check on your attorney account in the Newark Trust Company to
20 Mabel Daly for \$8,500, bearing date September 4, 1913, and endorsed Mabel Daly, and following that signature is your endorsement of William Pennington as attorney; do you recollect what you did with this check after it was endorsed by Mabel Daly? A I cannot recollect the circumstances or anything about it, except that I presume it was deposited; I don't know.

Q Would the fact that it was endorsed by
30 you indicate that it was deposited again in your attorney account? A That would seem to be an ordinary endorsement.

Q Where is your stub of this account? A I suppose it would be in my check books; I have so many books it is rather difficult to go through them, there are so many of them.

Q Have you your check book and vouchers of your attorney account as of the time around September 4, 1913? A I am not sure that I have. The books are not in very good order;
40 they are not kept very regularly; I had a way

William Pennington, direct.

of disposing of some books after they had accumulated awhile.

Q What was your way of disposing of those books? A I used to tear up some of the books and throw them away.

Q Have you made any investigation to find out whether you destroyed this check book? A I have looked through my books for that stub; I cannot find the record of that. 10

Q You cannot? A No.

Q Did you keep any account of your deposits and your disbursements in your attorney account? A No, not other than what appeared on the other check books as I drew them out.

Q You kept no ledger? A No ledger and no account book.

Q Then you depended upon the entries in your stubs in order to keep account of your deposits? A I did. 20

Q Can't you think of any place where you could look where this book might be? A I have looked through my books, Mr. Kahrs, carefully; I did last summer, I think it was.

Q And you failed to find it? A I failed to find it. I have been through my books and I failed to find a record of that. 30

Q Do you recollect what was done with the \$8,500, the proceeds of this check? A It is very hard for me to remember way back to that date, September 4, 1913; I cannot remember as far back as that.

Q Do you recollect ever giving Mabel Daly any money? A My impression is that I did, but I cannot recall; it is so long ago, I cannot remember those things; so much has happened since. 40

William Pennington, cross.

Q Do you recollect giving Mr. Crocker any money as the proceeds of this check? A I cannot truly recall giving this to any one; I really cannot.

10 Q How do you account for the fact that after the payee of this check endorsed it you then again endorsed it as attorney? A I cannot account for that; I know one thing, I never received a penny of it; I know that perfectly well.

Q But you cannot account for your endorsement following her endorsement? A I cannot account for that endorsement.

Q Why; did you usually endorse a check after the payee had endorsed it? A Usually you mean? Usually would mean that I was endorsing it for myself.

20 Q You were not endorsing it for yourself in this case, were you? A No.

Q Whom were you endorsing it for? A I was endorsing it, I presume, for Mabel Daly.

Q For what reason? A I don't know; there are the facts; the papers show all that I know; I only know one thing, I am perfectly willing to state this to you, that personally I never saw a dollar of it; I cannot remember two years ago.

30 *Cross examination by Mr. Slingerland.*

Q What was your custom in endorsing checks for deposit in your account; how would you endorse them? A If I were going to endorse a check to my own account, it would be my name for deposit only; if attorney, "Attorney" after my name for deposit only.

40 Q Was it your invariable custom to put "For deposit only" on checks that you were depositing in either of your accounts? A I cannot

William Pennington, cross.

say that it was invariable; it was my general custom.

Q Might this endorsement on Exhibit D. 10 have been put there by you as a means of identification, as banks sometimes require? A Very possibly it might; I have done that before.

Q But you don't recollect this particular transaction? A I know that I as a rule write "For deposit only" when I deposit a check, though sometimes I have not done so, and yet the bank has taken my check and put it to my account. 10

Q I show you a deposit slip of the Newark Trust Company for the account of William Pennington, attorney, under date for September 4, 19 blank; is that your handwriting? A No.

Q Do you know whose it is? A That I do not know; I cannot tell. 20

Q Do you recall whether that deposit slip had anything to do with this Mabel Daly loan? A I think that it does. There is \$2,500 and \$6,000 here.

Q Can you say positively whether or not that had reference to this Mabel Daly loan? A I cannot say positively, because my memory don't serve me; I believe that it does. 30

Q I show you a check of the Liberty Trust Company to your order as attorney, under date of September 4, 1913, for \$2,500, and ask you whether by looking at that check your memory is refreshed with reference to the deposit slip? A This is a check for \$2,500 and this slip shows a deposit of \$2,500.

Q On the same date? A I believe this check is the check which is deposited there. 40

William Pennington, cross.

Q How is that check of the Liberty Trust Company signed? A By Warren C. Biggin and A. H. Watson, treasurer and president.

Q You are familiar with their signatures? A Yes.

10 Q And you believe those to be the genuine signatures of Mr. Biggin and Mr. Watson? A I do.

Q You know that Mr. Biggin was the treasurer of the Liberty Trust Company at that time? A He was at that time.

Q And Mr. Watson was the president? A At that time, yes, sir.

20 *Mr. Slingerland.* I offer in evidence for identification the check on the Liberty Trust Company, dated September 4, 1913, for \$2,500, to the order of William Pennington, attorney.

(Marked Exhibit D. 12 for identification L. T. Co.)

I also offer in evidence deposit slip dated September 4, 19—, for \$8,500.

(Marked Exhibit D. 13, L. T. Co.)

30 It is stipulated between the parties that the inventory filed in the office of the Surrogate of Essex County, in the matter of the estate of Mary P. Butler, shows among other assets a bond of Frederick F. Meyer and Franklin L. Meyer, dated May 1, 1897, due May 1, 1898, secured by mortgages, one by Frederick F. Meyer and wife and the other by Franklin L. Meyer and wife, dated May 1, 1897, and recorded in the register's office May 13, 1897, on a tract of land on Frelinghuysen avenue and Bound Creek, \$1,400.

Certificate of Special Master.

It is further stipulated that the final account filed in the matter of the estate of Mary P. Butler, deceased, in the office of the surrogate of Essex County in Book 49 M, page 166, and filed by Walter S. Baker and Mina A. Baker, executor and executrix, shows that the accountants charged themselves, among other things, as follows: June 1, 1905, with interest due May 1, on Fred F. Meyer mortgage, \$42; December 21, with interest due on mortgage of Fred F. Meyer and wife from May 1 to date, \$53.43. 10

It is further stipulated and agreed that said Walter S. Baker and Mina A. Baker, executor and executrix of the estate of Mary P. Butler, deceased, are now deceased.

It is stipulated between the parties that the records in the register's office of Essex County disclose no assignment being recorded from Walter S. Baker and Mina A. Baker, executor and executrix of Mary P. Butler, deceased, to William Ronan of the mortgages in suit. 20

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

I HEREBY CERTIFY that pursuant to an order of reference made by the Honorable John R. Emery, Vice-Chancellor, the foregoing testimony was taken before me as Special Master in Chancery, at the office of Messrs. Lintott, Kahrs & Young, National State Bank Building, Newark, New Jersey, on July 6th and 9th and November 4th, 1915, in the presence of Mr. Archibald F. Slingerland for defendant, Liberty Trust Company, and Mr. Joseph Kahrs for defendants, Frank Schwarzwaelder, executor &c., and others; that it was stipulated and agreed by and be- 30 40

Allan Howard Watson, direct.

tween the counsel for the respective parties that the testimony of the witnesses should be taken down in shorthand by me and afterwards reduced to typewriting, the signatures of the witnesses to their said testimony being waived, and I further certify that the foregoing is a true and
 10 correct transcript of my shorthand notes of the testimony of the witnesses given before me.

NICHOLAS W. BINDSEIL,
Special Master in Chancery of New Jersey.

Dated November 15, 1915.

IN CHANCERY OF NEW JERSEY.

20

Between

STERLING LEATHER WORKS,
Complainant,

and

LIBERTY TRUST COMPANY,
et al.,

Defendants.

30

Transcript of testimony of Allan Howard Watson, taken by consent, before Nicholas W. Bindseil, a Master in Chancery of New Jersey, at the office of the United States Fidelity & Guaranty Company, 47 Cedar Street, New York, on Thursday, November 11th, 1915, at three o'clock in the afternoon, in the presence of Mr. Archibald F. Slingerland for defendant, Liberty Trust Company, and Mr. Joseph Kahrs for defendant, Frank Schwarzwaelder, executor &c., and others.

40

It is stipulated and agreed by and between the counsel for the respective parties that the

Allan Howard Watson, direct.

testimony of the witness may be taken down in shorthand by the Master and afterwards reduced to typewriting, the signature of the witness to his said testimony being waived.

ALLAN HOWARD WATSON, sworn on behalf of Liberty Trust Company, testifies as follows: 10

Direct examination by Mr. Slingerland.

Q Where do you reside, Mr. Watson? A 1437 McCormick avenue, Woodhaven, New York.

Q You were at one time connected with the Liberty Trust Company, were you not? A I was.

Q In what capacity? A President of the company. 20

Q From what time to what time? A The latter part of 1912 to December 1, 1914.

Q Was it the practice of the Liberty Trust Company to make loans upon collateral? A Yes, sir.

Q Do you recall in or about the month of September, 1913, making a loan to one Mabel Daly? A I do.

Q Was there a record kept of these collateral loans? A There was. 30

Q I show you a book marked "Collateral Loans, Liberty Trust Company, Newark, N. J.," and ask you if that is the record of the collateral loans made by that company? A It is.

Q I show you page 71 of that book, which is marked Exhibit D. 11, and ask you if that is a record of this Mabel Daly loan? A It is.

Q Can you tell us, by referring to that record, what papers were received by the Liberty Trust Company at the time of that loan? 40

Allan Howard Watson, direct.

Mr. Kahrs. I object to it because it speaks for itself, and I do not think the witness should be permitted to refresh his recollection.

Mr. Slingerland. Question withdrawn.

10 Q I notice on this record the entry "Bond, Frederick F. Meyer to Mary P. Butler, May 1, 1897, \$1,400," and ask you what that means? A It means the company held the bond described on the register.

Q I show you Exhibit D. 3, L. T. Co., and ask you if that is the bond referred to in that entry?

A It is.

20 Q I notice an entry "Mort., Franklin L. Meyer to Mary P. Butler," and I show you Exhibit D. 2, L. T. Co., and ask you if that is the mortgage referred to? A It is.

Q I notice an entry, "Mort., Frederick F. Meyer to Mary P. Butler" and show you Exhibit D. 4, L. T. Co., and ask you if that is the mortgage referred to in that entry? A It is.

30 Q The next item appears to be, "Appraisal Cert., Aug. 25/13, R. D. Crocker, J. W. Phillips, Wm. Pennington"; I show you a paper which purports to bear the signature of R. D. Crocker, John W. Phillips and William Pennington, and ask you if that is the appraisal certificate referred to? A It is.

Q You are familiar with the signatures of R. D. Crocker, J. W. Phillips and William Pennington? A I am.

Q And are they the genuine signatures that are attached to that paper, of these gentlemen? A I should say they were; I should judge them so to be.

40 *Mr. Slingerland.* I offer that appraisal certificate in evidence.

Allan Howard Watson, direct.

Mr. Kahrs. I object to it on the ground that it is irrelevant, incompetent and immaterial.

(Marked Exhibit D. 13, L. T. Co.)

Q The next entry appears to be "Assignment & Policy of Prudential Ins. Co. #645397" and the following entry appears to be "Assignment & Policy of Prudential Ins. Co. #861370"; did you have those assignments at the bank? A We did. 10

Q Do you know what has become of them? A No, sir.

Q The next entry appears to be "Abstract of Title of Franklin L. & Fred F. Meyer"; I show you Exhibit D. 5, L. T. Co., and ask you if that is the abstract referred to? A Yes, sir, that is the one. 20

Q The next entry is "Assignment of Mort. Mabel Daly to Liberty Trust Company"; I show you Exhibit D. 9, L. T. Co., and ask you if that is the assignment referred to? A It is.

Q Upon what was this loan made by the Trust Company, what evidence of the indebtedness? A We held a note of Mabel Daly, dated September 4, for \$2,500, made payable on demand. 30

Q I show you Exhibit D. 1, L. T. Co., and ask you if that is the note which was given for this loan? A This is the note, as it bears my handwriting on the back of it, in the way of figures, number 71, to correspond with the page in the collateral loan register.

Q These papers that you have inspected you say were held by the Liberty Trust Company; when did you receive those papers? A On September 4, 1913. 40

Allan Howard Watson, direct.

Q Did they remain continuously in the possession of the Trust Company from that time on? A They did.

Q Until when, do you know? A Until the time I left.

Q And that was? A December 1st, 1914.

10 Q Do you know of your own knowledge that these papers were always at the bank? A Yes, sir.

Q I show you a check marked Exhibit D. 12, which appears to have been signed by A. H. Watson, President, and Warren C. Biggin, Treasurer, to the order of William Pennington, Attorney, under date of September 4, 1913, and ask you if that is the check that was given at the time of the making of this loan? A It was.

20 Q Is that your signature to that check? A That is my signature.

Q And you are familiar with the signature of Mr. Biggin? A Yes.

Q Is that his signature? A Yes, sir.

Q The amount of that check is how much? A \$2,500.

Q And you know that that is the check that was given for this particular loan? A Yes, sir.

30 Q Was any interest ever paid on this loan?

A Yes, sir, six different times, amounting to—

Q Interest was paid up to what time? A Up to July 1st, 1914.

Q Do you recall who paid that interest? A No, I do not. It is not customary to list on any note from whom interest was received.

Q Referring to the policies of insurance which are listed here among these entries, do you know what those policies were?

40 *Mr. Kahrs.* Objected to upon the ground that it is irrelevant and immaterial.

Allan Howard Watson, cross.

A These were insurance policies on the life of a man named Lederer, which were assigned to the bank by a man named George W. Clark.

Q Do you know whether there was ever any dispute as to the title to those insurance policies? A Yes, Mr. MacMahon, the receiver or trustee in bankruptcy of Roland D. Crocker, said he was going to make a claim against the company on the ground that they were not assigned to Mabel Daly, and held that they should have been assigned to the bank from her instead of George W. Clark. 10

Mr. Slingerland. I now offer in evidence Exhibit D. 12 for identification, being the check of the Liberty Trust Company to the order of William Pennington, Attorney, for \$2,500, dated September 4, 1913. 20

(Marked Exhibit D. 12, L. T. Co.)

Cross examination by Mr. Kahrs.

Q What is your occupation at the present time, Mr. Watson? A Bank auditing business.

Q In business for yourself? A No, with a firm of certified public accountants.

Q What firm? A Charles F. McWhorter & Co.

Q What is their address? A 120 Broadway. 30

Q How long have you been with that firm?

A Since about January of this year.

Q Did you hold any position between the time that you retired as president of the bank until you took this position? A No, sir.

Q Do you recall when you first became associated with the Liberty Trust Company? A Yes, in the year 1913.

Q What month? A I don't remember without looking back. 40

Allan Howard Watson, cross.

Q You don't remember whether it was 1912 or 1913? A 1912 it must have been.

Q Do you recall the month of that year? A I do not.

10 Q What office did you hold, if any, from the time you first became associated with that company? A Before the company opened I was elected treasurer.

Q You mean before the company started to do business? A Yes.

Q And did you hold the office of treasurer? A I didn't perform any acts pertaining to that office, no, sir.

Q How long did you officially of record hold the office of treasurer? A Possibly two or three weeks.

20 Q And after that did you hold any office in the company? A As president.

Q You became president at once? A Yes, sir.

Q And you continued until December, 1914? A Yes, sir.

Q You attended regularly at the bank? A Yes, sir.

30 Q In whose handwriting are these records, referring to page 71 of the register? A My own.

Q Did you make all of them? A Yes, sir.

Q Did you ever meet Mabel Daly? A No, sir.

Q Do you recall the circumstances when application was made for this loan? A Only in general.

40 Q Tell us what your recollection is. A That application was made before a meeting of the executive committee.

Allan Howard Watson, cross.

Q You were present? A At which I was present.

Q Who made the application? A Roland D. Crocker.

Q How did he make it, verbally or in writing? A Verbally, and an appraisal committee was appointed to investigate the securities offered. 10

Q Who offered the securities? A Mabel Daly.

Q At that meeting? A No, sir, no securities were present at that meeting.

Q Were any securities offered at that meeting? A Yes, mention was made of what the loan would be made on.

Q Mabel Daly present? A No, sir.

Q Why do you say she offered the security? A She probably offered them through her attorney. 20

Q As a matter of fact, Mr. Watson, who made the offer that day? A Roland D. Crocker.

Q He was a member of the executive board? A He was.

Q Do you recall what securities he offered? A Insurance policies and bonds and mortgages described in the register. 30

Q Do you recall that because your memory has been refreshed by looking at this page 71?

A I remember this because question was raised, at the time of the disappearance of Mr. Crocker, regarding the assignments.

Q How did that refresh your memory? A Because it was singular that the assignments from George W. Clark to the bank were questioned, whereas all stock transfers passed through third parties, hands and still held good. 40

Allan Howard Watson, cross.

and the fact that no question had been made of it by the banking department who examined the loan.

Q What else was said by Roland D. Crocker when application was made for the loan? A I don't recall.

10 Q You recall nothing else? A No, sir.

Q What time of the day was that meeting held? A Nine o'clock in the morning.

Q Why do you say that? A Because our meetings were always held at nine o'clock.

Q That is the only reason for saying that? A Yes.

Q Who were present at the meeting? A I cannot say.

20 Q Where was it held? A At the office of the company.

Q You say that because all your meetings were held there? A They were.

Q Then you don't know whether the entire board was present? A The minute book of the bank would show who was present.

Q But you don't recall? A I don't recall.

Q What was the next step in the making of this loan, as you recall it; not the usual custom, but your memory of what took place? A That

30 I was directed to send a check to our counsel's office for \$2,500 for the Mabel Daly loan.

Q That was the next thing you remember? A Yes.

Q Who directed you to send that check? A The chairman of the executive committee.

Q Who was that? A Roland D. Crocker.

Q At the meeting when the application was made by Roland D. Crocker did he present the insurance policies and this bond and mortgage?

40 A No, sir.

Allan Howard Watson, cross.

Q When did you first see these papers? A On September 4, 1913.

Q How did you happen to see them on that date? A When they were sent to the bank.

Q Who sent them to the bank? A Our counsel, William Pennington.

Q How do you know that he did that; who delivered them? A Our messenger. 10

Q Where did he get them from? A He got them at the office when he delivered the check.

Q At the office of your counsel? A I don't remember where he went; I was at the bank.

Q You mean to say that he took the check from the bank and brought back those papers? A Yes, sir.

Q Do you recall when he brought the papers back? A No, sir. 20

Q When did you first see them? A September 4.

Q Wasn't that the day he brought them back? A That is the day he brought them back; I don't remember when he came in.

Q Tell us when you first saw them? A On September 4.

Q Who delivered them to you? A My messenger.

Q What time of the day? A That I cannot say; I assume around eleven o'clock. 30

Q Then you know nothing of what transpired between the time of the making of the application of this loan by Roland D. Crocker and the date when Roland D. Crocker directed you to send a check to the counsel of your company? A No, sir.

