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## New Jersey Court of Errors and Appeals.

Between

LOUIS HUBING, Executor, etc.,  
Complainant-Appellant,

AND

LIBERTY TRUST COMPANY,  
Defendant-Respondent.

On Bill, etc.  
On Appeal from  
Chancery.

### BRIEF FOR DEFENDANT-RESPONDENT.

There are two assignments of mortgages involved in this case. The first, Exhibit C-8, appears at pages 17, etc.; the second, Exhibit C-16, appears at page 19, line 36, etc.

Each assignment purports to assign two mortgages with their bonds.

The assignment, Exhibit C-8, purports to assign a bond and mortgage, from Courter to Loehnerberg, for \$2,500. on property 341 West Kinney Street, Newark, N. J. (Exhibits C-4 and C-5), referred to as the Courter mortgage.

This assignment, Exhibit C-8, also purports to assign a certain other bond and mortgage, from Heidel to Liberty Trust Co., for \$3,000. on property 157 North Twelfth Street, Newark, N. J. (Exhibits C-6 and C-7), referred to as the Heidel mortgage.

As to this first assignment (C-8), the trust company owned the Courter mortgage, and did in fact assign it and received its money therefor. It never

owned the Heidel mortgage, and did not in fact assign it, nor did it receive *any* money therefor. No reference to the Heidel mortgage was in the assignment as executed by the trust company (p. 166, lines 1-30).

The assignment, Exhibit C-16, also purported to assign two bonds and mortgages. It purported to assign a bond and mortgage from Heidel to Aschenbach, on property 82 Lyons Avenue, for \$3,000. (Exhibits C-11 and C-12), referred to as the Aschenbach mortgage.

It also purported to assign bond and mortgage from Wolbert to Schwarzwaelder, on property on South Fourteenth Street, Newark (Exhibits C-14 and C-15), referred to as the Wolbert mortgage.

The mortgage from Heidel to Aschenbach the Trust Company owned, and assigned, and received its money for. It never owned the mortgage from Wolbert to Schwarzwaelder, nor did it ever assign such mortgage, nor was such bond and mortgage in fact in existence. This mortgage was a bogus mortgage, and the bill so admits (p. 10, line 15).

No reference to the Heidel mortgage was in the assignment as executed by the Trust Company (p. 172, line 35, to p. 173, line 24).

The assignment (Exhibit C-8) by its terms, as it now reads, guaranteed that each of the mortgages purporting to be assigned was a first and valid lien on the premises therein described. The fact is: no such language was in the assignment at the time it was signed by the officers of the company for the purpose of assigning the Courter mortgage.

The assignment (Exhibit C-16) contains no guaranty that the mortgages purporting to be assigned are first and valid liens, but does purport to contain a covenant "that there is now due and owing upon said bond and mortgage the sum of \$3,000. on each".

Inasmuch as but one mortgage was originally mentioned in the assignment, the words "on each", were added, presumably at the same time the reference to the Wolbert mortgage was inserted.

The answer filed by the trust company sets up two main defenses.

First, that the assignments as they now read are not the acts or deeds of the trust company and that it is not bound thereby; and

Second, that the alteration of the assignments, to the damage of the complainant, was done by Roland D. Crocker, as his attorney.

At the very outset it should be pointed out to the Court that the testimony of A. Howard Watson, the former president of the trust company, is vital to a right decision of this case. His deposition was taken in New York and read in the case. His testimony is not impeached or discredited. He is the only witness called who has first hand knowledge of the condition of the assignments at the time they were executed as the act and deed of the trust company, and we respectfully urge upon the Court a careful reading of his testimony.

The allegation is that the trust company assigned four bonds and mortgages.

The proof is conclusive that it owned but two of the four, and of course, could not have intended to and did not in fact assign any others than the two which it owned.

Counsel for the appellant in his brief (p. 7), under the caption "Specification of the errors in the decree", sets forth four paragraphs of adjudication. The third and fourth of these paragraphs, however, which he describes as "adjudications" are not in the decree.

The decree (pp. 198-199) simply decrees that the complainant's bill be dismissed, with costs, and that is all that is adjudicated.

The so-called adjudications of which counsel complains, are taken from the memorandum filed by Vice-Chancellor Howell after the hearing.

It appears from the record that the Vice-Chancellor heard a number of cases at about the same time, growing out of the fraudulent acts of Roland D. Crocker. It is quite conceivable that in preparing his

memorandum in this case (pp. 193-197) he did not distinguish sharply between the facts brought out in this case, and those brought out in other cases connected with Crocker's affairs, which he had heard.

The respondent, however, is not called upon to defend the body opinion, but the decree, and we submit that the conclusion of the opinion, to the effect that the bill should be dismissed, is correct, and that the decree is correct.

An analysis of the evidence will demonstrate the following conclusions of fact:

1. That the trust company did not own and did not assign, and did not attempt to assign, the bond and mortgage from Heidel to Liberty Trust Company (C-6 and C-7), or the bond and mortgage from Wolbert to Schwarzwaelder (C-14 and C-15).

2. That the assignments (C-8 and C-16) purporting to include those respective bonds and mortgages were altered, and in that respect are not the obligations of the trust company.

3. That the assignment (C-8) as executed by the trust company, did assign the Courter bond and mortgage (Exhibits C-4 and C-5) to the complainant, and no other, but that this assignment contained no covenant that the mortgage so assigned was a first and valid lien on the premises.

4. That the assignment (C-16) as executed by the trust company, did assign the Aschenbach bond and mortgage (Exhibits C-11 and C-12) to the complainant, and no other.

5. That the trust company received the value of the Courter (C-5) and Aschenbach (C-12) mortgages from Crocker, but received no moneys whatever on account of the Heidel (C-7) or the Wolbert (C-15) mortgages.

6. That the falsification of the assignments, and the retention of moneys paid Crocker by the complainant for the purchase of the Heidel (C-7) and Wolbert (C-15) mortgages, was entirely without the knowledge of the trust company.

The trust company had an established custom under which it purchased, sold, and kept records of its various bonds and mortgages. Under the by-laws of the company before a loan on bond and mortgage could be made, a committee on appraisals must submit a written report, which had to be approved by the executive committee. Section 1 of Article VII and Section III of Article V of the by-laws provided for this as follows (p. 103, line 10):

“Article VII, Section 1. No loan on bond and mortgage shall be made without the approbation and concurrence of the Executive Committee, and that committee shall take no action on loans secured by real estate until after report in writing shall be made to it by the committee on appraisals.”

“Section III, Article V. There shall be a committee on appraisals consisting of not less than three members of the board. This committee shall be appointed by the chairman of the Executive Committee, and vacancies shall be filled in the same manner. They shall hold office during the pleasure of the board or until others are appointed in their stead.”

“This committee shall examine all applications for loans on real estate, and shall report in writing to the Executive Committee as to the value of the property offered as security.”

The practice, as Mr. Kautzmann, the present president, and Mr. Watson, the former president, showed, was an application for a loan to be made in writing, for this application to be referred to the appraisal committee, and for the appraisal committee to report in writing to the executive committee its recommendation.

If the report was favorable, the bond and mortgage was purchased.

Upon a bond and mortgage being purchased in this manner two records were kept of it; one, a loan envelope, so-called, which was numbered, and had endorsed on the outside the various data relating to the bond and mortgage, such as the name of the parties, the date, the amount, the policy of insurance, etc. This endorsement was virtually an index of the papers to be found in the envelope. There was also kept a book of entry called the supplementary loan ledger, or loan book, in which duplicates of the number and entries on the loan envelope were entered. These entries on both the loan envelope and on the loan ledger, were made by Mr. Watson, the then president.

The by-laws limited the authority of the officers of the company to assign bonds and mortgages, or to affix the seal of the trust company to any paper.

Article IV of Section IV, as amended, and in force at the time the assignments in question were executed, limited the authority of the chairman of the executive committee (Mr. Crocker) to transfer the securities of the company, except on the authority of the executive committee. The language of the by-law was (p. 138, line 40):

“ He shall also have the power to make loans and to make any and all transfers of the securities of the company as may be authorized by the executive committee.”

The president of the company by the by laws had custody of the seal, and was permitted to affix it to assignments of mortgages only when the amount due thereon had been paid. This was provided by section I of Article VI, which provided (p. 102, line 3):

“ The president shall have the custody of the seal of the company, and shall have the power to affix the same to certificates of the capital stock of the company; to certificates acknowledging satisfaction of judgment and mortgages, and to assignments of mortgages, when the whole amount due, or to be paid thereon, shall have been paid.”

Except as provided in Section I of Article VI, the seal of the company could only be affixed by order of the directors, or the executive committee as follows (Section II of Article VI, p. 103, line 1):

“The seal of the company shall not be affixed to any other deed, conveyance or instrument, whatever, unless by authority of the board or Executive Committee.”

When the amount due on a bond and mortgage was paid, the practice was for the officers of the company to execute an assignment of the bond and mortgage thus paid, and to affix the seal thereto. Under no other circumstances were assignments thus executed.

With this general survey of the procedure, we will discuss first the assignment C-8, which assigned the bond and mortgage from Courter to Loehnberg (C-4 and C-5), which the Trust Company owned, and also purported to assign the bond and mortgage from Heidel to Liberty Trust Company (C-6 and C-7), which the Trust Company never owned.

All of the loans of the Trust Company as represented by bonds and mortgages purchased, were numbered.

Thus the Courter bond and mortgage was Loan No. 3.

The Aschenbach bond and mortgage was Loan No. 6.

The Courter mortgage was originally purchased and came into the possession of the Trust Company as follows: Max Rosenthal, through Roland D. Crocker, as his attorney, made application for a loan of \$2,500. on bond and mortgage on property situated at No. 341 West Kinney Street, Newark (p. 108, line 16). The application pursuant to the by-laws and practice of the bank was referred to the appraisal committee and reported favorably (p. 103, line 36; p. 109, line 20). The application and appraisal are in evidence as Exhibit D-2 (p. 109). Upon this report the directors authorized the pur-

chase of the mortgage (p. 109, line 20). The check is in evidence as D-3 (p. 110, line 20). As already observed, two forms of record were kept by the Trust Company of mortgages purchased. One was their loan envelope, and the other was their supplementary loan ledger.

The loan envelope contained all the papers in connection with the loan. The envelope applying to the Courter mortgage is Exhibit D-4 (p. 111, line 35). It is made out in the handwriting of Mr. Watson (p. 109, lines 20-40), and contains on the face of it a list of the papers enclosed, namely, the bond and mortgage, the abstract of title, the insurance policies, the appraisal report, and the original assignment of the mortgage from Morehouse, the owner, to the trust company (see photo of Exhibit D-4, and page 110, lines 1-10; see also the testimony of Watson, p. 161, line 20). Mr. Watson remembered the purchase perfectly and identified the papers (p. 162).

The supplementary loan ledger contained duplicate entries of those made on the loan envelope (see photo). It is in evidence as D-5 (p. 111, line 40) and is also in the handwriting of Mr. Watson (p. 165, line 10).

The legal features in connection with the purchase of this mortgage were taken care of by the trust company's counsel, Mr. Pennington (p. 107, line 30, and p. 160, line 32, and p. 75, line 20).

On October 11, 1913, this Courter bond and mortgage was sold and assigned to the complainant. An assignment was executed for the transfer of this mortgage. The paper now in evidence as Exhibit C-8 is the paper executed for the purpose of assigning the Courter mortgage, but has been altered by Crocker by including therein the alleged assignment of the Heidel mortgage (C-7), and by adding thereto words to the effect that the mortgages assigned were first and valid liens.

The assignment as originally drawn was executed by Mr. Watson as president, and Mr. Biggin as

treasurer. Mr. Biggin, however, had nothing whatever to do with the mortgage loan department. Mr. Watson handled that entirely, he said (p. 74, line 14). He simply signed whatever papers he was asked to sign in that connection, after they had been signed by Watson as president (p. 65, line 35). While he had the title of treasurer, his duties were outside soliciting business (p. 65, line 40). He could, therefore, throw no light on the transaction at all. He simply identified his signature (p. 75, line 26).

Mr. Watson was the man who had full knowledge of the whole transaction, and he testified to the sale of the Courter mortgage to the complainant (Watson, p. 165, lines 14-30). Watson says that he and Biggin were the only ones who had access to the vaults where the bonds and mortgages were kept (Watson, p. 176, line 24). Kautzmann says that either Watson or Crocker possessed a key, but that neither one could open it without the presence of the other (p. 127, lines 20-30).

The money for the sale was received on October 11th. The loan envelope (Exhibit D-4) and the supplementary ledger (Exhibit D-5) are both stamped paid on that date. The stamp was put on by Watson (Watson, p. 163, line 40).

On the same day the trust company sold another mortgage which it owned, also executed by the same Mr. Aschenbach, for \$5,000. on property on North Twelfth Street. The two transactions were closed out at the same time, and the bank received for the principal of the two mortgages \$7,500. The supplementary ledger containing the entry of that Aschenbach mortgage, is in evidence as Exhibit D-6. It was known as loan No. 2 (p. 168, lines 3-27), see photo. (This Aschenbach mortgage must not be confused with the mortgage from Heidel to Aschenbach, Exhibit C-12, and assigned by Exhibit C-16.)

Watson testified that it was customary for letters to pass between him and Crocker whenever papers of this character passed out of his hands (Watson, p. 179, lines 30-40). Following his testimony, a

letter referring to this transaction was introduced in evidence (p. 187, line 30, to p. 188, line 5, and p. 191, line 20). The assignment (Exhibit C-8) was executed by Watson and Biggin on October 10th, 1913, at Crocker's office. The records show that the money was paid on October 11th, 1913. Counsel for the complainant tried to make capital out of the fact that a day had elapsed between the execution of the assignment and the payment of the money (Watson, p. 178, lines 20 to 37), but the letter from Crocker to Watson (Exhibit D-D) completely settles the matter. Watson said that he had gone to Crocker's office on the 10th and executed the assignment of the Courter mortgage. The letter (D-D), which is on the letter paper of Roland D. Crocker, attorney at law, Newark, N. J., is as follows (p. 191, line 17).

"NEWARK, N. J.,  
Oct. 10, 1913.

LIBERTY TRUST Co.,  
Newark, N. J.

DEAR SIRs:—

I enclose checks for the following mortgages as arranged with Mr. Watson today.

For Aschenbach mortgage, property N. 12 St., \$5167.17.

For Rosenthal mortgage, \$2576.25

Please send me in morning the papers in these cases.

Very truly,  
R. D. CROCKER.

Received Oct. 11, 1913  
Liberty Trust Company  
Answered October 11, 1913."

The Rosenthal mortgage is the same as the Courter to Loehnerberg mortgage referred to here. It was referred to as the Rosenthal mortgage because Rosenthal then owned the property (p. 108, line 16).

The checks received from Crocker, as stated in his letter, were deposited on October 11th in the National State Bank, where the trust company had an account. The deposit slip was introduced in evidence

as Exhibit D-6. It was made out in Watson's handwriting, and identified by him (Watson, p. 167, lines 16-40). This covered the principal and the interest (see Loan Ledger D-5 and D-C; see photos). In addition to these records, the paying teller's cash proof showing the funds in the bank's records were also put in as Exhibit D-7 (p. 113, lines 10-40). On the second page, in Watson's handwriting, is an entry of \$7,500. covering the Courter (Loan No. 3) and Aschenbach (Loan No. 2) mortgages paid for that day (see Watson, pp. 167-168). In addition to this, the general ledger of the trust company showed the same entries (Exhibit D-8, p. 114, lines 10-35).

The proof is conclusive that the trust company purchased the Caurter mortgage originally and sold it to the complainant, and got its money on October 11, 1913.

The proof is equally conclusive that it did not own and did not sell to the complainant the bond and mortgage from Heidel to the Liberty Trust Co. (Exhibits C-6 and C-7), which now purport to be included in the assignment (C-8).

Mr. Kautzmann, the present president, made a thorough search of the records of the trust company after Croker's disappearance to ascertain if it ever had owned any such bond and mortgage (Kautzmann, p. 120, lines 35, etc.). The only records which the trust company ever kept showing its ownership of bonds and mortgages, were the minute book, the loan envelopes and the loan ledger. There is no record in the minute book of the purchase of any such mortgage ever having come before the board. There is no loan envelope in existence, or any loan ledger entries in existence covering such a mortgage.

Kautzmann testified (p. 120, line 35, etc.):

“ Q. Now, have you gone through the minute book of the company, which is now in evidence, to see whether there is any record of any purchase by the company, by the Liberty Trust Company, of the second mortgage, which is

mentioned in the first assignment in evidence, namely, the mortgage or alleged mortgage of \$3,000 of Rudolph J. Heidel to the Liberty Trust Company? A. On what property?

Q. On North Twelfth Street? A. What number North Twelfth?

Q. No. 157 North Twelfth Street? A. I have no knowledge of any mortgage being purchased by the company on that property.

Q. Is there any record of any such purchase in the book? A. There is not. I went through the book carefully searching for it when this trouble was first called to our attention by Mr. Bradner.

Q. So there is neither any record of it nor have you any personal knowledge of any such thing? A. No."

See also page 121, line 35, to page 122, line 40.

Mr. Watson, who had immediate charge of all the mortgage loans, testified absolutely that to his personal knowledge the trust company never owned or sold any such bond and mortgage (p. 173, line 30, to p. 174, line 13). (In Watson's testimony this assignment is referred to as Exhibit C-3, but that is an error. Exhibit C-3 was a list of mortgages given the complainant by Crocker (p. 44, line 34). The assignment itself was marked Exhibit C-8 first for identification (p. 47, line 16), and afterwards in evidence).

Watson testified with reference to this Heidel to Liberty Trust Company mortgage (p. 168, line 39):

"Q. Mr. Watson, to your personal knowledge or recollection did the Liberty Trust Company own any such mortgage, as if referred to here on this Exhibit C-3, this assignment of the Courter mortgage? A. It did not."

Nor did the proof stop there. This assignment (Exhibit C-8), following the language assigning the Courter mortgage contained these words: "And also a certain other mortgage bearing date the 2nd day of September, 1913, made by Rudolph J. Heidel

and wife, to said Liberty Trust Company, on lands in the said City of Newark, to secure the payment of \$3,000., which mortgage is recorded in the Register's office of said County of Essex, in Book S. 31, page 162 of mortgages" (p. 17, line 30, &c.).

This language, Mr. Watson testified positively, was not in the assignment when he executed it (Watson, p. 166, lines 1-15). He was absolutely sure about it (Watson, p. 166, line 16). Watson also testified that the language at the close of the assignment as follows: "and that each of said mortgages is a first and valid lien on the premises therein described", was also not in the assignment when he executed it.

Watson's testimony on this subject was as follows (p. 165, line 32, &c.):

"Q. Now, I ask you whether the paper was signed and sealed by you in the form in which it now is, having included in it a reference to the mortgage of Heidel to the Liberty Trust Company? A. No, sir.

Q. What mortgage did it purport to assign, did it assign at the time you assigned it? A. The Albert C. Courter and wife mortgage to Lizzie Hess Loehnberg.

Q. At the time you signed the paper did it have in it these words, 'and also a certain other mortgage bearing date the second day of September, 1913, made by Rudolph J. Heidel and wife to the said Liberty Trust Company?' A. It did not.

Q. 'On lands in said City of Newark, to secure the payment of \$3,000, which mortgage is recorded in the Register's office of the said County of Essex in Book S 31, page 162 of mortgages?' A. No, sir.

Q. Are you sure about that? A. Yes, sir.

Q. Where was the paper signed when you signed it? A. In Mr. Crocker's office.

Q. And did you take the seal down there and put it on there for that purpose? A. I did.

Q. Now, I direct your attention to the closing words of this assignment, ahead of the 'In Witness Whereof,' as follows: 'And that each

of said mortgages is a first and valid lien on the premises therein described.' A. No, sir.

