New Jersey Court of Errors and Appeals.

Between
PEOPLES MUTUAL BUILDING AND LOAN ASSOCIATION OF RIDGEFIELD PARK, N. J.,
Complainant-Appellant,

and

ISAAC VANIEWSKY AND BESSIE VANIEWSKY, his wife,
Defendants-Respondents.

On Appeal.

Brief of Complainant-Appellant.

STATEMENT.

The appellant is a Building and Loan Association. On September 3rd, 1912, Emma C. Thornton applied to the Association for a $3,000 loan (Exhibit C-6, p. 37, L. 20-30) and after the Association's appraisers had reported that the security was sufficient for a loan of $2,800 a loan of that amount ($2,800) was granted (Exhibit C-6, p. 38, L. 10-25).

For this loan Thornton agreed to pay a 5% gross premium; became the holder of fourteen shares in the Association (Exhibit C-6, p. 37, L. 10-15); and paid the dues for the month of September, $14, with $1.40 initiation fee (Exhibit C-11, p. 41, L. 32).

On September 26th, the Association made its check to Thornton's order for $793 (Exhibit C-8, p. 39, L. 1-30), which was charged to her loan account (Exhibit C-7, p. 38, L. 35) and the 5% pre-

mium amounting to $140 was also deducted from the loan (Case, p. 19, L. 14-20).

The bond and mortgage by Thornton to the Association were executed and recorded on September 27th, 1912 (Exhibit C-1, p. 29, L. 1-35; Exhibit C-2, pp. 29, *et seq.*), but the full amount of the loan was not then advanced, as this was a construction loan on which the Association agreed to make payments as the building progressed (Case, p. 9, L. 20-30) and to make the final payment when the building was completed (Case, p. 17, L. 5-20).

On September 28th, 1912, a second mortgage of $800 to Carl Hallberg was recorded (Exhibit C-3, L. 25-35). This mortgage afterwards passed by Carl Hallberg's will (Exhibit C-5, p. 35) to the defendant, Ida Hallberg.

On January 27th, 1913, the Association made a further advance of $933 on account of its mortgage by its check to Thornton (Exhibit C-9, p. 40), which was charged against the loan (Exhibit C-7, p. 38, L. 36), and at the February meeting Thornton paid to the Association $70 for dues, and $70 interest, and $5.04 fines (Exhibit C-11, p. 41, L. 34) apparently for the five months, November, 1912, to February, 1913, inclusive.

On April 9th, 1913, the respondent Isaac Vaniewsky filed a mechanic's lien claim for work and material furnished for the Thornton building between July 27th, 1912, and December 12th, 1912 (Exhibit D-1, pp. 47, 48 and 49).

On August 4th, 1913, the Association advanced to Thornton the balance of the $2,800 loan by the check (Exhibit C-10, p. 41, L. 1-28) and charged the advance against the Thornton loan account, balancing and closing that account (Exhibit C-7, p. 38, L. 37-40). The building was then completed (Case, p. 16, L. 20-40; p. 17, L. 1-20).

On September 11th, 1913, judgment was entered in favor of the respondent Vaniewsky in a suit on his lien claim but subject to the mortgages of the Association and Hallberg (Exhibit C-14, p. 44). This was not according to a stipulation made at the trial that $1,860 of the mortgage money had been actually applied to the building at the time of the trial so the judgment was afterwards amended, by order of Mr. Justice Parker, October 24th, 1914, to be that the respondent's special judgment "is subject to the mortgage of the Peoples Mutual Building and Loan Association of Ridgefield Park, N. J., to the extent of the sum of $1,860 actually advanced thereon at the time of the trial, and also to the extent of such further moneys advanced thereon, not in excess of the principal thereof, as shall be adjudged by a competent court to be entitled to priority over the said lien, and the judgment thereon. And subject also to the mortgage held by Carl Hallberg" (Exhibit C-14, pp. 45-46).

On September 19th, 1913, out of the money advanced to Thornton on August 4th, 1913, by the Association's check (Exhibit C-10) $750 was paid to Brewster & Son for materials supplied by them for the erection of the Thornton building (Exhibit C-12, p. 42, L. 25-40, and p. 43, L. 1-10); Case, p. 23, L. 28-33, p. 24, L. 11-21; p. 25, L. 12-15), and on September 22nd the balance of the Association's last advance, with other money, was repaid to the Association (Exhibit C-13, p. 43) and credited to the Thornton loan at the October meeting, as $112 dues, $112 interest and $7.84 fines (Exhibit C-11, p. 41, L. 35).

Execution was issued on the Vaniewsky judgment, and after levy, advertisement, and sale, the Sheriff by his deed dated January 23rd, 1914, sold and conveyed the mortgaged premises to the re-

spondent, Isaac Vaniewsky, "subject to first mortgage of $2,800 held by Peoples Mutual Building and Loan Association of Ridgefield Park, and on which $1,860 has been advanced, and on which $184 in dues had been paid, with interest from October 6th, 1913, and any other payments that may be due thereon. And mortgage of $800 held by Estate of Carl Hallberg with interest from November 12th, 1912, and subject to certain taxes" (Exhibit D-2, p. 49, L. 24-30).

The question involved in this appeal is whether the Building and Loan Association, on the foreclosure of its mortgage, is entitled to a decree that the premises be sold to satisfy its entire mortgage, or only that part of the mortgage which had been advanced and applied to the building at the time the lien claim judgment was entered. This question is raised by the allegation in the foreclosure bill that the lien claim judgment was subject to the lien of the Association's mortgage (Bill of Complaint, p. 4, L. 20-25) and that the Sheriff conveyed the lands subject to the Association's mortgage (Bill, p. 4, L. 28-40), which allegations are denied by the Vaniewsky answers (Answer, p. 7, L. 8-40; p. 8, L. 1-10).

The advisory master concluded that the Association's mortgage was to the extent of the $750 paid to Brewster & Son, subsequent to the lien claim and judgment of Vaniewsky (Conclusions, p. 54, L. 15-18) and that the balance of the final advance, $184, was also subsequent (Conclusions, p. 58, L. 39-40; p. 59, L. 1-15), and the final decree was that the Association's mortgage "is entitled to priority of payment to the extent of $2,107.38 and no more, over the right, title, and interest of the defendants, Isaac and Bessie Vaniewsky" (Final Decree, p. 61, L. 1-10), and ordered the

mortgaged premises sold to raise and satisfy this sum (*Ibid.*, L. 25-30).

The appellant specifies this as erroneous and says that the decree should have been that the mortgage is entitled to priority of payment over the right, title and interest of the defendants Isaac and Bessie Vaniewsky, to the extent of the entire amount of $2,844.87 decreed to be due thereon, and that the mortgaged premises should have been decreed to be sold to raise that sum (Petition of Appeal, p. 63, L. 38-40; p. 64, L. 1-10).

POINT I.

The appellant's mortgage was given (a) to secure future advances, (b) which it was obligated to make, and (c) was recorded before the respondent's lien claim was filed.

A.

It was given to secure future advances.

The full amount of the mortgage was not advanced when the mortgage was signed (Case, p. 9, L. 25, 26).

The final payment was to be made only after the building was completed (Case, p. 17, L. 16-18).

B.

This was a construction loan and the Association was obligated to make payments on it as the building progressed (Case, p. 9, L. 26-30).

Vice-Chancellor Emery in Germania Building and Loan against Frankel Realty Company, 82 N. J. Eq., 49 (affirmed 93 Atl. Rep., 591) had under

consideration a similar Building and Loan Association mortgage for money for the construction of a building, and (at p. 59) he said:

> "In view of the application for loan and the granting thereof, and the actual execution and delivery of the bonds and mortgages, it is clear that the mortgages in question were mortgages upon which the mortgagee, the Association, was obligated on its part to make advances to the Realty Company to the extent of the mortgages."

C.

The mortgage was recorded after the building was started and before the lien claim was filed.

The mortgage was recorded September 27, 1912 (Exhibit C-1, p. 29, L. 31-32).

The building was under construction at that time (Case, p. 16, L. 9-10).

The respondent's lien claim was filed April 9th, 1913 (Bill, p. 4, L. 12-13, Answer, p. 6, L. 35-36).

POINT II.

The appellant's mortgage is a prior lien to the interest of the respondent in the mortgaged premises.

A.

It is a prior lien to the extent of $1,860. This was admitted by the answer (Answer, p. 7, L. 12-15) and cannot be disputed on this appeal, because by the Circuit Court judgment on the lien claim (Exhibit C-14, p. 44), priority to this extent at least is fixed, and cannot be re-examined in this

Chancery proceeding. Cutter *v.* Kline, 35 N. J. Eq. (8 Stew.), 534.

This sum, $1,860, is made up of the first advance, $793 (Exhibit C-8, p. 39), the second advance, $933 (Exhibit C-9, p. 40) and the 5% gross premium $140 (Exhibit C-7, p. 38, L. 30-40), making $1,866 in all (Case, p. 19, L. 1-20). The difference of $6 is, no doubt, due to an error made at the Circuit in stating or noting the sum of these three items.

B.

It is also a prior lien to the extent of the balance of the loan.

By the first general act in relation to Mechanics' Liens (P. L., 1853, p. 437), the Sheriff's deed in a mechanics' lien case conveyed the building and lands free from all encumbrances created by the owner after the commencement of the building (Sec. 11, at p. 442); and a mortgage made after the commencement of the building was subject to all mechanics' liens; even if the money advanced on the mortgage had been the means of paying for the very building which stood, with its curtilage, as security for the lien claims.

This mischief in the old mechanics' lien law was clearly pointed out by Vice Chancellor Pitney in Mutual Life Insurance Co. *v.* Walling, 51 N. J. Eq. (6 Dick. Ch.), 99. In that case it was proven that $500 in cash paid by the mortgagee to the owner, was by him in turn immediately paid over and distributed among the lien claimants so that they had the benefit of it, but under the mechanics' lien law as it then stood, it was necessary to decree priority for these lien claims over this mortgage, even for the money so advanced.

And Vice Chancellor Pitney says, at page 103:

> "The act describes these mortgages as mortgages given to secure money advanced

for the very purpose of paying these mechanics' liens, and it makes no exception in favor of moneys advanced not only for the purpose of being used in and about the construction of the buildings, but actually so used. It does not seem to be aimed at mortgages which, though actually intended for the purpose of raising money to pay the contractors, have not been devoted to that use, and the moneys advanced on them applied to other uses, but it is aimed at and includes all mortgages of that description, whether the money so advanced be or be not used in paying for the construction of the building.

"The theory of the act is, that as between the moneyed man advancing his money and the man advancing labor and materials, the labor and materials have the superior right; so that if the property in the end, is not worth enough to pay all, the man who puts in his hard cash shall lose rather than the man who puts in materials and labor. It is not for this court to criticise the justice and the equity of such a statute, but it is its duty to enforce it. The inequity, if any exists, is in the statute and not in the man who takes advantage of it."

The foregoing being the old law and the mischief, we find the remedy in the statutory provision first enacted in 1895 as a supplement to the old lien law. This supplement (P. L., 1895, Sec. 6, at p. 316) is as follows:

"And Be It Enacted that every mortgage upon lands in the state shall have priority over any claim which may be filed in pursuance of the act to which this is a supplement, or the various supplements or amendments thereto, to the extent of the money actually advanced and paid by the mortgagee and

> applied to the erection of any new building upon the mortgaged lands or any alterations, repairs or additions to any building on said lands, provided such mortgage be recorded or registered before the filing of any such claim."

This enactment was embodied in the 1898 Revision of the Mechanics' Lien Law as Section 15 (P. L., 1898, p. 538, Sec. 15; 3 C. S., p. 3303, Sec. 15), as follows:

> "Every mortgage given or to be given upon lands in this state shall have priority over any claim that may be filed in pursuance of this act to the extent of the money actually advanced and paid by the mortgagee and applied to the erection of any new building upon the mortgaged lands or any alterations, repairs or additions to any building on said lands; provided, such mortgage be registered or recorded before the filing of any such claim."

The mischief under the old mechanics' lien law which Section 15 was enacted to remedy, was that a lien claim had priority over a mortgage for money actually applied to the erection of the very building which the statute gave as security for the lien. And if the decree advised by the advisory master in this case is correct, that mischief has not been remedied, for what the respondent claims in this case is priority for his lien claim over the appellant's mortgage for money actually applied to the erection of the very building which he has taken as payment for his lien. The respondent admits the priority of the Hallberg mortgage for the purchase price or cost of the land, and seeks to deny the priority of the appellant's mortgage for the purchase price or cost of the building.

This inconsistency indicates that his contention is erroneous.

It is to be noted that the statute makes only two requirements for priority, first, that the mortgage be recorded before the lien claim is filed, and second, that the money be actually advanced and paid by the mortgagee and be applied to the erection of the new building on the mortgaged lands.

Contests for priority between a lien claimant and a mortgagee who had advanced money for the erection of the building arose under the old lien law, when the requirement was that the mortgage be recorded before the erection of the building had begun, and it was held by Chancellor Runyon in 1874, in Taylor *vs.* La Bar, 25 N. J. Eq. (10 C. E. Green), 222, that a mortgage recorded before the commencement of a building, and given to secure advances to be made to pay for the construction of the building, for the payment of which advances in installments the mortgagee bound himself by written agreement when the mortgage was given, is entitled to priority over a lien claimed under the mechanics' lien law, for work done in the construction of the building.

And again in Platt *v.* Griffith, 27 N. J. Eq. (12 C. E. Green), 207, Chancellor Runyon held that a mortgage executed, bona fide, to secure the payment of advances to be used in the construction of a building on the mortgaged premises, is a prior lien to claims for materials furnished in the construction of such building, with notice of the mortgage, to the full amount of the mortgage, if so much was advanced. That the agreement, under which the advances were made, was verbal, and not in writing, does not affect the lien.

And after the lien law was changed, it was held in Young *v.* Haight, 69 N. J. L. (40 Vr.), 453, that priority over the lien claim is given whether the

mortgage is made to secure future advances or money already advanced. In construing the supplement of 1895, now Section 15 of the Mechanics' Lien Law, Mr. Justice Gummere in Young *v.* Haight said (at page 456):

> "The manifest object of these changes in the statute was to make the lien of a mortgage given for moneys advanced for the erection of a building, and actually used for that purpose, superior to a mechanic's lien filed upon the property subsequent to the recording of the mortgage, notwithstanding the fact that the money had been advanced and the mortgage had been executed while the building was in course of erection. And this priority is given whether the mortgage be made to secure future advances or money already advanced; the only test is whether the money has been loaned for the erection of * * * the building and has been actually applied to that purpose. When such is the case, the mortgage has priority over the mechanic's lien filed subsequent to the date of its recording."

There is nothing in the wording of the original act, nor of Section 15, nor is it suggested in any of the cases that the advances on the mortgage must be made before the lien claim is filed, or before the lien claim judgment is entered, or even before the property is sold by the Sheriff on execution, but as Mr. Justice Gummere said in Young *v.* Haight (*supra*), at page 456:

> "The only test is whether the money has been loaned for the erection of * * * the building and has been actually applied to that purpose."

When defendant's judgment was entered on September 11th, 1913 (Exhibit C-14, p. 44), the

complainant, in addition to the sum of $1,860 for which the Circuit Court gave priority by its adjudication, had drawn its check to Thornton for $934 (Exhibit C-10, p. 41, L. 1-25) dated August 4th, 1913, and paid by the bank to the complainant's attorney on August 23rd, 1913. This money had, therefore, been actually advanced and paid by the mortgagee, so satisfying the first requirement of Section 15, but it had not yet been applied to the erection of the building so as to satisfy the second requirement, but was held in the control of the complainant's attorney for that purpose.