Q You didn't attempt to pass on the value of these securities yourself? A No, sir, the appraisal committee did that. 40

Allan Howard Watson, cross.

Q Who made up the appraisal committee?

A William Pennington, John W. Phillips and Roland D. Crocker.

Q William Pennington was your counsel? A Yes.

Q And he was associated in offices with Roland D. Crocker? A No, he had a separate office.

Q Didn't they have adjoining law offices? A No, sir.

Q Who is John W. Phillips? A The man who had the lunch stores on Market street.

Q What other office did he hold in the bank? A None other than director.

Q You say you never saw Mabel Daly? A Not to my knowledge.

Q No woman representing herself as Mabel Daly ever appeared at the bank? A No, sir.

Q Did you make any investigation as to who Mabel Daly was when the application was made for this loan? A No, sir.

Q Make no inquiry at all? A No, sir.

Q You took Crocker's recommendation, if there was one? A The directors did.

Q Did you? A We took the recommendation of the appraisal committee, not Mr. Crocker's.

Q Who appointed the appraisal committee?

A I believe that the chairman of the committee did.

Q And that was Roland D. Crocker? A Yes.

Q When those papers were first called to your attention who had them, the messenger (referring to the bond and mortgages and policies if any); who had the physical possession of them? A My messenger.

Allan Howard Watson, cross.

Q Did he give them to you? A That I don't remember.

Q Did you have possession of them that day?

A Yes, sir.

Q Personally? A Yes, sir; there is my handwriting.

Q Is that the only way you can say you had physical possession? A Certainly. 10

Q What handwriting do you refer to? A The writing on page 71 of the collateral loan register.

Q That is the only reason that you have for saying that you received possession that day?

A No.

Q You don't recall the act, do you? A No, sir.

Q When did you next see these papers, referring to the bond and mortgages and assignments? A I may have seen them the next day. 20

Q Do you recall when you saw them again?

A No.

Q Do you recollect ever seeing them again?

A Certainly.

Q When? A Every time I balanced up the collateral loans.

Q What did you do then? A I checked up the loans held by the bank. 30

Q By checking up, what did you do? A Listing the loans on an adding machine and pasting the list in a book kept by the bank for that purpose.

Q Where did you get your information as to the loans? A From the loans themselves, the envelope enclosing the loans.

Q Did you attend to that personally? A Yes, sir.

Q All the time? A All the time. 40

Allan Howard Watson, cross.

Q Do you recall at any time when you checked up these collateral loans that you saw these papers? A I wouldn't open any envelope at the time of checking the loans, other than take the figures on the outside of the envelopes, as is customary.

10 Q Then that is all you did? A Yes, sir.

Q You didn't look into the contents of the envelope? A No, sir, not until an examination would occur by the directors.

Q When did you actually see these papers again, if you ever saw them again; and if you didn't, say so? A I cannot remember on what date.

Q Did you ever see them again? A Of course.

20 Q When? A I may have seen them the next month or may have seen them the next week.

Q But you don't recall, do you? A I cannot remember the date, no, because I would look at a loan whenever I felt like it.

Q Do you recall any day at all when you positively saw these papers again after they were delivered to you on September 4? A
30 Yes; I would recall the time of the examination by the department and also by the directors.

Q Do you recall seeing these papers when the department made the examination? A Yes, sir.

Q What date? A That I cannot tell.

Q Do you recall the date when the directors examined the papers? A No, sir.

Q You recall no date at all? A No, the records of the bank would show that.

Allan Howard Watson, cross.

Q You only say that because it was customary to examine the papers when those examinations were made? A It was.

Q Otherwise you have no memory regarding it? A No, sir; I wouldn't be opening the envelope after the papers were once put in; it would be unnecessary.

10

Q You cannot say that you would at any time open the envelopes which are supposed to contain these papers, except it was the custom to do it; you don't recall actually seeing them on any day? A I cannot remember any particular date, except I know the papers were there.

Q Where was that envelope kept? A In the vault with the money.

Q Who had access to that vault? A The treasurer and myself only.

20

Q Who was acting treasurer then? A Warren C. Biggin.

Q Didn't the chairman of the executive committee have access to the vault? A He did not.

Q Wasn't he ever in the vault? A No, sir.

Q You are positive about that? A The vault where these securities were kept was about eighteen inches deep and two feet wide.

Q That vault was contained in what other safe or receptacle? A In the safe which was enclosed in the outer shell of the vault.

30

Q How was this particular vault opened? A By a key held by the treasurer and myself.

Q Who gave you that key? A The safe people.

Q Did they deliver the key to you? A Yes, sir.

Q You say you do not recall who made the interest payments? A No, sir.

40

Allan Howard Watson, cross.

Q Who received the interest payments? A I don't know.

Q Did you? A I don't remember.

Q The entries are in your handwriting? A Yes, sir.

10 Q Wouldn't you receive them? A Not necessarily.

Q Or some of them? A Not necessarily.

Q You don't recall any of them? A No, sir.

Q Do you recall seeing any of the checks which were paid for these interest payments? A No, sir.

Q So your memory is a blank on that? A Yes, sir.

20 Q And except for this book, page 71, you would have no recollection of interest payments, would you? A That and the other proof sheets of the day would show the transaction.

Q Have you seen the proof sheets? A No, sir, but I know they are on there.

30 Q The only thing that makes you say that the interest payments were made on the dates given on this page is the fact that you have just looked at them? A Yes, sir; and I made the entries on those dates; I am not in the habit of making them on other days than the days of the receipt.

Q It is possible that Roland D. Crocker made the payments? A No, sir—well, that I cannot say.

Q You told us of something that Judge MacMahon, the receiver, said; did he say it to you? A Yes, sir.

Q When? A At the time after the disappearance of Mr. Crocker.

40 Q And the only thing he said was that he was going to make some claim? A Yes, sir.

Allan Howard Watson, cross.

Q You had nothing to do with the matters of the bank after that or at that time? A At that time I was still the president of the institution.

Q How long before you retired as president was that conversation held? A Possibly two months.

Q Was anything more done regarding this loan between the time of that conversation and the time that you retired? A Yes, sir; it was placed in the hands of our newly appointed counsel. 10

Q You placed it in his hands? A The chairman of our executive committee did.

Q And that was who? A Mr. Gottlob Kauzmann.

Q He succeeded Mr. Crocker? A He succeeded Mr. Crocker. 20

Q And that was after the disappearance of Mr. Crocker? A It was.

Q And it was after the bank had caused a search to be made in the office of Mr. Crocker? A The bank never caused a search to be made in the office of Mr. Crocker.

Q None at all? A No, sir.

Q You know that to be a fact? A Yes, sir.

Q Didn't you direct your newly appointed counsel to make a search of the office? A No, sir. 30

Q When this matter was turned over to the newly appointed attorney you did not see what papers were given to him? A Yes, sir.

Q Did you see the papers personally? A I would have to be the one that would deliver them to our chairman of the executive committee, as they were in my possession.

Q Do you recall delivering them to him? A Yes, sir. After the disappearance of Mr. Crocker. 40

Allan Howard Watson, cross.

er there was a natural alarm made at to the validity of all documents held by the company, and without exception these were turned over to our counsel for search and other action as he might deem necessary.

10 Q You mean to say you simply delivered the envelopes containing the various papers to the chairman of the executive committee? A With contents.

Q You didn't examine the contents? A Yes, sir; they would naturally be examined, or I wouldn't have received a receipt for them.

Q Do you recollect making an examination of the contents? A Yes, sir, an examination was made in my presence.

20 Q By whom? A Mr. Kautzmann, who gave me his receipt.

Q When you were directed to deliver a check to your counsel, or after you had delivered that check to the messenger who gave it to your counsel, did Mr. Crocker say anything at any time about this loan? A I haven't any recollection at this moment of any particular conversation.

30 Q Did you ever see that voucher after the time you delivered it to the messenger until today? A Yes, sir.

Q When? A When it was returned to the bank.

Q You recollect seeing it then? A Not any particular recollection, no, sir.

40 Q Who gave you the information which caused you to make these entries as to interest payments? A The check or money for the interest would be laid on the desk and before its disposition the entries would be made.

Allan Howard Watson, cross.

Q And who would lay the money or check on the desk? A Either our treasurer or messenger, whoever received the amount.

Q What effort did you make at the time of the application for the loan in order to satisfy yourself of the validity of these papers? A We sent a letter to the Prudential Insurance Company by my messenger, asking the value of the policies held and also for a copy of their assignment, which was sent to me, and after the papers were properly recorded they were put in the envelope. 10

Q Is that the only investigation you made? A That was sufficient.

Q You made no other investigation? A None other than I had a written letter of the Prudential Insurance Company regarding the value of them. 20

Q And in reference to the loan you made no other investigation? A No, because the appraisal committee had passed on the value of the other securities held.

Q How many collateral loans did the bank have in December, 1914? A I cannot tell you.

Q About? A I cannot tell you without reference to the book showing the proof sheet of the loans. 30

Q Had Roland D. Crocker made application for many of those loans? A All the bond and mortgage loans.

Q Any others? A Not many of the others.

Q But some of them? A Yes, some of them.

Q Was Mr. Crocker in attendance at the bank about every day? A No, sir.

Q How many days a week? A Usually only on the meeting day. 40

Allan Howard Watson, re-direct.

Q How often were the meetings held? A Once a week.

Q Do you know where Mabel Daly lived at that time? A I ascertained that she lived in Montclair somewhere and made a pencil notation on the register.

10 Q From whom did you ascertain that? A Through Roland D. Crocker.

Q You never tried to communicate with her in any way? A Yes, sir, I sent her interest notices every month.

Q To which she never personally responded? A No, sir.

Re-direct by Mr. Slingerland.

20 Q Can you recall how many times during the years 1913 and 1914 that the department made their examinations in the Liberty Trust Company? A Only once a year.

Q When was that, in the year 1913? A I cannot say what time of the year, but there is a record on the ledger.

Q Did they make examinations in 1913? A Yes, sir.

30 Q Do you know whether it was after the granting of this loan that they made their examination? A I cannot tell without reference to the general ledger.

Q Or in 1914? A No, sir.

Q When they made their examinations did you assist them in checking up the securities? A I was present when the securities were checked up to see that I received them back again.

40 Q Would it have been necessary to check up the securities in connection with this loan in order to have the department pass the Trust Company?

Allan Howard Watson, re-cross.

Mr. Kahrs. Objected to.

A It would.

Q Do you know whether there was any investigation made as to the validity of this bond and these mortgages at the time of the granting of the loan? You have spoken about the policies. A No, the committee took the abstract of title as being sufficient. 10

Q You had nothing personally to do with that? A No, sir.

Q Who directed you to send this check for \$2,500 to Mr. Pennington? A The chairman of the executive committee, Mr. Crocker.

Re-cross by Mr. Kahrs.

Q Did you attend at Mr. Crocker's office at any time after his disappearance? A Yes, I went down to see if he was there. 20

Q How many times did you go down? A That I don't know.

Q About? A That I cannot say, I have no recollection.

Q You cannot tell whether you went there once or twenty-five times? A No, sir.

Q Did you make examination of any of his papers in his office? A I think I went down and saw his clerk, to find out about some tax sale certificates at one time. 30

Q Did you at any time after his disappearance take any papers away from his office? A No, sir.

Q None at all? A No, sir.

Q Were any papers from his office delivered to you or to the bank after his disappearance? A Yes, sir.

Q What papers? A That I have no idea of; they were in the bundle turned over to Mr. MacMahon, the receiver. 40

Allan Howard Watson, re-direct—re-cross.

Q Those papers were all turned over to the receiver? A They were.

Q How do you know? A Receipt was taken for them.

Q Did you turn them over? A No, sir.

Q Do you know what papers they were?
10 A No, sir.

Q Then you don't know as a matter of fact whether any papers were turned over to the receiver? A No, not as a matter of fact.

Re-direct by Mr. Slingerland.

Q Do you know as a matter of fact that these papers in connection with this Mabel Daly loan were not secured at Crocker's office after his disappearance? A Yes, sir.

Q You are positive about that? A Absolutely.
20

Q They had always been at the bank? A Always been at the bank.

Q And were at the time of his disappearance? A They were.

Re-cross by Mr. Kahrs.

Q And your only reason for saying so is the one you gave before? A No.

Q What other reasons? A Because these
30 papers were none that there were ever any manipulations on; they were not made out by him and there were some that he had nothing whatever to do with.

Certificate of Master.

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

I HEREBY CERTIFY that the foregoing testimony of Allan Howard Watson was taken by consent before me as Master in Chancery of New Jersey, at the office of the United States Fidelity & Guaranty Company, 47 Cedar street, New York, on Thursday, November 11th, 1915, at three o'clock in the afternoon, in the presence of Mr. Archibald F. Slingerland for defendant, Liberty Trust Company, and Mr. Joseph Kahrs for defendants, Frank Schwarzwaelder, executor, &c., and others; that it was stipulated and agreed by and between the counsel for the respective parties, that the testimony of the witness should be taken down in shorthand by me and afterwards reduced to typewriting, the signature of the witness to his said testimony being waived, and I further certify that the foregoing is a true and correct transcript of my shorthand notes of the testimony of the witness given before me.

Dated November 15th, 1915.

NICHOLAS W. BINDSEIL,
Master in Chancery of New Jersey.

10

20

30

40

*Conclusions of Vice-Chancellor.***Conclusions of Vice-Chancellor Lane.**

Filed January 26, 1917.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>STERLING LEATHER WORKS, a corporation,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LIBERTY TRUST COMPANY, a corporation,</p> <p style="text-align: right;"><i>Defendant.</i></p>	<p><i>Conclusions.</i></p> <p><i>Not to be</i> <i>printed.</i></p> <p><i>On Bill of in-</i> <i>terpleader.</i></p>
----	---	--

20 Messrs. Lintott, Kahrs & Young, for S. Schwarzwaelder, Executor; Mr. Archibald Slingerland, for Liberty Trust Company.

Submitted Dec. 15, 1916. Decided Jan. 19, 1917.

LANE, V. C.

30 This is an interpleader suit brought by the Sterling Leather Works which was liable upon two mortgages, one made by Franklin L. Meyer, and the other by Frederick F. Meyer and wife, each to Mary P. Butler, each registered in the Register's office of Essex County upon the 13th day of May, 1897. The mortgages secured one debt, evidenced by a bond made by Frederick F. Meyer and Franklin F. Meyer to Mary P. Butler, dated May 1, 1897, for the sum of \$1,400. The money due has been paid in court and the dispute is as to the distribution of this fund.

40 The contentions of the parties may be briefly stated: The Liberty Trust Company claims the

Conclusions of Vice-Chancellor.

fund by virtue of its possession of the bond and mortgages from the second or third day of September, 1913, down to the time of the filing of the bill. It claims to have obtained title through a series of assignments, the first purporting to be made by Walter S. Baker and Minnie A. Baker, respectively, executor and executrix of the estate of Mary P. Butler, deceased, to William H. Daly, dated December 20, 1905, and recorded in the Register's office of Essex County upon the second day of September, 1913, the next purporting to have been made by William H. Daly to George W. Clark, dated the first day of August, 1913, and recorded on the second day of September, 1913, and next purporting to be made by George W. Clark to Mabel Daly, dated the first day of August, 1913, and recorded on the second day of September, 1913, the next purporting to be made by Mabel Daly to the Liberty Trust Company, dated the 15th day of August, 1913, and recorded on the 3rd day of September, 1913. The originals of the first three assignments have been lost or destroyed; they never were in the possession of the bank. The original assignment from Mabel Daly to the bank, and the original bond and the mortgages were in the possession of the bank from on or about the 3rd day of September, 1913, down to the time of the filing of the bill of complaint, and were taken by the bank as security for a loan made by the bank for the sum of \$2,500, ostensibly to Mabel Daly on her note, but really for the benefit of Crocker, who was at the time the chairman of the executive committee of the bank and apparently its controlling influence. There is sufficient due upon the Daly loan to exhaust the fund. Each of the assignments purported to be witnessed

10

20

30

40

Conclusions of Vice-Chancellor.

and acknowledged by and before Crocker. Schwerzwaelder as sole acting executor of the estate of Ronan claims the fund on the ground that on or about December, 1915, the bond and mortgages were purchased by Ronan for full consideration from the Butler executor and executrix to Ronan, that Crocker acted as attorney for Ronan and that the assignment together with the bond and mortgages, was left in his possession until the death of Ronan in February, 1907; that upon his death and probate of his will, Schwerzwaelder and Crocker qualified as executors; that the assignment and the bond and mortgages were still left with Crocker for safe keeping; that interest during the life of Ronan was paid or credited to him and that after his death interest was paid to his estate regularly down to the first of December, 1914, at about which time Crocker disappeared.

The assignment, if it existed, from the Baker estate to Ronan has been lost or destroyed. Crocker was removed shortly after his disappearance as executor and Schwerzwaelder has been since acting as sole executor.

The case has given me considerable concern. Any decree which can be made will result in a loss to one of two innocent parties. Counsel on each side has diligently endeavored to supply the Court with all the information that it is possible to obtain. Great difficulty arises because of the disappearance of Crocker and the death or removal of the representatives of the Butler estate and the consequent inability to obtain any evidence from these sources. The case was fully argued and elaborately briefed. Because of the conclusion to which I have arrived, it will, how-

Conclusions of Vice-Chancellor.

ever, be unnecessary to refer in detail to the numerous cases cited.

I find that the assignment from the Butler estate to Ronan did, in fact, exist and that the paper purporting to be an assignment from the Butler estate to Daly was a forgery.

Schwerzwaelder testifies that he participated in the negotiations which resulted in the purchase by Ronan of the bond and mortgages. Ronan was interested in the Sterling Leather Works, and the reason he took over the bond and mortgages was that the Butler estate demanded payment which the Sterling Leather Works at that time could not make. He says that about the time of this transaction which must have been in the latter part of 1905, he saw the assignment at Crocker's office; that after the death of Ronan he saw the assignment and the bond and mortgages in Crocker's possession when they were making an inventory of the estate. The inventory filed by Crocker and Schwerzwaelder as executors, dated May 16, 1907, and filed in the Surrogate's office of Essex County sets out as one of the assets the Meyer mortgage of \$1,400; the final account of the Baker estate filed in the same office shows a charge to them as follows: "June 1st, 1905, to interest for the Frederick F. Meyer mortgage, interest due May 1st, \$42; December 21st, 1905, interest due on mortgage of Frederick F. Meyer and wife, May 1st to date, \$53.43." This demonstrates that it was on the 21st day of December, 1905, that the Butler estate parted with the bond and mortgages. Schwarzwaelder says that an account of the Ronan estate was prepared in which the interest on the Meyer mortgage was credited and that he was told by

10

20

30

40

Conclusions of Vice-Chancellor.