Q. Those words were not in it either? A. No, sir; they were not in it.

Q. When you signed this paper, as I understand it, it assigned the Courter mortgage? A. The mortgage that we held.

Q. That was the Courter mortgage? A. That was the Courter mortgage."

Mr. Watson's testimony was in no manner impeached or discredited. Apart from that, all the records of the bank, already alluded to, bear him out in his statement. The bank owned no such mortgage and did not have it to assign, and there is no foundation in fact or in theory for any reason why Watson should have executed the assignment in the form it now is.

#### ASSIGNMENT C-16.

We will next take up the discussion of the assignment (Exhibit C-16), purporting to assign the bond and mortgage from Heidel to Aschenbach (Exhibits C-11 and C-12), referred to as the Aschenbach mortgage; and the bond and mortgage from Wolbert to Schwarzwaelder (Exhibits C-14 and C-15), referred to as the Wolbert mortgage.

The same character of evidence exists in the matter of this assignment as in that of the previous one. The trust company owned the Aschenbach bond and mortgage (Exhibits C-11 and C-12) and assigned it to the complainant. It did not own nor assign the Wolbert mortgage. In fact, no such bond and mortgage was in existence.

The defendant introduced in evidence its records (p. 114, line 37, to p. 118, line 10) of the purchase of the Aschenbach mortgage (Exhibits C-11 and C-12), which was Loan No. 6 (see photos). These were the application by Aschenbach, and the appraisal report (Exhibit D-9), (p. 115, line 33, to p. 116, line 5), and the check for \$5,000. which had paid for the mort-

gage originally (Exhibit D-12), (p. 117, lines 23-30). In addition to these papers, there was introduced the loan envelope which had contained the papers (Exhibit D-10), (p. 117, line 15), and which had listed on the front of it that it contained the appraisal certificate (D-9), the bond and mortgage (C-11 and C-12), the search, the original assignment of the mortgage from Aschenbach to the trust company (C-13), and the fire insurance policies (see photo). Besides the loan envelope there was the entry in the loan ledger which was in evidence as Exhibit D-11, containing the same entries (see photo). These records were produced and identified by Mr. Kautzmann (pp. 115-117). Mr. Watson made the entries on both the loan envelope and the loan ledger, and remembered the transaction perfectly (Watson, p. 169, line 3, to p. 171, line 20).

In addition to these records, the minutes of the trust company showed the purchase of the mortgage, at page 75 of the minutes, where the record is: "Upon motion by Mr. Watson, duly seconded and carried, it was decided to purchase a mortgage on property of R. H. Heidel, of \$5,000. at 6 per cent., located at No. 80 South side of Lyons Avenue, Newark, New Jersey" (Kautzmann, p. 115, line 35).

This mortgage was sold and paid for on November 17, 1913. On the loan envelope (Exhibit D-10, see photo) and the supplementary loan ledger (D-11, see photo) is the stamp of that date showing that it was paid. This stamp was put on in each case by Mr. Watson (Watson, p. 173, line 20). He said he stamped it on that date, November 17th, 1913.

Further proof of the fact that the trust company got its money on that date appears from the paying teller's cash proof of November 17th, 1913 (Exhibit D-13) and deposit slip (Exhibit D-14), and the pass book of the trust company in the National State Bank (Exhibit D-B), particularly the entries of November 17th, 1913 (p. 175, lines 2 to 30).

The pass book contains three deposits made on November 17th—one for \$3,450; that appears on the

duplicate deposit slip D-14; another for \$780.58; that represented miscellaneous checks received by the trust company on deposit tickets; the third for \$10,210; this included the cash paid on the payment of this Aschenbach mortgage (Watson, p. 174, line 25, to p. 175, line 25).

The assignment C-16 purports to be dated December 8th, 1913. Complainant's counsel thought to discredit the defendant's testimony that the sale of the Aschenbach mortgage on November 17th, 1913, related to the same mortgage referred to in the assignment (C-16) by reason of the discrepancy of the date, but Watson's answer to that was that after the paper had been originally executed the date had been changed by Crocker (Watson, p. 183, lines 24-32).

See Complainant's Brief, p. 24.

Complete corroboration of Mr. Watson is found in the copy of the letter which he wrote to Crocker on November 17th, 1913, sending him the Aschenbach bond and mortgage. This letter is Exhibit D-E (p. 192), and reads as follows:

“ Nov. 17, 1913.

MR. R. D. CROCKER,  
776 Broad St.,  
Newark, N. J.

MY DEAR MR. CROCKER:

In accordance with your request we are handing you the following papers in relation to the Aschenbach mortgage of \$5,000.—, which we understand will be taken up to-day.

Bond & Mortgage Rudolph J. Heidel to Albert B. Aschenbach

Assignment of Mortgage Albert B. Ashenbach to Liberty Trust Company

Certificate of Search

Firemen's Insurance Co. Policy # B528170 Rudolph J. Heidel

Very truly yours,

LIBERTY TRUST COMPANY.

President.”

The papers mentioned in this letter correspond exactly with the entries made on the loan envelope (D-10) see photo, and the supplementary loan-ledger (Exhibit D-11) see photo, even to the number of the Firemen's Insurance Company policy No. B. 528170. There can be no doubt in view of this, that the Aschenbach mortgage was sold and paid for on November 17th, 1913, as the records show, and that Crocker changed the date of the assignment afterwards.

The assignment (C-16) also purports to assign the mortgage from Wolbert to Schwarzwaelder (Exhibits C-14 and C-15). It is conceded that there was no such mortgage in existence. The bill itself says that this mortgage was bogus (Par. 18, p. 10, line 12).

The records of the trust company show that it never owned any such such mortgage. There is no record of it in the minutes or the supplementary loan ledger, nor is there any loan envelope relating to it. Mr. Kautzmann made a thorough search but could find no trace of it (p. 122, line 30). Watson, who it will be remembered, handled all these mortgage matters, testified that the trust company never held any such mortgage or ever sold it (Watson, p. 172, lines 32-36).

The assignment (C-16), however, contains these words: "and also that mortgage bearing date the 12th day of April, 1906, made by George W. Wolbert and wife, on lands in said City of Newark, to secure the payment of the sum of \$3,000., which is recorded in Book S. 19, page 167 of Essex County mortgages."

This language was not in the assignment when executed by the trust company. Mr. Watson so testified (Watson, p. 172, lines 15-23). The clumsy language at the conclusion of the assignment, ahead of the words "In witness whereof", itself shows an alteration where it is said, "that there is now due and owing upon the said bond and mortgage the sum of \$3,000 on each" (p. 21, line 12); the words

“on each” very evidently written in after the reference to the Wolbert mortgage had been added to the assignment. The sentence would not have been worded like that had the Wolbert mortgage been in originally (see similar language in Assignment C-8, p. 18, line 20).

The trust company did not own nor attempt to sell the Heidel bond and mortgage (Exhibits C-11 and C-12), now appearing in the first assignment (Exhibit C-8), or the Wolbert bond and mortgage (Exhibits C-14 and C-15) now appearing in the second assignment (C-16). These bonds and mortgages could not have been purchased except after written application and appraisal, as was pursued in the case of the mortgages which were actually purchased and owned (By-laws Article VII, section 1; Article V., section 3; p. 103).

But the trust company officers had no authority to execute an assignment covering these mortgages, even if the trust company had owned them, for the reason that the trust company never got any money for those mortgages.

The by-laws of the company were introduced on Mr. Kinney's testimony. Article IV, section 4, appearing on page 100, line 23, &c., was amended, however, and the amendment appears on page 138, line 25, &c. The cross-examination of Mr. Kinney on this article of the by-laws, at page 103, &c., is therefore immaterial. The difference between the original of Article IV, section 4, appearing on page 100, and the amendment as it now appears on page 138, is that the amendment has eliminated the fourth sentence of the article to the effect that the chairman of the executive committee (Crocker) should keep personal securities under his control.

This fact is quite material on the complainant's holding out theory as to Crocker.

The fact was they were kept under the control of Mr. Watson. Crocker was the chairman of the executive committee, but his functions as such, as well as that of the other officers of the company,

were limited by the by-laws. There is no suggestion in the case that there was any holding out by the trust company of the officers of the bank to conduct the bank's business contrary to the provisions of the by-laws. By Article IV, section 4, the chairman of the executive committee could make no transfer of the securities of the company except "as may be authorized by the executive committee", and there is no suggestion that the executive committee ever authorized Crocker to transfer the Heidel or Wolbert mortgages, even assuming they had been owned by the trust company.

Article VI, section 1 (p. 402, line 13), authorized the president to execute assignments of mortgages "when the whole amount due or to be paid thereon shall have been paid". In such cases he was authorized to affix the seal of the company (p. 102). Under no other circumstances could he affix the seal of the company except by order of the board or the executive committee (Article VI, section 2, p. 103, line 1). If, therefore, Mr. Watson had attempted to execute the assignment of the Heidel and Wolbert mortgages (assuming the company owned them), either on his own motion, or at the instance of Crocker, he would have had no authority to have done so, for the company never received any money for any such mortgages.

The assignments (C-8 and C-16) as originally executed, transferred the legal title to the Courter and Aschenbach mortgages respectively to the complainant. These assignments covenanted only as to the amount of the principal due on the bonds. The trust company had title to each of these mortgages and the amount certified to be due under the bonds was in fact due, and the trust company in every respect fulfilled the terms of the assignments as originally executed. There can, therefore, be no liability as against the trust company for any breach of the covenants of the assignments as originally executed.

The inclusion in the assignment (C-8) of the Heidel mortgage (C-7), and the addition thereto that the mortgages therein named were first and valid liens; and the inclusion in the assignment (C-16) of the Wolbert mortgage (C-15), were in no respect the obligations of the trust company. The assignments containing those covenants were not in the papers when executed, the trust company had no knowledge of the existence of such mortgages, nor any ownership thereof, it received no money whatever for the alleged transfer of those mortgages, and did not intend to, and did not in fact sell, or attempt to sell either of those mortgages.

Any assignment, to bind the trust company, must be its corporate action, or made by its authorized agent, or ratified by it.

*Thompson v. Central Passenger Railway Co.*, 80 N. J. Law, 328, p. 330.

*Beach v. Palisade Realty & Amusement Co.*, 86 N. J. Law, 238, p. 241.

The officers who executed the paper had no knowledge of the fraudulent scheme of Crocker to defraud. The fact that Crocker was the chairman of the executive committee and the trust officer of the trust company, in nowise helps the complainant's case. Even if the trust company had owned these two mortgages, and Crocker had fraudulently procured the execution of the assignment, and had misappropriated the proceeds, the trust company could not be held, for in such case he would have been engaged in committing an independent fraud for his own benefit, designedly against his principal, and it would have been essential to the carrying out of the fraud that he should conceal the real facts from his principal, and such a situation would have destroyed any presumption of law, either that he had communicated the facts to his principal, the trust company, or that he, as agent, and the trust

company, as principal, were one in the transaction.

*Camden Safe Deposit & Trust Co. v. Lord*,  
67 N. J. Eq. 489, p. 492.

*Campbell v. Perth Amboy Mut. Loan Assoc.*  
76 N. J. Eq. 347, p. 355.

But the real facts here are not so strong in favor of the complainant. The trust company did not own these two mortgages, and Crocker was not even misusing his official connection with the trust company to procure their transfer, for the bank never had them to transfer. On no theory of law could the actions of Crocker, in altering the original assignments by including therein mortgages which the trust company did not own, and by adding to the warranties matters which were not in originally, be said to be the acts of the trust company so as to be binding upon it. In doing that he was neither acting within the scope of his authority, nor had the trust company ever placed him in a situation to do that class of acts.

*Corona Kid Co. v. Lichtman*, 84 N. J. Law, 363, p. 369.

*Mick v. Royal Exch. Assur. Co.*, 91 Atl. 102, p. 104.

Counsel for the appellant seeks to escape from the force of this evidence and the law applicable thereto, by arguing that there was a holding out of Crocker as the agent of the Trust Company (his brief, pp. 12-30).

In concluding his argument on the holding out theory, counsel says (his brief, p. 19):

“The testimony that has been reviewed, shows clearly that Crocker was the only person connected with Liberty Trust Company who handled the mortgage loans and made sales, and also shows clearly that whenever he made a sale he was authorized to assign the mortgage, and the president of the company was authorized to execute the assignment.”

All this may be granted, and yet the very statement of the proposition as made by counsel, fails to make out the complainant's case. The authority to assign the mortgage, and to execute the assignment, was necessarily limited to those cases where the Trust Company had a mortgage to assign. No evidence can be found of any practice by Crocker, or the president, to assign or attempt to assign mortgages which the Trust Company did not own, nor can any evidence be found of any holding out on the part of the Trust Company of Crocker, or the president, or any other officer, to do such a thing.

There is no evidence, or suggestion in the evidence, that Crocker or any other officer ever pursued any such practice either with or without the knowledge of the trust company, nor is there any evidence or suggestion in the evidence that Crocker or any other officer ever before attempted to do such a thing.

There are, therefore, no facts upon which a holding out could be predicated.

The cases cited by counsel, on page 19 of his brief, under the caption "As to Agency", do not help him.

*Crossley v. St. Philip Neri*, 74 N. J. Law, 653, was a case where the question for the jury was whether the authority of the bishop and vicar general of the diocese, who had been in the habit of signing notes in the same way in which the notes in suit were signed, extended to the signing of the notes in suit. The case was specifically distinguishable from this case, in that (p. 654):

"It was further shown that the minutes of the trustees of the church contained no resolution authorizing the making of the notes in suit; that according to the laws of the diocese a resolution of the board was required for the making of a new note, but that as to renewals, special resolutions of the board were not required; and that the notes in suit, so far as signed by the bishop, were signed under the impression that they were renewals."

*Murphy v. W. H. & W. F. Cane, Inc.*, 82 N. J. Law, 557, also involved the question of whether the president of the defendant was authorized to represent it generally in the making of such contracts as that upon which the plaintiff relied. Here again there were no by-laws to limit the authority of the officers. Chancellor Pitney in his opinion (p. 559), said:

“It would seem proper, therefore, that a company organized under this Act (Corporation Act of 1896) should by its by-laws establish and define the authority of the president. But the defendant company had no by-laws or at least the jury could reasonably so find from the entries in the minutes presently to be mentioned.”

In the case at bar, the authority of Crocker as chairman of the executive committee, and the authority of the president, as well as the other officers, were all carefully hedged about by the by-laws, so that there is no open question as to what their authority was, and as already pointed out there is no evidence to sustain any holding out of them by the corporation, to act contrary to the by-law requirements. In fact, no instance is shown where the by-laws requirements were disregarded by any officer to the knowledge of the trust company, and by no officer, without its knowledge, except Crocker.

*Beach v. Palisade Realty & Amusement Co.*, 86 N. J. Law, 238, hurts rather than helps complainant's case.

The cases cited by counsel on page 20 of his brief, under the caption “As to remedy in equity”, have no pertinency except as the agency of Crocker to bind the trust company is first established.

So as to the argument and cases cited at pages 26-27, under the caption, “As to relief in equity”.

There is another phase of this case which was not touched upon by the Vice-Chancellor, although

urged upon him in the argument below, nor is it adverted to by the appellant in his brief, and that is that the complainant is not entitled to relief because Crocker was his attorney.

### **Crocker was the Attorney of the Complainant.**

The testimony of the complainant shows this to be the fact. The complainant was the executor of Henry Kirchner. The complainant's brief admits that in April, 1913, certain persons appealed from the probate of the will, and the complainant retained Crocker to represent him in that fight; that the contest lasted a year and a half, and that the complainant attempted to purchase the mortgages in question, the first set in October, 1913, and the second set in December, 1913; so that these purchases were attempted to be made and the money was entrusted to Crocker during the time when he was acting as his attorney.

The draftsman of the bill of complaint has sought to make it appear that Crocker was the attorney of the trust company, and the bill so states. The contrary, however, is the fact. It appeared conclusively that Crocker was not the attorney of the trust company, although he was the chairman of its executive committee. The trust company had counsel independent of Crocker, namely, William Pennington, Esq., and Crocker never acted as the counsel of the company.

Mr. Kautzmann testified (p. 123, line 27):

“Q. You have already mentioned William Pennington, Esq., as counsel of the bank; was Roland D. Crocker ever counsel of the bank?  
A. Never.

Q. He did not act in the capacity of attorney at all? A. No, sir.”

And see Watson (p. 160, line 31, and Biggin, p. 75, line 20).

Not only did the complainant endeavor to make it appear that Crocker was the attorney of the trust company, in which he was unsuccessful, but he also endeavored to make it appear that Crocker was not his own attorney. In this he was equally unsuccessful. We urge upon the Court a reading of the cross-examination of Mr. Hubing (pp. 54-64), where the complainant unsuccessfully struggled to escape from the facts in this regard.

The cross-examination shows that complainant had retained Crocker to represent him as executor in the contest over the will (p. 54, line 34); that he saw him from time to time and took his advice (p. 55, line 3); that Crocker appeared in court for him as his counsel, and that Crocker advised him that the will contest might take a year before it was decided (p. 55, line 30); "that I should invest this money different as the judge might call me down, that is his expression". When the complainant saw the drift of the cross-examination he protested (p. 56, line 5), that he had not consulted Crocker, and that he was not helping him in the administration of his trust (p. 56, line 20), but he could not maintain that position. He admitted that Crocker had suggested to him that he ought to invest the money, that it sounded reasonable to him (p. 56, line 30); that Crocker advised him to invest on first bond and mortgage, and that this advice sounded good (p. 56, line 35); that Crocker stated that through his position with the Liberty Trust Company he could secure first mortgages (p. 56, line 27); that Crocker was the only person he talked to, and that he relied on his representations that the searches were all right (p. 57, line 25); that Crocker represented that the title was all right and that he relied on it (p. 57, line 28); that he then paid over the money to Crocker at Crocker's office (p. 57, line 33); that he had never gone to the banking house of the trust company (p. 57, line 39), but had dealt with Crocker entirely (p. 58, line 3). Not only did he do that in connection with the first purchase in October, but

he did it all over again in connection with the second purchase in December. The second investment was made at Crocker's suggestion, and on his advice (p. 58, line 35). He recommended the mortgages (p. 30), and as in the first case gave him a list of properties to look over, which he did look over with his friend Mr. Jaedel. After being satisfied as to the physical properties, he again relied on Crocker (p. 60, line 9), who represented that the title was all right, and he accepted his statement without question (p. 60, line 16). He again paid over the money at Crocker's office, No. 776 Broad Street (p. 60, lines 22-28), and received the papers from him. The first mortgage Crocker recorded for him (p. 61, line 1). Hubing himself recorded the second assignment, although not until after Crocker had disappeared. When he paid over the money Crocker gave him a receipt, which he accepted (p. 61, line 30). The first payment was by a check of \$5,500. (Exhibit C-9), dated October 10th, 1913. At the same time he took a receipt from Crocker (Exhibit C-10) reading as follows (p. 48, line 26): "October 10, 1913. Received from Louis Hubing \$5,500. for payment to Liberty Trust Company for purchase of mortgages R. D. Crocker:"

He made the second payment by two checks, each for \$3,000., one dated December 6, 1913 (C-17), and one dated December 8, 1913 (C-19). He took a receipt for each of these payments. The first receipt (Exhibit C-18) read as follows (p. 53, line 38): "December 1, 1913. Received from Louis Hubing, Executor, \$3,000. for a loan on mortgage lot 902, map of the Weequahic Tract, R. D. Crocker, attorney."

This receipt was dated five days before the check, but that does not seem to have disturbed Mr. Hubing.

The last receipt (C-19) reads as follows (p. 53, line 20): "December 8, 1913. Received from L. Hubing, Executor, check for purchase of \$3000. mortgage, premises South 14th Street, Newark, N. J. R. D. Crocker, attorney."