In this situation, the Circuit Court adjudicated the priority of this final advance, but conditionally. The judgment is, that the lien is subject to this mortgage to the extent of $1,860 "and also to the extent of such further moneys advanced thereon, not in excess of the principal thereof as shall be adjudged by a competent court to be entitled to priority over the said lien and the judgment thereon."

The further moneys advanced thereon were the moneys of the final advance which had not yet been applied to the erection of the building. What remained to be done after the Circuit Court judgment, to comply with Section 15, and gain priority, was nothing more than what, if done before the judgment, would have given priority; that is, to apply to the erection of the building these moneys already actually advanced and paid by the mortgagee.

Of these moneys, $750 was paid to Brewster & Son by the check (Exhibit C-12, p. 42, L. 25-40). By the testimony of Mr. Mavus (p. 25, L. 10-20) by the voucher endorsement on C-12 (p. 43, L. 1-10) and by the entries in Brewster & Son's books (p. 23, L. 25-35; p. 24, L. 12-25), it is clearly demonstrated that this sum was paid for materials

furnished by Brewster & Son, to the builder and used in the building, or in the words of the statute, applied to the erection of the building. The complainant is therefore, entitled to priority for this additional sum of $750.

When under the old law, the test was whether the mortgage was recorded before the building was begun, the Court held in Taylor *v.* La Bar, and Platt *v.* Griffith (*supra*) that if this test were met the mortgage had priority over lien claims to the full amount of the mortgage for advances which the mortgagee was obligated to make. If, in the present case, the test of Section 15 is met, as it is by showing that the mortgage was recorded before the lien claim was filed and that the mortgage money was actually advanced and paid by the mortgagee and applied to the erection of the building, it is respectfully submitted, upon the authority of Taylor *v.* La Bar, Platt *v.* Griffith, and Young *v.* Haight, that the appellant's mortgage has priority over the respondent's lien claim to the full amount of the mortgage which the appellant has advanced as it was obliged to do when the building was completed.

The remaining $184 with other money of Thornton's making $231.84 in all, was paid to the complainant (Exhibit C-13, p. 43, L. 15-40) and was applied by the complainant to the credit of the mortgage account as follows: Dues, $112. Interest, $112. Fines, $7.84 (Exhibit C-11, p. 41, L. 35). He who seeks equity must do equity, and if the defendant Vaniewsky would have the benefit of these payments as credits on account of complainant's mortgage, he cannot deny that the moneys with which the payments were made are validly secured by complainant's mortgage. And the result is the same, whether the priority of this last sum is conceded and credit taken for that

money as applied to the mortgage payments, or whether such priority is denied and the credits are not made on account of the mortgage.

It is respectfully submitted that the appellant's mortgage is entitled to priority over the right of the respondent to the extent, not only of the $1,860 applied to the erection of the building before the Circuit judgment was entered, but also to the extent of the sum of $750 applied to the erection of the building thereafter, and to the extent of $184 repaid and credited on account of the mortgage; or in short, for the entire amount of the mortgage.

POINT III.

The respondent acquired title to the premises in question subject to appellant's entire mortgage.

Respondent's title to the premises in question rests in his Sheriff's deed. He took thereby the same title as any other purchaser would have taken, and his lien claim and lien claim judgment are both merged into the title conveyed to him by the Sheriff.

The Mechanics' Lien Act, Section 28, expressly provides that:

> "The deed given by the Sheriff * * * shall convey to the purchaser the estate which the owner had in the lands at the commencement of the building * * * subject to the lien of any mortgage given and recorded or registered under the circumstances contemplated by and in conformity with the provisions of Sections 14 and 15 of this act."

The respondent's title is, therefore, subject to the complainant's mortgage, which was given and recorded under the circumstances contemplated by and in conformity with the provision of Section 15, that is, before the filing of the lien claim, and is subject to said mortgage to the extent of the money actually advanced and paid by the mortgagee and applied to the erection of the building.

And at the time respondent took title all of the mortgage money had been actually advanced and paid by the mortgagee and applied to the erection of the building. The payment to Brewster & Son was made September 19th, 1913 (Exhibit C-12, p. 42, L. 25-40) and the rest of the mortgage money was paid September 23rd, 1913 (Exhibit C-13, p. 43, L. 15-40), while the respondent's deed from the Sheriff was dated January 23rd, 1914 (Exhibit D-2, p. 49, L. 15-20).

The Mechanics' Lien act gives the Sheriff's vendee nothing but the property subject to the mortgages; it does not give him any right to receive or control the mortgage money still to be advanced when the lien claim is filed or the lien claim judgment given. The right to have this money and to control its application, subject only to the limitation of Section 15, that it be applied to the erection of the building, is in the mortgagor or his assignees. This is the principle applied by Vice-Chancellor Emery in Germania B. & L. *vs.* Frankel, 82 N. J. Eq., 49. At page 60, Vice-Chancellor Emery says:

> "The right of the mortgagor at any fixed or specific time to future advances under the mortgage is a property right existing at that time, and as such is, in equity at least, assignable."

At the time the respondent's lien claim was filed the right of Thornton to the future advances under

the appellant's mortgage was a property right belonging to Thornton. Nothing in the Mechanics' Lien act gives the respondent any interest in this right, other than the requirement of Section 15, that the money advanced must be applied to the erection of the building. All the Mechanics' Lien act gives the respondent as a result of filing his lien claim was a lien on the building and curtilage, and when the lien claim judgment was given the property right of Thornton to the future advances was not affected, all that was adjudicated was that the respondent had a lien on the building and curtilage, subject to appellant's mortgage to the extent of $1,860 and "such further moneys advanced thereon not in excess of the principal thereof as shall be adjudged by a competent Court to be entitled to priority." Nothing in this adjudication gave the respondent any right to have the money still to be advanced nor to control its application, other than the limitation of Section 15 that it be applied to the building. In Germania B. & L. Association *vs.* Frankel Realty Co. (82 N. J. Eq., 49; affirmed 93 Atl. Rep., 591), it was held that a payment to one to whom the mortgagor had assigned his right to a future advance of part of the mortgage money was collectible on foreclosure of the mortgage, against one to whom the mortgaged premises were conveyed by the mortgagor after the said assignment, even though the payment to the assignee was made after the conveyance and against the grantee's protest.

It is respectfully submitted that a payment, as part of a final advance which the mortgagee was obliged to make, made with the consent and by arrangement of the mortgagor to one who had furnished material for the building, is collectible on foreclosure against one to whom the mortgaged premises were subsequently conveyed by the

Sheriff on an execution based upon a lien claim filed after the mortgage was recorded.

Before the Sheriff's deed passed the title Thornton, who had the property right in the money of the final advance, arranged for the payment of this money less the Building and Loan monthly payments of dues and interest to Brewster & Son (Case, p. 27, L. 1-12), for materials furnished by them for the building. This actual payment to Brewster & Son for Thornton's credit and actual credit to his account for the materials furnished for the building, is at least as strong a case as the equitable assignment of part of a future advance which was held valid in Germania B. & L. Association *vs.* Frankel Realty Co. (*supra*) and the appellant is therefore entitled to priority for the money paid to Brewster & Son.

And when the Sheriff conveyed the premises in question to respondent the Sheriff's deed gave notice of this priority. The recital in the Sheriff's deed is:

> "Subject to first mortgage of $2,800 held by Peoples Mutual Loan and Building Association of Ridgefield Park, and on which $1,860 has been advanced, and on which $184 in dues has been paid, with interest from October 6, 1913, and any other payments that may be due thereon" (Exhibit D-2, p. 49, L. 25-30).

Even if we concede that respondent had a right to redeem from the appellant's mortgage by paying the amount due at the date of the conveyance to him, that amount was the entire mortgage, for all of the mortgage money had then been advanced and paid to Thornton and had been applied to the erection of the building.

Any prospective purchaser, attracted to this

sale by the Sheriff's advertisements, would have found the judgment at that time (although subsequently amended) giving the appellant's mortgage priority in full, and the Sheriff's advertisement or announcement, as in his deed, calling specific attention to "any other payments that may be due thereon." What were these other payments? Any inquiry of the Association would have disclosed its final advance, and the payment to Brewster & Son for Thornton's account for materials furnished to the building. No purchaser who had made this inquiry could contend that the Association on foreclosure should not collect its entire mortgage. No more can the respondent, who purchased without such inquiry, avoid the payment of the entire mortgage.

It is respectfully submitted that when the respondent became the owner of the mortgaged premises, he took title subject to the full amount of the appellant's mortgage.

POINT IV.

The learned advisory master mistakenly concluded that at the date of the judgment, the mortgage had no priority as against the lien claim or judgment as to any part of the final advance.

The advisory master says:

> "No part of the money ($934) represented by complainant's check of August 4th, 1913, was applied to the erection of the building till after the judgment was entered. At the date of the judgment, the mortgage had no priority as against the lien claim or judgment as to any part of that sum" (Conclusion, p. 53, L. 22-31).

He cites Young *v.* Haight, 69 N. J. L., 455, which does not hold that the money must be advanced before the lien claim judgment is entered, but which does hold at page 456 that "The only test is whether the money had been loaned for the erection of * * * the building, and has been actually applied for that purpose"; and he cites Stiles *v.* Galbreath, 69 N. J. Eq., 239-241, which does not hold that the money must be advanced before the lien claim judgment is entered, but does hold that no one mechanic's lien by any procedure, can equitably take the whole fund and apply it to the satisfaction of his own claim, which is in a way what the respondent is endeavoring to do, when he claims the premises in question for himself to the exclusion of the claim of Brewster & Son to which the appellant by payment is subrogated.

It is respectfully submitted that when the appellant's mortgage was recorded and appellant became obligated to advance the amount thereof, the mortgage was a potential lien for the full amount, and that at the time the lien claim judgment was entered, the mortgage had priority not only for the money then applied to the erection of the building, but for the money still to be applied, as it subsequently was, to the erection of the building.

POINT V.

The learned advisory master mistakenly concluded that the mortgagee was not obliged to advance the final payment on the mortgage.

In his conclusions the learned advisory master says (Conclusion, p. 58, L. 17-25):

> "In the circumstances of this case, the mortgagee was not bound to advance the $750 upon the mortgage until the lien of Vaniewsky was discharged." "As it chose to make the advance with actual notice of his lien, the latter has priority."

The learned advisory master does not point out any testimony to support this conclusion and entirely disregards the testimony that this was a construction loan and the Association was obligated to make payments on it as the building advanced (Case, p. 9, L. 25-30), and to make the final payment when the building is completed (Case, p. 17, L. 1-20), which stands uncontested and is supported by all the facts in the case, which show, as Vice-Chancellor Emery said in the very case cited by the advisory master, that:

> "In view of the application for the loan and the granting thereof, and the actual execution and delivery of the bonds and mortgages, it is clear that the mortgages in question were mortgages upon which the mortgagee, the Association, was obligated on its part to make advances to the Realty Company to the extent of the mortgages."

And the learned advisory master, basing his conclusion on an extract from the statement of facts in Germania Building and Loan *vs.* Frankel Realty Co. failed to note that Vice-Chancellor Emery, in his opinion (at p. 59) was careful to state that:

> "Any right of the Association to control over the application of the advances was only incidental to their right to sufficient security for the loan, and was a right, the exercise of which (as between them and the mortgagors) was optional as being intended solely for their

protection. It is not a right which the Association could be required to exercise for the benefit of the mortgagors, or as between adverse claimants under them."

The very reason releases were necessary in the Germania case is that the money was used for other purposes, and was not applied to the buildings as it was in this case.

It is respectfully submitted that the appellant was obligated to make its final advance and that by applying this money to the erection of the building, it had priority over mechanics' Liens by the terms of Section 15. Having this priority, it did not need releases of liens and therefore could not, as the learned advisory master suggests, refuse to make the advance until the respondent's lien was discharged.

POINT VI.

The learned advisory master mistakenly concluded that the money paid for dues, interest and fines, on the mortgage, was not applied to the erection of the building.

This is part of the conclusions (Case, p. 58, L. 40, and p. 59, L. 1-15).

The respondent raises the additional question that the sum of $140 retained for the 5% gross premium was not applied to the erection of the building.

By Section 1, a mechanic's lien is given for the debt for labor and materials "for the erection and construction" of the building. By Section 15, the

mortgage money is to be applied "to the erection of" the building. It is fair to say that those classes of items which may be included in a lien as part of the debt "for the erection and construction" of the building, can also be allowed as part of the mortgage money applied "to the erection of the building."

It has never been questioned that interest on the price of the labor done or materials furnished, was an item properly included in the amount for which a lien might be given, in fact the respondent claimed in his lien claim "Two hundred and forty-nine dollars and eighty cents and interest from December 12, 1912" (Exhibit D-1, p. 48, L. 40-45), that is interest on the value of his work from the day it was finished.

And the premium and fines are items of like nature, being charges for the use of the mortgage money, which the Building and Loan Association is, by statute, permitted to take over and above the usual interest rate.

It is respectfully submitted that money advanced and paid by the mortgagee and applied for interest accrued on the mortgage and to charges in the nature of interest, such as premium and fines, is applied "to the erection of" the building within the meaning of the statute. This was the opinion of the attorney for the Building and Loan Association when it was stated at the trial of the lien claim case that $1,866 had been applied to the erection of the building. There was no intention (as the respondent suggests in his brief) to gain any unfair advantage by that statement, and it is now respectfully submitted, for the reasons here stated, that the statement was an accurate one.

The money advanced and then repaid for dues was credited to Thornton's shares in the Building and Loan Association, which were pledged as col-

lateral security for the loan. The respondent cannot equitably ask that this money be credited on the mortgage for his benefit, and at the same time say that the mortgagee should not recover it on foreclosure. He who seeks equity must do equity.

POINT VII.

The Respondent's Arguments.

These may be summarized as follows:

1.—The appellant was not obligated to make the final advance. This is met by Point V of this brief.

2.—Money advanced after the lien claim judgment should have been applied first to the payment of that judgment. This is met by Point III, and particularly by the recent adjudication in Germania B. & L. *v.* Frankel Realty Co. (*supra*), that the right to future advances is a property right which belongs to the mortgagor, and which the mortgagor may assign or otherwise dispose of; and that a mortgagee who acts on the first disposition made by the mortgagor of the money to be advanced under the mortgage, is entitled to recover that money on foreclosure, against one to whom the mortgagor's equity in the property is subsequently conveyed.

3.—That the money advanced and repaid for dues, interest, fines and premium, was not applied to the erection of the building. This is met by Point VI above.

4.—That unless the lien is given priority over the last advance a creditor who diligently presses his suit will be left without remedy. The respon-

dent's remedy is clear, it is given him by the lien claim statute, in fact, he has availed himself of it. His remedy is to take, as he has taken, the ownership of the property subject to the mortgage.

POINT VIII.

The amount due on appellant's mortgage is $2,844.87.

This is not disputed.

It is respectfully submitted that the decree should be that the mortgaged premises be sold to pay to the appellant the entire amount due on its mortgage, with accrued interest and costs.

WILLIAM J. MORRISON, JR.,
Solicitor for and of Counsel with Complainant-Appellant.