Crocker that it had been filed, whereas, in fact, it never was; that the assignment at the time he saw it in Crocker's office, purported to be recorded in the Register's office, and bears the Register's stamp, whereas in fact, it never was recorded.

- 10 Unless I disbelieve, and I find no occasion to do so, the testimony of Schwerzwaelder, I must find that there was in existence about December, 1905, what purported at least to be an assignment from the Butler estate to Ronan, and that such assignment remained in existence in the custody of Crocker for some time after the death of Ronan in 1907.

- 20 When there is considered the circumstances with respect to the Daly and Clark assignments it is clear that the Butler assignment to Ronan was genuine. There is no doubt but that Ronan at about December, 1905, actually bought for full consideration the bond and mortgages and that the bond and mortgages were in Crocker's possession, as attorney for Ronan; that Crocker recognized the ownership of Ronan and the Ronan estate up to at least the time that the last check for interest was endorsed by him, "Estate of William Ronan, Roland D. Crocker, executor." This check is dated May 15, 1911. William H. Daly, George W. Clark, and Mabel Daly were all examined. Daly testifies distinctly that he had no knowledge of the transaction which apparently resulted in an assignment from the Butler estate to him, and that it is impossible that a bona fide purchase of these mortgages could have been made for his account by Crocker at any time prior to 1909. Clark testifies that he has no knowledge of the transaction. I conclude that the assignments made from Daly to
- 30
- 40

Conclusions of Vice-Chancellor.

Clark and from Clark to Mabel Daly, whether actually signed by Daly or Clark or not, were for the sole purpose of putting the apparent title in Mabel Daly so that Crocker might use them as collateral to the proposed Mabel Daly loan from the Liberty Trust Company. It is significant that all three of these purported assignments were recorded upon the same day, at the same hour and practically simultaneous with the loan to Mabel Daly; further that the original assignments were never exhibited to or returned to the bank, whereas the undoubtedly genuine assignment, made from Mabel Daly to the bank and recorded upon September 3rd, was delivered to it. 10

I conclude that the alleged transaction by which Daly apparently got title from the Butler estate could not have taken place, if legitimate, prior to 1909. If it took place after 1909, the paper could not have been signed by the representatives of the Butler estate. Unless the representatives of the Butler estate signed two assignments, one to Ronan and the other to Daly, thus committing a fraud, one or the other is a forgery. There is no reason for doubting the integrity of the representatives of the Butler estate. Although none of the original papers are here, all of them having been destroyed by Crocker to prevent discovery of his fraud, we have the evidence of one man that he actually saw the original Ronan assignment, there is no evidence as to anyone having actually seen the original Daly assignment. The probabilities of the case fit in with the bona fides of the Ronan assignment. 20 30

Upon the whole case, therefore, I find that the Ronan assignment was legitimate and that the 40

Conclusions of Vice-Chancellor.

Daly assignment was a forgery and that it was concocted by Crocker as a part of his scheme to get from the Liberty Trust Company \$2,500 upon the note of Mabel Daly.

10 The claim of the Liberty Trust Company must fall unless the Ronan estate is estopped from setting up its rights. I think that it was not. It is true that the papers were left by Ronan in his lifetime with Crocker as his attorney and by Schwerzwaelder thereafter as the co-executor and also the attorney of the estate. This course is not at all unusual. *Leithoff vs. Dennis*, 98 Atlantic, 242; *Brewster vs. Entz*, 97 Atlantic, 156; *Melick vs. the Liberty Trust Company*, 85 Equity, 29. Crocker, prior to his departure in 1914, was of unblemished reputation, of apparently large affairs, full financial responsibility, and was uniformly trusted. There was no reason for either Ronan or Schwerzwaelder to assume that he would commit a fraud. It was not incumbent upon either Ronan or Schwerzwaelder to themselves examine the record to ascertain whether or not the Ronan assignment had been recorded. If Crocker had assumed to act as an executor of the Ronan estate and should have assumed either by an assignment purporting to be executed by the Ronan estate, or by manual delivery of the bond and mortgages to transfer title to the Liberty Trust Company, a question might have arisen which I am not called upon to determine.

20

30

If Schwerzwaelder, as executor, was negligent, so was the bank. It depended upon Crocker. It knew that Crocker was the active party in applying for the Mabel Daly loan. It made no investigation as to the validity of the bond and mortgages, required no estoppel agreement from the

40

Conclusions of Vice-Chancellor.

mortgagor. If it had it would have discovered the fraud. It did not require that the original assignments should be exhibited to it, after their record it did not require their delivery to it. It depended simply and solely upon the report of its counsel who was associated with Crocker as to the record. That record discloses that these three assignments, one purporting to be made as far back as 1905, and two purporting to be made about the same date in 1913, were all recorded upon the same date in 1913 palpably for the purpose of assisting in securing the loan. While the knowledge of Crocker is not to be imputed to the bank, under the cases, yet the bank can hardly complain that Schwerzwaelder and Ronan did only what it itself did so far as trusting Crocker was concerned.

I will advise a decree awarding the fund in dispute to the Ronan estate.

10

20

30

40

Decree.

Decree.

Filed February 7, 1917.

This cause coming on to be heard before the Court, in the presence of Archibald Slingerland, solicitor for and of counsel with the defendant
 10 the Liberty Trust Company, and Lintott, Kahrs & Young, solicitors for and of counsel with defendant, Frank Schwarzwaelder, sole acting executor under and by virtue of the last will and testament of William Ronan, deceased; and the several answers of said defendants being read, depositions of witnesses taken and arguments of the respective counsels heard; and it appearing that the Sterling Leather Works, a corporation of the State of New Jersey was indebted in the
 20 sum of \$1,400, principal and interest on the same amounting to \$46.65, which indebtedness was secured by two certain mortgages on the property of said Sterling Leather Works, and that the amount due on said indebtedness was claimed by the Liberty Trust Company, a corporation of New Jersey, one of the defendants hereto, and also by Frank Schwarzwaelder sole acting executor of the estate of William Ronan, deceased, another one of the defendants herein; each by
 30 virtue of an alleged assignment of said indebtedness, together with said bond securing the same; and that said Frank Schwarzwaelder, sole acting executor of the estate of William Ronan, deceased, as aforesaid is lawfully entitled to receive the same and that the defendant, the Liberty Trust Company, is not so entitled.

And it further appearing to the Court that the said last mentioned sum of \$1,400 being the balance due on said indebtedness, secured by said
 40 mortgages, together with accumulated interest

Decree.

thereon amounting to \$46.65, making in all the sum of \$1,446.65, was at the time of the filing of the Decree of Interpleader made in this cause paid by the complainant into this Court and that the same, less the costs of said complainant, still remains deposited in this Court, and is subject to the order and direction thereof:

IT IS THEREUPON on this sixth day of February, 1917, by Edwin R. Walker, Esq., Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED and the Chancellor by virtue of the power and authority of this Court does hereby ORDER, ADJUDGE and DECREE that the said sum of \$1,446.65, remaining in the hands of the complainant at the time of the filing of the bill of complaint herein was the property of the said Frank Schwarzwaelder, sole acting executor under and by virtue of the last will and testament of William Ronan, deceased, and who was and now is entitled to said sum, together with accumulations of interest thereon as assets of the estate of William Ronan, deceased; and that the balance (after deducting said costs) of said sum paid into this Court as aforesaid and now remaining deposited therein, together with the interest accumulated thereon be paid to the said defendant, Frank Schwarzwaelder, sole acting executor under and by virtue of the last will and testament of William Ronan, deceased, or to his solicitors.

Respectfully advised,

MERRITT LANE,

V. C.

10

20

30

40

*Notice of Appeal.***Notice of Appeal.**

Filed February 13, 1917.

10 The defendant, Liberty Trust Company, hereby appeals from the final decree made in the above stated cause awarding the fund in court to the defendant, Frank Scvhwarzwaelder, sole acting executor under and by virtue of the last will and testament of William Ronan, deceased, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated February 9, 1917.

20 ARCHIBALD F. SLINGERLAND,
*Solicitor for and of Counsel with Deft.,
Liberty Trust Co.*

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

ARCHIBALD F. SLINGERLAND
Of Counsel with Deft., Liberty Trust Co.

30

40

Petition of Appeal.

Petition of Appeal.

Filed March 1, 1917.

New Jersey Court of Errors and Appeals

Between

STERLING LEATHER WORKS,
Complainant,

and

LIBERTY TRUST COMPANY,
Defendant-Appellant,

FRANK SCHWARZWAELDER, sole
acting executor and trustee
of the estate of WILLIM
RONAN, deceased,

Defendant-Respondent.

10

*Petition of
Appeal.*

20

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of Liberty Trust Company, the appellant in the above stated cause respectfully shows:

That your petitioner finds itself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date February —, 1917, wherein the said Sterling Leather Works was complainant and the Liberty Trust Company and Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased, and others were defendants, in the following particulars, to wit:

30

1. Because the said decree adjudges that the defendant, Liberty Trust Company, is not

40

Petition of Appeal.

entitled to the funds deposited with the clerk of the Court of Chancery by the complainant under the decree of interpleader filed in this suit.

10 3. Because the said decree adjudges that the defendant, Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased, is entitled to the fund deposited with the clerk of the Court of Chancery by the complainant under the decree of interpleader filed in this suit.

20 2. Because the said decree adjudges that the said fund, together with the interest accumulated thereon, should be paid to the said defendant, Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased, or to his solicitors.

4. Because the defendant, Liberty Trust Company, had proved that it was rightfully entitled to the said fund and that the said defendant, Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased, was not entitled thereto.

30 5. Because the defendant, Frank Schwarzwaelder, sole acting executor and trustee of the estate of William Ronan, deceased, failed to prove any right, title or interest in and to the said fund so deposited as aforesaid.

6. Because upon the pleadings and proofs the appellants were entitled to prevail in their suit.

And your petitioner humbly appeals from the said decree, and from the whole and every part thereof upon the ground that the said decree is erroneous in the particulars hereinbefore stated and set forth.

Exhibit D. 1—Liberty Trust Co.

And your petitioner therefore prays that the said decree may be reversed, set aside and for nothing holden, and that your petitioner may have such other relief in the premises as to this Honorable Court may seem meet.

ARCHIBALD F. SLINGERLAND. 10
Solicitor for and of Counsel with Appellant.

Formal answer to Petition of Appeal filed.

Exhibits.

EXHIBIT D. 1—LIBERTY TRUST CO.

1500 #
\$2,500.00. 20

Newark, N. J., August 15th, 1913.

On demand after date, for value received, I promise to pay to Liberty Trust Company, or order, at its banking house, with interest at the rate of 6% per annum, Twenty-five Hundred and no one-hundredths dollars, the undersigned having deposited with said Trust Company as collateral security for payment of this or any other liability or liabilities of the undersigned, direct 30
or contingent, individual or firm, to said Trust Company now existing, or which hereafter may be contracted, the following property, viz:

Assignment of two mortgages both G-13—450
Essex County Mortgages, with full power and authority to said Trust Company, or its officers, or one of them, to sell, assign and deliver the whole, or any part thereof, or any substitutes therefor, or any additions thereto, at any Brokers' Board, or at any public or private sale, at 40

Exhibit D. 1—Liberty Trust Co.

the option of said Trust Company, or its officers, or one of them, or its or their, or either of their Assigns, on the non-performance of this promise, or the non-payment at maturity of any of the other liabilities aforesaid, or at any time or times thereafter, without demand of payment, advertisement, or notice of sale, which are hereby expressly waived; and after deducting all costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale or sales, to pay any or all of said liabilities to said Trust Company, or its assigns, as its officers, or one of them, or assigns, shall deem proper, returning the over-plus to the undersigned; and upon any sale at public auction or at Brokers' Board the holder hereof may purchase the whole or any part of such securities, discharged from any right of redemption. And the undersigned agrees to be and remain liable to the holder hereof for any deficiency, and to pay the same upon demand of the holder hereof.

In case of depreciation according to the judgment of the holder hereof in the market value of the security hereby pledged, or which may hereafter be pledged for this loan, the undersigned agrees to make a payment on account, so that the said market value shall always be at least twenty per cent. more than the amount unpaid of this Note, or else to make such further additional deposits of securities as may be necessary to maintain such margin, adopting either course that the holder hereof may require. In case of failure to do so, or in the event of insolvency of the undersigned, or of any endorser or guarantor of this Note, this Note shall be due and payable forthwith at the option of the holder hereof, anything hereinbefore expressed to the contrary notwithstanding, and the holder may

Exhibit D. 1—Liberty Trust Co.

immediately reimburse himself by sale of the security as hereinbefore provided, also holding and applying the balance of any deposit account of the undersigned with said Trust Company. *And it is hereby agreed and understood, that if recourse is had to collaterals, any excess of collaterals upon this Note shall be applicable upon any other note, claim or endorsement, held by said Company.* In case of the substitution of any other securities for those above mentioned, or of any additions to the collaterals at any time securing this Note, the provisions hereof shall apply to all such substituted new or additional collaterals. 10

In case of default by the undersigned and the payment of this Note by any guarantor or endorser, the said Trust Company is hereby expressly authorized, if it so elect, to surrender to the person making such payment, any or all collaterals held for the payment hereof. 20

[Seal.]

MABEL DALY.

Endorsed:

Credit—Jan. 6/15. Check Prudential Insurance Co. on the Union National Bank order of Samuel L. Lederer endorsed to us. 1000.00 30

UNITED STATES OF AMERICA, }
 STATE OF NEW JERSEY, } ss.
 COUNTY OF ESSEX. }

I, A. Howard Watson, a notary public, in and for the State of New Jersey, duly commissioned and sworn, do hereby certify that on the 13th day of October, A. D. 1914, at the request of the Liberty Trust Company, of Newark, the original Promissory Demand Note, which is 40

Exhibit D. 1—Liberty Trust Co.

hereunto annexed, was duly presented at Liberty Trust Company and payment thereof was then and there demanded, which was refused; no funds.

10 Whereupon I, the said Notary, at the request aforesaid, did protest and by these presents do publicly and solemnly protest as well against the Drawer and Endorser of the said Instrument, as against all others whom it doth or may concern, for exchange, re-exchange and all costs, damages and interest already incurred, and to be hereafter incurred, for want of payment of the same.

Thus done and protested, at Newark, in the state aforesaid in the presence of John Doe and Richard Roe, witnesses.

20 In Testimonium Veritatis.

[Seal.] A. HOWARD WATSON,
Notary Public.

Protest.
Mabel Daly
for
Liberty Trust Company
Central Ave and Fourth St.
Newark, N. J.

30 Newark, N. J., Oct. 13, 1914.

Check	\$
Note	\$2500.00
Fees and Disbursements	1.25
	<hr/>
	\$2501.25

A. HOWARD WATSON,
447 Central Avenue Newark, N. J.

Exhibit D. 6—Liberty Trust Co.

EXHIBIT D. 6—LIBERTY TRUST CO.

MARY P. BUTLER, <i>deceased</i> , by executors, To WILLIAM H. DALY.	}	10
--	---	----

KNOW ALL MEN BY THESE PRESENTS, that we, Walter S. Baker, and Mina A. Baker, EXRS. of the Last Will and Testament of Mary P. Butler, late of the City of Newark, Essex County, New Jersey, deceased, party of the first part in consideration of the sum of fourteen hundred and fifty three dollars and forty three cents, lawful money of the United States of America, to us in hand paid by William H. Daly of the City of Newark, Essex County, New Jersey, party of the second part, at or before the en-
 sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his executors, administrators and assigns two Indentures of Mortgage bearing date the first day of May, one thousand eight hundred and ninety seven, one made by Franklin L. Meyer to Mary P. Butler on lands in said City of Newark, to secure the payment of the sum of Fourteen hundred dollars, which mortgage is registered in the Register's Office of the County of Essex in Book G. 13 of Mortgages, page 450; and the other made by Frederick F. Meyer and wife to Mary P. Butler, on lands formerly in the Township of Clinton, now in said City of Newark, to secure the

20

30

40

Exhibit D. 6—Liberty Trust Co.

payment of the same sum of \$1,400, which mortgage is registered in the Register's Office of the County of Essex in Book G. 13 of Mortgages, pages 450, &c.

10 TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold, the same unto the said party of the second part, his executors, administrators or assigns for his and their use forever, subject only to the proviso in the said Indenture of Mortgage mentioned, And we do hereby make, constitute and appoint the said party of the second part, our true and lawful attorney, irrevocable in our name or otherwise, but at *our* proper costs and charges, to have, use and take
 20 all the said money and interest, and in case of payment, to discharge the same as fully as we might or could do if these presents were not made. And we do hereby covenant, promise and agree, to and with the said party of the second part that there is now due and owing upon the said bond and mortgage the sum of fourteen hundred and fifty three dollars and forty three cents.

30 IN WITNESS WHEREOF, we have hereunto set our hands and seals the twentieth day of December, in the year of our Lord one thousand nine hundred and five.

Walter S. Baker (Seal)

Executor of Mary P. Butler, dec'd.

Mina A. Baker (Seal)

Executrix of Mary P. Butler, dec'd.

Signed, sealed and delivered in
 the presence of

40 Roland D. Crocker.

Exhibit D. 6—Liberty Trust Co.

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

BE IT REMEMBERED, that on this twentieth day of December, in the year of our Lord One thousand nine hundred and five, before me, a Master in Chancery of New Jersey, personally appeared Walter S. Baker and Mina A. Baker, his wife, executors of the last will and testament of Mary P. Butler, deceased who, I am satisfied are the assignors in the within deed of Assignment named, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. And the said Mina A. *Butler*, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

ROLAND D. CROCKER,
 Master in Chancery of New Jersey.

Received in the Office September 2, A. D. 1913,
 at 10:29 A. M.

ESSEX COUNTY REGISTER'S OFFICE.

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

I, THOMAS P. ALWORTH, Register of the County of Essex, do hereby certify that the foregoing is a true and correct copy of the record of a certain Assignment of Mortgage made by Mary P. Butler, Dec. by Exrs. to William H. Daly, and also of the certificate of acknowledgment

Exhibit D. 6—Liberty Trust Co.

ment thereto annexed, as the same may be found recorded in my office in book 113 of Assignments of Mortgages for said County on pages 287-288.

10 [L. s.] IN TESTIMONY WHEREOF, I have here-
unto set my hand and official seal this
24th day of June, A. D. 1915.

THOMAS P. ALWORTH,
Register.

A canceled ten cent revenue stamp attached.

Compared by Davis.

CERTIFIED COPY OF
Assignment of Mortgage

20 Mary P. Butler, Dec. by Exrs.
To
William H. Daly

30 The original Assignment of Mortgage, of
which this is a copy, was received in the Regis-
ter's Office of the County of Essex, State of
New Jersey, on the 2nd day of September, A. D.
1915, at 10:29 o'clock in the forenoon and Re-
corded in Book 113 of Assignments of Mort-
gages for said County on pages 287-288.

Thomas P. Alworth,
Register.

Exhibit D. 7—Liberty Trust Co.