Only the first receipt for \$5,500. made any mention whatever of the Liberty Trust Company, and that simply stated that the money was for payment to the Liberty Trust Company.

The other two receipts made no mention of the trust company at all. Hubing was cross-examined on these receipts (p. 61, line 25, to p. 62, line 40). He says he had every opportunity to read them and understand what they said, and that he relied "on Crocker to fix this thing alright" (p. 63, line 1), and he admits that he accepted the receipts without question when he paid over the money because he was "relying on Crocker to fix the thing alright" (p. 63, line 15).

After the mortgages were purchased he left it to Crocker to collect the interest (p. 64, lines 1-3).

Complainant's theory of the case was that Crocker was the attorney of the trust company, and in no manner represented him. The facts are just the contrary. A reading of his evidence, particularly his cross-examination, compels the conclusion that Crocker was acting as his attorney, and that he relied on him as such. No other conclusion is possible.

The situation, therefore, is that Hubing entrusted to his attorney certain funds to be applied to the purchase of mortgages. The attorney partially applied the funds in that he did pay over to the trust company the money for the purchase of the Courter and Aschenbach mortgages. The balance of the money he simply stole, and to conceal his theft altered the assignments which he had received from the trust company, so as to make it appear that he had secured for the complainant two additional bonds and mortgages, namely, the Heidel and Wolbert mortgages.

As between the complainant and defendant the complainant ought to suffer, because he made possible the fraud. He selected Crocker as his attorney; he entrusted him with the money; he relied on him to protect his interests, and he put it in

his power in the first place to steal the money, and in the second place to conceal the theft by the alteration of the assignments.

If there was any negligence in the matter it was all on the side of the complainant. This being the situation, the Court will not interfere in his protection at the expense of the trust company.

The principle applied in *Heyder v. Excelsior B. & L. Assoc.*, 42 N. J. Eq. 403, applies here. In that case a mortgage had been cancelled of record through the unauthorized act of another party, and the question was whether the purchaser of the premises or the mortgagee should bear the loss incident to the fraudulent cancellation made upon the record prior to the purchase, on the faith of which cancellation the buyer had parted with the purchase money. The Chancellor held that the purchaser should bear the loss, and not the mortgagee, but this Court reversed. In its opinion this Court said (p. 407):

“ Between a mortgagee, whose mortgage has been discharged of record, solely through the unauthorized act of another party, and a purchaser who buys the title in the belief, induced by such cancellation, that the mortgage is satisfied and discharged, the equities are balanced, and the rights, in the order of time, must prevail. The lien of the mortgage must remain, despite the apparent discharge.

But this is apart from any default attributable to the holder of the lien. If, through his negligence, the record is permitted to give notice to the world that his claim is satisfied, he cannot, in the face of his own carelessness, have his mortgage enforced against a *bona fide* purchaser, taking his title on the faith that the registry is discharged.

Where one gives to another the power to practice a fraud upon innocent parties, the court will not interfere in his protection at the expense of those who have been deceived and misled by such fraud. What circumstances shall be sufficient to establish negligence, such as shall preclude a mortgagee from a decree establishing his canceled paper, must be determined

as a question of fact in each particular case, tested by those rules of conduct which men of common prudence usually observe in the care and management of such securities."

Other authorities dealing with the application of this general principle are:

*Cooper v. Headley*, 1 Beas. 48;  
*Van Hook v. Somerville Mfg. Co.*, 1 Halst.  
 633;  
*Putnam v. Clark*, 2 Stew. 412;  
*Morris v. Joyce*, 18 Dick. 549;  
*Purcell v. Enright*, 4 Stew. 74;  
*Baldwin v. Howell*, 18 Stew. 519.

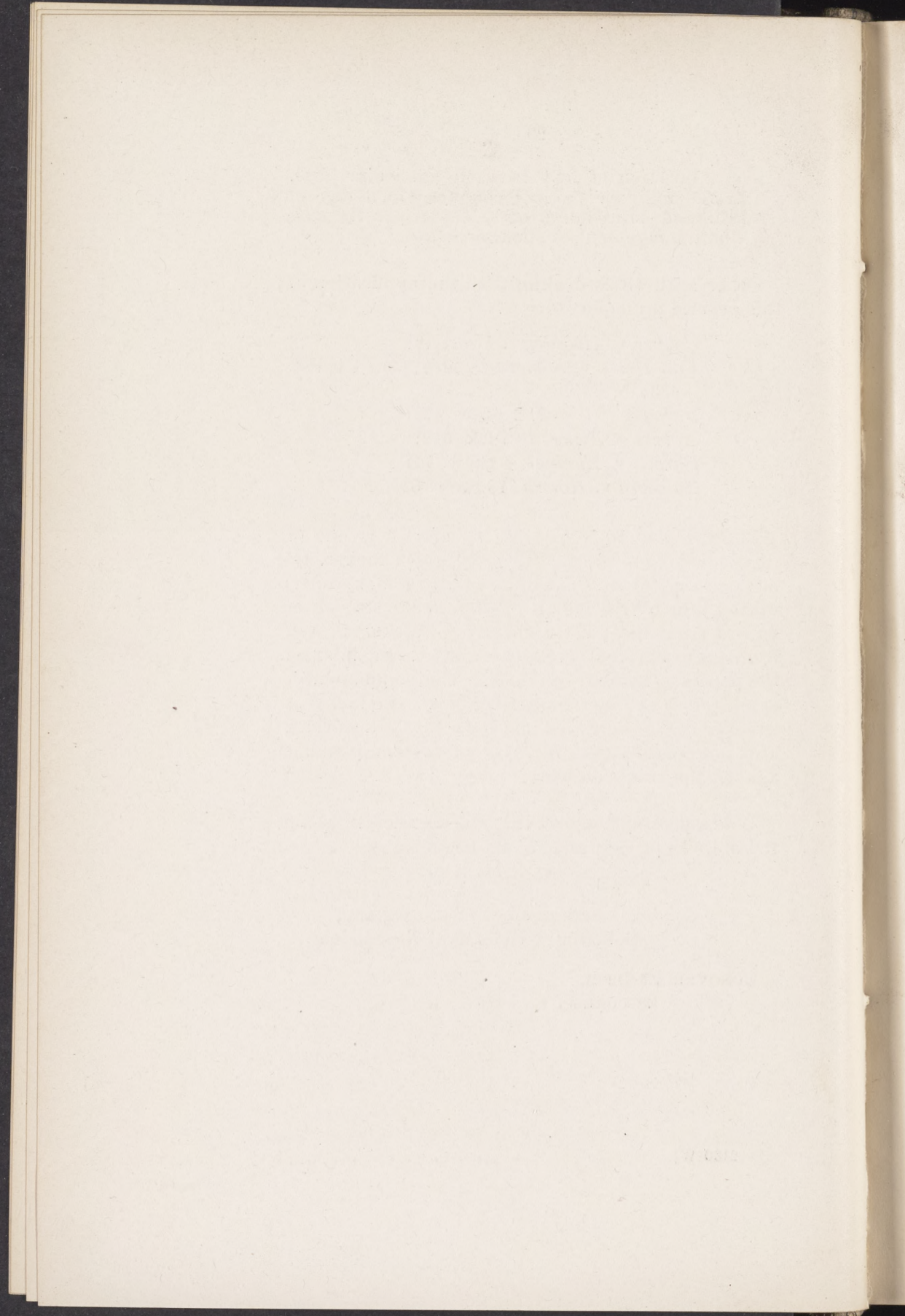
The complainant's case in its essence is one of misapplied confidence. He employed Crocker, relied on him, turned his money over to him, and permitted him to receive the assignments and other papers from the trust company. Crocker proved faithless to his trust, stole the money, and falsified the papers to conceal the theft. The complainant's case against Crocker is a perfect one. The fact that Crocker has disappeared and his estate is insolvent, does not create rights in favor of the complainant against the trust company.

We respectfully submit that the decree dismissing the bill was proper, and should be affirmed.

Respectfully submitted,

ARCHIBALD F. SLINGERLAND,  
 Solicitor of Defendant-Respondent.

CONOVER ENGLISH,  
 Of counsel.



## New Jersey Court of Errors and Appeals

*Between*

LOUIS HUBING, Executor,  
ete.,

*Complainant-Appellant,*

*and*

LIBERTY TRUST COMPANY,

*Defendant-Respondent.*

*On Appeal  
from  
Chancery.*

### **Brief for Appellant.**

#### **Abstract of the Case.**

This is an appeal from a decree of the Chancellor dismissing a bill filed by the complainant, who is the executor of the last Will and Testament of Henry Kirchner, deceased.

The suit was heard upon bill, answer and replication before Vice-Chancellor Howell, who sent a memorandum to counsel, which has not been filed. (p. 193.) After the death of Vice-Chancellor Howell, a decree was made, which recites, "that it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint," and orders a dismissal of the bill. (p. 198.)

The facts may be stated as follows: The complainant in his capacity as executor was obliged to defend an appeal from probate of the Kirchner will, and retained the services of Roland D. Crocker, an attorney at law of this State, to act for him in the Orphans' Court of Essex County. The complainant had known

Crocker for several years, and knew that he was in some way connected with Liberty Trust Company.

Complainant had in bank, drawing two per cent. interest, a considerable sum of money, in excess of \$11,500.00 and Crocker knew that he had the money. Crocker advised complainant that he should invest the money, as he might be reprimanded for not doing so; and stated to the complainant that he could invest the money in first mortgages, and that Liberty Trust Company, of which he was chairman of the finance committee, had good first mortgages which he could buy, and that the company at that particular time was desirous of realizing on some of the mortgages in order to meet a particular payment, which was called a Christmas fund.

This conversation occurred early in October, 1913. Crocker specifically represented to complainant, at that time, that Liberty Trust Company was the owner of a mortgage for \$2,500.00 made by one Courter, on property on West Kinney street, in Newark, and also of a mortgage for \$3,000.00 made by one Heidel on property on North Twelfth street, in Newark, and that both mortgages were first liens on the properties, and gave to complainant a slip of paper containing the street number and size of lot and amount of mortgage in each case (Ex. C 3, p. 189) and complainant visited the properties with a real estate agent and satisfied himself that there was sufficient value, and agreed to purchase the two bonds and mortgages, and on October 10, 1913, paid to Crocker as attorney \$5,500.00 and subsequently received from Crocker the two bonds and mortgages and an assignment of the same executed by Liberty

Trust Company by A. H. Watson, president, which assignment is annexed to the bill of complaint. (p. 17.)

This assignment contains this express covenant made by the defendant (p. 18): "And it doth hereby covenant, promise and agree to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage, the sum of principal money mentioned in each; and that each of said mortgages is a first and valid lien on the premises therein described."

This assignment was recorded on October 11, 1913, and after being recorded, it was delivered with the two bonds and mortgages and intermediate assignments, to the complainant. Subsequently, about December 1, 1913, Crocker made a further representation to the complainant, that the company had two other bonds and mortgages, which were first mortgages and for sale, and the complainant purchased them and gave to Crocker, after visiting the properties, \$6,000.00 in two payments—December 1st, \$3,000.00, December 8th, \$3,000.00, and on December 8th, the defendant by its president aforesaid, executed an assignment of the two additional bonds and mortgages, namely, a mortgage made by Heidel for \$3,000.00 on property on Lyons avenue in Newark, and a mortgage made by Wolbert for \$3,000.00 on property on South Fourteenth street in Newark; and the said bonds and mortgages and assignment were delivered to the complainant, but he did not observe that the assignment had not been recorded, and it was not recorded until September 28, 1914, (p. 22) but that fact is not of any consequence in the case, because there were no intervening assignments or liens.

The second assignment made by the defendant is annexed to the bill of complaint (p. 19) and contains a covenant made by the defendant (p. 21) as follows: "And it do hereby covenant, promise and agree to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage the sum of \$3,000.00 on each."

Crocker absconded early in the fall of 1914, and complainant became alarmed by what he heard of Crocker's wrongdoings, and caused a search to be made in the records, and discovered that he had been defrauded.

On October 16, 1914, complainant caused notice to be given to defendant, in which he sets forth the foregoing facts, and states the result of his investigation, as follows:

First. The mortgage on West Kinney street property (Courter mortgage) appears to be a first mortgage, but the title is disputed.

Second. The mortgage on North Twelfth street property appears to be a third mortgage, and the prior mortgages cover the entire value of the property.

Third. The mortgage on Lyons avenue property appears to be a fourth mortgage, and the prior mortgages cover the entire value of the property.

Fourth. The mortgage on South Fourteenth street property appears to be a bogus mortgage, and the person who executed it had no title to the property.

In this notice, which is attached to the bill of complaint (p. 22) complainant calls attention to the covenants in the assignments and offered to reassign the four bonds and mortgages, and demanded a return of his money, \$11,500.00, with legal interest. The defendant

replied to this notice, and demand by letter of November 30, 1914, attached to the bill of complaint (p. 25) and admitted that it had assigned the Courter mortgage and the Lyons avenue mortgage, but that the respective assignments did not contain any mention of the Twelfth street property mortgage, or the Fourteenth street mortgage at the time they were executed.

Subsequently, a suit to foreclose a prior mortgage on Lyons avenue property was commenced, and complainant conceiving that he might by making any claim under the mortgages held by him, waive his right to restitution from the defendant, notified the defendant of the foreclosure suit and of other matters and suggested that his interest should be protected by the defendant (p. 26). The result was that it was agreed between the parties, that the complainant should protect his interest in the foreclosure suit and should take proceedings to enforce the collection of the other bonds and mortgages, and that his action would be without prejudice. (See Stipulation p. 187.)

The complainant waited until the litigation had been terminated in the Orphans' Court, and then filed his bill in this cause, in which he alleges all the foregoing facts, and prays that the purchases may be rescinded, and that he may be allowed to reassign the bonds and mortgages to the defendant and may recover from the defendant the money paid by him with interest.

The defendant answered and admitted the receipt of \$5,500.00 in payment of the Courter mortgage, and the Lyons avenue mortgage, but denied that it sold the South Twelfth street mortgage, or the South Fourteenth street mortgage, and contended that the two assignments

had been altered by the insertion of those mortgages after they had been executed.

Vice-Chancellor Howell determined, as appears from his memorandum opinion, the following facts:

1. That the complainant relied upon statements made to him by Crocker (p. 194, l. 21).

2. That the complainant entrusted Crocker with the money with which the purchases might be made, in a total sum of \$11,500.00 (p. 194, l. 25).

3. That on October 10, 1913, an assignment of mortgage was executed by the defendant to the complainant, which purported to transfer the Crocker bond and mortgage, and the Heidel bond and mortgage on South Twelfth street (p. 194, l. 33).

4. That on December 3, 1915, another assignment of two mortgages was executed by the defendant to the complainant, which included the mortgage made by Heidel to Aschenbach on Lyons avenue property, and the mortgage made by Wolbert on South Fourteenth street (p. 195, l. 8).

5. That the representations made to the complainant by Crocker in relation to these mortgages, were wholly untrue (p. 195, l. 19).

The Vice-Chancellor did not find that any alteration had been made in either of these deeds of assignment.

The Vice-Chancellor also determined these facts:

1. That no express authority was conferred upon Crocker by the company to sell the mortgages, or to make representations concerning them (p. 196, l. 34).

2. That the action of Crocker was entirely gratuitous and without any semblance of authority (p. 196, l. 39).

3. That the trust company did not hold out Crocker as its agent (p. 197, l. 3).

4. That the complainant did not rely upon any holding out by the company of Crocker as its agent (p. 197, l. 5).

The Vice Chancellor concludes from his findings that the company was not bound by anything that Crocker did, because he had no express authority; and he also concludes that no authority was conferred upon Crocker by implication, because there was no proof that the trust company ever held him out as its agent, or that the complainant relied upon any such supposed holding out.

**Specification of the Errors in the Decree.**

1. The adjudication that the complainant is not entitled to the relief prayed for by him in his bill of complaint.

2. The order that the bill of complaint should be dismissed with costs to be taxed.

3. The adjudication that Roland D. Crocker was not the agent of the defendant to make sales of the bonds and mortgages.

4. The adjudication that the defendant had not held out Roland D. Crocker as its agent for the purposes above mentioned, and that the complainant had not relied upon any such supposed holding out.

These specifications may be resolved into two points as follows:

#### POINT I.

THE COMPLAINANT PROVED THAT THE DEFENDANT HAD PERMITTED CROCKER TO PURCHASE AND SELL BONDS AND MORTGAGES FOR IT, AND THAT HE WAS THE ONLY PERSON WHO DID ACT AS SUCH AGENT, AND THEREBY DEFENDANT HELD CROCKER OUT AS AGENT FOR SUCH PURPOSE AND IS BOUND BY THE REPRESENTATIONS MADE BY HIM; AND THE FALSITY OF THE REPRESENTATIONS HAVING BEEN PROVED AND THAT THE COMPLAINANT RELIED UPON THE REPRESENTATIONS AND SUFFERED A LOSS THEREBY, HE IS ENTITLED TO THE RELIEF PRAYED IN HIS BILL.

#### POINT II.

THE COMPLAINANT HAVING PROVED THE EXECUTION OF THE TWO ASSIGNMENTS OF MORTGAGES BY THE DEFENDANT, AND THAT THE STATEMENTS MADE IN THE COVENANTS CONTAINED THEREIN AS TO THE PRIORITY AND OWNERSHIP OF THE MORTGAGES AND THE AMOUNT DUE THEREON WERE NOT TRUE, AND HAVING PROVED HIS LOSS, IS ENTITLED TO THE RELIEF PRAYED IN HIS BILL.

### **Brief of Argument.**

#### **Point I.**

Reference will first be made to the testimony which proves the representations and their falsity, and the holding out of Crocker as agent, and complainant's loss.

#### AS TO REPRESENTATIONS.

Testimony of Hubing, p. 43, l. 13, *et seq*; p. 45, l. 37; p. 49, ll. 1 to 20; p. 56 ll. 30 and 39; p. 59, l. 30.

Testimony of Jaedel, p. 77, l. 1, *et seq*.

## AS TO RELIANCE ON REPRESENTATIONS.

The testimony of complainant and of Solomon Jaedel in its entirety, shows that complainant relied upon the representations made by Crocker as to the fact that the mortgages were first liens, and that the title was all right. Complainant was asked on cross examination, at p. 57, l. 10, whether he had any search made of the title, and his answer was that Crocker said the Liberty Trust Company just made one, and that being a bank, he relied upon it.

The testimony of these two witnesses shows that the physical properties were examined by them, and see particularly testimony of Hubing, p. 44, l. 25, referring to the list of properties Ex. C. 3, p. 45, l. 23; p. 49, l. 22; p. 59, l. 37; p. 60, l. 1; p. 62, l. 38; p. 63, l. 1.

Testimony of Jaedel, p. 75, l. 28; p. 78, l. 4, *et seq.*

## AS TO FALSITY OF REPRESENTATIONS.

Testimony of Brunyate as to Courter mortgage, p. 85, l. 21, *et seq.* showing disputed title.

The fact is, the complainant by arrangement with defendant, foreclosed the Courter mortgage, and the case was tried before Vice-Chancellor Howell, and he held that an assignment of the mortgage, through which the Liberty Trust Company claimed title, was a forgery.

The Vice-Chancellor so states in his opinion in this case, at p. 195, l. 23:

*The Courter mortgage did not belong to the defendant.*

Testimony of Brunyate, p. 86, l. 21, as to North Twelfth street property showing the mortgage to be as appears on the records, a fourth mortgage.

See also opinion of Vice-Chancellor Howell, p. 195, l. 26, the fact being asserted by counsel for defendant, at p. 89, l. 29, that the third mortgage had been paid, but no evidence was produced to that effect.

Testimony of Frank Schoener, p. 79, as to Courter mortgage; p. 80, as to North Twelfth street mortgage and Lyons avenue mortgage, which witness found to be a fourth mortgage.