New Jersey
Court of Errors and Appeals

PEOPLES MUTUAL BUILDING AND LOAN ASSOCIATION OF RIDGEFIELD PARK, NEW JERSEY, Complainant & Appellant, And ISAAC VANIEWSKY and BESSIE VANIEWSKY, *et als.*, Defendants and Appellees.	On Bill, &c. On Appeal.

BRIEF FOR RESPONDENTS

Facts

On the third day of September, Nineteen hundred and Twelve, Emma C. Thornton and John T. Thornton, her husband, made and executed a mortgage to the complainant for the sum of Twenty-eight Hundred Dollars ($2800.00) on the premises mentioned in the bill of complaint for the purpose of providing money for the erection of a dwelling house about to be erected upon said mortgaged premises; said money it is claimed was to be advanced from time to time as said building progressed. The mortgage was in the usual form. That said mortgage was duly recorded in the

Office of the Clerk of the County of Bergen, September 27th, 1912. That a mortgage was also made by Emma C. Thornton and her husband to one Carl Halberg, dated September 27th, 1912, for the sum of Eight Hundred Dollars ($800.00) upon said mortgaged premises, which said mortgage was recorded in said Clerk's Office, September 28th, 1912, alleged to be for the purchase price of said premises. That on or about the twenty-seventh day of July, 1912, an agreement was made by the said John T. Thornton with the defendant Isaac Vaniewsky, for the plastering work in said house, which was begun at about said date and finished so far as said defendants were concerned December 12th, 1912.

That the amount due for said work not being paid, the said defendant Isaac Vaniewsky, on March 22d, 1913, filed a lien claim against said Emma C. Thornton as owner and John T. Thornton as builder against said mortgaged lands and premises, making said mortgagees parties to the subsequent suit thereon. Such proceedings were thereupon had that on September 10th, 1913, the said Vaniewsky recovered a judgment against the said builder for the sum of Two Hundred Dollars ($200.00), damages and costs to be taxed, to be specially made of said mortgaged lands and premises, said judgment being subsequent to $1860.00 of the complainants' mortgage for advances alleged to have been made up to the time of the entry of said judgment, and also to the extent of such further moneys subsequently advanced thereon not in excess of the principal thereof, as should be adjudged by a competent Court to be entitled to priority over the said lien and the judgment entered thereon. That after the entry of the said judgment the said complainant, de-

clining to make any further advances on its said mortgage to pay the same, the said Isaac Vaniewsky caused an execution to be issued on his said judgment on or about the third day of October, 1913, directed to the Sheriff of the County of Bergen, commanding him to sell the said mortgaged lands and premises at public sale.

That the said Sheriff in obedience to the commands of said execution duly advertised and sold said mortgaged premises to the said defendant, Isaac Vaniewsky, executed and delivered a Deed to him for the same, dated January 23d, 1914, and recorded in the Bergen County Clerk's Office February 4th, 1914, in Book 877, on pages 228, etc., and he still owns the same.

That at the time of the said sale the Sheriff of said County of Bergen in the presence of the solicitor of said mortgagee appellant read the following notice:

> "Sold subject to first mortgage of $2800.-00 held by the Peoples Mutual Building Association of Ridgefield Park, New Jersey, and on which $1860.00 has been advanced and on which $184.00 in dues has been paid with interest from October 6th, 1912; and any other payments that may be due thereon; second mortgage of $800.00 held by the estate of Carl Halberg, with interest from November 12th, 1912, taxes of 1912 and 1913, amounting to about $30.00."

The amount of $1860.00 stated to have been advanced on the complainant's mortgage for $2800.-00, was obtained from the statement made in open Court by Mr. Morrison, the attorney for said mortgagee at the trial of the said lien claim suit, and was made up of the payment of September

26th, 1912, of $793.00 payment of January 27th, 1913, of $933.00, and premium already deducted of $140.00 making a total of $1866.00, the discrepancy is claimed as a mistake in figures to that amount. (Case, p. 13, l. 1, etc.).

The statement so made was intended and so understood by all parties interested, to mean that this amount had been advanced at that time for the erection and construction of the building, built on said mortgaged premises and had been advanced under the terms of Section 15 of the Mechanics Lien Act. That it was a misstatement of the fact appeared for the first time at the hearing of the cause before Charles H. Hartshorne, the advisory master to whom the said cause was referred, when it was disclosed that only $1726.00 had been advanced at that time (Case, p. 19, top), and that not only had the $140.00 not gone towards the construction and erection of the building, but also that $231.84, the amount of monthly payments $112, fines $7.84, and interest $112.00, had been paid to the complainant by its attorney Mr. Morrison, that had not of course gone towards the erection and construction of the building. And not only that, but had been actually paid long after the filing of the lien and judgment thereon (Case, p. 115, l. 11, etc.), (Case, p. 59. l. 1, etc.)

Mr. Morrison received the check for the last payment August 4th, 1913, $934.00 and retained the same until September 19th, 1913, when he paid over to Brewster & Sons $750.00, alleged to be for materials used in the erection and construction of said building, and on September 23d, 1913, although he had only $184.00 left, he paid to complainant $231.84 for said dues, interest and fines.

There was therefore $371.84 of the moneys provided by said mortgage that were not paid out for the erection and construction of said building, much more than enough to have paid defendants' claim in full and nearly enough after the obtaining of defendants' judgment paid out for other purposes than the erection of said building to have paid his claim.

That such adjudication as to amount advanced arrived at as it was by misstatement of the facts as alleged should in equity be corrected, it should not be necessary to argue.

The plaintiff and complainant however notwithstanding its own admission that the statement made was incorrect states its willingness to insist that the decision of the Circuit Court as to that amount being a prior lien is *res-adjudicata,* and cannot be examined here. If that be true, and this Court therefore powerless, let the complainant enjoy all the satisfaction that should arise from such a contention.

On September 19th, 1914, long after the entry of defendants' judgment in the lien suit, $750.00 was paid to Brewster & Son for alleged materials furnished for the construction and erection of said building, and $231.84 to the complainant itself for back dues, fines and interest and as said before which was much more than enough to pay defendant's judgment.

That on or about June 4th, 1914, the said complainant filed its bill of complaint in this Court to foreclose its said mortgage, making the defendant Vaniewsky and his wife defendants therein, and claiming that the lien of its mortgage for the whole amount of principal due thereon was prior to the claim of the defendants on its judgment (case, p. 2, etc.).

To this the defendant Vaniewsky and wife filed their answer, claiming that the complainant's lien prior to defendants' judgment is only for the amount advanced by him at that time; which as has already been seen was only $1726.00, and should be corrected from $1860.00 to this amount if the Court has the power so to do. (case, p. 6, etc.)

The work done and materials furnished for the value of which Vaniewsky filed his lien and obtained his judgment was done and furnished between July 27th, 1912, and December 12th, 1912. (Case, p. 47, etc.)

Complainant's mortgage was dated September 3d, 1912, recorded September 27th, 1912; Halberg's mortgage dated September 27th, 1912, recorded September 28th, 1912 (case, pp. 2 and 3).

The building was begun, before the giving and recording of either of these mortgages, and hence as the mechanics lien act formerly stood, would be subject to lien claims, and the Halberg mortgage would still be in that situation if not changed by the reason of the fact that it was given for purchase money.

The statutes of 1898, page 538, modified the previous statute so that thereafter advance money mortgages were given a preference as to moneys actually advanced for the erection and construction of the building over lien claims if recorded or registered before the filing of the same. There is no noticeable dispute it seems to me, as to what the facts in this case are and the real question will be the law applicable to the facts and to arrive at a proper conclusion when so applied.

POINT I

The law with reference to advance money mortgages is generally stated in *Luce on Mechanics Lien,* page 88, Section 1. Title "Advance Money Mortgages."

"It is well settled that a mortgage given to secure future advances, if duly registered or recorded, is good not only as against a mortgagor, but is entitled to priority over all encumbrances, whose liens attach subsequent to its execution for all advances prior to notice of such subsequent encumbrance, and also for all advances made after such notice when the mortgagee previous to such notice has obligated himself to make them" referring to a number of cases.

There was notice of the lien in this case, by the making of the mortgagee party defendant in said lien suit as provided by statute, by service of summons and declaration upon it. And it subsequently thereto filed an answer.

Had the Company absolutely obligated itself to advance this money?

The mortgage itself says nothing about it, but merely sets out the relations of the parties in the usual way, and to get at what was the understanding between the parties, we must resort to evidence outside of the same, and with that and the mortgage taken together determine the obligation to advance.

The loan is made upon certain conditions and agreements particularly set out in the mortgage, and briefly they are as follows:

The said amount of twenty-eight hundred dollars ($2800.00), shall be paid by the mortgagor by the payment of one dollar dues per month on each

of fourteen shares in the 23d series of the capital stock of said (complainant) association owned by said Emma C. Thornton and standing in her name on the books of said association and assigned to it as collateral security for the payment thereof, and on which said loan was based, on the first Monday of each and every month thereafter, or such other times as might thereafter be appointed for that purpose, until said shares should attain the par value of two hundred dollars each, together with interest on said sum of Twenty-eight hundred dollars ($2800.00) to be computed from the date thereof at the rate of six per cent per annum, and payable monthly at the same time and in the same manner as the stock payments, aforesaid; the total sum payable each month being Twenty-eight dollars ($28.00), and also all fines that might become due, as provided for by the Constitution and By-laws of said (complainant) association, which had been duly assented to by the said obligor and made a part thereof, without any fraud or other delay, than the obligation to be void, otherwise to remain in full force and virtue.

Then follows the right to foreclose if any default be made and lasts for thirty days. This would imply that they were not bound to make advances unless the lands and premises were kept in their condition, free of liens and the interest, dues and premiums paid as they became due. This was not the situation at the time of the entry of the judgment on the lien, as appears from the testimony as to advances made by the complainant subsequent to the judgment of $231.84 to pay them. (34 N. J. E., 562.)

POINT II

Admitting for the sake of argument that the complainant was obligated to advance the balance of the mortgage at the time of the entry of the judgment on the lien, which they claim was made on the 19th day of September, 1913, we contend that the claim of the defendant which had been contested by the complainant until the entry of the judgment on September 10th 1914, could not be legally or equitably disregarded, and balance of money not yet advanced paid to others, until the defendant Vaniewsky was first paid.

This view does not seem to be inconsistent with the provisions of the fifteenth section of the mechanics lien act (Laws 1898, p. 538), nor the judgment rendered in the case of *Young vs. Haight*, 40 Vroom, p. 453, and is fully discussed in the advisory master's conclusions. (Case, p. 56, etc.) Were they obligated to advance any further money when not only had a lien been filed but the mortgagor had failed to pay interest or dues, and had been fined therefor, according to the provisions of the constitution and by-laws of the complainant.

POINT III

If this contention is not correct, and the adjudication made by the entry of the judgment, does not settle the relations of the parties as to priorities as to advances at this time, and leaves the mortgagees with the right to go on and make advances after such adjudication at any time and in entire disregard of it, and to whom he may please to make them, except with the limitation

that it be applied to the erection of the building, the diligent creditor who has pressed his claim for work done in the erection of the building is left remediless, and the statute requiring mortgagees to be made parties becomes entirely useless.

POINT IV

The complainant is amply protected because he maintains his priority as to advances already made up to the time of the entry of judgment as to the defendant Vaniewsky, and for the advance made to pay his judgment, as to all other creditors, and the same as to all advances thereafter made for the construction of the building. This, of course, would exclude all advances made to the complainant to pay premiums, interest and dues.

POINT V

The complainant, by the adjudication contended for is protected under the #28 of Mechanics Lien Act relating to a sale under the usual *fieri facias* issued in such cases, he is protected because the Sheriff sells subject to the lien of any mortgage given and recorded or registered, under the circumstances contemplated by and in conformity with the provisions of Sections 14 and 15 of the said mechanics lien act.

POINT VI

In the matter of the lien claim of Vaniewsky, and the judgment thereon, at the time of the entry of said judgment, September 10th, 1914, the mortgagee, the complainant had advanced only $1,860.-00, as stated by Mr. Morrison, but really only in

fact $1,726.00, which had been applied towards the erection of the building on the mortgaged lands, and for this and this only can he have a lien prior to the lien of said judgment, and to that extent the mortgagee is protected against the lien claim, if he sees fit to advance more, it must be first towards the payment of this judgment and costs, and the balance may be advanced so far as it will go in part payments of others, who have claims for work done or materials furnished in the erection of said building, if there is not enough this is not the fault of the mortgagee as he does not agree to advance enough to pay everybody, but only $2,800.00.

The language used in *Young vs. Haight,* 69 N. J. Law, page 453, carries out this idea (p. 456):

> "The only test is whether money has been loaned for the erection of, or alteration, repair or addition to the building *and has been actually applied to that purpose.*"

In this case the mortgage was for $2,000.00 and $1,650.00 only had been advanced presumably at the time the lien suit was tried.

That is advanced before a judgment on a lien claim filed in which suit he is made a party, and his rights and that of the judgment creditor in the lien claim settled. If this is not the logical conclusion what is the purpose and use of making the mortgagee a defendant at all?

POINT VII

This conclusion is equitable. Why should not the diligent creditor have the preference. He brings his suit, makes the mortgagee a party and presses it to a conclusion, why should the mort-

gagee, admitting for the sake of argument that he has the right to make further advances to the extent of the money agreed to be loaned, exercise the right to advance such money to the general creditors, whom he himself selects, and leave the creditor who has settled his rights by suit with nothing but a judgment. The balance of the money was not advanced until September 19th, 1913, and defendant did not pursue the only remedy left him in sale under fi. fa. until informed that no further advances would be made by the mortgagee. $231.84 was advanced to pay complaint for dues, fines and interest, and was certainly not an advance towards the erection and construction of the building.

POINT VIII

The money paid to the complainant for interest, dues and fines could not be a lien prior to defendant Vaniewsky's judgment. See Section 15 of the Mechanics Lien Act; also *Young vs. Haight,* 40 Vroom, p. 453.

POINT IX

If the mortgagee can continue to make advances after entry of judgment at pleasure, when can judgment creditors know that they can safely proceed upon their respective judgments.

ANSWER TO APPELLANT'S BRIEF

POINT I

Appellant was not obligated to advance any more money after the filing of the lien, or default

in paying instalments, fines and interest, according to the terms of the mortgage.

82 N. J. Eq. page 49. (Syllabus)

> "While a mortgage to secure future advances is valid, yet, if it is optional with the mortgagee whether to make future advances or not, those made after notice of a subsequent encumbrance or transfer are not a prior lien."

N. J. Eq. 82, page 62, line 27.

> "The Association on its part was obligated to continue the mortgage as one for future advances, *until by six months default of the realty company, or its assignees and grantees to make the payments required by the mortgage, or for some other abandonment of the contract by the mortgagor, the principal of the mortgage became due and the contract for future advances terminated by the act of the realty company or its grantees.*"

In the case in question the right to foreclose began when any default was made in payment of the monthly instalments and interest, and it lasted for thirty days. The appellants mortgage is now being foreclosed for such default, and did exist long previous to the default alleged in the bill of complaint and for at least four months previous thereto, as indicated by the amount of $112.00 dues paid by the appellant to itself September 23d, 1913. Case page 43, ex. C. 13.