EXHIBIT D. 7—LIBERTY TRUST
COMPANY.

WILLIAM H. DALY TO GEORGE W. CLARK	KNOW ALL MEN BY THESE PRESENTS, That I, William H. Daly of Town of Mont-	10
--	---	----

clair in the County of Essex and State of New Jersey party of the first part in consideration of the sum of One Dollar and other valuable considerations lawful money of the United States *lawful money of the United States* of America to me in hand paid by George W. Clark of the City, County and State of New York, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part that certain Indenture of Mortgage bearing date the First day of May One Thousand Eight Hundred and Ninety-Seven made by Franklin L. Meyer to Mary P. Butler on lands in said City of Newark to secure the payment of the sum of Fourteen Hundred dollars which mortgage is registered in the register's office of the County of Essex in Book G. 13 of Mortgages page 450; and also another mortgage to secure the same debt of the same date, made by Frederick F. Meyer and wife to Mary P. Butler which mortgage is registered in the register's office of the County of Essex in Book G. 13 of Mortgages, pages 450.

10

20

30

Together with the bond or obligation therein described, and the money due and to grow due thereon with the interest. To have and to hold

40

Exhibit D. 7—Liberty Trust Co.

the same unto the said party of the second part, his executors, administrators or assigns for his and their use forever, subject to the proviso in the said Indenture of Mortgage mentioned. And I do hereby make, constitute and appoint the said party of the second part my true and
 10 lawful attorney, irrevocable in my name or otherwise, but at his proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest and in case of payment to discharge the same as *lawful* as I might or could do if these presents were not made. And I do hereby con-
 20 venant, promise and agree to and with the said party of the second part that there is now due and owing upon the said bond and mortgage the sum of Fourteen Hundred Dollars.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal the First day of August in the year of our Lord One Thousand Nine Hundred and Thirteen.

[SEAL]

WILLIAM H. DALY.

Signed, Sealed and Delivered
 in the presence of

30 ROLAND D. CROCKER.

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

BE IT REMEMBERED, That on this First day of August in the year of our Lord One Thousand Nine Hundred and Thirteen before me, A Master in Chancery of New Jersey personally appeared William H. Daly who, I am satisfied is the assignor in the within Deed of Assignment named;

40

Exhibit D. 7—Liberty Trust Co.

and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

ROLAND D. CROCKER,
Master in Chancery of New Jersey. 10

Received in the office September 2, A. D. 1913,
at 10:29 A. M.

ESSEX COUNTY REGISTER'S OFFICE

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

I THOMAS P. ALWORTH, register of the County of Essex, do hereby certify that the foregoing is a true and correct copy of the record of a certain assignment of mortgage made by William H. Daly, to George W. Clark and also of the certificate of acknowledgement thereto annexed, as the same may be found recorded in my office in book 113 of Assignment of Mortgages for said county on pages 288-289. 20

In testimony whereof, I have hereunto set my hand and official seal this 24th [Seal.] day of June A. D. 1915. 30

THOMAS P. ALWORTH,
Register.

Exhibit D. 8—Liberty Trust Co.

Compared by I. V. C.

CERTIFIED COPY OF

Assignment of Mortgage

William H. Daly

to

10

George W. Clark

The original assignment of mortgage, of which this is a copy, was received in the Register's office of the County of Essex, State of New Jersey, on the second day of September, A. D., 1913, at 10:29 o'clock in the forenoon and recorded in Book 113 of Assignment of Mortgages for said county on pages 288-289.

Thomas P. Alworth,

20

Register.

EXHIBIT D. 8—LIBERTY TRUST COMPANY.

GEORGE W. CLARK KNOW ALL MEN BY THESE
TO PRESENTS, THAT I, George W.
MABEL DALY. Clark of the City, County

30

and State of New York, party of the first part in consideration of the sum of One Dollar and other valuable considerations lawful money of the United States of America to me in hand paid by Mabel Daly of the Town of Montclair, Essex County, New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over and by these presents do grant, bargain, sell, assign, transfer

40

Exhibit D. 8—Liberty Trust Co.

and set over unto the said party of the second part that certain Indenture of Mortgage bearing date the First day of May, One Thousand Eight Hundred and Ninety Seven, made by Franklin L. Meyer to Mary P. Butler on lands in said City of Newark, to secure the payment of the sum of Fourteen Hundred Dollars which mortgage is registered in the Register's Office of the County of Essex in Book G. 13 of Mortgages, page 450; and also another mortgage to secure the same debt of the same date made by Frederick F. Meyer and wife to Mary P. Butler which mortgage is registered in the Register's Office of the County of Essex in Book G. 13 of Mortgages, pages 450.

Together with the bond or obligation therein described, and the money due and to grow due thereon with the interest. To Have and To Hold the same unto the said party of the second part her executors, administrators or assigns for her and their use forever subject to the proviso in the said Indenture of Mortgage mentioned, And I do hereby make, constitute and appoint the said party of the second part my true and lawful attorney, irrevocable in my name or otherwise, but at her proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment to discharge the same as *lawful* as I might or could do if these presents were not made. And I do hereby covenant, promise and agree to and with the said party of the second part that there is now due and owing upon the said bond and Mortgage the sum of Fourteen Hundred Dollars.

Exhibit D. 8—Liberty Trust Co.

In Witness Whereof, I have hereunto set my hand and seal the first day of August in the year of our Lord, One Thousand and Thirteen.

GEO. W. CLARK. [SEAL]

Signed, sealed and delivered
10 in the presence of

ROLAND D. CROCKER,

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

BE IT REMEMBERED, that on this first day of August in the year of our Lord, One Thousand Nine Hundred and Thirteen, before me a Master in Chancery of New Jersey personally appeared
20 George W. Clark who, I am satisfied is the assignor in the within Deed of Assignment named and I having first made known to him the contents thereof; he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

ROLAND D. CROCKER,
Master in Chancery of N. J.

30 Received in the Office September 2, A. D. 1913
at 10.29 A. M.

ESSEX COUNTY REGISTER'S OFFICE.

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

I, Thomas P. Alworth, Register of the County of Essex, do hereby certify that the foregoing is
40 a true and correct copy of the record of a certain Assignment of Mortgage made by George

Exhibit D. 8—Liberty Trust Co.

W. Clark to Mabel Daly and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book 113 of Assignments of Mortgages for said County on pages 289-290.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 24th day of June, 10
A. D. 1915.

[SEAL]

THOMAS P. ALWORTH,
Register.

Compared by Davis.

CERTIFIED COPY OF
Assignment of Mortgage
George W. Clark
to
Mabel Daly

20

The original Assignment of Mortgage of which this is a copy, was received in the Register's Office of the County of Essex, State of New Jersey, on the 2nd day of September, A. D., 1913, at 10.29 o'clock in the forenoon and recorded in Book 113 of Assignments of Mortgages for said County on pages 289-290.

30

Thomas P. Alworth,
Register.

40

Exhibit D. 9—Liberty Trust Co.

EXHIBIT D. 9—LIBERTY TRUST CO.

KNOW ALL MEN BY THESE PRESENTS, that I, Mabel Daly, of the Town of Montclair, Essex County, New Jersey, party of the first part, in consideration of the sum of Twenty-five Hundred Dollars, lawful money of the United States of America, to me in hand paid by Liberty Trust Company, a corporation of New Jersey, having its principal office in the City of Newark, Essex County, New Jersey, party of the Second Part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part that certain Indenture of Mortgage bearing date the first day of May, One Thousand Eight hundred and ninety-seven, made by Franklin L. Meyer to Mary P. Butler, on lands in said City of Newark, to secure the payment of the sum of Fourteen hundred dollars, which mortgage is registered in the Register's Office of the County of Essex, in Book G. 13 of mortgages, page 450; and also another mortgage to secure the same debt, of the same date, made by Frederick F. Meyer and wife to Mary P. Butler, which mortgage is registered in the Register's office of the County of Essex in Book G. 13 of Mortgages, page 450,

Together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold, the same unto the said party of the second part its successors or assigns for and as collateral security for the payment of my note of even

Exhibit D. 9—Liberty Trust Co.

date herewith made to said Liberty Trust Company, for the payment of twenty-five hundred dollars and interest on demand, subject only to the proviso in the said Indenture of Mortgage mentioned: And I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name, or otherwise, but at its proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made: And I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said Bond and Mortgage the sum of Fourteen hundred dollars.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal the fifteenth day of August, in the year of Our Lord One Thousand Nine hundred and thirteen.

MABEL DALY [SEAL]

Signed, Sealed and Delivered
in the presence of

ROLAND D. CROCKER.

10

20

30

40

Exhibit D. 9—Liberty Trust Co.

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

10 Be it Remembered, That on this 15th day of August in the year of Our Lord One Thousand Nine Hundred thirteen, before me, a Master in Chancery of N. J., personally appeared Mabel Daly who, I am satisfied, is the assignor in the within Deed of Assignment named: and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

ROLAND D. CROCKER,
 Master in Chancery of N. J.

20

Compared by Davis.

ASSIGNMENT OF MORTGAGE

Mabel Daly
 To
 Liberty Trust Co.

30 Received in the Register's Office of the County of Essex, N. J., on the 3rd day of September A. D., 1913, at 2:06 o'clock in the afternoon, and recorded in Book 113 of Assignments of Mortgages for said County, on page 300.

Thomas P. Alworth,
 Register.

40

Exhibits D. 10 and D. 12—Liberty Trust Co.

EXHIBIT D. 10.

Newark, N. J., September 4, 1913.

NEWARK TRUST COMPANY

Pay to the order of Mabel Daly Eight Thousand Five Hundred Dollars.

\$8,500.00.

10

Wm. Pennington, Atty.

Endorsement:

Mabel Daly

Wm. Pennington, Attorney.

EXHIBIT D. 12

LIBERTY TRUST COMPANY

Central Avenue & Fourth Street

20

Newark, N. J., Sep. 4, 1913.

Pay to the order of Wm. Pennington, Atty
Twenty-five hundred Dollars.

\$2,500.00

No. 676.

Warren C. Biggin, Treas. W. F. Watson,
Pres.

Endorsement:

30

For Deposit only.

Wm. Pennington, Atty.

Credit account NEWARK TRUST CO., Sep.
4, 1913. F. H. Kilpatrick, Treas.

Exhibit D. 13—Liberty Trust Co.

EXHIBIT D. 13.

Deposit to the account of
Wm. Pennington, Atty.
in

NEWARK TRUST CO.

Newark, N. J., Sept. 4, 19..

10

Please List Each Check Separately

Checks	2,500
	6,000.
	<hr/>
	8,500

NEWARK TRUST CO.

Paid.

20

EXHIBIT D. 13. LIBERTY TRUST COM-
PANY.

Newark, N. J., August 25, 1913.

To Liberty Trust Company,
Newark, N. J.

Sirs:

The undersigned, your committee on ap-
praisals, to whom was referred the matter of
the collateral loan to Mabel Daly, report as to
30 the following collaterals offered:

Bond of Franklin L. Meyer et al. for \$1,400
secured by mortgages Book G 13, page 450 of
Essex County mortgage we value at \$1,400 being
on land worth at least double that amount.

Life insurance policies of Prudential Insurance
Co. on the life of Samuel L. Lederer, we value
at \$1,700.

Exhibit D. 1—Schwarzwaelder.

And we recommend a loan of \$2,500 on these collaterals.

R. D. CROCKER,
JNO. W. PHILLIPS,
WM. PENNINGTON.

10

EXHIBIT D. 1—SCHWARZWAELDER.

LAST WILL AND TESTAMENT.

IN THE NAME OF GOD, AMEN.

I, William Ronan, of the City of Newark, in the County of Essex and State of New Jersey, being of sound and disposing mind, memory and understanding, do make, publish and declare this instrument in writing as and for my last Will and Testament, in manner and form following, that is to say:—

20

First:—I order and direct my executors hereinafter named to pay and satisfy all my just debts and funeral and testamentary expenses as soon as conveniently may be after my decease.

Second:—I give and bequeath to my Executors hereinafter named, to hold in trust as herein-after declared, the following sums: Fifteen Hundred Dollars for Mary Tulley, residing in the City of Chicago, Illinois; for Ellen Balef, of Smith's Falls, Ontario, Canada, the sum of Two Thousand Dollars; for Anna Louise McGillevy residing in said Smith's Falls, the sum of Two Thousand Dollars; for Michael Balef, residing in said Smith's Falls, the sum of Four Thousand Dollars; for Margaret Redmond, residing in Coburg, Ontario, Canada, the sum of Two Thousand Dollars for Susan Balef, residing in said Smith's Falls, the sum of Two Thousand Dollars (all the

30

40

Exhibit D. 1—Schwarzwaelder.

six above-named beneficiaries being children of my deceased sister, Margaret Balef); and also for my sister, Mary A. Rogers, the sum of Fifteen Hundred Dollars; and also for her four children the following sums: for Jane, residing in Portland, Ontario, Canada, the sum of Three
 10 Thousand Dollars; for Ellen Pelow, residing in Kingston, Ontario, Canada, the sum of Two Thousand Dollars; for Daniel R. Rogers, residing in said Portland, the sum of Two Thousand Dollars; and for William Rogers, residing in said Portland, the sum of Two Thousand Dollars.

Third:—The said sums above specified, amounting in all to the sum of Twenty-four thousand
 20 dollars, I direct my executors hereinafter named, and the survivor of them, to hold in trust and invest and re-invest, as may be necessary from time to time, in safe interest bearing securities, each sum to be held during the lifetime of the above named beneficiaries respectively, they each receiving the net income therefrom from time to time as the same shall be realized; and upon the death of each of said beneficiaries the principal sum held for him or her in trust as aforesaid shall be paid to the personal representatives of
 30 such beneficiary, to be distributed according to the laws of the place of the then residence of such beneficiary, in the case of any beneficiary above-named dying intestate; or to the person or persons, corporation or corporations, named in his or her last Will duly admitted to probate, if there be any such. If any beneficiary or beneficiaries named in this my Will shall contest the probate thereof, or contest the validity hereof, then and in that event I direct, and it is my will that such beneficiary or beneficiaries shall
 40 receive no part of my estate, and that any sum or sums that I do herein and hereby set apart

Exhibit D. 1—Schwarzwaelder.

for and give to such beneficiary or beneficiaries shall be paid over by my Executors to Annie E. Crater, of the City of Newark, New Jersey, and to Catherine R. Durning, of the same place, share and share alike.

Fourth:—To my half brothers, James Ronan, and Michael Ronan, of Kittley, County of Leeds, Ontario, Canada, I give and bequeath both the sum of Twenty-five dollars. 10

Fifth:—To Annie E. Crater, of Newark, New Jersey, in remembrance of her many acts of kindness, I give and bequeath the sum of Two Thousand Dollars.

Sixth:—To Elsie Tier, of Plainfield, New Jersey, I give and bequeath the sum of One Hundred Dollars.

Seventh:—To Catherine R. Durning, of Newark, New Jersey, I give and bequeath as a friendly remembrance a legacy of One Thousand Dollars. 20

Eighth:—I direct my Executors hereinafter named to expend such sum as to them shall seem reasonable, not, however, to exceed the sum of Two Hundred Dollars, for the purchase of a watch which they shall give to my friend, Arthur Marson, of Newark, New Jersey. 30

Ninth:—My stock in Sterling Leather Works I give and bequeath to my friend, Roland D. Crecer, of Newark, New Jersey, in trust to hold the same for the benefit of my aforesaid nephews and nieces for a period of at least three years and not more than five years from and after my death, paying over to them the net income and dividends therefrom from time to time as the same shall be realized, to said beneficiaries equally; and during said period I direct my said 40

Exhibit D. 1—Schwarzwaelder.

trustee to vote the same in harmony with my friend, Frank Schwarzwaelder at present the President of said Sterling Leather Works, so far as shall not be inconsistent with said trustee's duties and responsibilities in the protection of said beneficiaries; and if by so doing the principal of this fund shall be impaired I direct that said trustee shall not be held liable therefor. After the expiration of said period of three years and not later than five years after my decease, I direct that my said trustee shall sell and convey said stock at public or private sale, for cash, and at such price as to him shall seem reasonable, and I do hereby express to him that it is my wish that in such sale he shall, so far as he shall consider just and fair, allow and grant to said Frank Schwarzwaelder a full and ample opportunity to purchase my said stock. And thereupon, after the sale of said stock, the proceeds from the sale thereof shall be paid over to my said ten nephews and nieces whom I have named above.

Tenth:—All the rest, residue and remainder of my estate, whatsoever and wheresoever, I do give and bequeath for the use and benefit of my said nephews and nieces above-named, equally, to be held in trust as herein thirdly provided.

Lastly:—I do hereby give and grant to my executors and trustees full power and authority to sell and convey any real estate that I may die seized of, at such prices, upon such terms and in such manner as to them shall seem advantageous; and I do nominate, constitute and appoint my said friends Frank Schwarzwaelder, and Roland D. Crocker to be the executors hereof.

Exhibit D. 1—Schwarzwaelder.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-second day of November, in the year nineteen hundred and six.

WM RONAN, (L. S.)

Signed, sealed, published and declared by William Ronan, the above-named testator, as and for his last will and testament, in our presence, both being present at the same time, and who, in his presence and in the presence of each other, at his request, have hereunto subscribed our names as witnesses. 10

F. R. Clancy,
Frank P. Clancy, Newark, N. J.
Duane E. Minard, East Orange, N. J.

STATE OF NEW JERSEY, 20

ESSEX COUNTY SURROGATE'S OFFICE.

I, George E. Russell, Surrogate of the County of Essex, do certify the annexed to be a true copy of the last Will and Testament of William Ronan, late of the County of Essex, deceased, and that Frank Schwarzwaelder and Roland D. Crocker, the Executors therein named, proved the same before me, and are duly authorized to take upon themselves the administration of the Estate of the Testator, agreeably to the said Will. 30

Witness my hand and Seal of Office, the twenty-seventh day of February in the year of our Lord one thousand nine hundred and seven.

[SEAL]

G. E. RUSSELL,
Surrogate. 40

Exhibits D. 2 and D. 3—Schwarzwaelder.

EXHIBIT D. 2—SCHWARZWAELDER.
AND OTHERS.

July 9, 1915.

N. W. Bindseil, S. M. C. C. of N. J.

Newark, N. J., Dec. 1, 1914.

10 STERLING LEATHER WORKS
 329-341 Frelinghuysen Avenue.
Pay to the Order of Est. Wm. Ronan, \$35.00.
Thirty-five & 00/100.....Dollars

F. Schwarzwaelder, Pres.
F. E. Schwarzwaelder, Asst. Treas.

To
WEST SIDE TRUST COMPANY
Newark, N. J.
No. 5518.

20 Endorsement: For Deposit Est. Wm. Ronan.

EXHIBIT D. 3—SCHWARZWAELDER AND
OTHERS.

Jul 1915.

N. W. Bindseil, S. M. C. C. of N. J.

No. 5190. Newark, N. J., May 29, 1914.