Page 80, l. 23, as to Wolbert mortgage, which he describes as a bogus mortgage, meaning that there was no chain of title into Wolbert, and that he had no title at all.

Vice-Chancellor Howell *found these mortgages to be as stated by the witness*; p. 195, l. 19. The fact is also, that a prior mortgage on Lyons avenue property was foreclosed and the mortgage held by complainant was adjudged to be a third lien, but is a fourth lien on the record, it appearing that the third lien had actually been satisfied.

Record of suit of *Hearthstone B. & L. Assn. v. Lane*, p. 94, l. 10, Ex. C. 21.

#### AS TO COMPLAINANT'S LOSS.

Complainant paid into Crocker's hands on October 10, 1913, \$5,500.00 by check, Ex. C 9, p. 47, l. 20, and got from Crocker a receipt, Ex. C 10, p. 48. This receipt reads as follows:

“Oct. 10, 1913.

“Received from Louis Hubing \$5,500.00 for payment to Liberty Trust Co. for purchase of mortgages.

“R. D. Crocker.”

The receipt shows plainly that the money was to be paid to Liberty Trust Company for mortgages. The proof is that Crocker on the same day sent his checks to Liberty Trust Company

for \$7,500.00 and accrued interest, to pay for two mortgages, one being the Courter mortgage on Kinney street, designated in Crocker's letter as Rosenthal mortgage and the other being Aschenbach mortgage for property on North 12th street. (See Ex. DD. produced by defendant, p. 191).

This proves that complainant's money was actually paid to Liberty Trust Company, and with it Crocker evidently advanced money of his own in order to take up the two mortgages referred to.

On December 1, 1913, complainant paid into Crocker's hands \$3,000.00 by check (Ex. C. 17, p. 51 and 190), and he got a receipt from Crocker (Ex. C. 18, pp. 52 and 190). This receipt reads as follows:

“Received from Louis Hubing, Executor,  
\$3,000 for loan on mortgage lot 902 map of  
Weequahic Park.

“R. D. Crocker, Attorney.”

This property is designated in the case as Lyons avenue property. Defendant has put in evidence a copy of a letter sent by it to Crocker on November 17, 1913, (Ex. DE., p. 192), which shows that defendant transmitted to Crocker on that date a mortgage of \$5,000 made by Heidel to Aschenbach and an assignment by Aschenbach to defendant, and a certificate of search and its policy.

The mortgage referred to in Ex. DE. is the mortgage on Lyons avenue property.

On December 8, 1913, complainant paid to Crocker \$3,000.00 by check (Ex. C. 19, pp. 53

and 190), and got a receipt, which reads as follows:

“Recd. from Louis Hubing, Excr., check for purchase of \$3,000 mortgage, premises So. 14th street, Newark, N. J.

“R. D. Crocker, Atty.”

This receipt refers to the Wolbert mortgage. *These payments show that complainant has lost \$11,500.00.* He has received no interest whatever. The mortgages assigned to him have turned out to be worthless, in that the Courter mortgage did not belong to the Liberty Trust Company, and the North 12th street mortgage is a subsequent lien, and there is no value in the property.

A prior mortgage on Lyons avenue property has been foreclosed, resulting in insufficient proceeds of sale to pay prior liens, and the South 14th street mortgage was made by a person who had no title to the land.

#### AS TO HOLDING OUT OF CROCKER AS AGENT.

It is deemed proper to repeat here some extracts from the testimony.

Testimony of Warren C. Biggin, p. 73, l. 36.

“Q Well, was it the custom of the Liberty Trust Company to have Mr. Crocker attend to the sale and the purchase of mortgages?

A Well, pretty nearly all the mortgages we bought seemed to come from that direction.

Q (At p. 74, l. 1). Come through him?

A Yes.

Q And all you sold went out through him, didn't they?

A Well, I couldn't remember just how many we sold, and just whether they did or not; I know a great many came through that direction, through that office.

Q Did Mr. Crocker have the mortgages in his possession?

A Presumably he had them in his possession until we bought them."

Mr. Watson always handled the mortgage department, I had nothing to do with it.

Q If you made a sale of a mortgage and it was necessary to have proof on the assignment, you would sign that proof in Mr. Crocker's office?

A Well, some of them after he had signed them, or after the president of the company had signed them.

Q Well, would there be more than one of these papers laid out for your signature at a time?

A As I recollect, I think I have signed more than one at a time, in his office.

Q The same kind of a paper that is on the back of this assignment?

A Yes.

Q Made out in typewriting?

A Yes, sir.

Q Filled in with your name and signed by Mr. Crocker?

A Signed by the president or Mr. Crocker, and the seal of the company before I signed my name.

Q That was your habit to go to Mr. Crocker's office to do that?

A Either that, or they were sent up to the company, they were all prepared by the time I was to sign.

Q Did Mr. Crocker hold any office in the company?

A He was chairman of the finance committee.

Q During what time?

A During my administration there, 1912, I think it was, I resigned there in 1913, and I think I was there a year or so.

Q You resigned in 1914?

A Yes, 1914, of course."

*The witness was treasurer of the Liberty Trust Company.*

Howard S. Kinney, secretary of Liberty Trust Company, testified at p. 94, l. 34:

"Q The executive committee and finance committee constitute the same committee?

A We always refer to it as the executive committee and not finance committee.

Q And that committee did have charge of the finances of the Liberty Trust Company?

A Yes, sir.

Q And Mr. Crocker was the chairman of that committee?

A He was the chairman.

Q All through 1913?

A Yes, sir."

Testimony of Gottlob Kautzman, president of defendant, at p. 120, l. 20:

"Q (Referring to any sale of a mortgage.) Now when you came to sell it, what authority did the officers of the company have to make the sale?

A Under the existing by-laws at that time (referring to 1913) they had the authority under the by-laws without any action of the board or the committee.

Q Do you refer to Section 1, Article 6, dealing with the authority of the president to affix the seal of the company to assignment of mortgages?

A Yes.

Q (At p. 127, referring to the man who had access to the bonds and mortgages, l. 26.) Who were those two men?

A Mr. Watson and Mr. Crocker.

Q They were the two men?

A They were the two men at the time.

Q *Mr. Watson and Mr. Crocker could get into that box at any time?*

A *Yes.*

At p. 129, the same witness referring to minutes relating to assignments of mortgages, l. 19:

“Q And nothing in the minutes relating to the assignment of that bond and mortgage to Mr. Hubing?

A *Never made any records of those assignments because the officers had authority to do it without special action of the board.*

Q Oh, you made no records of assignments?

A No, sir.

Q *That was the fact that the officers had authority to make assignments without special action of the board?*

A *That was the authorization we worked under, that our by-laws gave the officers that authority.*

Q Then, if Mr. Crocker had requested the president instead of cancelling the bond and mortgage, to assign it to somebody, the president would have been authorized to do that?

A Yes, or in other words, if the client came in and wanted to pay off the mortgage

that was due, he had the authority to accept the money and cancel or assign the mortgage, as they requested.

Q Without any further action?

A Yes, sir.

Q Well, did he keep any record of the fact that he had made an assignment?

A That I don't know.

Q Do you find any such records?

A I only find the pencil mark in this case 'Assigned to Hubing;' that is the only record I have been able to find."

At p. 131, referring to loans, l. 22:

"Q And who had charge of the papers after the loans were granted?

A Why, the officers of the bank, Mr. Watson, and in connection with Mr. Crocker as chairman of the executive committee.

Q So when a mortgage was turned over by assignment, it would go directly into the hands of either Mr. Watson or Mr. Crocker?

A Presumably to Mr. Watson.

Q It might have gone into Mr. Crocker's hands?

A That I can't answer."

At p. 133:

"Q Then it is possible that Mr. Crocker requested Mr. Watson to execute an assignment of the Courter mortgage, and also the Aschenbach mortgage, and Mr. Watson could do that without any action of the directors, or of the executive committee?

A Yes."

At p. 124, referring to the mortgage on North Twelfth street at l. 34:

"Q You could not recognize that \$5,000.00 bond and mortgage, could you?

A I never handled it.

Q And that was also under the control of Mr. Crocker and Mr. Watson?

A Yes."

At p. 136, l. 9:

"Q A great many of your loans were made to Mr. Crocker's clients, weren't they?

A Very many of them, mortgage loans with the exception of two or three, most all of them.

Q They were his clients?

A Yes.

Q For whom he acted as attorney?

A Yes, sir.

Q And when mortgages were paid to you, you would receive the money from Crocker?

A As a rule, yes."

Testimony of A. Howard Watson, president of defendant company at the time of these transactions, p. 177, l. 22:

"Q When you signed Ex. C. 3 (should be C. 8), being the assignment of mortgage of the Liberty Trust Company to Louis Hubing, executor, were you told by Mr. Crocker that you were making a sale to Mr. Hubing?

A Yes.

Q And who he was?

A No, he didn't tell me who he was.

Q Did he tell you that he was the executor of an estate?

A I don't remember that he did.

Q Did he give any reason for selling the mortgage?

A No, he never did.

Q And when he was ready to sell it, you assented?

A We sold it."

At p. 178, l. 27:

"Q Well, it appears on your supplementary ledger that you got the money on October 11th, and the date of the assignment is October 10th.

A Yes, that may possibly be, because Mr. Crocker was never very prompt in his dealings."

At line 38.

"Q You mean that you might have delivered the assignment to him and had it fully executed before you got the money?

A As one of the officers in the bank, it was in his possession the same as if it was paid at the bank."

At p. 184, l. 3:

"Q You were asked who had the custody of the seal, and you started to say 'both,' who did you have in your mind?

A Mr. Crocker. He had the combination to the safe where the seal was kept, so that in my absence he could get at it; he also had a duplicate seal down in his own office, although I understand it was of a different size than the one I had made. These appear to be the seals that I put on.

Q Yours?

A I should say so (referring to the assignments in evidence)."

At p. 184, l. 16.

"Q Your mortgage loan business was done with Mr. Crocker?

A He was the man that handled it exclusively.

Q You made no other loans except those on his application?

A None at all.

Q You made no sales of mortgages except through him?

A No, sir."

The testimony that has been reviewed, shows clearly that Crocker was the only person connected with Liberty Trust Company who handled the mortgage loans and made sales, and also shows clearly that whenever he made a sale he was authorized to assign the mortgage, and the president of the company was authorized to execute the assignment.

This was certainly a holding out of Crocker as the representative of the company for the purpose of making loans on mortgages and making sales of mortgages.

The following cases, it is contended, sustain the point made by the appellant:

AS TO AGENCY:

*Crossley v. St. Philip Neri* (corporation)

74 Law 653, Court of Errors.

*Murphy v. W. H. & F. W. Crane, Inc.*, 82

Law 557, Court of Errors.

*Beach v. Palisade Realty & Amusement*

Co., 86 Law 238, Court of Errors.

AS TO LIABILITY OF PRINCIPAL.

Defendant is liable whether or not it benefited by the fraud of the agent.

*Mick v. Corporation of Royal Exchange,*

*etc.*, 87 Law 607, Court of Errors.

The principal is liable also, whether or not the appellant did in fact rely upon the holding out of Crocker as agent.

*Murphy v. W. H. & F. W. Crane, Inc., supra.*

#### AS TO REMEDY IN EQUITY

*Eibel v. von Fell*, 55 Eq. 670, Court of Chancery.

*Dubois v. Nugent*, 69 Eq. 145, Court of Chancery.

*Hubbard v. Int. Mer. Agency*, 68 Eq. 434, Court of Chancery.

### Point II.

#### AS TO EXECUTION OF ASSIGNMENTS.

Testimony of Warren C. Biggin, p. 64, l. 20, which shows that he was the treasurer of the company and the subscribing witness on the assignment of October 10, 1913, (Ex. C. 8), and made the proof of the execution by A. Howard Watson, the president.

At p. 70, the same witness proves his signature as subscribing witness to the assignment of December 8, 1913, (Ex. C. 13, p. 19).

The answer of the defendant, par. 28, p. 35, admits the execution of Ex. C. 8, and par. 31, p. 37, admits the execution of the assignment of December 8, Ex. C. 13.

Testimony of Frank Schoener, p. 81, l. 20, is that he saw Mr. Watson at the Liberty Trust Company after he had made a search which disclosed the falsity of the statements made in the assignments, and asked Mr. Watson whether he had signed his name as president to the two assignments of mortgages, and he is asked:

“Q What did he say?

A. He said that was his signature, and he believed that was the seal, and he believed that was Mr. Biggin's signature."

The answer sets up an alteration in each of these assignments, *but Mr. Watson did not claim that there had been any alteration when the two assignments were shown to him by Mr. Schoener.*

Testimony of A. Howard Watson, p. 165, l. 20, which shows that he executed Ex. C. 3, and that it has the seal of the trust company on it.

At p. 171, l. 34, he says that he executed the assignment of December 8, 1913, which is designated in his testimony as Ex. C. 16 (meaning Ex. C. 13).

#### AS TO REPRESENTATIONS IN THE ASSIGNMENTS.

Ex. C. 8, p. 17, contains at p. 18 three representations:

1. That the principal money is due on each bond and mortgage.
2. That each mortgage is a first and valid lien on the premises therein described.
3. An implied representation that the assignor is the legal owner of each bond and mortgage.

Ex. C 13, p. 19, contains two representations:

1. That there is due on each bond and mortgage the sum of \$3,000.00.
2. An implied representation, that the assignor is the owner of each bond and mortgage.

The burden is upon the defendant to establish the allegation that either of these assignments was altered after execution by the defendant.

The only evidence relating to that allegation is the testimony of Watson, who said at p. 165, l. 32, that the assignment did not at the time he signed it, have in it a reference to the mortgage of Heidel to the Liberty Trust Company (meaning the South Twelfth street mortgage).

At p. 166, he says that the words "and also a certain other mortgage bearing date the second day of September, 1913, made by Rudolph J. Heidel and wife to the said Liberty Trust Company" were not in the paper that he signed.

And also the words "on land in said City of Newark to secure the payment of \$3,000.00, which mortgage is recorded in the Register's Office of the said County of Essex in Book S 31, p. 162 of Mortgages" were not in the paper when he signed it; and also the words "and that each of said mortgages is a first and valid lien on the premises therein described" were not in the paper when he signed it. Watson admits, however, that the Courter mortgage for \$2,500.00, was mentioned in the assignment, and that it was intended to assign that mortgage to Hubing.

See p. 177, l. 22, where he says that Crocker told him that the company was making a sale to Mr. Hubing, and that Crocker did not give him any reason for selling the mortgage, and that he never did in any case.

Watson testified at page 172, line 10, that the Wolbert mortgage was not referred to in the assignment, Exhibit C. 13, at the time he executed it.

The weakness of Watson's testimony is shown by his failure to explain the recital in Exhibit C. 8, of the consideration, which is

page 17, line 8—"in consideration of the sum of \$5,500.00." He is asked particularly on cross examination at page 180, line 24:

"Q *Everything else was in this paper at the time you signed it except the words that you have stated were not in it? A To the best of my knowledge and belief.*

Q *It was not a completely unfilled legal blank when you signed it? A Oh, no.*

Q *There was some typewriting in it? A Oh, yes."*

The question naturally suggests itself: *Why does the assignment acknowledge a consideration of \$5,500 for a \$2,500 mortgage?* There is no dispute; *there is not the slightest hint of evidence that there was any alteration in the statement of the consideration.* The inference is irresistible, that Mr. Watson must be mistaken as to what was in the paper at the time he executed it. It is possible that the wrong mortgages were transferred, but the fact is that defendant received on October 11th from Crocker more than \$5,500.00, and in accordance with the course of business carried on by the defendant with Crocker, it was Crocker's privilege to designate what mortgages he wanted assigned, and it was the duty of Watson, the president, and of the secretary and treasurer to execute such assignments that Crocker prepared and tendered to them.

As to Exhibit C. 13, Watson testified as above stated, but on cross examination (page 181, line 20) he says that he got the money for the Lyons Avenue mortgage, which is the first one mentioned in Exhibit C. 13, on October 11th, and at page 182, line 34, he states that that mortgage was assigned to Louis Hubing, although it was paid on November 17th, and

at the foot of the same page, he stated that he knew it was assigned to Louis Hubing, because he had a record on the book in his own handwriting, and he received the money on November 17th.

At page 183, he is asked:

“Q Now, Mr. Watson, that assignment is dated the eighth day of December, 1913?

A Yes, he has filled it in.

Q He has filed it in? Who do you mean by he? A Crocker, that is Crocker's writing.

Q It is acknowledged on the eighth of December too, isn't it? A Yes, filled in by Mr. Crocker.

Q Then you evidently must have executed it without any date in it? A Well, it is possible that the date has been erased; it is possible that the date has been erased; this man has changed documents entirely, and it is very light type, if you notice, and it is very easily erased and changed.

Q You can't say whether the date was in there or not when you signed the paper?

A I usually sign dated papers when I sign them.

Q Well, that is the only explanation you can make, that the date has been changed?

A That is all I can say.

Q Everything else was in this paper when you signed it, this Exhibit C. 16 (meaning C. 13) except what you have stated in your direct examination, was not in there? A Yes, sir.”

This testimony on cross examination, shows the weakness of Watson's direct testimony as to any alteration in the paper, and it should be observed also, that he has not denied that these

words:—"reduced to \$3,000.00" were in the assignment when he executed it (page 20, line 19).

Therefore, *there is no explanation of those words to show why a mortgage of \$5,000.00 was assigned as a mortgage reduced to \$3,000.00.*

#### AS TO FALSITY OF THE REPRESENTATIONS IN THE ASSIGNMENTS.

The falsity of the representations contained in the two assignments is proved by the same testimony that is referred to under the same heading under Point I. Indeed, Vice-Chancellor Howell states as a finding of fact in his opinion, at page 195, line 19: "It now turns out that the representations made to the complainant by Crocker in relation to these mortgages, were wholly untrue; that by reason of certain manipulations of the securities, which need not be gone into here, the Courter bond and mortgage did not belong to the defendant; that the mortgage made by Heidel to the defendant, instead of being a first mortgage, was a third mortgage; that the mortgage made by Heidel to Aschenbach was a fourth mortgage; that the mortgage made by Wolbert was a bogus mortgage and never had any legal existence."

This statement of finding by the Vice-Chancellor, applies to the representations contained in the assignments and sustains the contention of the appellant, that those representations were false.

#### AS TO COMPLAINANT'S LOSS.

The evidence as has been shown under this heading under Point I, applies with equal force in this case, and shows that the complainant paid out \$11,500.00.

### AS TO THE EFFECT OF THE ASSIGNMENTS.

The assignments confirm the representations made by Crocker. Read in connection with the testimony of Hubing and Schoener, they prove beyond question that the false representations were made. The statements in the assignments standing by themselves, are not representations which induced the making of the contract, but are conditions, the performance of which goes to the whole consideration of the contract.

### AS TO RELIEF IN EQUITY.

The bill alleges paragraph 6, page 4, line 16, that the deed of assignment of October 10, 1913, contains a covenant (as stated) and refers to a copy of the deed of assignment annexed to the bill.

In paragraph 9, page 6, line 30, it is alleged in the bill that the assignment of December 8, 1913, contains a covenant that the sum of \$3,000.00 is due on each of said mortgages, and refers to a copy of the assignment annexed to the bill.

The notice given by the attorney of the complainant of November 30, 1914, page 22, states that the complainant's claim is based upon certain facts; and at page 23, the statement is made that in the deed of assignment, there is a covenant that the principal money mentioned in each mortgage is due and owing, and that each of the mortgages is a first and valid lien (referring to the assignment of October 10, 1913) and on the same page the statement is made, that in the deed of assignment of December 8, 1913, there is a covenant that the money is due upon the two mortgages mentioned in that assignment; and at page 24, the statement is made showing the falsity of the

covenant, and a demand is made for a return of the money.