POINT II

The change in the old law made by the law (P. W. 1898, p. 538) while it required two things

as stated by counsel to give it priority, first that the mortgage be recorded before the lien claim is filed, and second that the money be actually advanced and paid by the mortgagee, and be applied to the erection of the new building on the mortgaged lands, it must be assumed that it was passed with the full knowledge of principles already settled and which could not be disregarded, or to be subsequently settled, unless expressly so provided in the statute, and hence this case must be regarded as subject to the principle laid down in 82 Eq. page 49, contained in syllabus above set out. In *Taylor vs. La Bar,* 29 N. J. Eq. page 222, the question mooted was as to priority of a mortgage for advances recorded before the beginning of the building over claim for carpenter work in the construction of the same. The fact in dispute was as to whether the recording of the mortgage was previous to beginning of building, and it was determined that it was and hence had priority.

Platt vs. Griffith, 27 N. J. Eq. page 207. (1876) this case determines that a mortgage for advances has priority over lien claims for the amount advanced because of the fact that by the giving and recording of the mortgage before the beginning of the building the subsequent creditors had notice of the amount ahead of them. It differs from the present case, because in it the mortgage was recorded long after the beginning of the building September 27th, 1912, and long after the beginning of the work by respondent, to wit, July 27th, 1912.

Young vs. Haight, 79 N. J. L. page 453. This case is not inconsistent with our contention. The mortgage for advances was given for $2,000, and only $1,600 advanced, and the judgment was for that amount of priority over the lien claim.

The Circuit knew nothing about the payment of $934 by the appellant to its attorney, and hence could not have passed upon it. Neither did the attorney of the defendant disclose the fact to the Court when the question of how much had been advanced at that time was asked him. And why did he not disclose it? Simply because it was not an advance at that time and he did not so consider it. It was not paid out until September 23, 1915. The judgment was entered in the way it was entered by reason of the very fact of this concealment. The manner in which the payment was made to Brewster & Son the entry in their book, and endorsement on the check all prepared by the attorney for the appellant, show that some real fact was to be patched and fixed up or concealed.

The reason for giving priority in *Taylor vs. La Bar and Platt vs. Griffith* (*supra*) is quite different from those that exist in this case. In these two cases the mortgages were given and recorded before the buildings were commenced, and hence any workmen or materialmen had ample notice before beginning or furnishing material. In the present case the mortgage was given and recorded after the beginning of the building, and after the beginning of work by respondent.

The application of $231.84 towards the payment of dues, interest and fines owing by Thornton to appellants on September 23d, 1915, can make no difference to Vaniewsky, counsel asserts. When making this assertion counsel does not seem to be impressed with the equities of the situation. If the appellant is entitled to priority for only such advances as were made for the erection and construction of the building, then they cannot of

course claim this amount is a prior lien to respondent's claim, even though it be determined that other amounts claimed, are.

POINT III

In *Germainia B. & L. Association vs. B. Frankel Realty Company, (supra)* page 58, it is said:

> "The case at bar raises the different questions as to the rights of conflicting claimants under the mortgagor where, on the delivery of the mortgages the advance was not optional. On the facts above stated and in view of the application for loan and the granting thereof, and the actual execution and delivery of the bonds and mortgages, it is clear that the mortgages in question were mortgages upon which the mortgagee, the association, was obligated on its part to make advances to the realty company, to the extent of the mortgages. That the mortgages were of this character is not contested by the defendant's brief, but the right to charge the payment of the order as an advance under the mortgage is disputed upon several grounds.
>
> "First: Because the association had no right to make advances or payments under the mortgages, except for the payments of debts incurred in the erection of the houses on the mortgaged premises. *If this were a question between lien claim and mortgage under their lien law, as to the respective rights under advance money mortgages* (P. L. 1898, page 313) the objection might *be good, etc.*"

At the time the respondent took title all the money had not been advanced by the mortgagee called for by the terms of the mortgage for the erection and construction of the building or otherwise, and the respondent had a right to raise the question as to whether any more payment could be made until his claim was satisfied,

See last case cited.

$234.84 had been paid to the appellant for dues interest and fines and $140 for premiums. The balance of the money was paid as alleged for the erection of the building in manner detailed, illegally and contrary to the true intent and meaning of the statute. In making the payments as they did they were playing a waiting game, the money was paid over to their attorney on August 4th, 1913, and not paid over by him until September 19th, and September 23d, 1913, and then upon checks having endorsements made and formulated by the appellant's attorney, and entries made in the books also formulated by him.

As to its disposition after the entry of the lien judgment there can be no doubt that the lien claimant had something to say (see *supra* 82, N. J. Eq. page 49-58). The language of the Vice Chancellor in using the language he did at page 60 referred to by counsel, was a right of the mortgagor under the circumstances existing in that case, not a right that existed when a litigation had been had between owner, the mortgagee and the lienor.

The right of Thornton before the time of the filing of the lien to the future advances was undoubtedly a property right belonging to him, but changed by his change of situation, *viz,* the filing of the lien, and the mortgagee could have said to him no more money will be advanced until you

free the property from this lien, and successfully maintained the position (see *supra* 82, N. J. Eq. page 49).

Why were Brewster & Son selected as the creditors to whom payment should me made instead of respondent, who also had done work and furnished materials? Not of right but because of favoritism. One had made a fight the other had not; one was a business firm of the town, the other was a stranger from a distance.

The language of the notice by Sheriff at the sale might have been more clear, but when all the circumstances are understood, it is quite plain, the Sheriff was selling subject to a mortgage, for identification designated as mortgage for $2,800, and on which only $1,860 had been advanced, and on which $184 in dues had been paid. No fair minded person could construe that language into saying that any purchaser was buying the property subject to appellant's entire mortgage.

POINT IV

The learned advisory master was undoubtedly right in his application of the law as shown by his conclusion as to the application of the $934, and as to the mortgages priority at that time.

POINT V

The learned advisory master in his conclusions to the effect that under the circumstances of this case the mortgagee was not bound to advance the $750 upon the mortgage until the lien of the appellant was discharged was correct (*supra* 82 N. J. Eq. p. 62, l. 27).

POINT VI

It is respectfully submitted that the mortgage of the appellant is a prior lien to the respondent's title for the sum of $1,860, or as it should really be by admission of the appellant itself $1,720, only, with interest and the decree should be entered accordingly.

R. WORTENDYKE,
Atty. for Defendant and Appellants.

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New Jersey Court of Errors and Appeals.

In the Last Resort in All Cases.

Between

Peoples Mutual Building and Loan Association of Ridgefield Park, N. J.,
Complainant-Appellant,

and

Isaac Vaniewsky and Bessie Vaniewsky,
Defendants-Appellees.

} On Appeal.

Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

BETWEEN

PEOPLES MUTUAL BUILDING AND LOAN ASSOCIATION OF RIDGEFIELD PARK, N. J.,
Complainant,

and

ISAAC VANIEWSKY, BESSIE VANIEWSKY and IDA HALLBERG,
Defendants.

Bill of Complaint. Filed June 4th, 1914.

The bill is the common form of foreclosure bill alleging a bond by Emma C. Thornton to complainant dated September 3rd, 1912, conditioned for the payment of $2,800 by the payment of one dollar dues per month on each of fourteen shares in the 23rd series of the capital stock of said Association, owned by said Emma C. Thornton, and standing in her name on the books of said Association, and assigned to it as collateral security for the payment thereof, and on which said loan was based, on the first Monday of each and every month thereafter, or such other time as might thereafter be appointed for that purpose, until said shares should attain the par value of two hundred dollars each, together with interest on said sum of twenty-eight hundred dollars, to be computed from the date thereof, at the rate of six per cent. per annum, and payable monthly at the same time and in the same manner as the stock payments aforesaid; the total sum payable

each month being twenty-eight dollars, and also all fines that might become due, as provided for by the Constitution and By-Laws of said Association, which had been duly assented to by the said obligor and made a part thereof, and containing an agreement that if any default should be made in the payment of said instalments or premium on said shares or of the interest or any part thereof on any day whereon the same was made payable, and should remain unpaid and in arrear for the space of thirty days, then the whole of said principal sum mentioned in the condition should be immediately due at the option of the obligee; and alleging a mortgage to secure said payment covering the premises in question made by said Emma C. Thornton and husband to complainant, on the same date and duly acknowledged and recorded.

These allegations then follow:

That Emma C. Thornton and John T. Thornton, her husband, on the twenty-seventh day of September, one thousand nine hundred and twelve, mortgaged said lands to Carl Hallberg to secure the payment of eight hundred dollars with interest; which mortgage was, on the twenty-eight day of September, one thousand nine hundred and twelve, recorded in Book 291, page 389, of Mortgages in the Bergen County Clerk's office; that said mortgage is uncancelled and unsatisfied of record and is claimed to be a subsisting lien on the premises mortgaged to your orator, but your orator charges and insists that said mortgage was executed and recorded subsequent to the execution and recording of the mortgage to your orator; and that said last mentioned mortgage is a prior lien on the premises described therein.

That on the fifth day of September, one thousand nine hundred and twelve, said Carl Hallberg died, leaving his last will and testament, which was thereafter duly probated by the Surrogate of the County of Bergen and that in and by said last will and testament said Carl Hallberg appointed his wife, Ida Hallberg, his executrix, and gave and bequeathed to her the aforesaid mortgage.

That on April ninth, one thousand nine hundred and thirteen, Isaac Vaniewsky filed in the Bergen County Clerk's Office a mechanics' lien on the lands described in your orator's said mortgage and the building erected thereon, and that thereafter the said Isaac Vaniewsky brought suit on said lien claim in the Bergen County Circuit Court, and that on September tenth, one thousand nine hundred and thirteen, judgment was given in his favor for two hundred and fifty-eight dollars and eighty-one cents ($258.81) generally against John T. Thornton, builder, and specially against the lands of Emma C. Thornton, owner, and subject to the lien of your orator's mortgage aforesaid, and subject to the lien of the aforesaid mortgage to Carl Hallberg.

That by virtue of an execution on said judgment, Robert N. Heath, Sheriff of the County of Bergen, sold said lands to said Isaac Vaniewsky subject to the said mortgage of your orator and said mortgage of Carl Hallberg, and by his deed dated January twenty-third, nineteen hundred and fourteen, and recorded in Book 871, page 288, of Bergen County Deeds, conveyed said lands, subject to your orator's mortgage aforesaid and subject to said mortgage to Carl Hallberg to said Isaac Vaniewsky.

That on March second, one thousand nine hundred and fourteen, twenty-eight dollars ($28), being one month's dues, interest and premium on your orator's mortgage became due and payable, and that the same has not been paid and has remained unpaid and in arrears for more than thirty days thereafter, and your orator has elected and hereby elects that said principal sum of twenty-eight hundred dollars ($2,800) shall now be due and payable.

That said Isaac Vaniewsky is a married man, his wife being Bessie Vaniewsky.

The bill then concludes in the usual form with prayers for answer without oath, for a decree for payment, for foreclosure and sale, other relief and subpœna.

Decree Pro Confesso Filed July 22nd, 1914.

A decree *pro confesso* was taken against the defendant Hallberg.

Answer of Isaac Vaniewsky and Bessie Vaniewsky. Filed July 13, 1914.

BETWEEN

PEOPLES MUTUAL BUILDING & LOAN ASSOCIATION OF RIDGEFIELD PARK, N. J.,
Complainant,

and

ISAAC VANIEWSKY, BESSIE VANIEWSKY, and IDA HALLBERG,
Defendants.

The defendants, Isaac and Bessie Vaniewsky, answered admitting the allegations of the bill as to the complainant's bond and mortgage and the Hallberg bond and mortgage, and alleged no knowledge of the death and will of Carl Hallberg, leaving the complainant to prove these allegations.

These allegations then follow:

That these defendants admit that the said Isaac Vaniewsky on the ninth day of April, one thousand nine hundred and thirteen, filed in the Bergen County Clerk's Office a mechanic's lien on the lands described in the bill of complaint, and the building erected thereon, and that thereafter the said defendant Isaac Vaniewsky brought suit on said lien claim in the Bergen County Circuit Court, and that on April seventeen, one thousand

nine hundred and thirteen, judgment was given in favor of the said Isaac Vaniewsky for the sum of two hundred and fifty-eight dollars and eighty-one cents ($258.81) generally against the said John T. Thornton, builder and specially against the lands of Emma C. Thornton, owner, but denies that said judgment was given subject to the lien of complainant's mortgage, and subject to the lien of the said mortgage of Carl Hallberg, but alleges that said judgment was given subject to the sum of Eighteen hundred and sixty Dollars ($1,860) of complainant's mortgage, which was the amount admitted to have been advanced by the said complainant upon said mortgage, at the time of the giving of said judgment, and subject to the mortgage of the said Carl Hallberg.

That these defendants admit that by virtue of an execution on said judgment, Robert N. Heath, Sheriff of the County of Bergen, sold said lands to said Isaac Vaniewsky, but denies that the said Sheriff sold said property subject to the complainant's mortgage, but alleges that the Sheriff announced that said property was sold subject to the sum of Eighteen hundred and sixty Dollars ($1,860), the amount advanced on said mortgage at that time, subject to the said mortgage of Carl Hallberg, and subject to the taxes due thereon, and that the representative of said complainant's attended said sale, heard said announcement made and made no objections thereto.

These defendants deny that the said Robert N. Heath, Sheriff as aforesaid, by deed dated January twenty-third, nineteen hundred and fourteen, and recorded in Book 871, page 228, of Bergen County Deeds, conveyed said lands subject to said complainant's said mortgage aforesaid, but did convey it subject to the sum of Eighteen hundred

and sixty Dollars ($1,860.00) of said mortgage, and on which One hundred and eighty-four Dollars ($184.00) had been paid; and subject to the said mortgage of Carl Hallberg, and the taxes assessed against said lands for the years 1912 and 1913, amounting to about $30.

Then follows a denial of default, and of the amount alleged by complainant to be due, and an admission that Bessie Vaniewsky is the wife of Isaac Vaniewsky.

Replication. Filed August 7th, 1914.

The formal replication was filed by the complainant.

Testimony.

FRANK A. MORRISON, sworn:

Direct-examination by Mr. Morrison:

Q. You are an attorney at law, practicing in Ridgefield Park, New Jersey, and my brother and associate in practice with me there? A. Yes, sir.

Q. I show you a mortgage for $2,800, endorsed Emma C. Thornton and husband to the Peoples Mutual Building and Loan Association, and call your attention to the signature of the subscribing witness; is that your signature? A. Yes, sir.

Mr. Morrison: I offer the mortgage in evidence.

(Mortgage marked C-1.)

Q. I show you a bond and call your attention to the subscribing witness thereon and ask you if that is your signature? A. Yes, sir.

Mr. Morrison: I offer the bond in evidence.
(Bond marked C-2.)

Q. I show you another mortgage for $800, Emma C. Thornton to Carl Hallberg, and ask you if you know the signature of the subscribing witness? A. Yes, sir.

Q. Is that your signature? A. Yes, sir.

Mr. Morrison: I offer the mortgage in evidence.
(Mortgage marked C-3.)

Q. I show you a bond, endorsed Emma C. Thornton and Carl Hallberg, and ask you if that is your signature as the subscribing witness? A. Yes, sir.

Mr. Morrison: I offer the bond in evidence.
(Bond marked C-4.)

Q. At the time the mortgage to the Peoples Association was given, C-1, and the bond, C-2, were signed, was the amount of the mortgage advanced to the mortgagor? A. No, this was a construction loan and the Association was obligated to make payments on it as the building advanced.

Mr. Wortendyke: I object to that as calling for a conclusion and ask that it be stricken out.

The Court: No, I will let the answer stand against your objection.

Q. Was this arrangement in the form of a written agreement between Thornton and the Association? A. No.

Frank A. Morrison, Cross.