30 STERLING LEATHER WORKS
 329-341 Frelinghuysen Avenue
Pay to the Order of Est. Wm. Ronan, \$35.00.
Thirty-five & 00/100.....Dollars

F. Schwarzwaelder, President.
F. E. Schwarzwaelder, Asst. Treasurer.

To
WEST SIDE TRUST COMPANY
Newark, N. J.

40 Endorsement: For Deposit Est. of Wm. Ro-
nan.

Exhibits D. 4 and D. 5—Schwarzwaelder.

EXHIBIT D. 4.—SCHWARZWAELDER AND OTHERS.

Jul 9, 1915.

N. W. Bindseil, S. M. C. C. of N. J.

No. 4878. Newark, N. J., Nov. 29, 1913.

STERLING LEATHER WORKS

10

329-341 Frelinghuysen Avenue

Pay to the Order of Est. Wm. Ronan, \$35.00.

Thirty-five & 00/100.....Dollars

F. Schwarzwaelder, President.

F. E. Schwarzwaelder, Asst. Treasurer.

To

WEST SIDE TRUST COMPANY

Newark, N. J.

Endorsement: For deposit estate of Wm. Ronan.

20

EXHIBIT D. 5—SCHWARZWAELDER AND OTHERS.

July 9, 1915.

N. W. Bindseil, S. M. C. C. of N. J.

No. 4598. Newark, N. J., June 18, 1913.

STERLING LEATHER WORKS

30

329-341 Frelinghuysen Avenue

Pay to the Order of Est. Wm. Ronan, \$35.00.

Thirty-five & 00/100.....Dollars

F. Schwarzwaelder, President.

F. E. Schwarzwaelder, Asst. Treasurer.

To

WEST SIDE TRUST COMPANY

Newark, N. J.

Endorsement: For deposit estate of William Ronan.

40

Exhibits D. 6 and D. 7—Schwarzwaelder.

EXHIBIT D. 6—SCHWARZWAELDER AND OTHERS.

July 9, 1915.

N. W. Bindseil, S. M. C. C. of N. J.

No. 4297. Newark, N. J., Dec. 14, 1912.

10

STERLING LEATHER WORKS

329-341 Frelinghuysen Avenue

Pay to the Order of Wm. Ronan, Est., \$35.00.

Thirty-five & 00/100.....Dollars

F. Schwarzwaelder, President.

F. E. Schwarzwaelder, Asst. Treasurer.

To

WEST SIDE TRUST COMPANY

Newark, N. J.

Endorsement: Estate of William Ronan.

20

EXHIBIT D. 7—SCHWARZWAELDER AND OTHERS.

Jul 9, 1915.

N. W. Bindseil, S. M. C. C. of N. J.

No. 2192. Newark, N. J., Nov. 11, 1909

STERLING LEATHER WORKS

329-341 Frelinghuysen Avenue

Pay to the Order of Est. Wm. Ronan, \$35.00.

30

Thirty-five & 00/100.....Dollars

F. Schwarzwaelder, President.

F. E. Schwarzwaelder, Asst. Treasurer.

To

WEST SIDE TRUST COMPANY

Newark, N. J.

Endorsement: Estate Wm. Ronan, Roland D. Crocker, Exr.

40

Exhibits D. 8 and D. 9—Schwarzwaelder.

EXHIBIT D. 8—SCHWARZWAELDER AND OTHERS.

July 9, 1915.

N. W. Bindseil, S. M. C. C. of N. J.

No. 3223. Newark, N. J., May 15, 1911.

STERLING LEATHER WORKS

10

329-341 Frelinghuysen Avenue

Pay to the Order of Est. William Ronan, \$35.00.

Thirty-five & 00/100.....Dollars

F. Schwarzwaelder, President.

F. E. Schwarzwaelder, Asst. Treasurer.

To

WEST SIDE TRUST COMPANY

Newark, N. J.

Endorsement: Estate Wm. Ronan, Roland D. Crocker, Exr.

20

EXHIBIT D. 9—SCHWARZWAELDER AND OTHERS.

Jul 9, 1915.

N. W. Bindseil, S. M. C. C. of N. J.

No. 2018. Newark, N. J., July 3, 1909

STERLING LEATHER WORKS

30

329-341 Frelinghuysen Avenue

Pay to the Order of Est. William Ronan, \$35.00.

Thirty-five & 00/100.....Dollars

F. Schwarzwaelder, President.

F. E. Schwarzwaelder, Asst. Treasurer.

To

WEST SIDE TRUST COMPANY

Newark, N. J.

Endorsement: Estate William Ronan, Roland D. Crocker, Exr.

40

Exhibits D. 10 and D. 11—Schwarzwaelder.

EXHIBIT D. 10, SCHWARZWAELDER AND OTHERS.

Jul 9, 1915.

N. W. Bindseil, S. M. C. C. of N. J.
No. 1708. Newark, N. J., Dec. 28, 1908

10

STERLING LEATHER WORKS

329-341 Frelinghuysen Avenue

Pay to the Order of Est. Wm. Ronan, \$70.00.
Seventy & 00/100.....Dollars

F. Schwarzwaelder, President.

F. E. Schwarzwaelder, Asst. Treasurer.

To

WEST SIDE TRUST COMPANY

Newark, N. J.

Endorsement: Est. Wm. Ronan, p, F.
Schwarzwaelder, Ex.

20

EXHIBIT D. 11—SCHWARZWAELDER AND OTHERS.

July 9, 1915.

N. W. Bindseil, S. M. C. C. of N. J.

STERLING LEATHER WORKS, No. 1192
329-341 Frelinghuysen Ave.

30

Newark, N. J., Jan. 4, 1908

Pay to the Order of Est. William Ronan, \$70.00.
Seventy & 00/100.....Dollars

F. Schwarzwaelder, President.

F. E. Schwarzwaelder, Asst. Treasurer.

To WEST SIDE TRUST COMPANY,

Newark, N. J.

Endorsement: Est. Wm. Ronan, p. F.
Schwarzwaelder, Ex.

40

Exhibit D. 12—Schwarzwaelder.

EXHIBIT D. 12—SCHWARZWAELDER AND OTHERS.

Jul 9, 1915.

N. W. Bendseil,
S. N. C. C. of N. J.

STERLING LEATHER WORKS. 10

No. 58. Newark, N. J., July 1, 1905

WEST SIDE TRUST COMPANY

Pay to the order of Dr. Walter J. Baker, Administrator, Forty-two & 00/100.....Dollars \$42.00.

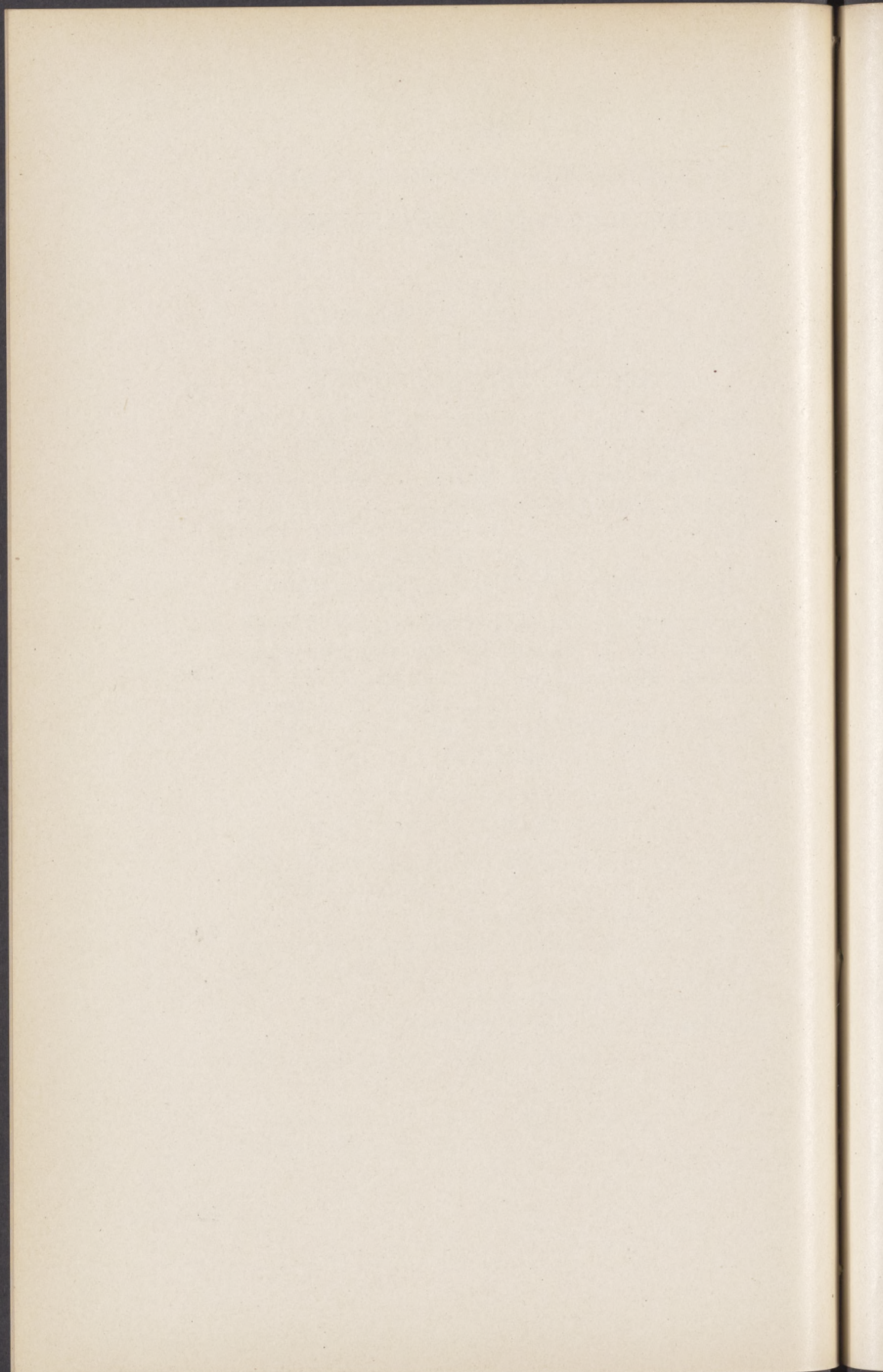
F. Schwarzwaelder, Pres.
William Ronan, Treas.

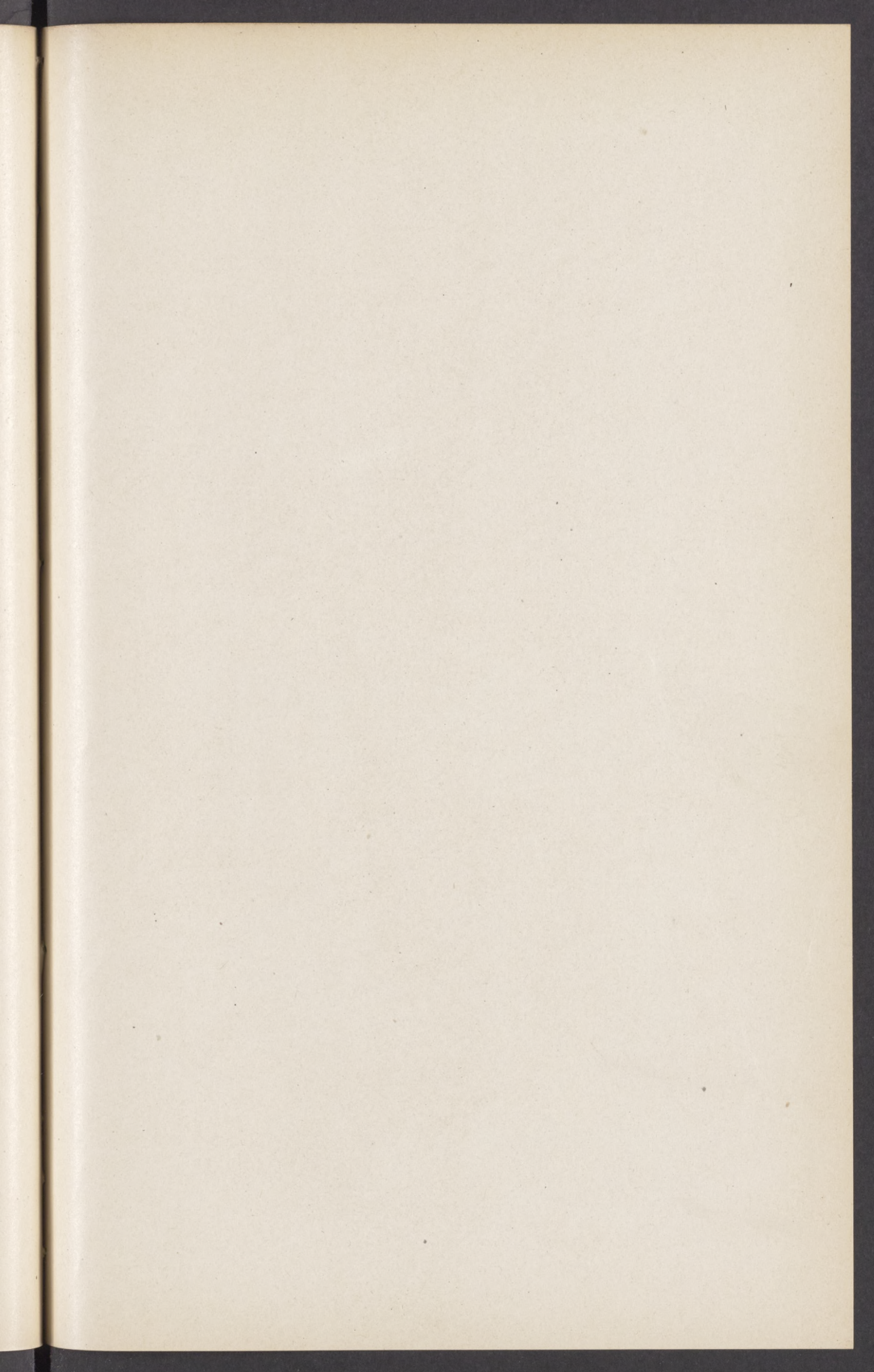
Endorsement: Dr. Walter S. Baker, Adm.

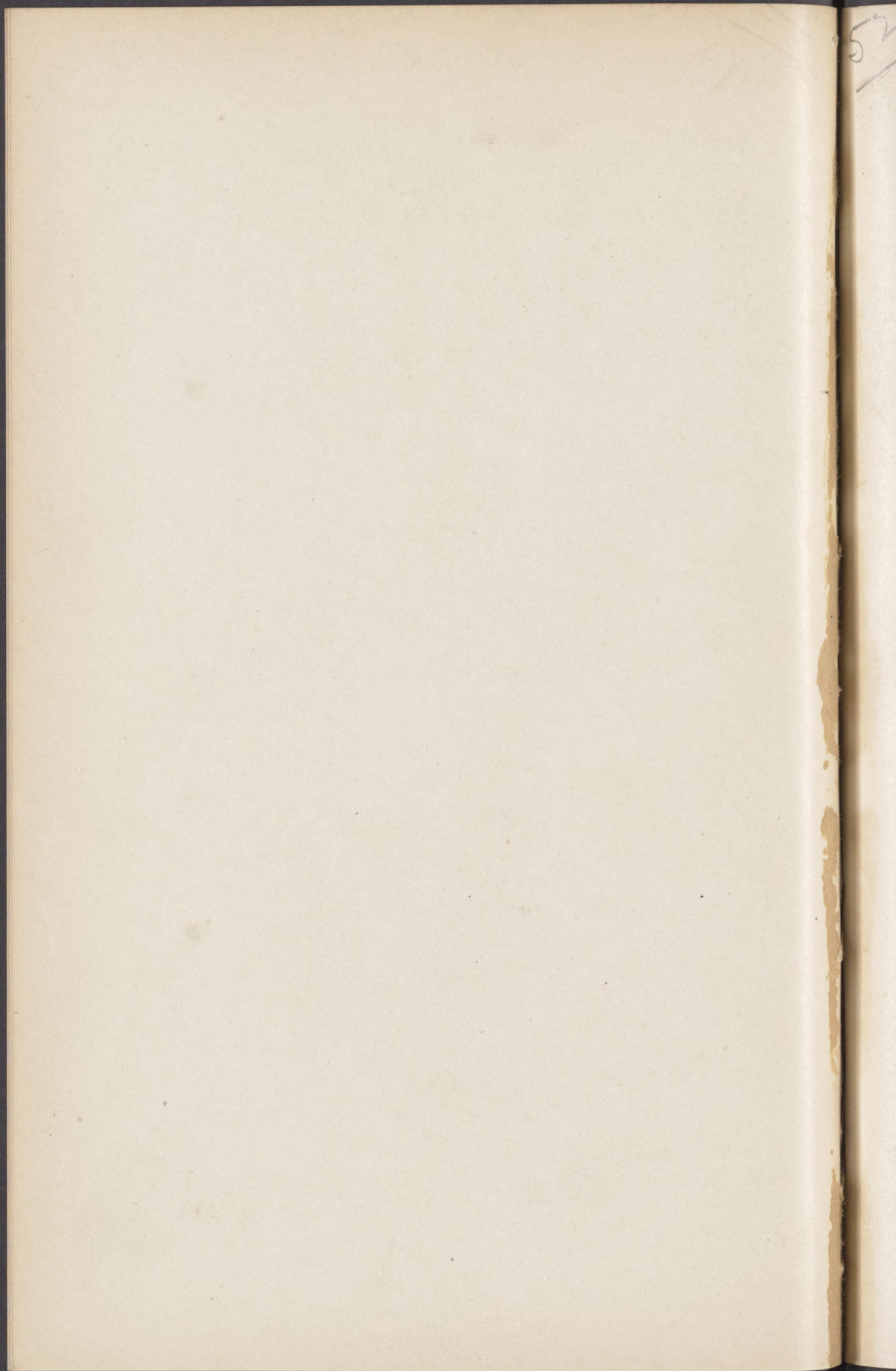
Pay to the Order of Essex County Nat'l Bank, Newark, N. J. Restrictive endorsements guaranteed. Federal Trust Co., Newark, N. J. 20
F. L. LUFF, Treasurer.

30

40







New Jersey Court of Errors and Appeals

Between

STERLING LEATHER WORKS,
Complainant,

and

LIBERTY TRUST COMPANY,
Defendant-Appellant.

FRANK SCHWARZWAELDER, sole
acting executor and trustee
of the estate of William
Ronan, deceased,
Defendant-Respondent.

*On Bill of
Interpleader.*

*On Appeal
from
Chancery.*

Brief of Defendant-Appellant.

This is an appeal from a decree of the Chancellor awarding to the respondent a fund which had been deposited in court by the complainant under a decree of interpleader, the fund having been claimed by both the appellant and respondent, who were the defendants to the interpleader suit.