The bill prays specifically (page 15, line 17) that the contract made on October 10, 1913, to purchase the two mortgages (Courter and North 12th Street) and the deed of assignment thereof, and that the contract made on December 1, 1913, to purchase the two further mortgages and the deed of assignment thereof, may be rescinded and set aside.

The authorities heretofore cited under Point I sustained the remedy in equity of rescission when the contract has been induced by false representations.

“Ordinarily, the breach of a condition or a covenant in a contract, is not sufficient reason for its rescission in equity in the absence of fraud, mistake or some other independent ground of equitable relief; but the best authorities make a distinction in this respect between dependent and independent covenants.”

“An independent covenant is one which goes to the whole consideration of the contract, and the breach of such a covenant gives to the injured party a right to rescind the contract.”

*Black, Rescission & Cancellation, Vol. 1, par. 212.*

“Statements intended to be a substantive part of the contract, and which are essential to its primary object, constitute a ‘warranty’ in the sense of a condition on the failure or non-performance of which the other party may repudiate the contract in toto.”

*Behn v. Burness, Eng. Rul. Cas., Vol. 6, 492.*

Manifestly, the statements that the Courter and North 12th Street mortgages were first liens, and that principal money was due therein, were a substantive part of the contract; and also, the statements in the second assignment, that the sum of \$3,000.00 was due on each mortgage.

*The falsity of these statements entitled the complainant to rescind the contract in toto.*

The complainant having filed his bill asking for a rescission of these two assignments, and no objection having been made to the jurisdiction of the court, it is contended that the Court of Chancery could exercise jurisdiction notwithstanding the fact, that the complainant had a remedy at law.

*Eggers v. Anderson, 63 Eq., 264.*

### **Conclusion.**

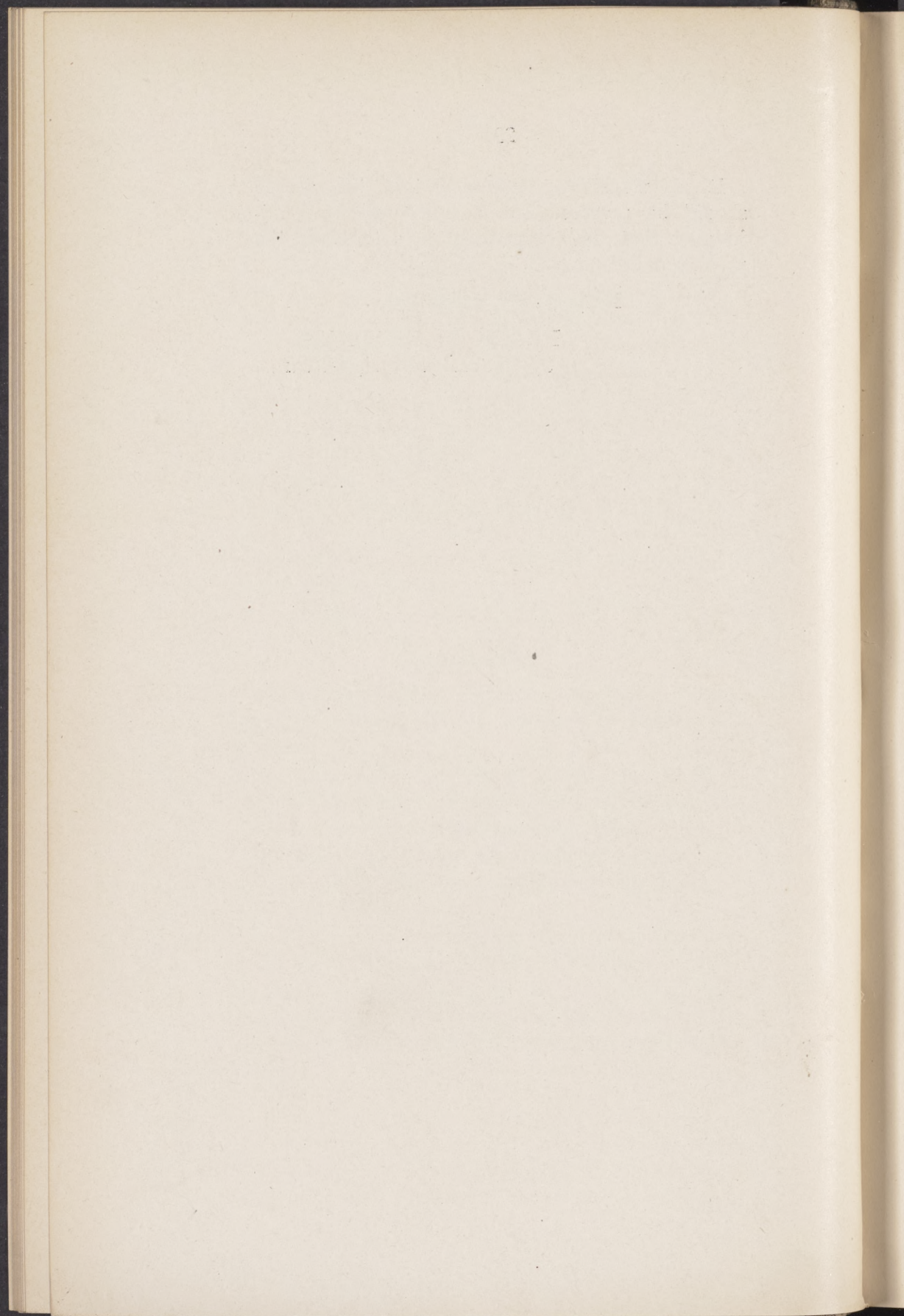
It is respectfully submitted that the Vice-Chancellor erred in his findings in three respects:

1. That there was no proof of the holding out of Crocker by the defendant as its agent, for the purposes of selling mortgages.
2. That there was no proof, or that proof was required, that the complainant relied upon any such holding out.
3. That notwithstanding the fact that an issue had been made as to the validity of the two assignments containing the covenants aforesaid, and notwithstanding the falsity of those covenants, the complainant was not entitled to relief.

It is, therefore, contended that the decree should be reversed and a decree directed adjudging that the complainant is entitled to the specific relief prayed in his bill.

Respectfully submitted,

FRANK E. BRADNER,  
*Of Counsel with Appellant.*



## New Jersey Court of Errors and Appeals

*Between*

LOUIS HUBING, Executor, etc.,  
*Complainant-Appellant,*

*and*

LIBERTY TRUST COMPANY,  
*Defendant-Respondent.*

*On Appeal  
from  
Chancery.*

### Reply Brief for Appellant.

The respondent admits that it intended to assign to the appellant two of the mortgages, one known as the Courter mortgage, and the other as the Aschenbach mortgage on Lyons Avenue property.

The Courter mortgage is mentioned in the assignment of October 10, 1913, and the Lyons Avenue mortgage is mentioned in the assignment of December 8, 1913. The respondent denies ownership of the mortgage known as the Heidel mortgage on North 12th Street property, mentioned in the assignment of October 10, 1913, and also denies ownership of the Wolbert mortgage, mentioned in the assignment of December 8, 1913.

Considerable evidence was introduced to show the course of business in the purchase of mortgages, or making of loans, and manifestly, the complainant could not in any manner contradict such testimony. Notwithstanding the elaborate documentary evidence, *the fact still remains perfectly clear that Crocker had entire and sole charge of the making of loans and sale of mort-*

*gages.* An effort will be made to demonstrate that the respondent did own the two mortgages aforesaid, ownership of which is now denied, and that the two mortgages and the bonds connected therewith were in the possession of Crocker as the agent of the respondent, and that the respondent did actually assign them, and received sufficient money to pay for them.

Exhibit DD, p. 191, the letter from Crocker, refers to a check, then, on October 10, 1913, given to Liberty Trust Company for Aschenbach mortgage property North 12th Street \$5,167.17. *This shows that respondent received from Crocker \$5,000.00 and accrued interest for a mortgage on the North 12th Street property.*

Mr. Brunyate's testimony, p. 87, l. 20, shows that the mortgage for \$5,000.00 on North 12th Street property was assigned by the mortgagor to Liberty Trust Company, and that the mortgage is still open of record.

At p. 89, l. 20, it appears by the same witness, that Aschenbach, the owner of the property, conveyed title to Heidel, and Heidel made a new mortgage, which is Exhibit C. 7, p. 46. This new mortgage on North 12th Street property, purports to be a mortgage made by Rudolph J. Heidel and wife to Liberty Trust Company, a corporation, and bears date September 2, 1913, and is in the sum of \$3,000.00, and was received in the Register's Office of the County of Essex on September 4, 1913, and recorded in Book S 31 of Mortgages for said County on pp. 162-164.

It has been shown in my direct brief for the appellant, that it was the custom when a mortgage had been paid, for Watson, the president, to execute an assignment, if requested. *It is manifest, that the mortgage held by Liberty Trust Company on North 12th Street property,*

*was paid, and that the company intended to assign its lien.* Now, Crocker had control of the mortgages, and he possibly had in his possession on October 10 the mortgage for \$3,000.00, which had been registered on September 4th, and he substituted that bond and mortgage instead of the Aschenbach mortgage. *The result is precisely the same as though the Aschenbach mortgage had been assigned and a credit made thereon of \$2,000.00.*

The Trust Company has received the amount of the lien that it held on the North 12th Street property, and that lien in either case, as a mortgage given by Aschenbach, or as one given by Heidel, was not a first lien, as was clearly shown by Mr. Brunyate's testimony.

There is another point in connection with this North 12th Street mortgage. Mr. Watson, as I have shown in my brief, at p. 22, testified that certain words were not in the assignment Exhibit C. 8, and that it was only intended to assign the Courter mortgage. He did not explain the recital of the consideration of \$5,500.00, and he did not testify that the words "*in consideration of the sum of \$5,500.00*" were not in the assignment when he executed it; and he did not testify that the covenant, as follows: "*And it doth hereby covenant, promise and agree to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage the sum of principal money mentioned in each*" were not in the assignment when it was executed.

I think I have demonstrated that the North 12th Street mortgage was the property of the Liberty Trust Company, and was intended to be assigned, and was assigned, and that the Trust Company received the money to pay for the

same included in the consideration of \$5,500.00. *And this explains statement of counsel p. 89, l. 29—that mortgage had been paid.*

The other mortgage denied by the respondent, is known as the Wolbert mortgage. That mortgage bears date April 12, 1906, and purports to have been given by George W. Wolbert and wife to Frank Schwarzwaelder, in the sum of \$3,000.00, and was registered in Register's Office of the County of Essex on April 13, 1906, in Book S 19 of Mortgages on pp. 167-168.

It is quite true that the testimony on the part of the respondent is to the effect that no such mortgage is found on the records of the bank. My contention is, *that under the very loose system of transacting the mortgage loan business, the mortgage could have been in the possession of Mr. Crocker.* The Certificate of the Register of Deeds, shows that the mortgage had been on record for a number of years. It was not a paper gotten up for the purpose of assigning to Hubing. *The mere fact, that it is not entered on the books of the Trust Company, does not prove that the Trust Company did not own it, or did not intend to assign it.*

Significant evidence of an intention to assign sufficient mortgages to cover the amount of money paid by Hubing, is shown by the fact that Crocker, who had paid \$7,500.00 and interest on October 10, 1913, subsequently on November 17, 1913, paid to the respondent the sum of \$5,000.00.

This is shown by Exhibit D-E, p. 192, the letter addressed to Mr. Crocker. *It therefore, appears that the respondent had received from Crocker \$12,500.00.*

Respondent says that it only owned mortgages amounting to \$7,500.00, and only intended to assign two mortgages for that amount. *It has*

*actually assigned mortgages to the amount of \$11,500.00, and has received \$12,500.00.*

I believe that Crocker acting entirely within his power substituted the North 12th Street mortgage for \$3,000.00 in the first assignment, and credited \$2,000.00 on the Lyons Avenue mortgage in the second assignment.

I call attention again to the fact, that Mr. Watson failed to explain the words in the second assignment "*reduced to \$3,000.00*" It was Mr. Watson's intention to assign a mortgage in the sum of \$5,000.00 when he executed the assignment of December 8th. It appears that the assignment recites that it had been reduced to \$3,000.00, and there is a receipt on the bond for the sum of \$2,000.00. No doubt also, in order to give Mr. Hubing sufficient mortgages to cover the money that he had paid Crocker, included the Wolbert mortgage which was in his possession.

I maintain that the attack upon these assignments has not in any respect been successful. The evidence is clear, that the Trust Company received sufficient money through Crocker to pay for these mortgages, and that the assignments were executed by the authority of the company.

I have had memoranda of the two mortgages North 12th Street and Wolbert mortgage printed as additional exhibits, and have served the same on the respondent.

The respondent also contends that Crocker was the attorney of the complainant. It is true, the bill alleges, that Crocker was the attorney of the Trust Company, but this may be taken as an allegation that he was the agent.

There was testimony to show that Mr. William Pennington was the counsel of the Trust Company, but Mr. Pennington was not called as a witness, and neither was Mr. Phillips, who was

associated with him on the committee of which Mr. Crocker was the chairman. No doubt, Crocker intended to defraud Hubing, and no doubt he took advantage of the position that he held as chairman of the Finance Committee of Liberty Trust Company and his control of the mortgages, to carry out his fraudulent scheme. The first receipt that he gave, states that he received the money for the purchase of mortgages. This was calculated to deceive Hubing. The second receipt, he states that he received the money for a loan on mortgage, which refers to the Lyons Avenue mortgage. And the last receipt states that he received the money for the purchase of a mortgage on South 14th Street.

Notwithstanding the statements and the different receipts, the fact is that Crocker represented himself to be in a position in connection with Liberty Trust Company, to sell first mortgages to Mr. Hubing, as executor of the Kirchner estate. Hubing did not employ Crocker to buy mortgages for him. He acted upon Crocker's suggestion that it would be proper to invest the money, but it does not appear that he sought any such advice, or paid for it. Crocker took advantage of his knowledge of the condition of the estate, to make the suggestion, so that he could carry out his fraudulent designs. The argument, that the complainant made the fraud possible, because he selected Crocker and trusted him with the money, and put it in his power to steal the money, is without any force. *The evidence shows beyond controversy that Liberty Trust Company put the power in Crocker to act for it to buy and sell first mortgages, and to make loans, and that he was the only person who did buy and sell mortgages, and that sales were made and that assignments were made according to his dictation.*

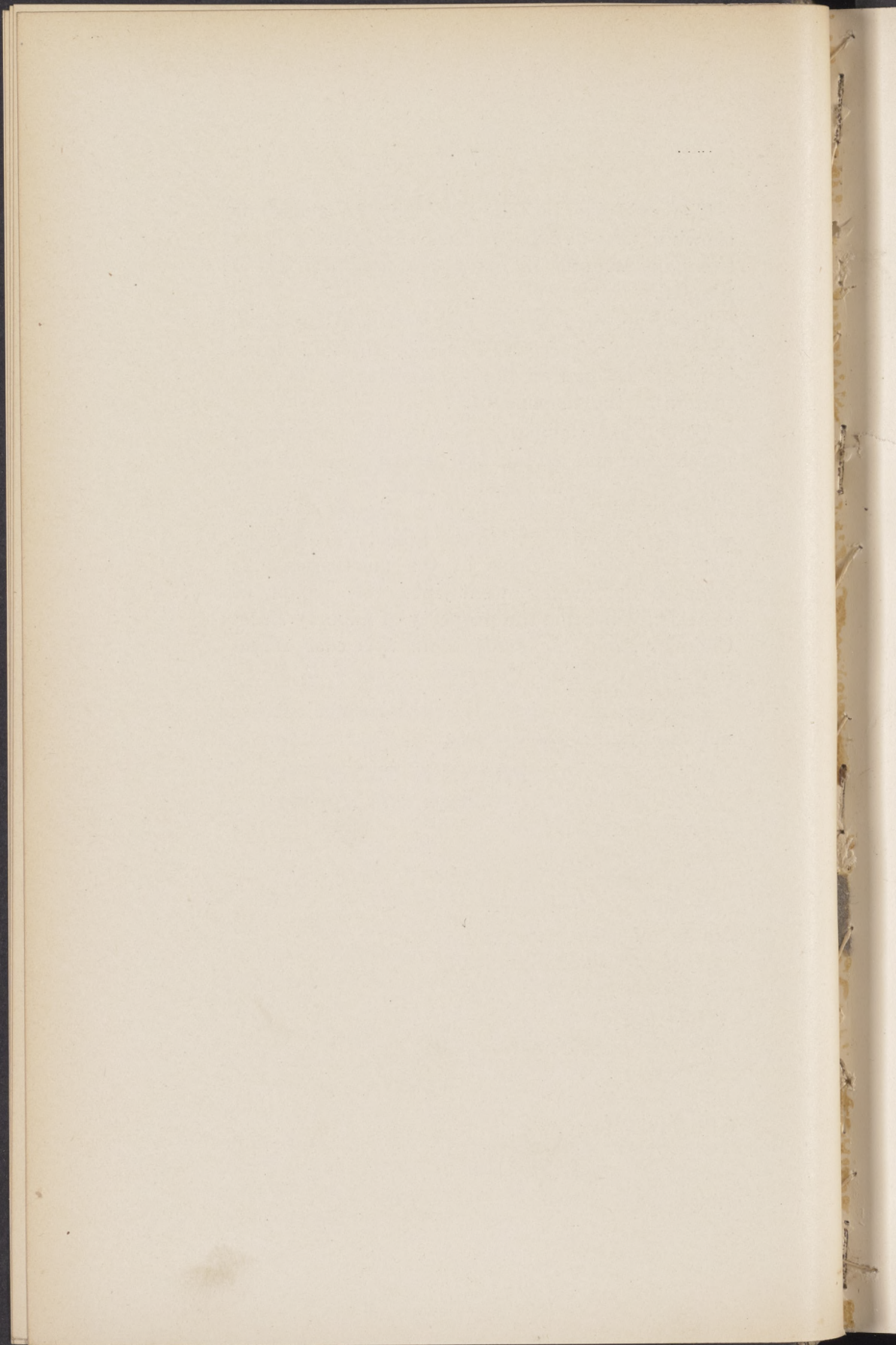
The evidence in this case may be stated as showing, that *Crocker carried the Liberty Trust Company around in his pocket and did as he pleased.*

The case cited by the respondent in its brief, on p. 28, of *Heyder v. Excelsior B. & L. Assn.*, is in my estimation plainly adverse to the contention of the respondent.

The Trust Company was in the position of purchasing and selling first mortgages, and held out Crocker as the agent for that purpose. The complainant had the right to entrust Crocker with the money to pay to the Liberty Trust Company for the purchase of the mortgages. As soon as the money went into the hands of Crocker, it became the property of Liberty Trust Company, *and the evidence in this case shows that Liberty Trust Company received it.*

I respectfully submit that the respondent has not maintained its defence.

FRANK E. BRADNER,  
*Of Counsel with Appellant.*



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*Bill of Complaint.*

**Bill of Complaint.**

Filed January 21, 1915.