Q. What was the arrangement as to payments, if you know? A. I don't know the exact arrangement.

Q. How much do you know of it? A. I know that in a number of cases of this kind in which I have been connected that the Building and Loan Association has made payments as the building progressed.

By the Court:

Q. Do you know, of your own knowledge, anything about the arrangement with respect to the advances? A. No, I do not.

Cross-examination by Mr. Wortendyke:

Q. There was no money advanced at the time of the execution and recording of this mortgage? A. Yes, I believe there was a check given to Mrs. Thornton at that time.

Q. At the time of the date of the mortgage or the time of the recording? A. At the time of the execution of the mortgage.

Q. Do you know what the amount was? A. No, I do not.

Q. Were you present? A. I don't know, I don't believe I was.

Q. You have no information upon the subject at all of your knowledge, have you? A. No, except that I know that there was a check given at that time.

By the Court:

Q. Did you see the check? A. I have seen the check since that time, but I did not see it at that time.

Arthur V. Morrison, Direct.

By Mr. Wortendyke:

Q. Did you make the agreement with Mrs. Thornton or anyone on her behalf as to how this money was to be advanced? A. No.

Q. You have no knowledge of your own on that subject, have you? A. No, not as to any specific agreement being made.

Mr. Morrison: I offer in evidence a certified copy of the Will of Carl Hallberg on which the passage of his property to his wife was made.

(Will marked C-5.)

ARTHUR V. MORRISON, sworn:

Direct-examination by Mr. Morrison:

Q. You are my brother and a clerk in my office? A. Yes, sir.

Q. And you are also secretary of the Peoples Mutual Building and Loan Association of Ridgefield Park? A. Yes, sir.

Q. I show you a paper and ask you if that is one of the records of that association? A. Yes, sir.

Q. It is a record of what? A. It is a record of the application and approval of a loan to Emma C. Thornton of $2,800.

Q. On lots 129 and 130 on map of "Carl Hallberg, No. 2"? A. Yes, sir.

Mr. Morrison: I offer the paper in evidence.

(Paper marked C-6.)

Arthur V. Morrison, Cross.

Q. Does the Association keep a book showing advances made on loans such as the Thornton mortgage? A. Yes.

Q. On page 172 there is a record of advances made on that loan? A. Yes, sir.

Q. That book is marked "Ledger"? A. Yes.

Q. Page 172? A. Yes, sir.

Mr. Morrison: I offer that in evidence and would like to copy the items in the record.

Cross-examination by Mr. Wortendyke:

Q. Those entries were made by you at the time? A. I was not secretary at the time, but this is the Association book.

Q. Were you secretary at any time when those entries were made? A. No, sir.

Q. Then you do not know anything of your own knowledge except as you find them on the book? A. That is the Association record, and that is where they are kept now and have always been kept.

Q. (Last question repeated.) A. No, sir.

Q. Do you know this handwriting? A. Yes.

Q. You saw none of the entries made? A. No.

Q. Whose handwriting is it? A. Miss Elizabeth Dooling, she was employed by Mr. Hallberg before his death, who was the secretary at that time; I have taken his place and she is now assistant for me.

Q. How long has she occupied that position? A. Since the Association was organized and she made all the entries in that book and she does all the posting and makes all the entries in the book under the direction of the secretary.

Arthur V. Morrison, Cross.

The Court: On page 172 appears an account, of which the following is a copy:

"Emma C. Thornton Premium 140—5%
1912
Sept. Cash 793.
1913 Cr. 1912 Loan 2800.
1913
June 27 Cash 933.00
August 4 Cash 934.00
Premium 140.00—2800."

(Marked C-7.)

Q. I show you a check on the Hackensack Trust Company, number 537, dated September 26, 1912, for $793, being a check of the Peoples Mutual Building and Loan Association of Ridgefield Park to the order of Emma C. Thornton, and ask you whether that is produced by you from the checks of the Association which have been returned by the bank? A. Yes, it is.

By Mr. Wortendyke:

Q. Do you know these various signatures on here? A. The signatures; I believe I do, yes; I know they are all proper signatures, as they are all the personal signatures of the officers.

Q. And that signature on the back, do you know that signature? A. Yes, sir.

Q. Where did you get that check from? A. From the bundles of checks.

Q. When did you get them? A. Day before yesterday. I think I took it out of the files.

Q. Is that the first you saw of them? A. I don't remember, I may have seen them in February; I don't remember that, though.

(Marked C-8.)

Arthur V. Morrison, Direct.

By Mr. Morrison:

Q. I show you a check dated January 27, 1913, No. 573, drawn on the Hackensack Trust Company by the Peoples Mutual Building and Loan Association of Ridgefield Park, to the order of Emma C. Thornton for $933, and ask you if that is produced from the files of paid checks of the Association? A. Yes, sir; it is.

Q. Do you know the signatures of the officers on the face of it? A. Yes, sir.

(Offered in evidence and marked C-9.)

Q. I show you a check dated August 4, 1913, No. 650, drawn on the Hackensack Trust Company by the Peoples Mutual Building and Loan Association of Ridgefield Park, to the order of Emma C. Thornton for $934, and endorsed by Emma C. Thornton, paid August 23rd, 1913, and ask you if that was paid out of the funds of the Association? A. Yes, sir.

Q. Do you know the signatures of the officers on the face of that check? A. Yes, sir.

(Offered in evidence and marked C-10.)

Q. I show you a pass book, No. 635, Emma C. Thornton, and ask you if that is the pass book for the borrower of this loan? A. It is.

Mr. Morrison: I offer that in evidence to show the payments made by Thornton on account, and they can be read in the minutes.

The Court: Any objection, Mr. Wortendyke?

By Mr. Wortendyke:

Q. Are those entries made by you? A. The last one.

Q. The one in October? A. Yes, sir.

Q. Who are the other ones made by? A. I will have to look it up; I don't know; they are both receipted for by Mr. Hallberg, the former secretary.

Q. That is Mr. Hallberg's handwriting? A. Yes, that is his handwriting there (indicating), and this is his initials there (indicating).

	Dues	Fines	Interest	Received payment
1912				
September	14		Init. 1.40	C. H.
1913				
February	70	5.04	70.	C. H.
October	112	7.84	112.	A. V. M.

Q. I call your attention to the Constitution and By-Laws printed and inserted in this book; are those the By-Laws of the Association? A. They were at that time; since then they have been changed.

Q. How, respecting fines and monthly payments? A. No, a small change was made, it is not very material; I do not know what it was just now.

Q. I call attention particularly to Section 23, "Fines," and ask you whether there has been any change or amendment made to that section since the By-Laws were printed? A. No, there has been no change made in that.

Mr. Morrison: I offer Section 23 of the By-Laws in evidence.

(Section 23 of the By-Laws admitted, without objection, and marked Exhibit C-11.)

Q. In September, 1912, were you familiar with

the building on which this loan was granted, and the premises? A. Yes, sir.

Q. You have seen them? Yes, sir.

Q. Do you know on September 3rd and September 27th whether the building had been completed? A. No, it had not been completed.

Q. Do you know whether the building was under construction at that time? A. Yes, sir, it was.

Q. Do you know whether it was subsequently completed? A. Yes, it was completed.

Q. Do you know that from having been through the building and seen it yourself? A. Yes, sir.

By the Court:

Q. Do you know when it was completed? A. I don't know the exact date when it was completed.

By Mr. Morrison:

Q. I show the witness Exhibit C-10; it is the third advance made by the Association, and I ask you whether you knew at that time the building was completed? A. No, sir.

Q. Do you remember seeing the building in August, 1913, when the final payment was made? A. Yes; I saw it during different stages of construction.

Q. Do you know whether or not the building was completed at the time the final payment was made by the Association? A. The only way I can fix the time when the building was completed is I remember taking this check and the check before the last two checks up to Mrs. Thornton's house for her, they went on their jobs that were running along and I found that building completed or practically completed.

Arthur V. Morrison, Cross.

Q. You are the secretary of the Association? A. Yes, sir.

Q. What is the method when payments are made by the Association, referring particularly to final payments? A. He makes application to the secretary or notifies the secretary that the building is completed and the secretary instructs that committee that was appointed on that loan; some of the directors of the Association, to make an inspection of the building and they report back to the secretary that is or is not completed and the Secretary, if the building is completed, then draws the check and gives it to the counsel.

Q. The final payment is only made after the committee has reported to the secretary that the building is completed? A. Yes, sir.

By Mr. Wortendyke:

Q. You do not know what the custom was at that time? A. When I was secretary I attended meetings of the Building and Loan Association and I have taken a number of final payments up with Mr. Hallberg.

Q. Mrs. Thornton, when these checks were given to her, simply endorsed them, did she not, and passed them back to the person who brought them to her and then they were passed over to your brother, the solicitor in this cause? A. Yes, sir.

Q. And what disposition was made of them after that, you do not know of your own knowledge? A. Why, I know that they were deposited by my brother, and that the checks were paid out to different contractors for labor and materials furnished on the building.

Q. How do you know that? A. Why, I am the

bookkeeper for my brother; I drew most of the checks and had most of the work in charge.

Q. Now, as to the amount subsequent to the $1,860, the $934 advanced on August 4th, 1913, what have you to say with reference to the moneys that were turned in to your brother, as to disbursements, who received them and what amount? A. Brewster & Son, material men, received $750.

Q. For material that went into this building? A. I believe so.

Q. Do you know? A. We sent them a check for that purpose and they accepted it for that purpose.

Q. Do you know of your own personal knowledge of the fact that Mr. Brewster furnished $750 worth of material for this particular building? A. No, sir.

Q. And as to the balance of $184? A. The balance was paid to the People's Building & Loan Association, $112 dues, $112 interest, and $7.84, I believe fines.

Q. What was done with the balance? A. The balance was credited to the Thornton account on this house.

Q. Mr. Morrison, the bills that were still owing after September 10th, 1913, was how much? A. The balance that was owing from the Association on the mortgage, do you mean?

Q. Yes. A. There was nothing owing; it was all paid; the check was dated August 4th, and that was the final payment.

Q. How do you reconcile that all had been paid on August 4th, 1913, when it was claimed that only $1,860 had been paid at that time? A. I was not secretary at that time; I don't quite understand your question.

Arthur V. Morrison, Cross.

By the Court:

Q. It has been admitted by counsel on both sides that at the time judgment was recovered, which is referred to in the bill of complaint, the amount found due by that judgment on the mortgage was $1,860, but it appears by the evidence here just now, that on that date only $1,726 had been advanced, being the amount of two checks, one of September 26th, and one of June 27th, and he asked you if you can explain that apparent contradiction? A. Why, in the application for this mortgage and signed by Mrs. Thornton she agreed to pay the premium charge of the Association, which is five per cent. on $2,800, which would be $140, and we deducted $140 right after the loan, so she really got $2,660, $140 of the premium is charged to the Association, and it also shows that in the ledger.

By Mr. Wortendyke:

Q. There was actually paid to the Association from the amount of this loan, the amounts which you have named, namely, $112 dues, $112 interest, and $7.84 fines, and the balance that was left of the money had not yet been advanced? A. The only payments on account of the mortgage are the dues that is credited there; of course the interest was paid up to that time; the interest was advanced by the Association.

Q. Is that the payment of those amounts which I have given you? A. Yes, they advanced the full amount and counsel returned his check to the Association for these different checks and they are credited in that pass book.

Q. In other words, how much of these moneys

that were to be advanced after September 10th, on that mortgage were paid to the Association itself and not to persons who had done work or furnished material? A. $231.84 is the credit as shown in the pass book.

Q. Is that the amount that appears in the pass book? A. It appears in three different items, dues, interest and fines, total $231.84.

Mr. Morrison: I offer in evidence now a certified copy of the judgment by Vaniewsky *vs.* Thornton.

Redirect-examination by Mr. Morrison:

Q. Mr. Wortendyke has asked you, as bookkeeper in my office, if you know about the disbursements of this money after you had endorsed them; I show you a check dated September 19, 1913, No. 3464, signed by me, and drawn to the order of Brewster & Son, for $750, and ask you if that is one of the advances that you have mentioned to Mr. Wortendyke? A. It is.

Mr. Morrison: I offer that check in evidence.

(Marked C-12.)

Q. I show you a check dated September 22d, 1913, No. 3471, drawn to the order of the Peoples Mutual Building and Loan Association, and signed by me, and ask you if that is the other disbursement of the Thornton money referred to in your answer to Mr. Wortendyke? A. Yes, sir, $231.84.

Mr. Morrison: I offer that check in evidence.

(Check marked Exhibit C-13.)

Q. I call your attention to the amount of these

two checks, C-10 and C-11, $981.84; and the building and loan check is for $934,—do you know where the other $50, approximately, came from? A. There was a small credit by one of the former payments on our ledger.

Q. That small credit was the difference between those two sums? A. Yes, I believe it was $47 or $50.

Recross-examination by Mr. Wortendyke:

Q. In the book which you have just produced here, which has just been offered? A. No, in our personal ledger; Mr. Morrison's personal ledger.

Q. An amount that your brother owed them upon some other account? A. This check was for $934 and the payment made was about $47 more than the check that was received from the building and loan.

Q. That was a payment to Mrs. Thornton by Mr. Morrison? A. There was a payment on the books of about $50 and that made up the difference.

Q. And that did not pertain to this building at all, but arose out of some other transaction? A. No, it was in relation to this building.

Q. How did it relate to this building? A. Why, it was a small amount left out of one of the earlier payments.

Q. That had not been entirely disbursed? A. No, except for that small amount.

Q. Do you know out of which payment it was left? A. No, I do not; I do not know whether it was completely left out of the first part, or part of the first part, or part of the second payment; I do not know.

Q. Have you any method of ascertaining the certainty of it? A. Why, I can check up the ledger, I know where the different payments went.

Q. The building and loan ledger doesn't show it? A. No, it is on Mr. Morrison's ledger.

Mr. Morrison: I offer in evidence a certified copy of the judgment of Vaniewsky against John T. Thornton and Emma C. Thornton, in the Bergen County Circuit Court, on the lien claim, filed September 11, 1913.

(Marked Exhibit C-14.)

JACOB E. MAVUS, sworn:

Direct-examination by Mr. Morrison:

Q. You are employed by Brewster & Son? A. Yes.

Q. In what capacity? A. Bookkeeper.

Q. I show you a check drawn to the order of Brewster & Son marked C-12, for $750, and ask you whether that check passed through your bookkeeping department? A. Yes, sir.

Q. Have you with you the books showing the account to which this was credited in your office? A. Yes, sir.

Q. Will you produce them? A. (Witness produces a book marked "Cash," and on page 236, "September 19, 1913, received check from W. J. Morrison, Jr., of $750 to be applied on the Thornton house, No. 3.")

Mr. Morrison: I offer that book in evidence.

The Court: Is there any objection?

Jacob E. Mavus, Cross.

By Mr. Wortendyke:

Q. Is that in your handwriting? A. Yes, sir.

Q. When was the entry made? A. On September 19, 1913.

Q. By whose direction? A. By my own direction, I was handed the check and was told to give Mr. Morrison credit for $750 on the Thornton job.

Q. Was an endorsement made on the check? A. Yes, sir.

Q. By whom? A. By me, at the time I put it through the bank.

By the Court:

Q. There is an endorsement on this check as follows: "Credit to account of John T. Thornton, for material for building covered by Peoples Mutual Building & Loan mortgage, known as Arthur Street, No. 3"; in whose handwriting is that endorsement? A. Mr. Morrison's.