Appellant and respondent filed statements of their claims and testimony was taken before a Special Master under an order of reference for that purpose. Argument thereon was had before Vice-Chancellor Lane, from whose conclusions, and the decree entered thereon, this appeal is taken.

Facts.

On September 4, 1913, the Liberty Trust Company made a loan of \$2,500 to one Mabel Daly upon her collateral note (Exhibit D. 1, p. 127). The collateral pledged by the said Mabel Daly

as security for the payment of the said note included a bond made by Frederick F. Meyer and Franklin L. Meyer to Mary P. Butler, dated May 1, 1897, to secure the sum of \$1,400. This bond was secured by two mortgages, one made by Franklin L. Meyer, and the other by Frederick F. Meyer and wife, each to the said Mary P. Butler. The mortgages were both registered in the Register's Office of Essex County on May 13, 1897, in Book G 13 of mortgages, on page 450 (Exhs. D. 2, D. 3, and D. 4, p. 24). The application for the Daly loan had been made to the Liberty Trust Company by one Roland D. Crocker, who acted as her attorney (p. 54, l. 37). Crocker was also chairman of the Executive Committee of the Liberty Trust Company, but was not then nor had he ever been attorney for the Trust Company (p. 26, l. 14). William Pennington was at that time and had been since the organization of the Trust Company its counsel (p. 25, l. 20). The application was then referred to an Appraisal Committee for investigation (p. 99, l. 10); and the Appraisal Committee after investigation reported to the directors recommending the granting of the loan (Exh. D. 13, p. 146). The Trust Company thereupon had its counsel examine the title to the said mortgages and he prepared and presented to the Trust Company an abstract of title wherein he certified that the said mortgages were good, valid and subsisting first liens on the premises therein described (Exh. D. 5, p. 35, l. 30). On September 4, 1913, the Trust Company drew a check, signed by its president and treasurer, to the order of William Pennington, attorney, for the amount of the loan, \$2,500, which was delivered to Pennington. This check and a check for \$6,000 were deposited by Pennington in his at-

torney's account in the Newark Trust Company (Exh. D. 12, p. 145; Exh. D. 13, p. 146; pp. 89, 90). On the same day Pennington drew a check to the order of Mabel Daly for \$8,500, which was endorsed by her (Exh. D. 10, p. 145; p. 59, l. 20).

Upon the delivery of the check for \$2,500 on September 4, 1913, to Pennington, the bank received the collateral pledged as security for the Mabel Daly note, among which were the bond and mortgages in question (p. 101); and they have always been in the possession of the Trust Company from that time till the present (pp. 112, 24, 29 & 30). Interest on the Daly loan was duly paid to the Trust Company until July 1, 1914 (Exh. D. 11, p. 83; p. 96, l. 30).

On October 13, 1914, payment of the Daly note having been demanded and refused, the said note was protested for non-payment (Exh. D. 1, pp. 127-130; p. 25). Thereupon, the Liberty Trust Company having made demand upon the Sterling Leather Works, the owner of the equity of redemption in the property covered by the said mortgages, and the respondent also claiming to be the owner of the bond and mortgages in question, the said Sterling Leather Works filed its bill of interpleader and a decree was made thereon compelling the appellant and respondent to interplead.

The title of the appellant to the bond and mortgages in question was traced through four assignments thereof as follows:

1. Assignment of mortgage made by the executors of Mary P. Butler (the original mortgage) to William Daly (Exh. D. 6, p. 131).
2. Assignment of mortgage from William Daly to George W. Clark (Exh. D. 7, p. 135).

3. Assignment of mortgage from George W. Clark to Mabel Daly (Exh. D. 8, 138).

4. Assignment of mortgage from Mabel Daly to Liberty Trust Company (Exh. D. 9, p. 142).

All of these assignments were duly recorded in the Register's Office of Essex County in accordance with the recording acts of this state.

The respondent claims to be entitled to the said bond and mortgages by reason of an alleged assignment from the executors of Mary P. Butler to one William Ronan, which assignment is not produced or accounted for and is not recorded. He also attacks the title of the appellant on the ground that no consideration was paid for any of the assignments in its chain of title. He does not, in his statement of claim filed in the said suit, allege the forgery of any of the assignments through which the appellant asserts title.

The learned Vice-Chancellor found that the assignment from the Butler Estate to Ronan did, in fact, exist and that the paper purporting to be an assignment from the Butler Estate to Daly was a forgery; and that the Ronan Estate was not estopped from setting up its rights. He also found that the knowledge of Crocker was not to be imputed to the bank, the appellant. Having concluded that the first assignment in the chain of title of the Trust Company was a forgery, it was unnecessary for the Vice-Chancellor to go into the question of consideration for the assignments.

Specification of Errors.

1. The error of the Vice-Chancellor in considering evidence tending to prove forgery in the assignment of mortgage made by the Butler Executors to William H. Daly, over the objection of the appellant (p. 41, State of Case).

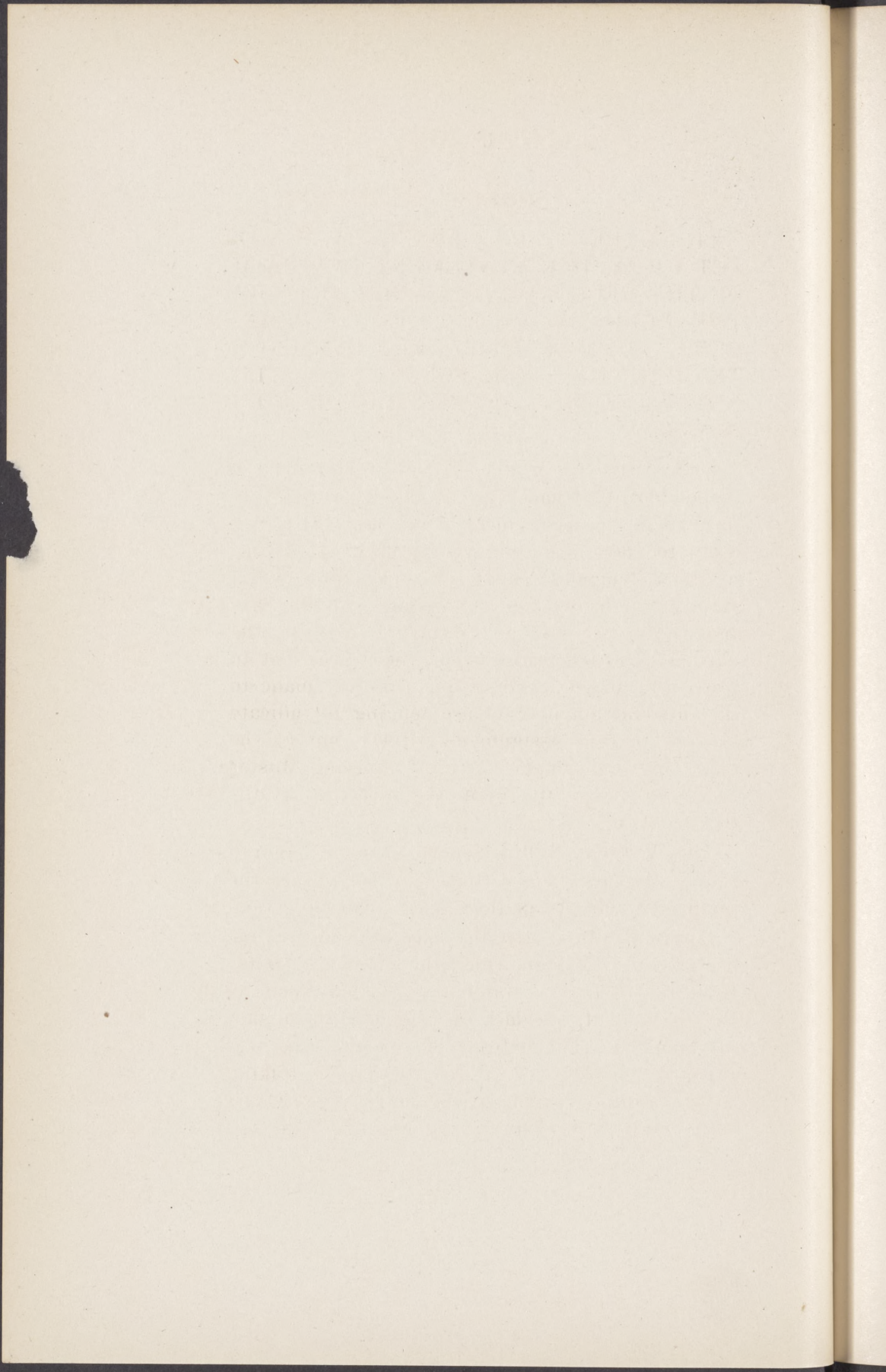
2. The adjudication that the assignment of mortgage from the Butler Executors to William H. Daly, through which appellant claims title, is a forgery.

3. The adjudication that the alleged assignment of mortgage from the Butler Executors to William Ronan, through which respondent claims title, in fact existed and was properly proved.

4. The adjudication that the respondent was not estopped from asserting his title.

5. The adjudication that appellant is not entitled to the fund deposited with the Clerk of the Court of Chancery by the complainant, under the degree of interpleader filed in this suit.

6. The adjudication that respondent is entitled to said fund.



Point I.

THE DEFENSE OF FORGERY WAS NOT SET UP IN THE STATEMENT OF CLAIM OF THE RESPONDENT, AS REQUIRED BY THE RULES OF THE COURT OF CHANCERY, AND THEREFORE EVIDENCE TENDING TO SHOW FORGERY SHOULD NOT HAVE BEEN ADMITTED OR CONSIDERED.

Under Rule 69 of the Court of Chancery the respondent, if it had been his intention to assert forgery in the assignment from the Butler executors to Daly, should have set up that defense in his statement of claim, or in a supplemental statement. Under the circumstances of the case such a defense was an affirmative defense, the burden of proof resting upon the respondent to prove the forgery. Objection was duly made to the introduction of evidence tending to indicate forgery in that assignment (p. 41), but as the testimony was taken before a Special Master there was no ruling upon the objection at the time.

The Vice-Chancellor seems to have ignored this point and to have considered as proper the testimony which was thus taken over objection.

It will be noted that the only objection to the assignments through which the appellant claims title, raised in the statement of claim filed by the respondent, was lack of consideration in said assignments. The defense of forgery was only injected into the case at the time of the taking of the testimony, and without leave of the Court first obtained as required by the said rule.

Point II.

THERE WAS ABSOLUTELY NO EVIDENCE THAT THE ASSIGNMENT FROM THE BUTLER EXECUTORS TO WILLIAM H. DALY WAS A FORGERY.

FULL CONSIDERATION WAS PAID FOR EACH OF THE ASSIGNMENTS OF MORTGAGE IN THE CHAIN OF TITLE OF THE APPELLANT.

THE BURDEN OF PROVING FORGERY AND LACK OF CONSIDERATION FOR SAID ASSIGNMENTS RESTS UPON THE RESPONDENT.

It was contended on behalf of the respondent, not that the assignments through which appellant claims were forgeries, but that no consideration was given for any of the said assignments. However, even if we consider the defense of forgery as having been properly raised, it is not substantiated by the testimony; nor is the contention of lack of consideration substantiated by the testimony.

William Daly, the first assignee in the chain of title of the appellant, testified that Roland D. Crocker, his attorney, had complete charge of his business transactions and acted for him during a number of years of which he kept no record (p. 49), that Crocker bought and sold mortgages for him, collected interest on the mortgages and also the principal, and reinvested the proceeds (p. 50), and that he could not state positively that Crocker did not purchase for him the bond and mortgages in suit from the executors of Mary P. Butler, and he said that Crocker might have paid full consideration for them (p. 50, l. 30, *et seq*). And even on his

direct examination by counsel for the respondent, whose witness he was, he testified that he could not say positively that he never did purchase this bond and mortgage, because it was possible that he did (p. 51, l. 21, *et seq*), and this was his last word on the subject, after he had first testified that the transaction could not have taken place prior to 1909, which the Vice-Chancellor seemed to consider controlling. The Vice-Chancellor took the view that as Daly had testified that the transaction did not take place before 1909, therefore the assignment to Daly was a forgery. We do not think the testimony warrants such a presumption. As will be seen by an examination of the testimony, Daly later testified that it was possible that he did purchase this bond and mortgage. Clearly, in the face of such testimony, and relying solely thereon, it was error to presume that that assignment was forged.

As to Daly's assignment to George W. Clark, the second in the chain, Daly testified on his direct examination that he did not remember whether he assigned these bonds and mortgages, or whether he received any consideration for such an assignment (p. 46, l. 34); yet, on cross examination, he admitted that he might have received full consideration from Mr. Clark for such assignment (p. 50, l. 40).

George W. Clark, the assignee in the second assignment in the chain, testified that he had had many transactions with Mr. Crocker during the twenty years he had known him, of which he had kept no record (p. 43, l. 20, *et seq*); that Crocker took care of a great many of his affairs, bought mortgages for him, took care of the collection of the interest and of the principal when

paid off, and that it was possible that Crocker might have purchased the bond and mortgages in question and have taken the assignment from Daly without his remembering it (p. 44, l. 10, *et seq.*); but that, as a matter of fact, all that he could say was that he did not remember the transaction (p. 44); and when questioned by his own counsel he said:

“Q But you knew what mortgages were purchased by Mr. Crocker for you? A No, sir.

Q You did not know that? A No, sir” (p. 44).

And as to Clark's assignment to Mabel Daly, the third in the chain, he testified on direct examination that he would not say that he did not acknowledge that assignment because he did not remember (p. 41, l. 40), and when pressed by his own counsel to say positively one way or the other as to whether he did execute the assignment he said, “I don't want to say that, because I don't know” (p. 42, l. 30). And on cross examination he admitted that he might have executed it and have forgotten about it (p. 43, l. 35).

Mabel Daly, the assignee in the third assignment in the chain, testified that Crocker was her and her husband's attorney and they trusted him as an honest man (p. 54, l. 37); and that he was acting as her attorney in this transaction (p. 55, l. 15); that she had allowed Crocker to use her name in many transactions as an accommodation to him (p. 54); and that he might have purchased this bond and mortgage in her name for all she knew (p. 55, l. 2).

As to her assignment to the Liberty Trust Company, the last assignment in the chain, she

admitted her signature (p. 53, l. 16), and also her signature to the note, Exhibit D. 1 (p. 57, l. 21), and said that she understood the assignment was to be given as security for the note (p. 53, l. 28); that so far as she knew Crocker might have received the money from this loan for her (p. 56, l. 10); and while she denied ever receiving any of the money herself and said that in reality she had no interest in it, she never spoke to anyone in the Liberty Trust Company about it (p. 56, l. 18) and never told the Trust Company it was not for her, because she trusted Mr. Crocker (p. 56, l. 24); and that she signed anything for Crocker that was "all right" (p. 56, l. 30). And while it was attempted on her direct examination to show that she never received anything on account of this note and that there was nothing due from her to the Liberty Trust Company, yet on cross examination she admitted that she might owe this money and that Crocker took care of paying the interest on her loan (p. 58), and that any interest that was paid on this loan was paid by Crocker for her (p. 58, l. 29).

It is apparent from the foregoing and from the testimony in the case that there is absolutely no evidence that would justify the Court in setting aside any one of these assignments either for forgery or for lack of consideration. On the contrary, the testimony of the parties to the assignments themselves conclusively shows that full consideration was probably paid for every one of the assignments, and that they were all genuine, although their recollection of the transactions is indistinct and hazy.

The assignment of a bond and mortgage duly executed is *prima facie* evidence that the consideration was paid.

Dunn v. Seymour, 11 N. J. Eq. (3 Stock) 278, 279;

Westervelt v. Scott, 11 N. J. Eq. (3 Stock) 80.

In the absence of proof to the contrary, the assignments through which the appellant claims title to the bond and mortgages in question, afford *prima facie* evidence that consideration was paid therefor.

The burden of proving forgery and lack of consideration for these assignments rests upon the respondent, who is attacking the title of the appellant, which on the face of the record is perfect. In other words, the respondent has the affirmative of the issue and must prove by a preponderance of the evidence the invalidity of the title of the appellant.

Prima facie the holder of a written agreement is entitled to the benefit of it, and if the attempt is made to destroy its validity by showing a non-delivery, the proof must not leave the matter in doubt.

Hill v. Beach, 12 N. J. Eq., 31.

The presumptions are all in favor of the appellant. As was held in the case of *Hill v. Beach*, *supra*, where a party shows a state of facts raising a presumption in his favor or otherwise makes out a *prima facie* case, the burden of proof is cast upon the opposite party.

It is respectfully submitted that the respondent not only failed to meet the burden imposed upon him of proving the forgery of the assignment from the Butler executors to Daly and of overcoming the presumption of consideration for the

various assignments in the chain of title of the appellant, but that he failed to produce any proof whatever to that end. The learned Vice-Chancellor, notwithstanding the lack of evidence, presumed from the mere fact that William Daly testified that he did not think the transaction in question could have occurred prior to 1909 (although he later alters that testimony and says that it might have been possible) that the assignment from the Butler executors to Daly was a forgery and his whole decision is based upon that one point. In this we respectfully insist that he erred and that his decision was not justified by the evidence.

Point III.

THE RESPONDENT FAILED IN HIS ATTEMPT TO PROVE AN ASSIGNMENT OF THE BOND AND MORTGAGES IN QUESTION FROM THE BUTLER ESTATE TO WILLIAM RONAN, THROUGH WHICH HE CLAIMED.

It was contended by the respondent that the estate of William Ronan, of which he is one of the executors, was entitled to the funds in court by reason of an alleged assignment of the bond and mortgages in question, supposed to have been made by the executors of Mary P. Butler to William Ronan in his lifetime. No such assignment appears of record (p. 91, l. 20), and there was no proof as to when it was made, although the pleadings alleged that it was made on December 21, 1905, which was subsequent to the assignment to William Daly, through which the appellant claims.

An examination of the testimony on this head will soon satisfy the Court that there was ab-

solutely no evidence to substantiate such a claim and that the Vice-Chancellor erred in finding that such an assignment was in existence.

Mr. Schwarzwaelder, the only witness called for this purpose, testified that William Ronan died in February, 1907, leaving a will, duly probated, under which he, Schwarzwaelder, and Roland D. Crocker were the duly qualified executors (p. 64). He then testified (over objection) as to certain alleged payments of interest on this bond and mortgage to the Butler Estate, and then to the estate of William Ronan (pp. 65, 66). Clearly, any such payments were not binding upon the appellant, which was an innocent, *bona fide* holder for value of the bond and mortgage. And the evidence was that interest was duly paid on the note of Mabel Daly to the Liberty Trust Company until July 1, 1914 (pp. 83, 96), so that there would be no occasion for it to demand interest from the mortgagor until a failure to meet the interest on the note occurred. He then testified that he saw this bond and mortgage in the possession of Roland D. Crocker at Crocker's office in 1907 (p. 68). This is quite probable, for, as we have seen, Crocker had complete charge of Mr. Daly's matters, and, as Mr. Daly had purchased this bond and mortgage from the Butler executors in 1905 and held them until his assignment to Clark in 1913, it is doubtless the fact that Crocker had possession of the bond and mortgage in 1907 for Mr. Daly.