*To His Honor, Edwin Robert Walker,  
Chancellor of the State of New Jersey:*

Humbly complaining shows unto your Honor your orator, Louis Hubing, executor of the last will and testament of Henry Kirchner, deceased, of the City of Newark, in the County of Essex and State of New Jersey. 10

1. That Henry Kirchner departed this life at the City of Newark, in the County of Essex and State of New Jersey, on October 13, 1912, leaving his last will and testament, in which he nominated your orator as executor; and that said will was admitted to probate by the Surrogate of the County of Essex aforesaid on October 29, 1912; and that on April 28, 1913, certain persons interested in the estate of said Henry Kirchner appealed from the order of the surrogate admitting said will to probate, to the Orphans Court of the County of Essex, contesting the validity of said will, and that said appeal was not disposed of until December 18, 1914, on which date, a decree was made by the Orphans Court aforesaid affirming the said probate and sustaining the said will. 20 30

2. That pending the proceedings on the appeal from the probate of said will as aforesaid, your orator was permitted to continue in office as executor of said last will and testament, but was required by the Orphans Court aforesaid to enter into a bond in the sum of forty thousand dollars, bearing date June 16, 1913, which bond recites that application had been made for the

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10 appointment of an administrator *pendente lite*,  
 and that your orator had stipulated and con-  
 sented to give bond for the safe custody of the  
 estate, and that the Orphans Court had denied  
 the application for the appointment of an ad-  
 ministrator upon condition that such bond  
 20 should be given; and the condition of the bond  
 is, that your orator shall faithfully perform the  
 duties as executor according to law, and shall  
 make a just and true account of his administra-  
 tion within twelve calendar months from the  
 date of this obligation, and shall deliver all the  
 rest and residue of the goods and chattels re-  
 maining in his hands to such persons as by law  
 shall be entitled to the same; and that your  
 orator entered into such a bond with sureties,  
 and the bond was approved by the Judge of the  
 30 Orphans Court and duly filed on June 21, 1913.

3. That your orator as such executor, had in  
 his hands money amounting to more than eleven  
 thousand dollars, and was desirous of invest-  
 ing the same in such securities as permitted by  
 the laws of this State, and your orator was in-  
 formed by Roland D. Crocker, who was an at-  
 torney at law, practicing in the City of Newark  
 aforesaid, that Liberty Trust Company, a cor-  
 30 poration of the State of New Jersey, doing  
 business in the City of Newark aforesaid, had  
 mortgages for sale, which would be legal in-  
 vestments for your orator to make.

4. That the said Roland D. Crocker at the  
 time of the making of the representations here-  
 inafter stated, was the chairman of the finance  
 committee of said Liberty Trust Company, and  
 was also the attorney of said Liberty Trust  
 Company, and that the said Roland D. Crocker  
 40 had acted as the attorney of your orator in the

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litigation aforesaid relating to the estate of Henry Kirchner, deceased, and had advised your orator that he could invest the money aforesaid in first mortgages on improved real estate in the State of New Jersey.

5. That on the tenth day of October, in the year 1913, the said Roland D. Crocker acting on behalf of Liberty Trust Company as the chairman of the finance committee of said company, and as attorney of said company, represented to your orator that said Liberty Trust Company was the owner of a mortgage in the sum of \$2,500.00, dated September 19, 1896, made by Albert C. Courter and wife to Lizzie Hess Loehberg, on a house and lot known as No. 341 West Kinney street, in the City of Newark aforesaid, and that the said mortgage was a first lien on said premises, and that the sum of \$2,500.00 was due thereon, and that the interest had all been paid thereon; and that at the same time, the said Roland D. Crocker, acting in behalf of said Liberty Trust Company as aforesaid, represented to your orator that said Liberty Trust Company also held a certain other mortgage bearing date September 2, 1913, made by Rudolph J. Heidel and wife to said Liberty Trust Company on lands in the City of Newark, on North Twelfth street, in the sum of \$3,000.00, and that said mortgage was a first and valid lien on the premises, and that the sum of \$3,000.00 was due and owing upon said mortgage; and the said Crocker informed your orator that the said mortgages were legal and proper securities for him to purchase as executor aforesaid.

6. That relying upon the representations made by the said Crocker as aforesaid to your orator, your orator paid to said Crocker on the

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*Bill of Complaint.*

tenth day of October, 1913, the sum of \$5,500.00, and that said payment was made to said Crocker as attorney of Liberty Trust Company aforesaid, and your orator on the date last mentioned received from the said Crocker a deed of assignment of the two mortgages aforesaid, which deed of assignment is executed by Liberty Trust Company by A. H. Watson, its president, and the said deed of assignment is duly proved and dated October 10, 1913, and was recorded on October 11, 1913, in Book 114 of Assignments of Mortgages for the County of Essex on pp. 39-40, and that said deed of assignment contains a covenant made by said Liberty Trust Company, that there is due and owing upon each of said bonds and mortgages, the principal money mentioned therein, and that each of said mortgages is a first and valid lien on the premises therein described; and your orator has annexed hereto a copy of said deed of assignment for reference, and will produce the original.

7. That at the same time when the said last mentioned deed of assignment was delivered to your orator, the said Roland D. Crocker delivered to your orator a bond purporting to have been made by Albert C. Courter to Lizzie Hess Loehnberg, dated September 19, 1896, in the penal sum of \$5,000.00, conditioned for the payment of \$2,500.00; and also a mortgage purporting to have been made by Albert C. Courter and Lottie G., his wife, to said Lizzie Hess Loehnberg, in consideration of \$2,500.00 on lands on the north side of Kinney street, in the City of Newark, which mortgage is recorded in Book A13 of Mortgages for said County of Essex, on pages 282, etc., on November 23, 1896; and also a bond purporting to have been made

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by Rudolph J. Heidel to Liberty Trust Company in the penal sum of \$6,000.00, conditioned for the payment of \$3,000.00, and dated September 2, 1913; and also a mortgage purporting to have been made by Rudolph J. Heidel and Amelia, his wife, to Liberty Trust Company in consideration of \$3,000.00 on lands on the easterly side of North Twelfth street, in the City of Newark aforesaid, and dated September 2, 1913, and recorded September 4, 1913, in Book S 31 of Mortgages for said County of Essex on pp. 162, &c. 10

8. That on or about the first day of December in the year 1913, the said Roland D. Crocker, acting in behalf of said Liberty Trust Company as aforesaid, represented to your orator that said Liberty Trust Company had two other bonds and mortgages, which were first liens upon the lands described in the mortgages, and that one of said mortgages was made by Rudolph J. Heidel and wife to Albert B. Aschenbach, in consideration of \$5,000.00 on Lyons avenue, in the City of Newark, and that there had been paid on said mortgage the sum of \$2,000.00, leaving a balance due of \$3,000.00; and that the other mortgage was made by George W. Wolbert and wife to Frank Schwarzwaelder, in consideration of \$3,000.00 on lot No. 32, known as the Peck property, on South Fourteenth street in the City of Newark; and that both mortgages were first liens on the properties described therein, and that there was due on the Heidel mortgage the sum of \$3,000.00, and on the Wolbert mortgage the sum of \$3,000.00, and that they were legal and proper investments for your orator to make. 20 30

*Bill of Complaint.*

9. That your orator relying upon the representations of said Roland D. Crocker as aforesaid, relating to the said two last mentioned mortgages in the preceding paragraph, paid to said Roland D. Crocker as the attorney of said Liberty Trust Company on December 1, 1913, the  
10 sum of \$3,000.00, and on December 8, 1913, the further sum of \$3,000.00 and on December 8, 1913, your orator received from the said Roland D. Crocker a deed of assignment made and executed by Liberty Trust Company by A. H. Watson, its president, and duly proved and bearing date the eighth day of December, 1913, and transferring to your orator an indenture of mortgage dated April 15, 1913, made by Rudolph J. Heidel and wife on lands in the City  
20 of Newark, to secure the payment of the sum of \$5,000.00 reduced to \$3,000.00 and recorded in the register's office of the County of Essex in Book V 30 of Mortgages, pp. 480, etc.; and also a mortgage bearing date the 12th day of April, 1906, made by George W. Wolbert and wife on lands in the said City of Newark to secure the payment of the sum of \$3,000.00 and recorded in Book S 19, p. 167, of Mortgages for Essex County, together with the bonds described in  
30 the said mortgages; and that said deed of assignment contains a covenant made by said Liberty Trust Company, that the sum of \$3,000.00 is due on each of said mortgages; and that the said deed of assignment is recorded in Book 120 of Assignments of Mortgages for said County of Essex on pp. 73-74; and that your orator has annexed hereunto a copy of said deed of assignment, for reference, and will produce the original.

*Bill of Complaint.*

10. That at the time of the delivery of the said last mentioned deed of assignment by the said Roland D. Crocker to your orator as aforesaid, the said Crocker also delivered to your orator a bond made by Rudolph J. Heidel to Albert B. Aschenbach in the penal sum of \$10,000.00, conditioned for the payment of \$5,000.00, and having endorsed on said bond a receipt in the following language:

“December 1, 1913. Received on principal \$2,000.00, leaving balance of principal due \$3,000.00. Roland D. Crocker, Atty.”; and also a mortgage purporting to have been made by Rudolph J. Heidel and Amelia, his wife, to Albert B. Aschenbach, in consideration of the sum of \$5,000.00 on lands in the southerly line of Lyons avenue in the City of Newark, N. J., which mortgage is recorded in Book V 30 of Mortgages for the County of Essex on pp. 480-482; and also a deed of assignment purporting to have been made by Albert B. Aschenbach to Liberty Trust Company, transferring the said bond and mortgage, which said deed of assignment is dated May 2, 1913, and was recorded in Book 111 of Assignments of Mortgages for said County on pp. 269-270; and also a bond purporting to have been made by George W. Wolbert to Frank Schwarzwaelder, dated April 12, 1906, in the penal sum of \$6,000.00, to secure the payment of the sum of \$3,000.00; and also a mortgage purporting to have been made by George W. Wolbert and Sarah A., his wife, to Frank Schwarzwaelder on April 12, 1906, in consideration of \$3,000.00 on property known as the Peck property on South 14th street, in the City of Newark, which mortgage is registered in Book S 19 of Mortgages for said County on pp. 167-168.

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*Bill of Complaint.*

11. That the money paid by your orator aforesaid to said Roland D. Crocker, as attorney for said Liberty Trust Company, was money belonging to the estate of Henry Kirchner, deceased, and that the said Roland D. Crocker and the said Liberty Trust Company  
10 knew that your orator as executor aforesaid, could not legally invest said money in any other mortgages than first mortgages, and knew that said money belonged to said estate; at the time of the purchase of the said four bonds and mortgages respectively from said Liberty Trust Company.

12. That after your orator had acquired the title to said four bonds and mortgages and had possession of the same, he entrusted said Roland D. Crocker with the collection of the interest thereon, and that no interest has been paid to your orator on any of said mortgages, and your orator does not know that any interest has been paid to the said Roland D. Crocker.  
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13. That about the first of October, 1914, your orator heard that said Roland D. Crocker had absconded, and had defrauded his clients and your orator naturally became alarmed, and endeavored to ascertain whether he had been  
30 in any way defrauded, and caused inquiries to be made of the several persons who could be found in occupation of the several premises mentioned in the said mortgages, and caused a search to be made in the records of deeds and mortgages, etc., in the County of Essex, and caused inquiry to be made of said Liberty Trust Company, and the result of your orator's investigations was, that he was advised to consult counsel and make a demand upon the Liberty Trust Company for the return of the money that had  
40 been paid as aforesaid.

*Bill of Complaint.*

14. That on October 16, 1914, your orator caused a demand to be made upon the said Liberty Trust Company for the sum of \$11,500.00, and offered to return to said Liberty Trust Company the four certain bonds and mortgages aforesaid, and your orator caused to be stated at that time to the Liberty Trust Company the facts upon which his claim is based, and that said demand and offer and statement of facts are all contained in a letter written by your orator's attorney, Frank E. Bradner, and sent to and duly received by said Liberty Trust Company on the date last mentioned, and that a copy of said letter is hereunto annexed, and reference is made thereto. 10

15. That the mortgage made by Albert C. Courter appears to be on the records a first mortgage, but the title to it is disputed; and it is claimed by third persons that the said Lizzie Hess Loehnberg was not authorized to make any assignment of said mortgage, and that she did not in fact make any assignment of said mortgage, and a notice has been put on the record of said mortgage to prevent its cancellation, and your orator charges that Liberty Trust Company did not have the legal title to said bond and mortgage, and did not transfer to your orator the legal title thereof. 20 30

16. That the mortgage in the sum of \$3,000.00 made by Rudolph J. Heidel and wife to Liberty Trust Company, on property on North 12th street aforesaid, is shown by the records to be a third mortgage, and the prior mortgages cover the entire value of the property, and the mortgage transferred to your orator as aforesaid, is of no value whatever. 40

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17. That the mortgage made by Rudolph J. Heidel and wife to Albert B. Aschenbach on Lyons avenue property, appears on the records to be a fourth mortgage, and the prior mortgages cover the entire value of the property, and the mortgage assigned to your orator by  
10 said Liberty Trust Company is of no value whatever.

18. That the mortgage made by George W. Wolbert to Frank Schwarzwaelder on property on South 14th street, is a bogus mortgage, and the person who executed it had no title to the property, and there is nothing due on said mortgage, and it is of no value whatever.

19. That after your orator had acquainted the said Liberty Trust Company with the facts that he had ascertained as aforesaid, and had  
20 made his demand for the return to him of the said sum of \$11,500.00, and his offer to return the bonds and mortgages to said Liberty Trust Company, the said Liberty Trust Company by one of its officers and its attorney, requested a conference with your orator and his attorney, and an opportunity to make an investigation on its own behalf, and on November 30, 1914, your orator's attorney received from the at-  
30 torney of the said Liberty Trust Company a letter admitting that the mortgage of \$2,500.00 made by Albert C. Courter had been assigned by said Liberty Trust Company, and claiming that when the deed of assignment was executed, it did not contain any reference to the Heidel mortgage of \$3,000.00; and also claiming that the reference to the Heidel mortgage in the deed of assignment is a forgery, and that the covenants in the assignments are forgeries; and admitting that the second deed of assign-  
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*Bill of Complaint.*

ment when it was executed, contained the Heidel mortgage covering property on Lyons avenue, Newark, and no reference to the Wolbert mortgage, and also claiming that the Wolbert mortgage was inserted as a forgery; and declining to pay to your orator the said sum of \$11,500.00; and your orator has annexed hereunto a copy of said last mentioned letter to which reference is made, and will produce the original.

20. That your orator was advised that he ought not to take any proceedings until after the contest in the Orphans Court had been disposed of, and your orator did not receive notification of the final disposition in the making of a decree in said proceedings until some time after the 18th of December, when the decree was made; and since that time, the matter has been in the hands of your orator's counsel to take such proceedings as he may advise.

21. That on November 16, 1914, Hearthstone Building and Loan Association, a corporation of the State of New Jersey, filed its bill in this honorable Court to foreclose a mortgage in the sum of \$4,500.00, which purports to be a lien upon the same lands and premises on Lyons avenue in the City of Newark, mentioned and described in the mortgage aforesaid assigned by Liberty Trust Company to your orator; and on December 15, 1914, a subpoena was issued in said cause and was afterwards duly served upon your orator, and your orator has filed an answer to the bill of complaint, and has set up in the answer substantially, that the mortgage held by him was represented to be a first mortgage, and denying that the preceding mortgages are sub-

*Bill of Complaint.*

sisting liens, and stating that your orator has called upon Liberty Trust Company to protect his interest and its interest in the said foreclosure.

10 22. That the Hearthstone Building and Loan Association claims to have the first mortgage on said property on Lyons avenue, and alleges in the bill of complaint that Weequahic Park Land and Improvement Company holds a mortgage recorded on August 4, 1909, and that Arthur Nungesser holds a mortgage recorded on August 29, 1910, which mortgages thereby appear to be prior to the mortgage held by your orator.

20 23. That there has also been served upon your orator by Charles Bierman, three notices that he has purchased from the City of Newark lots Numbers 80, 82 and 84 Lyons avenue, which include the premises in the mortgage held by your orator as aforesaid, and notifying your orator that unless the said respective lots shall be redeemed before the expiration of six months from the date of service, a deed for the same will be given according to the provision of a certain statute commonly known as the Martin Act, and that the amount of money claimed by said  
30 Bierman on each lot is the sum of \$177.15.

24. That on January 6, 1915, your orator caused notice to be given to Liberty Trust Company that Hearthstone Building and Loan Association had filed its bill in this honorable Court to foreclose a mortgage of \$4,500.00 as aforesaid, and stating to said Liberty Trust Company that it appeared that the said mortgage assigned by it to your orator is a fourth mortgage on the property; and your orator called  
40 upon the said Liberty Trust Company to pro-

*Bill of Complaint.*

teet its own interests, and also the interests of your orator; and also notified the said Liberty Trust Company of the claims of Charles Bierman as aforesaid; and that such notice was given to said Liberty Trust Company by letter written and signed by your orator's attorney, Frank E. Bradner, and that a copy of said letter is hereunto annexed, and that reference is made thereto; and that no response has been made to said letter. 10

25. That the said Roland D. Crocker has absconded from the State of New Jersey, and that his whereabouts are unknown.

26. Your orator charges that the defendant Liberty Trust Company authorized the said Roland D. Crocker to buy and sell mortgages for it, and authorized the said Roland D. Crocker to sell to your orator the said four bonds and mortgages, and at the time of each of said sales, the said Roland D. Crocker was the attorney of said Liberty Trust Company, with authority to make said sales, and with the authority to make statements as to the validity of the mortgages, and the order of priority of the same and the amount due thereon; and at the same time, the said Roland D. Crocker was chairman of the finance committee of said Liberty Trust Company, and as such chairman, had authority to bind said Liberty Trust Company by statements relating to the validity of said bonds and mortgages, and the amount due thereon; and your orator charges that said Liberty Trust Company did in the first deed of assignment bearing date October 10, 1913, assign the two mortgages therein stated to your orator, and did represent that said mortgages were first and valid liens on the premises described therein, and that the principal money 20 30 40

*Bill of Complaint.*

mentioned in each was then due and did represent to your orator that there was due the sum of \$5,500.00, and that both of said mortgages was a first mortgage; and that said Liberty Trust Company did on December 8, 1913, assign to your orator the two bonds and mortgages mentioned and described in the deed of assignment, bearing date on that day, and did represent to your orator that there was \$3,000.00 due on each of said mortgages, and did lead your orator to believe that each of said mortgages was then a first mortgage on the premises described therein.

27. That your orator has offered to return the said four bonds and mortgages to said Liberty Trust Company, as hereinabove stated, and does now tender himself ready to execute any necessary assignments of said several bonds and mortgages to the Liberty Trust Company, and to deliver said bonds and mortgages to said Liberty Trust Company, and he says that no money has been paid to him either on account of principal or interest, on any of the bonds and mortgages, and that the said bonds and mortgages are now in the same condition as to the amount due thereon and as to the lien of said mortgages, that they were in when they were assigned to him and delivered to him as aforesaid.

All of which actings and doings of the said defendant Liberty Trust Company are contrary to equity and tend to the manifest wrong, injury and oppression of your orator in the premises.

In consideration whereof and for as much as your orator can only have adequate relief in this honorable Court by rescinding the purchases of said bond and mortgages and by reassigning the same to said Liberty Trust Company, and re-

*Bill of Complaint.*

ceiving from the said Liberty Trust Company the said sum of \$11,500.00 together with such interest thereon as may be legally payable; to the end therefore, that said Liberty Trust Company may according to law and the course of practice of this Court, full, true and perfect answer and discovery make without oath, the oath of the said defendant being hereby expressly waived, to all and singular the premises, and that as fully as though the same were herein again repeated and the said defendant particularly interrogated thereunto paragraph by paragraph.