Q. And it was on the check at the time you credited the amount of the check in the books of Brewster & Son? A. Yes, sir.

The Court: The book offered is "Cash Book No. 12, Brewster & Son." The entry referred to by the witness is as follows: Under date of September 19, 1913: " J. T. Thornton a/c Arthur & Hanson, No. 3, by W. J. M. Jr. $750."

Q. In that entry on the cash book appears the words "Arthur & Hanson," what do they refer to? A. Those are the names of the streets nearest which this particular house is located.

Q. And what does this, the "No. 3," refer to?

A. Mr. Thornton's building; he was building three houses, and we furnished the material separately; we separated each house.

Q. And the letters "W. J. M. Jr." referred to Mr. Morrison? A. Yes, sir.

Q. Do you know whether the job No. 3 indicated the building referred to in the bill of complaint in this cause? A. No, I don't know that.

By Mr. Morrison:

Q. Have you the ledger account corresponding to which this entry was posted? A. Yes, sir.

The Court: The witness produces an account headed "Emma C. Thornton, Ledger Account 3120, Job No. 3," and indicates a credit under date of September 19, "Cash $750," with a folio reference to page 231 in the cash book.

By the Court:

Q. Is that the book and page from which you read the other entry? A. Yes, this is posted from the cash book.

Cross-examination by Mr. Wortendyke:

Q. When was that change made in the location? First it was Arthur and Henry Streets, and then it was changed to Arthur and Hanson Streets. A. The address given to me was Arthur and Henry Streets, and a week after that entry was made we found out that the address should have been given as Arthur and Hanson Streets, and we made the change.

Q. You did that? A. Yes, sir.

Q. And at whose direction? A. At the building, Mr. Thornton informed me that I had the location as Arthur and Henry Streets, and he informed me that it should be Arthur and Hanson, and I corrected it as directed.

Q. Where does the $750 that you speak of appear? A. (Witness indicates on page in book.)

Q. This entire lower portion of this leaflet shows the entire account of this house No. 3? A. Yes, sir.

Q. Do you know, of your own knowledge, whether these different accounts for merchandise furnished on No. 3 were actually furnished there? A. I know that they were furnished there.

Q. How? A. By keeping the delivery slips.

Q. You have not those delivery slips here? A. No, sir.

Q. And there is still $90.85 owing on that house? A. No, the account has been satisfactorily closed by Mr. Thornton.

Q. From moneys of his own? A. Yes.

By Mr. Morrison:

Q. Can you describe where this No. 3 job is? A. Mr. Thornton built three houses on Arthur Street, running from Hanson to the Queen Anne Road, and this No. 3 is nearest to the Queen Anne Road, and we kept them as "1, 2 and 3" so as to keep them separate.

William J. Morrison, Jr., sworn:

By the Witness:

As counsel for the Peoples Mutual Building & Loan Association of Ridgefield Park, N. J., I was

familiar with the location and designation of the properties under construction by Thornton, and particularly the one covered by the complainant's mortgage; that one is on lots 129 and 130, in Block D, on Map No. 2 of the Hallberg property, and it was situated in the third of three building plots beginning on the corner of Hanson and Arthur Streets, on the south side of Arthur Street, and running west from Hanson Street; the builder and mechanics called the one on the corner No. 1, the middle one No. 2 and the one nearest the Queen Anne Road No. 3, and from the searches which were made at the time, and from the papers which were drawn up, I know that Arthur Street, No. 3, was on the lots covered by the complainant's mortgage in this cause. There is one other statement I would like to make, and that is that the check for the third advance, which has been marked C-10, was endorsed and delivered to me by Mrs. Thornton, and was deposited, as it shows by the perforation of the bank on August 23, 1913; at that time the trial of the mechanic's lien case was pending, and actually came on in September, and I held the proceeds of this check until the mechanic's lien case had been tried, and advanced it on September 19 and 22, as is shown by the checks marked C-12 and C-13; I was the counsel for the Association and did not advance the money until the mechanic's lien suit had been settled.

Cross-examination by Mr. Wortendyke:

Q. Did you, at that time, when you made that advance, know anything about the account of Brewster & Son? A. I don't quite know what you refer to "at that time."

W. J. Morrison, Jr., Cross.

Q. At that time, when you made that payment of $750 did you know what their account was? A. Not of my own knowledge, but Mr. Thornton and Brewster & Son's representative both told me that they had an account against the building, and that there was over $750 due on it; what we did was to pay the Association what was due them to date and give the rest of the money to Brewster, and that was not enough to satisfy Brewster's claim against the building.

Q. You did not pay him any additional money because of the fact that you did not have sufficient moneys after paying what was due to the Association? A. Yes, sir.

Q. There were a number of others who were not paid? A. Yes, sir.

Q. Do you know to what extent? A. No.

Q. The plumber was not paid? A. I have a vague recollection of it, and I think there was a number of other mechanics who were not paid.

(Book of Brewster & Son, marked "Cash," admitted in evidence and marked Exhibit C-15.)

Mr. Morrison: Before closing for the complainant I would like to amend the bill typographically; the bill alleges that the judgment was given on April 17, 1913, and I would like to have that changed.

Mr. Wortendyke: No objection.

Mr. Morrison: I would like to offer in evidence a certificate of search made in this foreclosure suit, so that the fees may be taxed.

(Without objection, the certificate of search was admitted in evidence and marked Exhibit C-16.)

Mr. Morrison: The complainant rests.

Defendant's Case.

THE CASE OF THE DEFENDANT.

Mr. Wortendyke: I desire, with the consent of Mr. Morrison, to offer a copy of the lien claim as filed.

(The copy of the lien claim was admitted, without objection, and marked Exhibit D-1.)

Mr. Wortendyke: I also desire to offer in evidence a copy of the notice that was read by the Sheriff upon the sale of the property.

Mr. Morrison: I object to the offer, on the ground that there is nothing to show that this was the notice that was served by the Sheriff.

Mr. Wortendyke: I will withdraw the offer.

Mr. Wortendyke: I offer in evidence deed dated January 23, 1914, made by Robert N. Heath, Sheriff of the County of Bergen, to Isaac Vaniewsky, recorded February 4, 1914, in Liber 871 of Deeds for Bergen County, on pages 228, etc., and I call attention to the notice that was served and read as to the encumbrances on the property at that time.

(The deed referred to above was admitted, without objection, and marked Exhibit D-2 on the part of the defendant.)

Mr. Wortendyke: I would like to prove, unless Mr. Morrison admits it, that he was present at the Sheriff's sale.

Mr. Morrison: I will admit that I was present on the day of the sale, but not representing anybody.

Mr. Wortendyke: I think that is all I wish to prove:

Exhibits C-1, C-2.

Exhibit C-1.

The mortgage by Emma C. Thornton and John T. Thornton, her husband to complainant, dated September 3rd, 1912, after reciting the bond, C-2 (printed at length) conveys to complainant all those two (2) certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Overpeck, in the County of Bergen and State of New Jersey, which on a certain map on file in the Clerk's office of said County, entitled "Map No. 2 of Property of Carl Hallberg, Ridgefield Park, N. J." are shown and designated as Lots numbered One Hundred and Twenty-nine (129) and One Hundred and Thirty (130) in Block lettered "D." All as laid down on said map; with the usual proviso that the estate granted shall cease, determine and be void upon payment in the manner expressed in the bond, and contains agreements in the usual form for fire and tornado insurance, and for payment of taxes without deduction by reason of the mortgage, and is signed by Emma C. Thornton and John T. Thornton in the presence of Frank A. Morrison. The mortgage bears an acknowledgment in regular form before Frank A. Morrison, attorney at law and is endorsed "Received in the Clerk's office of the County of Bergen, N. J., on the 27th day of September, A. D. 1912, at 10:22 o'clock in the forenoon and recorded in Book 292 of Mortgages for said County, on page 179, &c. Charles F. Thompson, County Clerk."

Exhibit C-2.

Know All Men By These Presents:

That I, Emma C. Thornton, of the Township of Teaneck, in the County of Bergen, and State of

Exhibit C-2.

New Jersey, am held and firmly bound unto Peoples Mutual Building and Loan Association of Ridgefield Park, N. J., a body corporate of the State of New Jersey, in the sum of Fifty-six Hundred ($5,600.00) Dollars, lawful money of the United States of America, to be paid to the said Association, its successors or assigns, FOR WHICH PAYMENT well and truly to be made we bind ourselves and our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals. Dated the third day of September, one thousand nine hundred and twelve.

THE CONDITION of the above obligation is such that if the above bounden Emma C. Thornton her heirs, executors or administrators, shall well and truly pay or cause to be paid, unto the above named Association, its successors or assigns, the just and full sum of Twenty-eight Hundred ($2,800.00) Dollars, in the manner following, viz: By the payment of One Dollar dues per month on each of fourteen shares in the 23rd series of the capital stock of said Association, owned by the said Emma C. Thornton and standing in her name on the books of said Association, and assigned to it as collateral security for the payment hereof, and on which this loan is based, on the first Monday of each and every month hereafter, or such other time as may hereafter be appointed for that purpose, until the said shares shall attain the par value of Two Hundred Dollars each, together with interest on said sum of Twenty-eight Hundred ($2,800.) Dollars, to be computed from the date hereof at the rate of six per cent. per annum, and payable monthly at the same time and in the same manner as the stock-payments aforesaid, the total

sum payable each month being Twenty-eight ($28.00) Dollars, and also all fines that may become due, as provided for by the Constitution and By-Laws of said Association, which have been duly assented to by said obligor, and made a part hereof, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

And It Is Hereby Expressly Agreed, that should any default be made in the payment of the said installment or premium on said shares, or interest, or of any part thereof on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said installment or premium on said shares, or interest or of any part thereof remain unpaid and in arrears for the space of thirty days or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of thirty days or should the said obligor refuse or neglect for ten days after demand to produce and exhibit to the obligee the vouchers showing the payments of such tax, assessment, water rent, or other lien due and payable, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Twenty-eight Hundred ($2,800.) Dollars or the balance thereof remaining unpaid with all arrearage of interest, premiums and fines thereon, shall at the option

of the said Association, or its legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding, and the said Mortgagee may, at its option, pay such tax, assessment, or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum above mentioned, and shall be payable on demand with interest at six per centum per annum.

(Signed) EMMA C. THORNTON.
(Seal.)

SEALED AND DELIVERED
IN THE PRESENCE OF
(Signed) FRANK A. MORRISON.

FOR VALUE RECEIVED, I, Emma C. Thornton, the within named obligor do hereby assign, transfer and set over unto the Peoples Mutual Building and Loan Association of Ridgefield Park, N. J., the fourteen shares in the 23rd series of stock, held by me in said Association, as collateral security for the payment of the debt mentioned in the within bond. And in case of default in payment of the dues, interest, cost of insurance or taxes upon premises mortgaged to the Association, or fines for non-payment of same, I hereby authorize the said Association to make sale of said fourteen shares in the 23rd series of stock, at auction at any general meeting thereafter, and in my name to make and execute a transfer of said fourteen shares in the 23rd series of stock to the purchaser of same, applying the proceeds of said sale to payment of said loan.

Exhibits C-2, C-3, C-4.

And further I do hereby elect to treat all past and future payments of dues on said stock as credits on the within bond and mortgage accompanying the same, and authorize and direct the officers of said Association to so appropriate and credit the same.

Witness my hand and seal this third day of September, A. D. 1912.

(Signed) Emma C. Thornton.

(Seal.)

Sealed and Delivered
in the Presence of
(Signed) Frank A. Morrison.

Exhibit C-3.

The mortgage made by Emma C. Thornton and John T. Thornton her husband to Carl Hallberg, dated September 27th, 1912, after reciting the bond, C-4, conveyed to the mortgagee the same premises described in the complainant's mortgage, with the customary proviso and agreements as to payment, taxes, insurance, etc.

It was acknowledged in the regular form before Frank A. Morrison, attorney at law on the 27th day of September, 1912, and was registered in the Bergen County Clerk's office on the 28th day of September, 1912, at 11:34 o'clock in the forenoon in Book 291, of Mortgages for said County, on page 398.

Exhibit C-4.

Know All Men By These Presents: That We, Emma C. Thornton and John T. Thornton, her husband, of the Township of Teaneck, in the

Exhibit C-4.

County of Bergen and State of New Jersey held and firmly bound unto Carl Hallberg of the Township of Overpeck, in the County of Bergen and State of New Jersey, in the penal sum of Sixteen Hundred Dollars, lawful money of the United States of America, to be paid to the said Carl Hallberg, his executors, administrators or assigns: For which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals. Dated the 27th day of September, one thousand nine hundred and twelve.

THE CONDITION of the above obligation is such that if the above bounden Emma C. Thornton and John T. Thornton, her husband, their heirs, executors or administrators, shall well and truly pay, or cause to be paid unto the above named Carl Hallberg, his executors, administrators or assigns, the just and full sum of Eight Hundred Dollars on the first day of August, which will be in the year one thousand nine hundred and fourteen, and the interest thereon, to be computed from the first day of August, 1911, at and after the rate of six per cent. per annum, and to be paid semi-annually, without any fraud or other delay, then the above Obligation to be void, otherwise to remain in full force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or

acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of ninety days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of Eight Hundred Dollars with all arrearage of interest thereon, shall, at the option of the said Carl Hallberg or his legal representatives become and be due and payable immediately thereafter although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

(Signed) JOHN T. THORNTON. (Seal.)

" EMMA C. THORNTON. (Seal.)

Signed, sealed and delivered
in the presence of
(Signed) FRANK A. MORRISON.

Exhibit C-5.

LAST WILL AND TESTAMENT OF CARL HALLBERG, of the Township of Overpeck, County of Bergen and State of New Jersey,

First: I revoke all former wills by me at any time heretofore made.

Exhibit C-5.

Second: I order and direct my executrix hereinafter named to pay all my just debts and funeral and testamentary expenses as soon as conveniently may be after my decease.

Third: I give, devise and bequeath unto my wife Ida Hallberg, all my estate both real and personal, of whatsoever kind and nature and wheresoever the same is situated, to her, her heirs, executors, administrators and assigns forever.

Lastly: I nominate, constitute and appoint my said wife Ida Hallberg, executrix of this my last will and testament, and she shall not be required to give bond or other security for the performance of her duties as such executrix.

In Witness Whereof I have hereunto set my hand and seal this fourteenth day of November, nineteen hundred and six.

Carl Hallberg. (Seal)

Signed, Sealed, Published and Declared by the said testator, Carl Hallberg, as and for his last will and testament in the presence of us, who at his request and in his presence, and in the presence of each other, and at the same time, have hereunto subscribed our names as witnesses after the testator had signed.

Eva Peterson, Ridgefield Park, N. J.
William B. Mackay, Jr., Hackensack, New Jersey.

(Certified in regular form by Surrogate of Bergen Co.)

Exhibit C-6.

Exhibit C-6.

Application No.....Date.....19....Loan No.....

PEOPLES MUTUAL BUILDING & LOAN ASS'N

of Ridgefield Park, N. J.

I, HEREBY CERTIFY that Emma C. Thornton is the holder of 14 shares of stock in this Association, and bought a loan of $2800. at a premium of 5 per cent per share at the meeting held Sept. 3 1912.

CARL HALLBERG, Secretary.

SECURITY OFFERED.

15 Shares of stock in said association, certificate No. 766 Bond and Mortgage of $3000 covering the following property: Size of plot 40 ft. front by 120 ft. deep, known as lots No. 129-130 on map No. 2 Carl Hallberg located at Ridgefield Park, N. J. Said plot faces on Arthur Street. Building about 24 ft. by 32 ft. deep two stories and attic and is to be occupied as a dwelling.