But Schwarzwaelder attempted to go further and said that he saw an assignment from Dr. Baker, one of the executors of Mary P. Butler, to William Ronan, at the same time; but does not know where it is now (p. 68). When he undertook to describe that mythical instrument, however, he failed pitifully, even on his direct exam-

ination. He said it was signed by Dr. Baker "as administrator" (p. 91) although it appeared that Dr. Baker was executor and not administrator. This might have been a natural error of a layman, but when pressed upon that point he was positive about it (p. 80, l. 10, *et seq.*). He said it was acknowledged and appeared to be recorded because "the papers *in general* all bore the stamp of record that we looked over" (p. 70, l. 25), but that he did not examine this assignment specially (p. 70, l. 28). He then claimed to have seen the alleged assignment on another occasion in 1909 when he and Crocker made the first accounting, and this was the last he saw of it (p. 72, l. 8).

On cross examination he did not know whether the alleged assignment was typewritten or in long hand (p. 73, l. 20), did not recall whether the name of the assignor was set out (p. 72, l. 35), did not remember the date, or whether the date was in longhand or in typewriting (p. 74, l. 1), did not know that he read what mortgage or mortgages it purported to assign (p. 74, l. 5) although he claimed to know that it did assign the bond and mortgage in question (p. 74). When asked how he knew that, he tried to explain by saying that he was with Ronan at Crocker's office when the assignment was made up (p. 74), but he admitted that Dr. Baker was not there at the time, and he "supposed" it was signed afterwards (p. 74, l. 20, *et seq.*). He then was asked:

"Q You don't know whether that paper that was drawn was ever executed, do you?"

and he answered:

"A That, I don't know; I don't know as it made any difference, because it wasn't signed" (p. 82, l. 16).

He finally confessed that he simply assumed that this alleged assignment had assigned these mortgages (p. 74, l. 32), and when he first saw it, as he said, after Mr. Ronan's death, he did not remember whether he looked at the back of it, although he says it was folded up, or not (p. 75, l. 20), so that it follows that he could not remember whether or not there was any indication of its having been recorded. On the next occasion, namely, when they made up their first accounting as he claimed, he said he might have looked at the back, it being folded up at that time also (p. 75, l. 30), but when asked where the Register's mark appeared he replied, "It must have appeared on the outside" (p. 76, l. 2), plainly showing that he was simply guessing at it.

Without going into further details of his testimony it is perfectly obvious from a reading of it that he was, as he himself says, imagining things (p. 77, l. 14; p. 78, l. 35), that he had no clear recollection of the matter whatever, and that he was only testifying to things as he thought they should be and not as they actually were. The probability is that Crocker had told him the mortgage had been assigned to Ronan, and Schwarzwaelder relied upon what he said.

In view of such vague, uncertain testimony as to the existence of this alleged assignment, we submit that the Vice-Chancellor was not justified in bringing into existence and in effect, making for the respondent an assignment which it itself could not prove had ever been made.

Point IV.

EVEN IF THE ALLEGED ASSIGNMENT FROM THE BUTLER ESTATE TO RONAN EVER HAD EXISTED, IT NEVER WAS RECORDED AND THEREFORE WAS NOT BINDING UPON THE APPELLANT WHO TOOK WITHOUT NOTICE, EITHER ACTUAL OR CONSTRUCTIVE, THEREOF.

There is no proof whatever that the assignment from the Butler executors to William Daly is not a genuine legal assignment. In the absence of such proof, it must be presumed to be such. That being so, even if we assume the existence of another assignment of the same bond and mortgages by the Butler executors to Ronan, as between the two, that one which is first recorded has priority, even though the alleged assignment was executed first, of which there is no evidence—on the contrary, it is admitted in the pleadings that it was made subsequent to the assignment to William Daly, through which the Liberty Trust Company claims. The law on this point is well established.

An assignee of a mortgage is a purchaser, and is entitled to the protection of the recording acts as much as a purchaser of the equity of redemption. If he purchased in good faith and for a valuable consideration, he is not chargeable with any notice his assignor had of prior encumbrances upon the property, provided he records his assignment before such prior mortgage or other deed is recorded. If two assignments of the same mortgage by any means are made and taken by different persons in good faith, of course, the assignee who first records his assignment would gain the better title to the mortgage

if he had paid full value for it at the time of taking it.

Jones on Mtges, Sec. 482.

As between successive assignees of the same mortgage, both making in equal good faith, the assignment which is first recorded will have the priority.

27 Cyc. 1302.

A subsequent assignee of the mortgage, who acts in good faith and pays value, relying on the mortgagee's apparent ownership of the securities, is, according to most of the cases, protected against the claims of one owning the mortgage under a prior assignment, of which such third person had no knowledge.

27 Cyc. 1318.

Where the statute authorizes or requires the recording of assignments of mortgages, the effect of recording such assignment is to give constructive notice to all subsequent purchasers and encumbrancers; and on the other hand, failure to record it places the assignee in such a position that he can claim no rights against a person subsequently buying the property or acquiring a lien on it for value, and in reliance on a release or discharge of the mortgage by the original mortgagee.

27 Cyc. 1319.

The Vice-Chancellor correctly finds that the knowledge of Crocker is not to be imputed to appellant, so that the question of the appellant having received notice of the alleged assignment through Crocker, as its agent, does not enter into the case.

Appellant, having no notice, either actual or constructive, of the existence of the alleged assignment to Ronan, was a *bona fide* holder, and having given full value for the bond and mortgages in question, is entitled to the fund in court.

Point V.

THE RESPONDENT IS ESTOPPED FROM CLAIMING TITLE THROUGH THE ALLEGED ASSIGNMENT TO RONAN BECAUSE OF THE NEGLIGENCE, BOTH OF RONAN IN HIS LIFETIME, AND OF HIMSELF AS RONAN'S EXECUTOR, IN FAILING TO RECORD THE SAME, IF IT, IN FACT, EVER EXISTED.

THE RESPONDENT, SCHWARZWAELDER, WAS ALSO NEGLIGENT IN ALLOWING HIS CO-EXECUTOR, CROCKER, TO HAVE COMPLETE CONTROL OF THE ASSETS OF THE RONAN ESTATE, AND HE, PERSONALLY, AND NOT AN INNOCENT PURCHASER, SHOULD LOSE, IF, THROUGH THE MISCONDUCT OF HIS CO-EXECUTOR, THE ESTATE IS WASTED, AS HIS NEGLIGENCE MAKES SUCH MISCONDUCT POSSIBLE.

The alleged assignment through which the respondent asserts title, is claimed by him to have been made by the Butler Estate to William Ronan.

Just when this alleged assignment is supposed to have been executed is not clear from the evidence. By inference we are led to assume that it was sometime in 1905. William Ronan died in 1907. It will therefore be seen that if these dates be correct, Ronan would have

held this fictitious assignment for upward of two years without seeing that it was properly recorded. If he left it with Crocker to record for him and Crocker failed to do so, then the remedy of Ronan and his estate is against Crocker and not the appellant. And so, after Ronan's death, the respondent, Schwarzwaelder, one of his executors, never made any investigation to learn whether this assignment was recorded, but left everything to Crocker, his co-executor. As he himself admits, he only saw the papers of the Ronan Estate on two occasions between 1907 and the time of Crocker's disappearance in 1914 and the last time he saw them was in 1909 (p. 78). From 1909 until 1914 he made no investigation to see whether the assets of the estate were intact or not (p. 78). For a period of five years he remains quiescent and allows his co-executor, Crocker, to have full sway, never asking Crocker to let him see the assets and never making any inquiry at the Surrogate's office to see if any account had been filed (p. 78). If there ever was a case of gross negligence on the part of an executor, the present case is one, and under the authorities hereinafter adverted to, respondent is estopped by reason of such negligence from asserting any rights he might have had to the bond and mortgages in question.

The law on the subject is clear.

Where the owner of things in action, or of chattels, has either designedly or negligently clothed a third person with apparent title and power of disposition, and this third person transfers them to a purchaser in good faith, who relies upon the apparent power of sale they confer, the original owner is estopped by his conduct from asserting his right to property and the

bona fide purchaser acquires a perfect title by estoppel.

2 *Pom. Eq. Jur.*, Sec. 811.

See also:

Big. Estop. (5th Ed. 565).

An equity otherwise equal, or even prior in point of time, may, through the gross laches of its holder, be postponed to a subsequent interest which another person was enabled to acquire by means of such negligence.

For example: A, a mortgagee of a leasehold estate, having the lease in his possession, loaned it to the mortgagor for the purpose of enabling him to obtain a further loan upon its security, but told the mortgagor to inform the person of whom he should borrow the money that he, A, had a prior lien. The mortgagor borrowed a sum from his bankers and deposited the lease with them without security, without informing them of A's mortgage. It was held that as his gross negligence had enabled the mortgagor to perpetrate the fraud his mortgage must be postponed to the lien of the bankers.

Briggs v. Jones, L. R. 10 Eq. 92.

2 *Pom. Eq. Jur.*, Sec. 687.

A priority which would otherwise have existed may be disturbed and defeated by fraud or negligence in obtaining the interest, or in failing to secure it properly. It is therefore a settled doctrine that among successive equities otherwise equal, and also between a legal title or superior equitable interest earlier in time, and a subsequent equity, the holder of the interest which is prior in time and would be prior in right, may lose his precedence and be postponed to the subsequent one by his own fraud or negli-

gence or that of his agent. The same rule applies to the holder of a subsequent legal estate who would otherwise have the precedence over a prior equitable interest; but may be postponed by reason of his neglect or fraud. While the general rule has been fully adopted by the American Courts, the cases involving it are much less frequent in this country than in England, because almost every kind of interest in land is within the operation of the recording acts and may be protected by a record. Most instances of laches, therefore, coming before our courts have arisen from a neglect to record an instrument or to comply with the provision of some statute analogous to that of recording.

2 *Pom. Eq. Jur.*, Sec. 731, and cases there cited.

In *Heyder v. Excelsior Building & Loan Association*, 15 Stew. (42 Eq. 403), the mortgagee permitted the custody of the mortgage to be in the mortgagor, who fraudulently cancelled it of record. As against a subsequent purchaser in good faith and without notice, the mortgagee will not be permitted to establish his lien. In its opinion, the Court by Justice Knapp, says:

“If, through his (the holder of the lien) negligence the record is permitted to give notice to the world that his claim is satisfied, he cannot, in the face of his own carelessness have his mortgage enforced against the *bona fide* purchaser, taking his title on the faith that the registry is discharged.

Where one gives to another the power to practice a fraud upon innocent parties the court will not interfere in his protection at the expense of those who have been deceived and misled by such fraud. What circumstance shall be sufficient to establish

negligence such as shall preclude a mortgagee from a decree establishing his cancelled paper, must be determined as a question of fact in each particular case, tested by those rules of conduct which men of common prudence usually observe in the care and management of such securities."

In *Mott v. Newark German Hospital*, 10 Dick. (55 Eq. 72), there were two claimants to a bond and mortgage, Mott and Somerville. It was claimed by Somerville, among other things, that the complainant was estopped to deny his title to the mortgage under the operation of the rule that if one of two innocent parties must suffer by a fraud, that one must bear the loss who enabled the fraud-doer to consummate the fraud.

The Court in its opinion says:

"An estoppel is worked not because the loss to the party injured was a succeeding event to the act or omission of the party to be estopped in dealing with the subject matter of the transaction, but because the act or omission of the party to be estopped was the moving cause which led the party injured to do the act, resulting in the loss. There must have been a relation of cause and effect by which the injury and consequent loss to the injured party were the result of the previous conduct of the party to be estopped. The party setting up an estoppel must show that he relied on, and was misled by the conduct imputed by the party to be estopped."

And it seems that under such circumstances the executor is personally liable to the estate.

In *Smith v. Pettigrew*, 7 Stew. (34 E. 216), Smith and Bailey were executors of a will and as such in 1861 invested \$4,000 in a mortgage, taken in the name of both. Bailey borrowed money at various times from the mortgagor on his own account, and in 1875 credited the mortgagor on the mortgage with \$1,000 on account of those borrowed moneys. In 1878 Smith ascertained these facts and inquired of Bailey in regard to them, but took no further steps. When the mortgage became due Bailey was insolvent and it was held that Smith was liable for the \$1,000, and that it was no ground of relief that the mortgage had, for convenience in collecting the interest, been left in Bailey's hands; or that Bailey's malfeasance had not been discovered until two years thereafter, and that Bailey was said to have been then insolvent; or that Bailey had voluntarily accounted alone in the Orphans' Court in 1875 for his administration of the fund, Smith having omitted to take the steps precautionary and protective which he might have taken in behalf of the estate in premises.

The Ordinary in his opinion says:

“It is the duty of one trustee to protect the trust estate from any malfeasance by his co-trustee, upon being made aware of the intended act, by obtaining an injunction against him; and if the wrongful act has been already committed, to take measures, by suit or otherwise, to compel the restitution of the property and its application in the manner required by the trust * * * Smith does not appear to have inspected the bond and mortgage while they were in the hands of his co-executor from 1861 to 1878 and, as before stated, he appears to have made no inquiry about them. The \$1,000

was receipted for in 1875 and it was not until more than two years afterwards that he learned of it, and then it was not by any inquiry, but by information received from Oliver (the *cestui que trust*). He never so much as notified the obligor in the bond that no payment of principal was to be made without his express consent, but trusted implicitly to Bailey. Under the circumstances he must bear the consequences."

In *Laroe v. Douglas*, 2 Beas. (13 Eq.), a trustee permitted the securities to be taken by his co-trustee by whom they were afterwards improperly given up and cancelled, and, although he knew of the intended wrong, stood unresistingly by and permitted the wrong to be perpetrated.

The Chancellor in his opinion says:

"If a trustee stand by and suffer his co-trustee to retain the exclusive possession and control of the trust funds and they are lost or wasted by the co-trustee, the non-acting trustee will be decreed personally to make good the loss."

Citing *Hill on Trustees*, 309.

The rule as stated by Mr. Justice Story is somewhat less rigid.

"A trustee must act with reasonable diligence and in case of a joint trust, must exercise due caution and vigilance in respect to the appropriation of and acquiescence in the acts of his co-trustees; for if he should deliver over the whole management to the others and betray supine indifference or gross negligence in regard to the interests of the *cestui que trust*, he will be held responsible."

Citing 2 *Story Eq.*, Sec. 1275.

“So if a trustee by his own negligence suffers his co-trustee to receive and waste the trust fund, when he has the means of preventing such receipt and waste by the exercise of reasonable care and diligence, he will in such case be held personally responsible for the loss.”

In the light of the foregoing and of all the evidence in the case, it is respectfully submitted that there is absolutely no evidence to justify the findings of the learned Vice-Chancellor; and that the decree entered upon his conclusions should be set aside and the fund in court awarded to the appellant, whose claim thereto is perfectly established, and whose title is without a single flaw.

ARCHIBALD F. SLINGERLAND,
Solicitor for Appellant.

New Jersey Court of Errors and Appeal

Between

STERLING LEATHER WORKS,
Complainant,

and

LIBERTY TRUST COMPANY, *et*
als,
Defendants-Appellants.

*On Bill of
Interpleader.*

*On Appeal
from Court
of Chancery.*

**Brief for Frank Schwarzwaelder, sole acting
executor, etc.**

FACTS.

On or about May 1, 1897, Frederick F. Meyer and Franklin Meyer owned certain premises in the Westerly line of Frelinghuysen avenue, Newark, New Jersey, and being indebted to Mary P. Butler in the sum of \$1,400 gave their bond in the penal sum of \$2,800 to said Mary P. Butler, which bond was dated May 1st, 1897, payable in one year with interest at the rate of six per centum per annum, payable semi-annually.

Two mortgages were given to secure the said bond, each in the sum of \$1,400 and each dated May 1st, 1897, one made by Frederick F. Meyer and Mathilda A. his wife to Mary P. Butler which was registered in the Essex County Register's office May 13, 1897, in Book G 13 of mortgages for said County on page 450 and the other made by Franklin Meyer, widower to Mary P. Butler, registered in the Essex County Register's office on May 13, 1897, in Book G 13 on page 450.

Mary P. Butler died possessed of said bond and mortgages on or about January 28th, 1905, leaving

a last will appointing Walter S. Baker and Mina A. Baker as executor and executrix.

This matter came before the Court of Chancery to decide whether Liberty Trust Company or Frank Schwarzwaelder, sole acting executor, etc., is entitled to said bond and mortgages and their claims arise in the manner as hereinafter stated.

The equity of redemption of the premises embraced in said mortgages was conveyed by Frederick F. Meyer and Franklin Meyer to Sterling Leather Works, a body corporate, who assumed the payment of said mortgages.

The said bond bore interest at the rate of six per centum per annum and after Mary P. Butler's death interest was paid by Sterling Leather Works to the representatives of the Butler estate (see Exhibit D. 12), and in December, 1915, the executors called for the payment of the same and on December 21, 1905, an assignment was made by the executors of the Butler estate to William Ronan, who paid the sum of \$1,400 for the same, together with interest amounting to \$53.43, being from May 1st to December 21, 1905, at the rate of six per centum per annum; previous to this assignment the interest had been paid by the Sterling Leather Works to Walter S. Baker, administrator, and the final payment of interest to May 1st, 1905, was paid by check bearing date July 1, 1905, for the sum of \$42, marked Exhibit D. 12.

William Ronan agreed to reduce the interest on said bond and mortgages from six to five per centum per annum and thereafter the Sterling Leather Works paid regularly to William Ronan the interest on said bond and mortgages and after his decease, which took place February 16th, 1907, paid the same to the Estate of William Ronan and checks marked Exhibits D. 2, D. 3, D. 4, D. 5, D. 6,

D. 7, D. 8, D. 9, D. 10, D. 11, were offered in evidence for the purpose of showing these payments.

The last check bears date May 29th, 1914, and is in the sum of \$35.00, being presumably interest to May 1st, 1914, on that bond and mortgages.

No checks for interest were given by Sterling Leather Works to William Ronan in his lifetime, but the amount of interest, as it became due, was credited to his account in the books of Sterling Leather Works (p. 79).

The purchase of the bond and mortgages by William Ronan was attended to by Roland D. Crocker, an Attorney at Law of New Jersey, having an office in the City of Newark, and said Frank Schwarzwaelder, who was associated in the business of the Sterling Leather Works with the said William Ronan, attended at Crocker's office at the time of the assignment of the said bond and mortgages from the Butler Estate and remembers seeing the bond and mortgages in Crocker's hands, together with an assignment executed by Walter S. Baker in the capacity of administrator or executor and that the said assignment appeared to have been acknowledged before said Roland D. Crocker.