And your orator specifically prays that the contract made by him on or about the tenth day of October, in the year 1913, with said Liberty Trust Company, to purchase from said Liberty Trust Company, the two certain bonds and mortgages, one made by Albert C. Courter and wife to Lizzie Hess Loehnberg, to secure the payment of the sum of \$2,500.00, and the other made by Rudolph J. Heidel and wife to said Liberty Trust Company, to secure the payment of \$3,000.00; and also the contract made by your orator with said Liberty Trust Company on or about the first day of December, 1913, to purchase from said Liberty Trust Company two certain mortgages, one made by Rudolph J. Heidel and wife to Albert B. Aschenbach to secure a balance due of \$3,000.00 and the other made by George W. Wolbert and wife to Frank Schwarzwaelder to secure the payment of \$3,000.00; and the deed of assignment made by said Liberty Trust Company to your orator bearing date October 10, 1913, and also the deed of assignment made by said Liberty Trust Company to your orator bearing date October 10, 1913, and also the deed of assignment made by said Liberty Trust Company

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*Bill of Complaint.*

to your orator bearing date December 8, 1913, which two respective deeds of assignment assigned to your orator the several bonds and mortgages aforesaid, may be rescinded and set aside by the decree of this Court and that your orator may have a decree adjudging that the said  
 10 contracts and deeds of assignment shall be set aside, and that your orator is entitled to receive from and be paid by said Liberty Trust Company the sum of \$11,500.00 together with interest thereon from the dates of the respective payments to said Liberty Trust Company, and that your orator may execute such deeds of assignment as may be necessary to reassign and transfer said several bonds and mortgages to said Liberty Trust Company.

20 And that your orator may have such other and further relief in the premises as may be agreeable to equity, and may recover from said defendant his costs of this suit to be taxed, including such reasonable allowances as may be made for the services of your orator's counsel.

30 May it please your Honor the premises considered, to grant unto your orator a writ of subpoena to be issued out of and under the seal of this honorable Court, to be directed to said Liberty Trust Company, a corporation, therein and thereby commanding it to appear before this honorable Court according to law and the course of this Court at a certain day and under a certain penalty therein to be expressed then and there to answer the premises, and to stand to, abide by and perform such decree as to your Honor shall seem meet.

And your orator will ever pray, etc.

FRANK E. BRADNER,

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*Solicitor for and of Counsel  
with Complainant.*

*Bill of Complaint.*

KNOW ALL MEN BY THESE PRESENTS, That Liberty Trust Company, a corporation of New Jersey, having its principal office in the City of Newark, County of Essex, and State of New Jersey, party of the first part, in consideration of the sum of five thousand five hundred dollars, lawful money of the United States of America, to it in hand paid by Louis Hubing, executor under the will of Henry Kirchner, late of the City of Newark, in the County of Essex, deceased, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part that certain Indenture of Mortgage bearing date the nineteenth day of September, one thousand eight hundred and ninety-six, made by Albert C. Courter and wife to Lizzie Hess Loehnberg, on lands in the City of Newark, Essex County, New Jersey, to secure the payment of the sum of twenty-five hundred dollars, which mortgage is recorded in the register's office of the County of Essex in Book A-13 of Mortgages, pages 282, etc., and also a certain other mortgage bearing date the second day of September, 1913, made by Rudolph J. Heidel and wife, to said Liberty Trust Company on lands in the said City of Newark, to secure the payment of three thousand dollars, which mortgage is recorded in the register's office of said County of Essex in Book S-31, page 162 of Mortgages; together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To HAVE AND TO HOLD, the

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*Bill of Complaint.*

same unto the said party of the second part, his  
 executors, administrators or assigns forever sub-  
 ject only to the proviso in the said Indenture of  
 Mortgage mentioned: And it doth hereby make,  
 constitute and appoint the said party of the  
 second part its true and lawful attorney, ir-  
 10 revocable, in its name, or otherwise, but at his  
 proper costs and charges, to have, use and take  
 all lawful ways and means for the recovery of  
 all the said money and interest; and in case of  
 payment, to discharge the same as fully as it  
 might or could do if these presents were not  
 made: AND it doth hereby covenant, promise  
 and agree, to and with the said party of the  
 second part, that there is now due and owing  
 upon the said bond and mortgage the sum of  
 20 principal money mentioned in each; and that  
 each of said mortgages is a first and valid lien  
 on the premises therein described.

IN WITNESS WHEREOF said Liberty Trust Com-  
 pany hath caused these presents to be signed  
 by its and its corporate seal to be affixed  
 thereto, this tenth day of October, nineteen  
 hundred and thirteen.

LIBERTY TRUST COMPANY (L. S.)

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By A. H. WATSON, Pres.

Signed, sealed and delivered  
 in the presence of  
 WARREN C. BIGGIN, Treasurer.

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

BE IT REMEMBERED, That on this tenth day of  
 October, nineteen hundred and thirteen, before  
 40 me, the subscriber a Master in Chancery of New

*Bill of Complaint.*

Jersey, personally appears Warren C. Biggin, who, being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the Liberty Trust Company, the assignor named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto, and the said instrument signed and delivered by A. Howard Watson, who was at the date and execution thereof the president of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness. 10

WARREN C. BIGGIN,

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Sworn and subscribed to before me at Newark, the date aforesaid.

ROLAND D. CROCKER,  
*Master in Chancery of New Jersey.*

Endorsed: Assignment of Mortgage. Liberty Trust Company, a corporation, to Louis Hubing, executor, &c. Received in the register's office of the County of Essex, N. J., on the 11th day of October, A. D., 1913, at 9:05 o'clock, in the forenoon, and recorded in Book 114 of Assignments of Mortgages for said county, on pp. 39-40. 30

THOMAS P. ALWORTH,  
*Register.*

KNOW ALL MEN BY THESE PRESENTS, That Liberty Trust Company, a corporation of New Jersey, having its principal office in the City of Newark, New Jersey, party of the first part, in 40

*Bill of Complaint.*

consideration of the sum of one dollar and other valuable considerations, lawful money of the United States of America, to it in hand paid by Louis Hubing, executor of Henry Kirchner, deceased, of said City of Newark, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, that Indenture of Mortgage bearing date the fifteenth day of April, one thousand nine hundred and thirteen, made by Rudolph J. Heidel and wife, on lands in said City of Newark, to secure the payment of the sum of five thousand dollars, reduced to three thousand dollars, which mortgage is recorded in the register's office of the County of Essex in Book V-30 of Mortgages, pages 480, etc., and also that mortgage bearing date the twelfth day of April, one thousand nine hundred and six, made by George W. Wolbert and wife, on lands in said City of Newark, to secure the payment of the sum of three thousand dollars, which is recorded in Book S-19, page 167 of Essex County mortgages, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest, to have and to hold, the same unto the said party of the second part, his executors, administrators or assigns, for his use forever, subject only to the proviso in the said Indenture of Mortgage mentioned: And it do hereby make, constitute and appoint the said party of the second part its true and lawful attorney, irrevocable in its name, or otherwise, but at his proper costs and charges, to have, use

*Bill of Complaint.*

and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as it might or could do if these presents were not made: And it do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage the sum of three thousand dollars on each. 10

IN WITNESS WHEREOF, said Liberty Trust Company hath caused these presents to be signed by its president and its corporate seal to be hereto affixed this eighth day of December, one thousand nine hundred and thirteen.

LIBERTY TRUST COMPANY,  
A. H. WATSON, President.

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Signed, sealed and delivered  
in the presence of

WARREN C. BIGGIN,  
Treasurer.

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

BE IT REMEMBERED, That on this eighth day of December, nineteen hundred and thirteen, before me, the subscriber, a Master in Chancery of New Jersey, personally appears Warren C. Biggin, who, being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of Liberty Trust Company, the assignor named in the foregoing assignment; that the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto, and the said deed signed and delivered by A. Howard Watson, 30 40

*Bill of Complaint.*

who was at the date and execution thereof the president of said company, in the presence of said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

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WARREN C. BIGGIN.

Sworn and subscribed to before  
me at Newark, N. J., the date aforesaid.

ROLAND D. CROCKER,  
*Master in Chancery of New Jersey.*

20 Endorsed: Assignment of Mortgage. Liberty Trust Co. to Louis Hubing, Exr., &c. 1 30-480. Received in the register's office of the County of Essex, N. J., on the 28th day of September, A. D. 1914, at 11:37 o'clock in the forenoon, and recorded in Book 120 of Assignments of Mortgages for said county on pages 73-74.

THOMAS P. ALWORTH,  
*Register.*

October 16, 1914.

30 Liberty Trust Co.,  
447 Central Ave., City.

Gentlemen:—

I have been retained by Mr. Louis Hubing, Executor of the last Will and Testament of Henry Kirchner, deceased, of Newark, to demand from you the sum of \$11,500.00, and to offer to return to you four certain bonds and mortgages, which are hereinafter designated.

Mr. Hubing's claim is based upon the following facts:—

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*Bill of Complaint.*

On Oct. 10, 1913, he paid to you the sum of \$5500.00, being the purchase money of two certain bonds and mortgages sold by you to him, and you executed an assignment of the two mortgages, and in the deed of assignment, there is a covenant made by you that the principal money mentioned in each mortgage is due and owing, and that each of the mortgages is a first and valid lien on the premises described therein. The two mortgages referred to in that deed of assignment, are as follows:—

1. A mortgage in the sum of \$2500.00 made by Albert C. Courter and wife, to Lizzie Hess Loehnberg, on the property No. 341 West Kinney St., Newark, N. J.

2. A mortgage in the sum of \$3000.00 made by Rudolph J. Heidel and wife to Liberty Trust Company, on property on North 12th Street, Newark, N. J.

On December 8, 1913, Mr. Hubing purchased two other mortgages from you, and you made a like deed of assignment of these mortgages to him as executor aforesaid, and in the deed of assignment you covenant that the money is due upon the two mortgages. In this last assignment, the two mortgages referred to are as follows:—

1. A mortgage in the sum of \$5000.00 reduced by payments to \$3000.00 made by Rudolph J. Heidel to Albert B. Aschenbach and wife, on property 82 Lyons Avenue

2. A mortgage in the sum of \$3000.00 made by George W. Wolbert and wife, to Frank Schwarzwaelder, on property on South 14th Street, Newark.

*Bill of Complaint.*

These transactions were negotiated and carried out by Roland D. Crocker. Since the publication of the alleged wrongdoings of Crocker, Mr. Hubing naturally became suspicious and anxious about the funds of the Estate of Henry Kirchner, which he had so invested, and had a  
 10 thorough investigation made, the result of which discloses the following facts:—

First: The mortgage on West Kinney Street property appears to be a first mortgage, but the title to it is disputed, and a notice has been put on record to prevent its cancellation, and no interest appears to have been paid for many years, and the present owner of the property repudiates the mortgage.

20 Second: The mortgage on North 12th Street property appears from the records to be a third mortgage, and the prior mortgages cover the entire value of the property.

Third: The mortgage on 82 Lyons Avenue appears on the record to be a fourth mortgage, and the prior mortgages cover the entire value of the property.

30 The mortgage on South 14th Street property appears to be a bogus mortgage, and the person who executed it had no title whatever to the property.

In view of these facts and Mr. Hubing representing an estate, it is his duty to demand a return of the money. I, therefore, on his behalf hereby offer to reassign to you these four bonds and mortgages, and demand the immediate payment of \$11500 together with legal interest thereon from the respective dates aforesaid.

Yours truly,

FRANK E. BRADNER.

*Bill of Complaint.*

November 30, 1914.

Frank E. Bradner, Esq.,  
Essex Building, City.

Dear Sir:—

The Liberty Trust Company has referred to me for reply your letter to it under date of the 24th inst. in reference to the mortgages held by the Kirchner Estate. 10

After a thorough investigation of this matter I have advised the Liberty Trust Company that there is no duty on its part to take back the bonds and mortgages mentioned in your letter of October 16th last, or to pay to your client the sum of \$11,500 as therein demanded, for the following reasons, among others:

1. The assignment dated October 10, 1913, which purports to assign two mortgages, namely, the Courter mortgage of \$2500 and a Heidel mortgage of \$3000, when executed by the Trust Company, contained no reference to the Heidel mortgage, nor did it contain the covenant that now appears therein. The only mortgage mentioned in the assignment at the time of its execution was the Courter mortgage. That part, therefore, that purports to assign a Heidel mortgage and also the covenant now appearing in the assignment are forgeries. 20 30

2. The same condition exists with reference to the other alleged assignment. The only mortgage set out in the assignment at the time of its execution by the Trust Company was the Heidel mortgage covering property on Lyons Avenue, Newark, the assignment at that time containing no reference to a Wolbert mortgage. That part, therefore, is also a forgery. Under the circum-

*Bill of Complaint.*

stances the Liberty Trust Company does not feel under any obligation to accede to your demand.

Yours very truly,  
ARCHIBALD F. SLINGERLAND.

January 6, 1915.

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Liberty Trust Company,  
447 Central Ave., City.

Gentlemen:—

I desire to notify you that Hearthstone B. & L. Assn. of Newark has filed a bill in the Court of Chancery to foreclose a mortgage of \$4500.00, which is claimed to be a first lien on property on Lyons Avenue in the City of Newark, which is designated as Lot No. 904, and the Westerly portion of Lot No. 903, as laid down on a map of the property of the Weequahic Park Land & Improvement Co. This is the same land described in a mortgage made by Rudolph J. Heidel to Albert B. Aschenbach in the sum of \$5000.00, dated April 15, 1913, and recorded in Book V 30 of Mortgages for Essex County on pp. 480, etc. and assigned by Aschenbach to Liberty Trust Co. by deed of assignment dated May 2, 1913, recorded in Book 111 of Assignments of Mortgages for Essex County on pp. 269, etc.; and assigned by Liberty Trust Company to Louis Hubing, Executor of Henry Kirchner, deceased, by deed of assignment dated December 8, 1913, and recorded in Book 120 of Assignments of Mortgages for said County on pp. 73, etc. Louis Hubing, Exr. etc., is made a party to the bill of complaint, and it is alleged in the bill that the mortgage assigned by Liberty Trust Co. to Hubing Exr., &c. is a fourth mortgage on the property.

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*Bill of Complaint.*

In view of the fact, that I have, as attorney for Mr. Hubing, offered to reassign this mortgage and other mortgages to you, and have thereby endeavored to rescind the purchases from you of this mortgage and other mortgages, I am giving you this notice so that you may not only protect your own interests, but I contend that you are bound to protect the interests of Mr. Hubing as Executor, etc. 10

I have a copy of the bill of complaint, and you or your attorney, may see it at any time.

I also desire to notify you that Charles Bierman has served notices on Mr. Hubing that he has purchased from the Martin Act Commissioners this land, and claims a total sum of \$531.45. Of course, if Mr. Bierman is not paid, he will acquire title to the land prior to the mortgage. 20

I would be pleased to see you or your attorney, in relation to this matter, and to make some arrangement for our mutual protection.

Very truly yours,

FRANK E. BRADNER.

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*Answer.*

**Answer.**

Filed March 10, 1915.

10 **In Chancery of New Jersey.**

Between

LOUIS HUBING, Executor, &c.,  
Complainant,

and

20 LIBERTY TRUST COMPANY,  
Defendant.

*On Bill, &c.*

*Answer.*

The answer of Liberty Trust Company, defendant, to the bill of complaint of Louis Hubing, executor of the last will and testament of Henry Kirchner, deceased, complainant.

This defendant, answering said bill of complaint, or so much thereof as it is advised is material or necessary, says:

30 1. That as to the allegations of the first paragraph of said bill this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

2. That as to the allegations of the second paragraph of said bill this defendant has no knowledge or information save from said bill and leaves the complainant to make such proof thereof as he may be advised is necessary.

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*Answer.*

3. That as to the allegations of the third paragraph of the said bill this defendant has no knowledge or information save from the said bill and leaves the complainant to make such proof thereof as he may be advised is necessary.

4. That it denies that part of the fourth paragraph of the said bill and the allegations elsewhere in said bill, wherein it is alleged that the said Roland D. Crocker was the Chairman of the Finance Committee of this defendant, and was also the attorney of this defendant; and as to the allegations of the balance of the said paragraph this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

5. That it denies those portions of the fifth paragraph of the said bill, wherein it is alleged that on the tenth day of October, in the year 1913, the said Roland D. Crocker acted on behalf of this defendant as the Chairman of its Finance Committee and as attorney for this defendant, and that the representations alleged to have been made by him as in said paragraph of said bill is more particularly set forth were made by him on behalf of this defendant. And this defendant further answering says that as to what representations were made by said Crocker to the complainant, if any, with reference to the matters set forth in said paragraph of said bill, this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

6. That as to the allegations in the sixth paragraph of said bill with reference to the

*Answer.*

10 payment by the complainant to the said Roland D. Crocker of the sum of \$5,500, this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary; but if such payment was made this defendant denies that it was made to said Crocker, as attorney of this defendant.

And this defendant further answering says that it denies that it executed the deed of assignment as set forth in the sixth paragraph of said bill and avers and insists that the said deed of assignment therein mentioned is a forgery as hereinafter more particularly stated.

20 7. That as to the allegations in the seventh paragraph of said bill this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

30 8. That it denies those portions of the eighth paragraph of said bill, wherein it is alleged that on or about the first day of December, in the year 1913, the said Roland D. Crocker acted on behalf of this defendant, and that the representations alleged to have been made by him as in said paragraph of said bill is more particularly set forth were made by him on behalf of this defendant. And this defendant further answering says that as to what representations were made by said Crocker to the complainant, if any, with reference to the matters set forth in said paragraph of said bill this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

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*Answer.*

9. That as to the allegations in the ninth paragraph of said bill with reference to the payment by the complainant to the said Crocker on December 1, 1913, of the sum of \$3,000, and on December 8, 1913, of the further sum of \$3,000, this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary; but if such payments were made it denies that they were made to said Crocker, as attorney of this defendant. 10

And this defendant further answering says that it denies that it executed the deed of assignment as set forth in the ninth paragraph of said bill, and avers and insists that the said deed of assignment therein mentioned is a forgery, as hereinafter more particularly stated. 20

10. That as to the allegations in the tenth paragraph of said bill this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

11. That it denies that the money alleged to have been paid by the complainant as aforesaid to said Roland D. Crocker was paid to the said Crocker, as attorney for this defendant, as alleged in the eleventh paragraph of said bill; and it denies that it knew that the complainant, as executor aforesaid, could not legally invest said money in any other mortgages than first mortgages and that it knew that said money belonged to said estate; and it denies that the complainant purchased four bonds and mortgages from this defendant as alleged in said paragraph. And this defendant further answer- 30 40

*Answer.*

ing says that as to the allegations of the remainder of said paragraph this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

10 12. That as to the allegations in the twelfth paragraph of said bill this defendant has no knowledge or information save from said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

13. That as to the allegations in the thirteenth paragraph of said bill this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is  
20 necessary.

14. That it admits the allegations in the fourteenth paragraph of said bill.

15. That it admits that portion of the fifteenth paragraph of said bill wherein it is alleged that the mortgage made by Albert C. Courter appears to be on the records a first mortgage; but it denies that portion of the said paragraph wherein it is alleged that this defendant did not have the legal title to said  
30 bond and mortgage and did not transfer to the complainant the legal title thereof; and as to the allegations of the remainder of the said paragraph this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

16. That it denies that it transferred to the complainant the mortgage of \$3,000, made by Rudolph J. Heidel and wife to this defendant  
40 on property on North Twelfth street, as al-

*Answer.*

leged in the sixteenth paragraph of said bill and avers and insists that if the complainant holds an assignment thereof, as alleged in said bill, the same is a forgery as hereinafter more particularly stated. And this defendant further answering says that as to the allegations in the remainder of the said sixteenth paragraph this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary. 10

17. That as to the allegations in the seventeenth paragraph of the said bill this complainant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary. 20

18. That as to the allegations in the eighteenth paragraph this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

19. That it admits the allegations in the nineteenth paragraph of the said bill.

20. That as to the allegations in the twentieth paragraph of the said bill this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary. 30

21. That as to the allegations in the twenty-first paragraph of the said bill this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary. 40

*Answer.*

22. That as to the allegations in the twenty-second paragraph of the said bill this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

10 23. That as to the allegations in the twenty-third paragraph of the said bill this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

24. That it admits the allegations in the twenty-fourth paragraph of said bill.

25. That it admits the allegations in the twenty-fifth paragraph of said bill.

20 26. That it denies the allegations in the twenty-sixth paragraph of said bill, wherein it is charged that this defendant authorized the said Roland D. Crocker to buy and sell mortgages for it, and authorized the said Roland D. Crocker to sell to the complainant the said four bonds and mortgages, and that at the time of each of said sales the said Roland D. Crocker was the attorney of this defendant with authority to make said sales, and with the  
 30 authority to make statements as to the validity of the mortgages and the order of priority of the same and the amount due thereon; and it further denies that at the same time the said Roland D. Crocker was Chairman of the Finance Committee of this defendant, and as such chairman had authority to bind this defendant by statements relating to the validity of said bonds and mortgages and the amount due thereon. And this defendant further an-  
 40 swering says that it denies that it did, in the

*Answer.*

first deed of assignment bearing date October 10, 1913, assign the two mortgages therein stated to the complainant and did represent that said mortgages were first and valid liens on the premises described therein and that the principal money mentioned in each was then due and did represent to the complainant that there was due the sum of \$5,500, and that both of said mortgages were first mortgages; and that it did on December 8, 1913, assign to the complainant the two bonds and mortgages mentioned and described in the deed of assignment bearing date on that day and did represent to the complainant that there was \$3,000 due on each of said mortgages and did lead the complainant to believe that each of said mortgages was then a first mortgage on the premises described therein.