Dated Sept. 3, 1912.

EMMA C. THORNTON Borrower.
Teaneck, N. J. Address.

APPRAISERS' REPORT.

We the undersigned, having been chosen to examine and report the facts with our opinion thereon, respecting the sufficiency of the security

as offered above, respectfully report, that we have visited the premises, and made personal inspection thereof, and find the description in above application correct, and further that we value the

Plot at	$800.00
Building at	$3000.00
Total	$3800.00

It is our opinion that the security is sufficient for a loan of $2800.00

CYRIL DE WYRALL }
W. A. BICKELL } Appraisers.

DIRECTORS' APPROVAL.

I HEREBY CERTIFY that the Board of Directors have this day approved the above report and authorized that a loan be consummated to the extent of $2800.00.

Dated Sept. 17, 1912.

CARL HALLBERG,
Secretary.

Exhibit C-7.

EMMA C. THORNTON.

Prem. $140.00
5%

Sept.	26	Cash	$793.00	1912	Loan	$2800
Jan.	27	Cash	933.00			
Aug.	4	Cash	934.00			
		Prem.	140.00			
			$2800.00			

Exhibit C-8.

Exhibit C-8.

Peoples Mutual Building and Loan Association of Ridgefield Park, N. J.

Ridgefield Park, N. J.
No. 537 Sept. 26, 1912

HACKENSACK TRUST COMPANY
of Hackensack, N. J.

Pay to the order of Emma C. Thornton.....$793.00
Seven hundred ninety-three.....Dollars

PEOPLES MUTUAL BUILDING AND LOAN ASSOCIATION OF RIDGEFIELD PARK, N. J.
(signed) JOHN E. HOEY,
President
" GEO. J. SMITH,
Treasurer.

(signed) CARL HALLBERG,
Sec'y.
" A. D. LEES,
Director.

Endorsed—
Pay to the order of
W. J. Morrison, Jr.
(signed) Emma C. Thornton
For Deposit
W. J. Morrison, Jr.

Exhibit C-9.

Exhibit C-9.

Peoples Mutual Building and Loan Association of Ridgefield Park, N. J.

Ridgefield Park, N. J.
Jan. 27, 1913.
No. 573.

HACKENSACK TRUST COMPANY
of Hackensack, N. J.

Pay to the order of Emma C. Thornton.....
$933.00. Nine hundred thirty-three.....Dollars.

PEOPLES MUTUAL BUILDING AND LOAN ASSOCIATION OF RIDGEFIELD PARK, N. J.
(signed) JOHN E. HOEY,
President
" GEO. J. SMITH,
Treasurer

(signed) CYRUS J. LOZIER,
Director.
" CARL HALLBERG,
Sec'y.

Endorsed:
EMMA C. THORNTON.
For Deposit:
W. J. MORRISON, JR.

Exhibits C-10, C-11.

Exhibit C-10.

Peoples Mutual Building and Loan Association of Ridgefield Park, N. J.

Ridgefield Park, N. J., Aug. 4, 1913. No. 650.

HACKENSACK TRUST COMPANY
of Hackensack, N. J.

Pay to the order of Emma C. Thornton..... 10
$934. Nine hundred thirty-four.....Dollars.

PEOPLES MUTUAL BUILDING AND LOAN ASSOCIATION OF RIDGEFIELD PARK, N. J.
(signed) JOHN E. HOEY, President
" GEO. J. SMITH, Treasurer

(signed) CARL HALLBERG, Secrearty.
" W. A. BICKELL, Director. 20

Endorsed:
EMMA C. THORNTON.
For Deposit:
W. J. MORRISON, JR.

Exhibit C-11. 30

1912	Dues	Fines	Interest	Received payment
September	14		Init. 1.40	C. H.
1913				
February	70	5.04	70.	C. H.
October	112	7.84	112.	A. V. M.

Sec. 23 of By-Laws. Fines.

Each member neglecting or refusing to pay his or her monthly dues at any meeting shall forfeit 40

or pay the sum of ten (10) cents for each month on each share for that month. After default in any periodical payment for three successive months, cumulative fines shall not be charged in excess of two per centum per month on the amount in arrears.

No arrearages allowed to run longer than six (6) months. No fines shall be charged to a deceased member's account from and after his or her decease, unless the representatives shall continue to hold the stock for the benefit of his or her estate. The Secretary, for neglecting to attend at a monthly meeting to receive the members' dues, shall pay a fine of two dollars; for refusing to furnish quarterly statement and annual statements, he shall be removed from office and his successor shall be elected. But the Secretary shall not be fined in case he sends a duly authorized substitute.

Exhibit C-12.

No. 3464 Ridgefield Park, N. J. Sept. 19, 1913.

THE HACKENSACK NATIONAL BANK
of Hackensack, N. J.

Pay to the order of Brewster and Son.....$750.$\frac{00}{100}$

Seven hundred and fifty and 00/100.....Dollars

(Signed) W. J. Morrison, Jr.

William J. Morrison, Jr.
Counselor at Law,
Ridgefield Park, N. J.

Endorsed—
Credit to account of John T. Thornton for material for building covered by Peoples Mutual B. & L. mortgage known as Arthur St. #3

Pay to order of
The Hackensack National Bank
Brewster and Son

Exhibit C-13.

No. 3471 Ridgefield Park, N. J. Sept. 23rd, 1913

THE HACKENSACK NATIONAL BANK
of Hackensack, N. J.

Pay to the order of Peoples Mutual Building & Loan Ass'n. $231.84/100
Two hundred and thirty-one 84/100.....Dollars
(Signed) W. J. Morrison, Jr.

William J. Morrison, Jr.
Counselor at Law
Ridgefield Park, N. J.

Endorsed—
Pay to the order of
The Hackensack Trust Company
Hackensack, N. J.
Peoples Mutual Building and
Loan Association of
Ridgefield Park, N. J.
Geo. J. Smith, Treas.

Exhibit C-14.

Exhibit C-14.

BERGEN CIRCUIT COURT.

ISAAC VANIEWSKY

vs.

JOHN T. THORNTON, Builder;
EMMA T. THORNTON, Owner.

Contract.

R. P. WORTENDYKE,
Plff. Atty.

Amount of damages on trial Two hundred dollars and costs Fifty one dollars and eighty cents, generally against the builder and specially against the lands and building in complaint described, subject to the lien of the mortgages of Peoples Mutual Building and Loan Association of Ridgefield Park, N. J., and Carl Hallberg, respectively.

Dam. $200.
Costs 58.81

$258.81

Judgment signed and entered
September 11, 1913, at 3 P. M.

CHAS. C. BLACK,
Judge.

See Order of C. W. Parker, J. S., filed in case.
Filed Oct. 31, 1914.

Exhibit C-14.

BERGEN COUNTY CIRCUIT COURT.

ISAAC VANIEWSKY, *Plaintiff,* *vs.* EMMA C. THORNTON, Owner; JOHN C. THORNTON, Builder, and PEOPLES MUTUAL BUILDING AND LOAN ASSOCIATION OF RIDGEFIELD PARK, N. J., and CARL HALBERG, Mortgagees, *Defendants.*	On Contract. On Lien Claim. Order of Amending Amended Order of Judgment, dated August 1st, 1914.

Having read the petition of the plaintiff in the above entitled cause and having heard the argument of counsel therein and duly considered the same,

It is on this twenty-fourth day of October, One Thousand Nine hundred and fourteen ordered by his Honor Charles W. Parker, Justice of the New Jersey Supreme Court, presiding in the County of Bergen, that said order as amended be further amended so as to read as follows:

Judgment ordered in favor of the plaintiff in the sum of Two hundred dollars damages generally against John T. Thornton, the builder and specially against the lands and buildings in the complaint described, and costs of court taxed at $58.81.

And it is further ordered that the said judgment is subject to the mortgage of the Peoples Mutual Building and Loan Association of Ridge-

field Park, N. J., to the extent of the sum of Eighteen hundred and sixty (1860) Dollars, actually advanced thereon at the time of the trial, and also to the extent of such further moneys advanced thereon, not in excess of the principal thereof as shall be adjudged by a competent court to be entitled to priority over the said lien and the judgment thereon.

And subject also to the mortgage held by Carl Halberg.

C. W. PARKER,
Judge.

I consent to the entering of the above order.
WM. J. MORRISON, JR.
Atty. for Peoples Mutual Building and Loan Assn. of Ridgefield Park, N. J., Defdt.

(Certified in regular form by County Clerk of Bergen County.)

Exhibit C-15.

Printed in the testimony, p. 23.

Exhibit C-16.

Foreclosure search. Not printed, as the items necessary for this appeal appear in the other exhibits.

Exhibit D-1.

Exhibit D-1.

BERGEN COUNTY CLERK'S OFFICE.

ISAAC VANIEWSKY,
Claimant,

vs.

EMMA C. THORNTON, Owner;
JOHN T. THORNTON, Builder,

and

CARL HALLBERG and THE PEOPLES MUTUAL BUILDING AND LOAN ASSOCIATION OF RIDGEFIELD PARK, N. J., Mortgagees.

} Lien Claim.

Be it known, that Isaac Vaniewsky, of the City of Englewood, in the County of Bergen, and the State of New Jersey, claims a lien upon the building and lands hereinafter described, pursuant to the Statute in such cases made and provided for a debt contracted and owing by her for labor performed and materials furnished for the erection and construction of said building and therefore shows:

First.—The said Building is a two-story and attic-frame building on a lot or curtilage, upon which this lien is claimed, and which is situated in the Borough of Ridgefield Park, in the County of Bergen and State of New Jersey and is more particularly described as follows:

"All those two certain lots, tracts, pieces or parcels of land and premises, known and distinguished on a certain map known as "Map No. 2 of Carl Hallberg, Ridgefield Park, Bergen County, N. J.," as lots numbered One Hundred and Twenty-nine (129) and One Hundred and Thirty (130).

Exhibit D-1.

Second.—The name of the owner of the land upon which the lien is claimed is Emma C. Thornton.

Third.—The name of the person who contracts the debt and for whom and at whose request the labor was performed and the materials furnished, for which said lien is claimed, is the said John T. Thornton.

Fourth.—The following is a bill of particulars, exhibiting the amount and kind of labor performed and of materials furnished, and the price at which, and times when they were performed and furnished, and exhibiting the amount justly due to the said Isaac Vaniewsky, claimant, from the said John T. Thornton, viz:

John T. Thornton to Isaac Vaniewsky, Dr.,

1912

July	27	To Lath furnished (9,000)	$40.50
Dec.	5	To Keg of Lath nails	3.25
"	5	To 7,000 Lath	33.25
Dec.	7	To 100 Bags of Plaster	32.50
"	7	To bags	10.00
"	12	To 50 Bags of Plaster	16.25
"	12	To bags	5.00
"	12	To putting on 101 bundles of lath at .25	25.25
"	12	To Concrete for piers	5.00
"	12	To Plaster 20 Bags	8.30
"	12	To Building Chimney	45.00
"	12	To Expressage	6.00
		To time of claimant on job	35.00
		Total	$265.30
		To credit for bags returned	15.50
		Balance justly due claimant	$249.80

TWO HUNDRED AND FORTY-NINE DOLLARS AND EIGHTY CENTS and interest from December 12th, 1912.

Exhibits D-1, D-2.

All the above labor was performed and the materials furnished between the twenty-seventh day of July, Nineteen hundred and twelve, and the twelfth day of December, Nineteen hundred and twelve, which said last mentioned date is the date of the last work done and materials furnished, for which such debt is due.

(Verification attached.)

Exhibit D-2.

Deed by Robert N. Heath, Sheriff to Isaac Vaniewsky, dated January 23rd, 1914. Recites the execution, levy, advertisement and adjournments, and sets forth that in pursuance of said writ the said Sheriff did cry off and sell at public vendue, all of the property hereinbefore mentioned and described, and under the said writ advertised to be sold, with the appurtenances to Isaac Vaniewsky, for the sum of Fifty (50) Dollars, and subject to first mortgage of $2,800 held by Peoples Mutual Loan and Building Association of Ridgefield Park, and on which $1,860 has been advanced, and on which $184 in dues has been paid, with interest from October 6, 1913, and any other payments that may be due thereon. And mortgage of $800 held by estate of Carl Hallberg with interest from November 12th, 1912. Taxes of 1912 and 1913, amounting to about $30.00, he being the highest bidder therefor, and said sum being the highest bid offered on the same.

Then follow the clauses formally conveying all of the property in said writ mentioned and described and thereby ordered to be sold as afore-

said, together with the appurtenances, easements and privileges thereunto belonging or in anywise appertaining.

The deed is duly executed, acknowledged and proved and was recorded February 4th, 1914, in Liber 871, page 228, of Bergen County Deeds.

Conclusions of Advisory Master.

IN CHANCERY OF NEW JERSEY.

BETWEEN

PEOPLES MUTUAL BUILDING & LOAN ASSOCIATION,
Complainant,

and

ISAAC VANIEWSKY, *et als.*,
Defendants.

Conclusions.

Complainant is foreclosing a mortgage. The defendant, Vaniewsky, obtained a judgment upon a lien claim and purchased the mortgaged premises under an execution sale upon his judgment. The mortgage was for $2,800. It was made by Mrs. Thornton (who was a shareholder in the complainant corporation) while the building was in process of construction. It was dated on the 3rd and recorded on the 27th of September, 1912, and the loan was made as a building loan, upon the understanding that it should be advanced in part payments as the building progressed.

Conclusions.

Vaniewsky filed a lien claim against the land March 22nd, 1913. The first item in the particulars of his claim was dated July 27th, two months before the mortgage was recorded. On September 11th, 1913, he recovered judgment upon this claim specially against the mortgaged lands. The judgment was entered for $258.81, "subject to the lien of the mortgages of Peoples Mutual Building and Loan Association of Ridgefield Park, N. J., and Carl Halberg, respectively."

On October 24th, 1914 (more than a year after the entry of judgment), an order was made, on consent, by Justice Parker, amending the rule for that judgment by substituting for the words above quoted the following:

> "And it is further ORDERED that the said judgment is subject to the mortgage of the Peoples Mutual Building and Loan Association of Ridgefield Park, N. J., to the extent of the sum of Eighteen hundred and sixty (1860) Dollars, actually advanced thereon at the time of the trial, and also to the extent of such further moneys advanced thereon, not in excess of the principal thereof as shall be adjudged by a competent court to be entitled to priority over the said lien and the judgment thereon.
>
> "And subject also to the mortgage held by Carl Halberg."

At the time of entering the judgment, September 11th, 1913, the mortgage stood as a prior lien for the sum of $1,860, as admitted by the answer of defendant, Vaniewsky. Halberg was a second mortgagee. He did not appear, and a decree *pro confesso* was taken against him. No request to

have his mortgage reported upon (under Rule 23-A) is on file.

Complainant had actual notice of the entry of the judgment. It was a party defendant in that suit. While the suit was pending, but prior to the entry of judgment, the mortgagee delivered to its attorney, Mr. Morrison, its check, dated August 4th, 1913, for $934, which was intended as a final advance of the whole amount ($2,800) for which the mortgage was made. This check was made payable to the mortgagor, Mrs. Thornton, was endorsed by her in blank, and was deposited by Mr.Morrison, in his own bank account, and the money held by him until after the judgment was entered. On the 19th of September, eight days after the entry of the judgment, Mr. Morrison handed to Brewster a check for $750 in payment of a bill for material furnished by Brewster and used in the construction of the building. The balance ($184) of the $934 represented by complainant's check of August 4th, remained in the hands of Mr. Morrison until October 22nd, following, when it was paid by his check to the complainant in satisfaction of "dues," interest on the mortgage and "fines" which were due from the mortgagor, Mrs. Thornton, to the mortgagee.