The interest on said bond and mortgages from the time of the assignment to Ronan was paid at the rate of five per centum per annum, up and until his decease, and thereafter the interest continued to be paid to his estate at the rate of five per centum per annum as aforesaid.

The final account of Walter S. Baker and Mina A. Baker, executors of the estate of Mary P. Butler, deceased, filed in the office of the Surrogate of Essex County in Book 49 M on page 166, shows that the accountants charge themselves, among other things, as follows: "June 1, 1905, to interest on Frederick F. Meyer mortgage, interest due May 1st, \$42. December 21, 1905, the interest due on mort-

gage of Frederick F. Meyer and wife to May 1st to date \$53.43" (see p. 91).

During the administration of the said Butler Estate the executors filed an inventory and included said Meyer bond and mortgages among the securities at a valuation of \$1,400 (see p. 90).

Said William Ronan died on February 16th, 1907, leaving a last will and testament and codicil which were regularly probated on February 27th, 1907, a copy of the same being annexed to the bill of complaint filed herein (see Exhibit D. 1). The last will appointed said Frank Schwarzwaelder and Roland D. Crocker as executors and trustees, who properly qualified, and said bond and mortgages came into their possession as executors and trustees and were placed in a safe in Mr. Crocker's law office for the purpose of safe keeping; when an inventory was prepared by the executors, bearing date May 16th, 1907, which inventory was properly recorded in the Surrogate's Office of the County of Essex, one of the items set forth in the inventory was the Meyer mortgage of \$1,400 (see p. 71), and at the time of the preparation of the inventory, the bond and mortgage and assignment from the Butler Estate to William Ronan were altogether and in Crocker's office and this is testified to by Frank Schwarzwaelder, who assisted in the preparation of the account and made an examination of the securities and assets of the estate and knew that those papers were there at that time.

So the existence of the lost assignment from Butler Estate to Ronan is established by the testimony of Schwarzwaelder.

Roland D. Crocker exercised no control over said bond and mortgages and assignment except as co-executor with Frank Schwarzwaelder and the assignment to William Ronan appeared to have been properly recorded, but there is no record in

the office of the Register of Essex County showing that this assignment had ever been placed on the records, so no doubt the endorsement which purported to show the recording of this assignment was a forgery.

That said Roland D. Crocker was removed as co-executor of the Ronan Estate and said Frank Schwarzwaelder is now sole acting executor and trustee.

That Roland D. Crocker disappeared from Newark during the year 1914 leaving his affairs in a most chaotic state and after his disappearance a thorough and complete search was made in his office and amongst the papers and files and other places which belonged to him, which did not reveal the assignment of the Meyer mortgages from the Butler Estate to Ronan, so it can be assumed that this instrument was destroyed by Crocker or else has been lost (see p. 69).

After the Crocker disappearance the bond and mortgages turned up in the possession of the Liberty Trust Company, which company claims ownership of the same, in the following manner:

The Liberty Trust Company was organized in the year 1912 and said Roland D. Crocker was the principal organizer; he was Director and Chairman of the Executive Committee from the time of its organization until the time of his departure from these whereabouts, and his friend, William Pennington, an attorney practicing in Newark, and having an office with Crocker, was made counsel.

About September, 1913, Roland D. Crocker presented to the Liberty Trust Company the verbal application which he stated was being made on behalf of Mabel Daly for a loan of \$2,500 and offered as collateral security an assignment of the aforesaid Meyer bond and mortgages together with insurance policies on the life of one, Lederer, which

application came before the Executive Committee of the Liberty Trust Company, of which Crocker was the chairman, and they advised the making of the loan. Mabel Daly was unknown to the president of said bank, or his successor, Gottlob Kautzmann, or to the directors; she had no check account or money on deposit in said bank (see pp. 84 and 85), and the only record in that institution bearing her name was the one showing this loan and the collateral held to secure it.

The meeting of the executive board was held at nine o'clock in the morning and Roland D. Crocker, as chairman of the executive committee directed the president to send a check for \$2,500 to their counsel's office which check was sent by messenger to William Pennington and upon the delivery of the check to him the Lederer policies were returned by the same messenger.

The value of the securities offered for the Daly loan was passed upon by the appraisal committee, consisting of Roland D. Crocker, William Pennington and one John W. Phillips.

No investigation was made by the president of the Liberty Trust Company as to whom Mrs. Daly was or where she resided or anything concerning her financial condition, but the entire transaction was put through upon Crocker's recommendation. The appraisal committee was appointed by the chairman of the executive committee, who was Roland D. Crocker and thereafter—although the date is uncertain—the bank came into possession of the Meyer bond and mortgages together with an abstract of title signed by William Pennington which abstract of title had been prepared by Roland D. Crocker; dictated by him to his own stenographer and merely signed by William Pennington as counsel.

The Liberty Trust Company claims the said bond

and mortgages because the records in the office of the Register of Essex County show that what purported to have been a chain of assignments was recorded in that office as follows:

Baker, executor to William H. Daly, dated Dec. 30, 1905, recorded Sept. 2, 1913, the consideration set forth in this assignment being for \$1,453.43, William Daly to George Clark, dated Aug. 1, 1913, recorded Sept. 2, 1913.

George Clark to Mabel Daly, dated Aug. 1, 1913, recorded Sept. 2, 1913.

Mabel Daly to Liberty Trust Company, dated August 13, 1913, recorded Sept. 3, 1913.

The original papers which were lodged in the register's office for recording purposes can not be found and it may be assumed that they were destroyed by Crocker or having been lost, certified copies of these records have been offered in evidence.

ARGUMENT.

The chain of alleged assignments starting with the Baker executor assignment, and ending in Liberty Trust Company, is no stronger than its weakest link.

Both Walter S. Baker and Mina Baker are dead and their records as executors of the Butler Estate are lost or destroyed.

William H. Daly was a friend of Crocker's and entrusted some of his affairs in Crocker's keeping and testified that he knew Crocker since 1900, but that his first dealing with him was in 1905 *and thereafter had no deal or transaction of any kind with him until 1909*, and the transaction in 1905 was a search of title on property on Summer and Montclair avenues, in order to obtain a report on the title to said property.

The next business transaction of any kind between Daly and Crocker took place in 1909, so the alleged assignment from Baker Executor to William H. Daly, bearing date December 20th, 1905,

must have been a forgery on the part of Crocker, made about the time of the Mabel Daly application for a loan, because it was not recorded until September 2, 1913, which is just about the time that Crocker presented the application for this loan to the Trust Company.

William H. Daly testified that he does not remember ever seeing the Meyer mortgages and that he never parted with any consideration for the same, nor did he claim ownership from December 20, 1905, until August 1, 1909; that he never received any interest on said bond and mortgages and that he did not assign said bond and mortgages to George W. Clark; that he never authorized Crocker to purchase the said bond and mortgages in December, 1905, and that he never heard of them until September, 1913, when Crocker requested him to have Mrs. Daly make a note to the Liberty Trust Company for \$3,500 and that he would secure the payment of that note with insurance policy on the life of some party and that these mortgages would be assigned by George W. Clark to her as security, but after considering the matter William H. Daly informed Crocker that he would permit his wife to make a note for \$2,500, but no more; that this loan was Crocker's and that he (William H. Daly) had no interest in this bond and these mortgages and that this transaction was simply an accommodation for Mr. Crocker who was borrowing \$2,500 from the Trust Company and merely wanted to use the name of Mrs. Mabel Daly, wife of William H. Daly.

William H. Daly on cross examination testified that he had several transactions with Crocker between 1909 and 1912, some involving the loaning of money on bond and mortgage, but that nothing was done for him by Crocker before 1909 except the searching of the Summer avenue property.

So it would seem to be quite clear that the link

in the chain of assignments from Baker Executor to William H. Daly is broken and consequently the title to the Meyer mortgages is not in the Liberty Trust Company by virtue of those assignments.

But that is not all, as George W. Clark, a distant relative of Crocker's by marriage, testifies that he never purchased said bond and mortgages from William H. Daly, or anybody else; that he never received any consideration for said bond and mortgages from Mabel Daly; that he never had said bond and mortgages and that he never assigned the same to Mabel Daly; that he never received any interest on this bond and that he never demanded interest, and that he never heard about said bond and mortgages until the time of his examination on the stand in this cause.

Mabel Daly testifies that she first knew Crocker about 1904 or 1905, and never had any personal transactions with him; that she never bought the Meyer mortgages or bond and that she never paid anything for them, and that she never received any money for them and that she never owned them at all. That the transaction in September, 1913, was for the purpose of enabling a man she considered her friend—Crocker—to obtain a loan of \$2,500 from the Liberty Trust Company of which he was director, Chairman of the Executive Committee and Chairman of the Appraisal Committee, and that she trusted him as an honest man; that she never received any of the money from said loan and that she never spoke to anybody in the Liberty Trust Company except Mr. Crocker, and that after the loan was granted she never paid any interest on it to the Liberty Trust Company or anyone else.

Mr. Pennington's testimony regarding this transaction is exceedingly hazy and he is unable to produce any of his books, records, accounts, or any documentary evidence whatever regarding his affairs. That he was associated in the office with Rol-

and D. Crocker and in the Daly transaction Crocker prepared all the papers and merely furnished him with an abstract of title to be signed. He cannot recall receiving a check from the Liberty Trust Company for \$2,500 on September 4th, 1913, and does not know what was done with the proceeds of that check. This check for \$2,500 issued by the Liberty Trust Company was made to the order of William Pennington, attorney, but Mr. Pennington can give us no information as to how he disposed of this money or to whom it was paid.

So the situation is that the bond and mortgages are held by the Liberty Trust Company, claiming title under a series of assignments, one or more of which was a forgery, and having paid out the sum of \$2,500 on a loan which was made for the benefit of Crocker, their director, and Chairman of their Executive Committee.

On the other hand a claim by Schwarzwaelder, sole acting executor of the Ronan Estate, who bases his claim on the fact that the bond and mortgages were purchased by Ronan during his lifetime and an assignment of the bond and mortgages was in Ronan's possession, and after his death those papers continued in the possession of one of his executors, who held them until September, 1913, when he fraudulently prepared the assignments to the Liberty Trust Company.

—1—

*SCHWARZWAELDER IS NOT ESTOPPED
FROM CLAIMING BOND AND MORTGAGES
BY VIRTUE OF NEGLIGENCE ON HIS PART.*

William Ronan in his lifetime trusted Crocker, who, so far as there is any testimony in the case was a respected attorney at law whose integrity was not even suspected and Ronan left the Meyer

bond and mortgages in Crocker's custody for safe keeping; after Ronan's death Schwarzwaelder and Crocker qualified as executors and trustees, and the custody of the Meyer bond and mortgages remained with Crocker for the purpose of safely keeping the same.

"Generally speaking the rights of co-executors or co-administrators to the custody and control of assets belonging to the estate are equal, and a representative has apparently no right to prevent his associates from collecting the assets of the estate or holding them in their possession for the purpose of administration, unless in case of mismanagement or the existing or impending insolvency." 18 Cyc., 1331.

Schwarzwaelder examined the bond and mortgages and assignment at the time the inventory was made and again when the account was prepared; the inventory was placed on record but the account was kept off by Crocker, although he had assured Schwarzwaelder that it had been properly filed. There was nothing in the instruments at the time of their examination by Schwarzwaelder which could have excited his suspicions, especially so when coming from a man in whom he had confidence. Suspicion was further removed by the fact that the interest payments by the Sterling Leather Works were made to the Ronan Estate regularly and no one else made a demand of any kind for the same.

The conduct of Schwarzwaelder in the transaction was that of an ordinary person having confidence in an attorney at law of good repute. There is nothing in the case which justified him in assuming that the attorney was a criminal or that the Ronan Estate was in any danger of losing its securities, because during all this time he rested in the belief that the bond and mortgages were lying in Crocker's safe.

This defense as to Schwarzwaelder's negligence

can not prevail, for there was no negligence on his part in leaving these investment securities in the hands of Crocker, his co-executor and trustee, who up to the time of his disappearance had enjoyed an unblemished reputation and was a lawyer of good standing at the Bar and that he was a leading member of the Liberty Trust Company, Director and Chairman of the Executive Committee.

“It is a common thing, as Vice-Chancellor Howell states in his opinion in the case of *Leithoff vs. Dennis*, 98 Atl. Rep., 243, for people to deposit a bond and mortgage and other documents quite as important such as wills, contracts, title deeds and other valuable papers with their attorneys. I do not think that this fact shifts the burden of proof or permits the inference to be made that the complainants have themselves contributed to the loss.”

See also *English vs. Newell*, 42 Eq., 82.

—2—

LIBERTY TRUST COMPANY WAS NEGLIGENT AND SHOULD BE ESTOPPED IN CLAIMING BOND AND MORTGAGES.

Liberty Trust Company accepted the verbal application of Crocker for the loan of \$2,500 from Mabel Daly with whom they were unacquainted and who had no account in the bank; they accepted the representations of Crocker as to Mabel Daly and the value of the mortgages. Their attorney, William Pennington, made no examination of the records in order to ascertain if the title to the property embraced in the mortgages was good or whether the various assignments of the mortgages were in proper order. Liberty Trust Company and Pennington, its attorney, accepted the bond and mortgages and the assignment from Mabel Daly, without receiving or asking for the other three origi-

nal assignments, all this in view of the fact that the last three assignments were all dated and executed within a few days of the completion of the loan, although the assignment pretending to have come from the Butler Estate was made eight years before that time—this in itself was enough to excite the suspicions of an ordinary and prudent person, and still more so the officers and attorney of the Trust Company who were in the business of making loans and therefore had experience and knowledge as to the methods employed in making a proper investigation. In addition to that there had never been an inquiry of any kind made at the Sterling Leather Works, in order to receive from them an estoppel certificate or to ascertain whether the mortgages and assignments were *bona fide* and one word of inquiry directed to that source would have been sufficient to have exposed the entire situation and prevented Crocker from completing this loan from which he was the sold beneficiary.

—3—

*THE ASSIGNMENTS TO DALY AND THOSE
SUBSEQUENT WHICH ENDED IN THE ONE
TO MABEL DALY WERE FORGED.*

There can be no question as to the forgery of those assignments when the testimony of Daly is considered, in effect that prior to 1909 he had placed but one matter in Crocker's charge and there was a search of a title to some Summer avenue property, and so the alleged assignment from Baker administrator to William Daly bearing date 1905, must have been a forgery on the part of Crocker, as well as the succeeding assignments from William Daly to Clark and from Clark to Mabel Daly, as it is apparent that those assignments were all prepared by Crocker on or about September 2, 1913,

and after forging the signatures, he placed these forged documents in the office of the Register of Essex County, who copied them in his records and as soon as the filed documents were returned to Crocker they were destroyed by him in order to do away with evidence of the forgery.

Pennington made no examination of the records and probably did not know that two of the assignments were dated September 2nd, 1913, and the last September 4th, 1913, as he merely accepted the abstract of title prepared by Crocker and signed the same. Certified copies of these assignments were not even held by the Trust Company and were only obtained by their new counsel for the purpose of using them in this suit, so that the bank's chain of documents was incomplete until after Crocker's departure.

It requires no citation of authorities that one can not be deprived of the title and ownership of his property by forgery.

In the case of *Brewster vs. Entz*, 97 Atl. Rep., 156, there is an opinion by Griffin, V.-C. and quite applicable to this cause, where the owner of bonds secured by mortgages delivered them to an attorney to collect the interest, who held the documents in his possession for some months, during which time he prepared forgeries which he delivered to a third party. The woman received the interest regularly and her suspicions were not aroused. It was held that as the attorney was not authorized to assign the bonds and was apparently a reliable member of the Bar complainant was not estopped on discovering the forgeries from suing to set aside the assignment.

The case of *Melick vs. Liberty Trust Company*, 85 N. J. Eq., 29, is further authority for the contention that Schwarzwaelder was not negligent and

should not be estopped from claiming the bond and mortgages in this cause.

See also *Morris vs. Joyce*, 63 N. J. Eq., 549.

*THERE CAN BE NO QUESTION OF AGENCY
ON THE PART OF CROCKER.*

Counsel for Liberty Trust Company may contend that this cause is one arising under the laws of agency and that the question is whether the agency authorized an assignment of the mortgage.

Crocker did not assign the bond and mortgages as executor and trustee, but forged assignments in the names of other persons.

An agency to do what he did is therefore out of the question.

See again *Melick vs. Liberty Trust Company*, 85 N. J. Eq., page 29.

When Crocker undertook to perpetrate the fraud upon the bank he was acting for himself and for his own benefit; at the same time he was the presiding officer of the Executive Committee which has authority to make loans to and accept securities from the borrowers. It was the duty of the Executive Committee to ascertain the genuineness of the assignments which were offered to them as security for the loan to Mabel Daly and there was a duty placed upon the Trust Company to make inquiry. If inquiry had been made they would have discovered the forgery; therefore the law presumes that the bank had notice of the forgery and the fraud connected therewith.

Any act or conduct on the part of the presiding officer of the Executive Committee, or of any agent of the Trust Company authorized to make this inquiry respecting the genuineness of the assignments will necessarily bind the Trust Company. So far as the evidence discloses the alleged original

assignments were therefore never exhibited to the members of the Executive Committee nor to any officer or agent of the Trust Company; and the Trust Company acted through its agents solely, upon the presentation of the bond and mortgages.

The principal of law applicable thereto is whether the owner of the bond and mortgages should lose his rights therein, where, without fraud on his part, a third person, the Liberty Trust Company, has suffered injury by the fraudulent conduct of its agent while acting for the Trust Company, although said fraudulent acts were for the exclusive benefit of the agent. The transfer by the forged assignments conveyed no title, and therefore Mabel Daly was in no position to convey a title to the Liberty Trust Company.

Vulcan Detinning Company vs. American Can Co., 72 N. J. Eq., 387, is authority for:

“The knowledge of the agent is chargeable upon his principal whenever the principal, if acting for himself, would have received notice of the matters known to the agent.”

If the Liberty Trust Company had acted through an agent, honestly performing his duties, an inquiry would have been made of the Sterling Leather Works as to the validity of and amount due on the bond and mortgages. This is a common practice in taking assignments of bond and mortgages. It can fairly be said therefore that the Liberty Trust Company is chargeable with notice of the fraud and the forgery.

The Ronan Estate cannot be bound by any acts of Crocker as its agent, unless they are within the purview of his authority or had placed him in that situation so that he had an opportunity to perpetrate the fraud and an innocent party was injured thereby. There are no cases which hold that the placing of legal instruments, such as bond and mort-

gages in the possession of an agent, affords the agent an opportunity of forging the name of his principal and to forge a copy of one or more of the assignments in his possession.

Schwarzwaelder did not clothe Crocker with the apparent title and power of disposition. His act in signing other names to the assignments was criminal and Schwarzwaelder should not be chargeable with negligence.

The decree appealed from should be affirmed.

Respectfully submitted,

LINTOTT, KAHR & YOUNG,

*Solicitors for and of Counsel
with Frank Schwarzwaelder,
sole acting executor, etc.*