The sheriff's sale of the mortgaged premises to Vaniewsky, under his judgment, was made January 21st, 1914.

The present contest is between him and the mortgagee as to their respective priorities.

W. J. MORRISON, JR.,
For Complainant.

R. P. WORTENDYKE,
For Defendant, Vaniewsky.

Conclusions.

CHARLES H. HARTSHORNE, ADVISORY MASTER (after making the foregoing statement of facts) I have reached the following conclusions in this case:

1.—At the date of Vaniewsky's judgment, September 11th, 1913, complainant's mortgage was entitled to priority to the extent of $1,860.

That fact is admitted in the answer. The judgment did not expressly fix the amount for which the mortgage was a prior lien. The pleadings and issues in that case are not in evidence here. Whether the judgment did, or did not, establish, as *res judicata*, the priority of the whole amount of the mortgage, is a point which was not raised in the pleadings in this case or at the hearing. In view of the above mentioned admission in the answer, I need not consider the effect of the order made by Justice Parker more than a year after the judgment was entered.

2.—No part of the money ($934) represented by complainant's check of August 4th, 1913, was applied to the erection of the building till after the judgment was entered. At the date of the judgment, the mortgage had no priority as against the lien claim or judgment as to any part of that sum. (*Young* vs. *Haight*, 69 N. J. L., 455; *Stiles* vs. *Galbreath*, 69 N. J. E., 239-241.)

That money remained in the hands of the complainant's attorney till paid out by him after the entry of the judgment. He was bound to protect his client's interest and presumably acted under its control.

3.—Of the money represented by that check, $750 was actually advanced and applied to the

erection of the building on September 19th, 1913, after the lien claim had been reduced to judgment and after complainant had actual notice of that fact.

The complainant's attorney paid that sum on that day to Brewster, who had contributed material to the building. It does not appear that Brewster had filed any lien claim, or that he was, at the time of receiving that payment, entitled to file such a claim.

4.—The mortgage, to the extent of the $750 paid to Brewster, is subsequent, in order of priority, to the lien claim and judgment of Vaniewsky.

The loan was negotiated and the mortgage was made and recorded with full knowledge by the mortgagee that the building was in process of construction. The $750 was advanced by the mortgagee after it had actual notice of the lien and judgment of Vaniewsky. In these circumstances, I think that that payment was not within the terms of Section 15 of the Mechanics' Lien Claim Act (C. S., 3303). That Section provides that,

> "Every mortgage * * * upon lands in this state shall have priority over any claim that may be filed in pursuance of this act to the extent of the money actually advanced and paid by the mortgagee and applied to"

the erection or alteration of the building; provided the mortgage be recorded before the filing of the claim.

This provision does not in express terms give priority as to advances made after actual notice that the claimant has perfected his lien claim by

judgment. Reading the provision in its relation to the state of the law at the time of its enactment, I think that it was not intended to have that effect. At that time, the lien claim, if duly filed and perfected, took effect, by relation, as of the time when the building was commenced, and had priority, by the express terms of the statute, over a mortgage recorded in the intervening period, even though all the mortgage money was, in good faith, and without actual notice of lien claims, applied to construct the building which constituted the chief part of the claimant's security.

The preference given to lien claimants, in such case, was based upon the equitable theory that those who deal with land must, at their peril, take notice of what may be seen upon it—the construction of a building being obvious notice of the possible claims of those creditors who build it.

Upon the same equitable principle that priority in notice may give priority in right, it was decided that when the mortgage was recorded before the commencement of the building, it had priority over lien claims even though the advances on the mortgage were made after the building was begun. (*Taylor* vs. *LaBar*, 25 N. J. E., 221.) The reason for this rule is stated to be that "the lien claimants had notice, before giving credit on the security of the land, of the existence of the complainant's mortgage and of the amount for which it was to be security." (*Platt* vs. *Griffith*, 27 N. J. E., at p. 208-209.)

The same reason was recognized in *Jacobus* vs. *Mutual Ins. Co.*, 27 N. J. E., at pp. 611-612, 614; and in *Central Trust Co.* vs. *Continental Iron Works*, 51 N. J. E., at pp. 608, 610.

In the Central Trust Company case it was held that if the mortgage were recorded before the

building was commenced, actual notice of the mechanics' lien claim was necessary in order to give it priority over advances made upon the mortgage after the claim was filed.

In the Platt case and in the Taylor case above mentioned, the mortgagee was under a binding agreement to make the mortgage loan in installments as work on the building progressed, and this was one of the grounds upon which priority was accorded to the mortgage. But such priority was denied, notwithstanding a similar agreement, in a case in which the mortgage was recorded after the commencement of the building. (*Barnett* vs. *Griffith,* 27 N. J. E., at p. 204.)

In *Heintze* vs. *Bentley,* 34 N. J. E., 562, it was held that advances made by a mortgagee, with knowledge of a second encumbrance, were subject to that encumbrance when it was optional with the mortgagee to make the advances.

In the *Germania Building & Loan Association* vs. *Fraenkel Realty Co.,* 82 N. J. E., p. 49, Vice-Chancellor Emery was of opinion, in a case where the mortgage loan was made by a building and loan association, to be advanced in installments as the building progressed, "that the conditions as to future advances must be held to have contemplated that at the time of making any future advances, the building and loan association had the right to require that the property should be free from liens," * * * (p. 52), *i. e.,* that the mortgagee was not bound to make advances after an intervening lien had attached.

The equitable principle which underlies all these cases is stated by Prof. Pomeroy thus:

> "A person who acquires a legal title, or an equitable title or interest in a given subject

matter, even for a valuable consideration, but with notice that the subject matter is already affected by an equity or equitable claim in favor of another, takes it subject to that equity or equitable claim." (*2 Pom. Eq. Jur.*, sec. 591.)

The same author, in dealing with the equitable rules (2 *Id.*, Sec. 682) which determine priorities, says:

"The third, and in its practical effects, by far the most important rule is, that a party taking, with notice of an equity, takes subject to that equity. The full meaning of this most just rule is, that the purchaser of an estate or interest legal or equitable, even for a valuable consideration with notice of any existing equitable estate, interest, claim or right, in or to the same subject matter, held by a third person, is liable in equity to the same extent and in the same manner, as the person from whom he made the purchase; his conscience is equally bound with that of his vendor, and he acquires only what his vendor can honestly transfer" (Sec. 688).

The author adds that this rule is applicable to many cases and mentions among them, that of a mortgagee taking with notice of an equitable lien created by any means from which an equitable lien can arise. *2 Pom. Eq. Jur.*, Sec. 688.

I think that Section 15 should be construed in harmony with this rule of equity when the mortgagee has actual notice of the claimant's lien. Other provisions of the act recognize this principle; for example, the section (28) preserving

the priority of encumbrances recorded prior to the commencement of the building, in cases of construction; and the section (10) preserving the priority of bona fide purchasers and mortgagees whose rights are acquired before the lien claims are filed, in cases of repairs or alterations of the building.

I find nothing to indicate a legislative purpose in Section 15 to depart from this principle, except general terms which, I think, may fairly be given a full and reasonable effect by limiting the priority of the mortgage to advances made upon it before actual notice of the lien acquired by the lien claimant.

In the circumstances of this case the mortgagee was not bound to advance the $750 upon the mortgage until the lien of Vaniewsky was discharged (*Germania Building & Loan Association* vs. *Fraenkel* (*supra*), at p. 52; *Central Trust Co.* vs. *Continental Iron Works* (*supra*), at p. 608). As it chose to make the advance with actual notice of his lien, the latter has priority.

Complainant relies upon *Young* vs. *Haight*, 69 N. J. L., at p. 453. The mortgage in that case was made for $2,000 as a building loan and was recorded after the commencement of the building. The mortgagee advanced upon it $1,650 which was applied to the building. No advance was made after notice of the lien claim. The claim was filed six days after the mortgage was recorded and the full sum of $1,650 had been advanced prior to the recording. The language of the opinion of the court has reference to that state of facts. The question which is before me did not arise, and was not considered in the opinion in that case.

5.—The remainder ($184) of the check of August 4th, 1913, for $934 has never been applied

to the erection of the building. The check was to the order of, and was endorsed by, the mortgagor, but was retained and collected by complainant's attorney. The sum of $184 was held by him forty-six days after the date of the check, and was then returned by him to the complainant. It was so returned in payment of "dues," of interest on the mortgage, and of "fines." In no sense can it be said that the money paid for any one of those items was "applied to the erection" of the building. It added nothing to the value of the latter, either in labor or material.

6.—Complainant's mortgage has priority *as against the judgment* as follows:

Amount of principal admitted in the answer $1,860

With interest at 6% from February 3rd, 1913, to date of decree.

7.—*As against the mortgagor,* the whole amount of the principal ($2,800), less $196 paid on account of dues, has been advanced by complainant and is due upon the mortgage with interest from October 6th, 1913.

8.—The mortgaged premises should be sold and the balance of the proceeds of sale, after paying complainant the amount for which its mortgage is adjudged to be the first lien, with costs, should be paid into court.

A decree *pro confesso* has been taken against Mrs. Halberg, whose mortgage is subsequent to the mortgage of the complainant, but is admitted to be a prior lien to the judgment. In these circumstances, Rule 24 applies and the respective priorities as between the Halberg mortgage, the

judgment, and the remainder of the sum due upon complainant's mortgage should be determined upon application for surplus money. (*Clement* vs. *Kaighn,* 15 N. J. E., 47; *Hoag* vs. *Sayre,* 33 N. J. E., 552.)

Final Decree. Filed April 22, 1915.

IN CHANCERY OF NEW JERSEY.

BETWEEN PEOPLES MUTUAL BUILDING AND LOAN ASSOCIATION OF RIDGEFIELD PARK, N. J., *Compl't.* and ISAAC VANIEWSKY, *et al.*, *Def'ts.*	On Bill to Foreclose. Final Decree.

This cause coming on to be heard at the Chancery Chambers in Jersey City, in the presence of William J. Morrison, Jr., of counsel with the complainant and Raymond P. Wortendyke, of counsel with the defendants, Isaac Vaniewsky and Bessie Vaniewsky, the complainant's bill having been heretofore taken as confessed against the other defendants and the pleadings having been read, the proof taken, and the arguments of the respective counsel heard, and the Court having considered the same and it appearing to the Court that there is due and owing to the complainant on its mortgage on this day, as against the mortgagors therein named, the sum of two thousand, eight hundred and forty-four dollars and eighty-seven

cents ($2,844.87) for principal and interest, and that said mortgage is entitled to priority of payment to the extent of two thousand, one hundred and seven dollars and thirty-eight cents ($2,107.38), and no more, over the right, title and interest of the defendants, Isaac and Bessie Vaniewsky, in the mortgaged premises, and that complainant claims priority for the whole amount due upon its mortgage as against the mortgage of the defendant Halberg (against whom the bill of complaint has been taken as confessed), but that it is admitted that the mortgage of said Halberg is a prior lien to the right, title and interest of the defendants Vaniewsky.

It is, on this twenty-second day of April, in the year of our Lord, one thousand nine hundred and fifteen, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth by virtue of the power and authority of this Court, hereby order, adjudge and decree that the said mortgaged premises be sold to raise and satisfy the said sum of two thousand, one hundred and seven dollars and thirty-eight cents ($2,107.38) due to the complainant, for which the complainant is entitled to priority as aforesaid over the defendants Isaac and Bessie Vaniewsky, together with interest thereon to be computed from the date hereof, with the complainant's costs to be taxed, and that a writ of *fieri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Bergen, commanding him to make sale, according to law of the said mortgaged premises, and that out of the money arising from such sale, he pay to the complainant or its solicitor the said sum of two thousand, one hundred and seven dollars and thirty-eight cents

($2,107.38) with interest and costs as aforesaid and in case more money should be raised by the said sale than shall be sufficient to answer said payments, that such surplus be brought into this Court, to abide the further order of this Court, unless otherwise disposed of by the order of this Court; and that the said Sheriff make return, without delay, of his proceedings by virtue of this writ.

And it is further ordered, adjudged and decreed that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid by virtue of this decree.

Petition of Appeal. Filed July 16, 1915.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

Peoples Mutual Building and Loan Association of Ridgefield Park, N. J.,
Complainant-Appellant,

and

Isaac Vaniewsky and Bessie Vaniewsky,
Defendants-Appellees.

Petition of Appeal.

The petition of Peoples Mutual Building and Loan Association of Ridgefield Park, N. J., the appellant in the above stated cause, respectfully

shows that your petitioner finds itself aggrieved by a final decree entered in the Court of Chancery by his honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the twenty-second day of April, nineteen hundred and fifteen, wherein the said Peoples Mutual Building and Loan Association of Ridgefield Park, N. J., was complainant and the said Isaac Vaniewsky, Bessie Vaniewsky and Ida Hallberg were defendants; in this respect, to wit: That the said decree adjudges that there was due and owing to the complainant on its mortgage on that day, as against the mortgagors therein named, the sum of two thousand, eight hundred and forty-four dollars and eighty-seven cents ($2,844.87) for principal and interest, and that said mortgage is entitled to priority of payment to the extent of two thousand, one hundred and seven dollars and thirty-eight cents ($2,107.38), and no more, over the right, title and interest of the defendants, Isaac and Bessie Vaniewsky, in the mortgaged premises, and that the said mortgaged premises be sold to raise and satisfy the said sum of two thousand, one hundred and seven dollars and thirty-eight cents ($2,107.38) due to the complainant, for which the complainant is entitled to priority as aforesaid over the defendants, Isaac and Bessie Vaniewsky, together with interest thereon to be computed from the date hereof, with the complainant's costs to be taxed.

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, for that the decree of the Chancellor should have been that the complainant's mortgage is entitled to priority of payment over the right, title and interest of the defendants Isaac

Vaniewsky and Bessie Vaniewsky, to the extent of the entire amount of two thousand, eight hundred and forty-four dollars, and eighty-seven cents ($2,844.87) decreed to be due thereon, and that the mortgaged premises be sold to raise and satisfy the said last mentioned sum of money together with interest and costs.

Your petitioner therefore prays that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

W. J. MORRISON, JR.,
Solicitor for and of Counsel with Appellant.

Answer to Petition of Appeal. Filed Sept. 26, 1915.

IN CHANCERY OF NEW JERSEY.

BETWEEN PEOPLES MUTUAL BUILDING & LOAN ASSOCIATION of Ridgefield Park, N. J., *Complainant and Appellant,* and ISAAC VANIEWSKY and BESSIE VANIEWSKY, his wife, *Defendants and Respondents.*	On Petition of Appeal. Answer.

The answer of the above named respondents to the petition of appeal of the above named appellant:

Answer to Petition of Appeal.

These respondents, not acknowledging all or any of the matters, which in said petition of appeal are contained, to be true for answer thereto, nevertheless say and admit that a decree was on the twenty-second day of April, nineteen hundred and fifteen last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned, in the said petition, as is therein stated; but as to the substances and form thereof, these respondents pray to refer thereto when the same shall be produced, and these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

R. P. WORTENDYKE,
Solicitor for and of Counsel with Respondents.