27. That it admits that portion of the twenty-seventh paragraph of said bill wherein it is alleged that the complainant has offered to return the said four bonds and mortgages to this defendant; but as to the remainder of the said paragraph this defendant has no knowledge or information save from the said bill, and leaves the complainant to make such proof thereof as he may be advised is necessary.

28. And this defendant further answering says that on the tenth day of October, 1913, and prior thereto, the said Roland D. Crocker was acting as attorney for the said complainant, and that as such attorney he entered into negotiations with this defendant for the purchase from it by the said complainant of a certain mortgage made by Albert C. Courter and wife to Lizzie Hess Loehnberg for \$2,500, recorded in Book A. 13 of Mortgages for Essex

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*Answer.*

County, on page 282, which was then owned by this defendant; and as a result of such negotiations this defendant did on the tenth day of October, 1913, execute an assignment of said mortgage, together with the bond accompanying the same and delivered the said assignment to  
10 the said Roland D. Crocker, as the attorney for the said complainant; but this defendant avers and insists that when the said assignment was executed by this defendant it contained no mention of any bond and mortgage other than the aforesaid bond and mortgage of Albert C. Courter, and that if the said assignment now purports to assign any mortgage other than the said Courter mortgage, the same has been altered since its execution by this defendant  
20 and its delivery to the complainant as aforesaid, and that such alteration is a forgery.

29. And this defendant further answering says that at the time of the execution of the aforesaid assignment of mortgage by this defendant it contained no covenant as to the amount due upon any other mortgage than the mortgage of Albert C. Courter thereby intended to be assigned, nor did it contain a covenant that the said Courter mortgage was  
30 a first and valid lien upon the premises covered thereby; but it avers and insists that if such covenants now appear in said assignment they have been inserted since the execution of the said assignment by this defendant and its delivery to the complainant as aforesaid, and that such alterations or insertions are forgeries.

30. And this defendant further answering says that the aforesaid mortgage of Albert C. Courter and wife to Lizzie Hess Loehnberg is  
40 a first and valid lien upon the premises covered

*Answer.*

thereby, and that this defendant transferred a good title thereto to the complainant by its assignment of mortgage above mentioned.

31. And this defendant further answering says that on the eighth day of December, 1913, and prior thereto, the said Roland D. Crocker was acting as attorney for the said complainant, and that as such attorney he entered into negotiations with this defendant for the purchase from it by the said complainant of a certain mortgage made by Rudolph J. Heidel and wife to this defendant for \$5,000 (reduced to \$3,000), recorded in Book V. 30 of Mortgages for Essex County, on page 480, which was then owned by this defendant; and as a result of such negotiations this defendant did on the eighth day of December, 1913, execute an assignment of said mortgage, together with the bond accompanying the same and delivered the said assignment to the said Roland D. Crocker, attorney for the said complainant; but this defendant avers and insists that when the said assignment was executed by this defendant it contained no mention of any bond and mortgage other than the aforesaid bond and mortgage of Rudolph J. Heidel and wife, and that if the said assignment now purports to assign any mortgage other than the said Heidel mortgage the same has been altered since its execution by this defendant and its delivery to the complainant as aforesaid, and that such alteration is a forgery.

32. And this defendant further answering says that at the time of the execution of the aforesaid assignment of mortgage by this defendant it contained no covenant as to the amount due upon any other mortgage than the

*Answer.*

10 mortgage of Rudolph J. Heidel thereby intended to be assigned; and it avers and insists that if such covenant now appears in said assignment it has been inserted since the execution of the said assignment by this defendant and its delivery to the complainant as aforesaid, and that such alteration or insertion is a for-  
gery.

33. And this defendant further answering says that it transferred to the complainant a good title to the aforesaid mortgage of Rudolph J. Heidel and wife to this defendant by its assignment of mortgage above mentioned; but it avers and insists that it did not covenant that the said mortgage was a first lien on the premises covered thereby.

20 34. And this defendant further answering says that all of its negotiations and dealings with the complainant in connection with the said assignments of mortgages were had with the said Roland D. Crocker, who represented himself to be, and this defendant avers and insists that he was, the attorney and agent of the said complainant authorized to act for him in and about the purchase of the said two mortgages.

30 35. And this defendant further answering says that it received from the said Roland D. Crocker, acting on behalf of the said complainant, the sum of \$2,500 as and for the consideration for its sale to the said complainant of the said Albert C. Courter bond and mortgage of \$2,500, and the sum of \$3,000 as and for the consideration for its sale to the said complainant of the Rudolph J. Heidel bond and mortgage for \$5,000 (reduced to  
40 \$3,000), but that it received no consideration

*Answer.*

whatever for the alleged assignment of the Heidel mortgage of \$3,000, and the Wolbert mortgage of \$3,000.

36. And this defendant further answering says that the said Roland D. Crocker never had any authority to enter into any agreement to assign, or to assign, mortgages for this defendant, and that any such agreement entered into between the said Crocker and the complainant was, to the knowledge of the said complainant, without authority and is not binding upon this defendant. 10

37. And this defendant further answering says that it never owned any mortgage made by George W. Wolbert and wife to Frank Schwarzwaelder for \$3,000, mentioned in the said bill of complaint, and that at the time of the assignment dated October 10, 1913, it held no mortgage made by Rudolph J. Heidel and wife, covering property on North Twelfth street in the City of Newark, in the sum of \$3,000, and that the officers who executed the said assignments of mortgages hereinbefore referred to had no authority to assign any such mortgages, and that this was well known to the said Roland D. Crocker, the attorney for the said complainant; and this defendant avers and insists that if said two mortgages were attempted to be assigned by the said officers they were acting without the scope of their authority to the knowledge of the complainant, and that therefore such assignments, if any exist, would not be binding upon the said defendant, and were and are void as against this defendant. 20 30

*Replication.*

Wherefore, this defendant prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

ARCHIBALD F. SLINGERLAND,  
*Solicitor for Defendant.*

10

**Replication.**

Filed March 11, 1915.

IN CHANCERY OF NEW JERSEY.

20	Between LOUIS HUBING, Executor, etc., <i>Complainant,</i>  <i>and</i> LIBERTY TRUST COMPANY, a corporation,  <i>Defendant.</i>	}	<i>On Bill, etc.</i>  <i>Replication.</i>
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30 The complainant joins issue with the defendant on the answer filed by it in the above stated cause.

Dated March 11, 1915.

FRANK E. BRADNER,  
*Solicitor of Complainant.*

*Louis Hubing, direct.*

IN CHANCERY OF NEW JERSEY.

*Between*

LOUIS HUBING, Executor &c.  
of Henry Kirchner, dec'd.,  
*Complainant,*

10

*and*

LIBERTY TRUST COMPANY, a  
corporation,  
*Defendant.*

Before his Honor Vice Chancellor Howell.

Mr. Frank E. Bradner, for complainant.

20

Mr. Conover English and Mr. A. Slingerland,  
for the defendant.

Transcript of shorthand report of the evidence  
given upon the trial of the above stated cause,  
on Tuesday, October 5, 1915, at Chancery Chamb-  
ers, Newark, New Jersey.

LOUIS HUBING, sworn.

30

*Direct examination* by Mr. Bradner.

Q Mr. Hubing, you live in the City of New-  
ark? A Yes, sir.

Q You were made executor of the estate of  
Henry Kirchner by his last will? A Yes, sir.

Q You proved the will? A Yes, sir.

Q I show you a paper purporting to be a  
copy of the will and letters testamentary. I

40

*Louis Hubing, direct.*

thought this was certified, but I will have it certified.

*The Court.* Do you object to the offer of a copy instead of the original?

10 *Mr. English.* Oh, there is no question about that, if Mr. Bradner says that is a true copy.

*Mr. Bradner.* I will offer that in evidence. (Marked Exhibit C. 1.)

Q After that will had been proved, do you know whether an appeal was taken by anybody?

A No, no appeal taken.

Q Did anything happen in reference to it, have any proceedings in the Orphans Court? A Well, there was a contest there, yes.

20 Q You do not know the nature of the contest, what it was? A Well, they tried to break the will, Mr. Kirchner's will.

Q When was that contest decided? A That was decided in 1913, I think in December.

Q You received a copy of the decree disposing of it, didn't you? A Yes, sir.

Q Is this the paper? A That is the paper, yes, sir.

30 *Mr. Bradner.* I offer in evidence a certified copy of the decree of the Orphans Court on the appeal from the probate of the will.

*The Court.* I take it from the bill that is principally for the purpose of showing a date.

*Mr. Bradner.* Showing a date, and showing his trust relationship in that estate.

*Mr. English.* We have no objection to this.

40 (Marked Exhibit C. 2.)

*Louis Hubing, direct.*

Q In that contest over the will, in the Orphans Court, were you represented by any attorney? A I was represented by Mr. Crocker.

Q And during that time did you have any money in your hands as executor? A Yes, sir.

Q Where was that money? A In the Fidelity Trust Company. 10

Q Did you pay over any of that money to Mr. Crocker? A Well, after those mortgages, yes.

Q What led up to your taking any of the mortgages from the Liberty Trust Company? A Why, Mr. Crocker said to me, he said it might take a year before this will contest was decided, and he said I might get a calling down from the judge for not investing this money more properly, getting more percentage, and he said to me that he was chairman of the Liberty Trust Company, and he said they had some mortgages for sale, and they needed some money. 20

Q Chairman of what? A Chairman of the finance committee of the Liberty Trust Company, and he said that they needed some money for to pay off the Christmas Fund, that was in October then, and he said he had two mortgages for sale, and he said they would like to sell them; so I told Mr. Jaedel about it, and he went to see Mr. Crocker. 30

Q (*By the Court.*) Who is Mr. Jaedel? A A friend of mine.

Q Sol Jaedel? A In the real estate business, yes.

Q Right there, when he said that they wanted money to pay off the Christmas Fund, was there anything further said about this money, what they wanted it for? A They wanted it to pay off the Christmas fund, and that they had 40

*Louis Hubing, direct.*

mortgages for sale. So I talked to Mr. Jaedel about it, and we went to see Mr. Crocker, and—

Q Don't tell what he told you. A So he gave me the list of two properties.

Q (*By Mr. English.*) Who did, Jaedel or Crocker? A Mr. Crocker.

10 Q Well, before you come to that, I want to direct your attention to anything further that Mr. Crocker said about this money that you had in the bank? A Well, he said the judge might call me down for not investing it to better advantage.

Q Well, what were you to do, if anything, when the court finally decided the will case, when you had to pay out the money? A I asked Mr. Crocker, supposing the case would be  
20 decided sooner than a year, and he said, "Why, the Liberty Trust Company would buy the mortgages back again if I gave them thirty days' notice;" I said "All right;" so he gave me a list of two properties.

Q Is that the list he gave you (handing witness paper)? A Yes, sir, that is the list, that was 341 West Kinney street and 157 North Twelfth street.

30 Q Whose handwriting is it? A Mr. Crocker's.

Q Did you see him write it? A Yes, sir.

*Mr. Bradner.* I offer the list in evidence. (Marked Exhibit C. 3.)

*Mr. Bradner.* I call your Honor's attention to this paper, it reads, "No. 341 West Kinney Street, 25x100, \$2,500. No. 156 North Twelfth street, 25x100, \$3,000." They are on the same paper, and the only items  
40 on the first paper that was given to him.

*Louis Hubing, direct.*

Q (*By the Court.*) When did you get the list from Mr. Crocker? A When he sold me the first two mortgages.

Q How long before you paid him any money? A Well, October 8th I paid him the first \$5,500, and it was before that I looked at the properties, to see whether they were all right. 10

Q (*By the Court.*) How long before that was it? A About three or four weeks before, I went to see the properties and took Mr. Jaedel along, because he is a real estate man.

Q You say you think it was three or four weeks before you paid the money? A Well, the money I paid October 8th, I think that is the right date, the first money for the two mortgages.

Q Well, it was some time before that that you got the list from Mr. Crocker? A Yes, three or four weeks before. 20

Q When you got the list, what did you do with it? A Why I went to Mr. Jaedel.

Q Was he with you at the time you got the list? A No.

Q You went to him? A Went to him, and I took him along to look at those properties, to see what he gave me; one mortgage of \$3,000 he said was a first mortgage which the Liberty Trust Company had, and the \$2,500, so I took him along to see whether it was all right. 30

Q Then you did examine both properties? A Both properties, yes, sir.

Q (*By the Court.*) And Mr. Jaedel was with you at both properties? A Yes, sir.

Q What did Mr. Crocker say about these two mortgages? A Why, he said they were first mortgages, and I asked him about the searches, and he said, why the Liberty Trust 40

*Louis Hubing, direct.*

Company just made the searches, and that they were all right, they were first mortgages.

Q Did you afterwards receive any papers from Mr. Crocker? A Yes, sir, I received the bond and mortgage, and assignment from the Liberty Trust Company to me.

10 Q Now I show you a bond made by Albert C. Courter and Lizzie Hess Loehnberg, dated September 19, 1896; did you receive that paper from Mr. Crocker? A Yes.

*Mr. Bradner.* I offer this in evidence.

(Marked Exhibit C. 4.)

Q I show you a mortgage made by Courter and wife to Lizzie Hess Loehnberg, dated September 19, 1896; did you at that time receive that paper from Mr. Crocker? A Yes.

20 *Mr. Bradner.* I offer that in evidence.

(Marked Exhibit C. 5.)

Q I show you bond made by Rudolph J. Heidel to Liberty Trust Company, dated September 2, 1913; did you receive that paper at that time from Mr. Crocker? A Yes.

*Mr. Bradner.* I offer that in evidence.

(Marked Exhibit C. 6.)

30 Q I show you a mortgage dated September 2, 1913, made by Rudolph J. Heidel and wife to Liberty Trust Company, on property on North 12th street, in the city of Newark; did you receive that mortgage at that time from Mr. Crocker? A Yes.

*Mr. Bradner.* I offer that in evidence.

(Marked Exhibit C. 7.)

40 Q I show you a paper purporting to be an assignment of mortgage, made by the Liberty Trust Company to you, dated October 10, 1913;

*Louis Hubing, direct.*

did you receive that from Mr. Crocker at that time? A Yes, sir.

Q That you got with the two bonds and two mortgages? A Yes.

*Mr. Bradner.* I offer that in evidence.

*Mr. English.* I think that ought to be proved. 10

*Mr. Bradner.* Well, I will call Mr. Biggin afterwards; it is only now for the purpose of showing what papers he received.

*Mr. English.* Well, offer it for identification then.

(Marked for identification C. 8.)

Q When you received the four papers, and the assignment from Mr. Crocker, did you pay him any money? A Paid him \$5,500. 20

Q In cash or check? A Check.

Q I show you a check A That is mine.

Q Is that the check? A Yes, sir.

Q Was the check made by you as executor, for \$5,500? A Yes.

Q To the order of R. D. Crocker, attorney? A Yes.

Q Dated October 10th? A Yes.

*Mr. Bradner.* I offer that in evidence.

(Marked Exhibit C. 9.) 30

Q Did you get a receipt from Mr. Crocker at the time? A Yes, sir.

Q I show you paper. A That is the paper.

Q Is that signed by him? A Yes, sir.

*Mr. Bradner.* I offer that in evidence.

*Mr. English.* I suppose we ought to preserve our point on this. It says for payment to the Liberty Trust Company. We do not care to be bound, without objection, 40

*Louis Hubing, direct.*

to an alleged payment of \$5,500 to the Liberty Trust Company, because we never got any such sum of money.

*The Court.* What is the paper?

10 *Mr. English.* A receipt from Mr. Crocker to Mr. Hubing, which says "Received \$5,500 for payment to Liberty Trust Company," for the purchase of these two mortgages, but as a matter of fact we never got any \$5,500.

*The Court.* Well, that is a matter of defense.

*Mr. English.* I suppose it is, but we do not want that to go in without that being noted, though.

20 *The Court.* I think I will have to admit the document.

*Mr. English.* Oh, yes, but I did not want by making no objection, to have our mouths closed.

(Said paper marked Exhibit C. 10.)

30 *Mr. Bradner.* This paper reads "October 10, 1913. Received from Louis Hubing \$5,500 for payment to Liberty Trust Company for purchase of mortgages. R. D. Crocker."

Q (*By the Court*) Where did this transaction take place? A In Mr. Crocker's office.

Q (*By the Court*) Where was his office? A On Broad street, where the Byrne Insurance business is.

Q (*By Mr. English*) 776 Broad street? A Yes.

40 Q (*By Mr. English*) The Byrne Building?  
A Yes, that is the building.

*Louis Hubing, direct.*

Q Now Mr. Hubing, after you had gotten these first mortgages, did you have any further transaction with Mr. Crocker relating to mortgages? A Yes, two more.

Q And when did that happen? A That was in December.

Q (*By the Court*) 1913? A 1913, yes. 10

Q And what was said then? A Why, he said they were first mortgages, he said the Liberty Trust Company wouldn't have nothing else but first mortgages to sell; so I said, "Well, give me the list, and I will look at the properties;" he gave me the list and I went with Mr. Jaedel again looking at the property; it was in Lyons avenue and Fourteenth street, and I told him I will take the mortgages.

Q Did you afterwards receive any bonds and mortgages from Mr. Crocker? A Yes, sir. 20

Q Where is the second list that you got? A Well, the second list, that paper what he gave me I haven't got no more; I marked it down.

Q You have not been able to find it? A Haven't been able to find it.

Q But you had a list, and Mr. Jaedel went with you, with that list? A Yes, sir, went with me with that list. 30

Q Now I show you a bond made by Rudolph J. Heidel to Albert B. Aschenbach, dated April 15, 1913, in the sum of \$10,000 penalty; did you receive that paper on this second occasion from Mr. Crocker? A Yes, sir.

Q And at the time that you received this bond, can you say whether or not there was a receipt endorsed on the body of it for \$2,000? A Yes, he said it was paid down to \$3,000, there was \$2,000 paid. 40

*Louis Hubing, direct.*

*Mr. English.* You asked him whether this was endorsed on it.

Q Was this on there when you received the bond, this receipt? A Yes.

*Mr. Bradner.* I offer that bond in evidence.

10

(Marked Exhibit C. 11.)

*Mr. Bradner.* There is a receipt on this bond "December 1, 1913. Received on principal \$2,000, leaving balance of principal due \$3,000. Roland D. Crocker, attorney."

Q At that time did you receive this mortgage made by Rudolph J. Heidel and wife to Albert B. Aschenbach, in the sum of \$5,000, dated April 15, 1913, on property on Lyons avenue in the city of Newark? A Yes.

20

*Mr. Bradner.* I offer that in evidence.

(Marked Exhibit C. 12.)

Q I show you assignment of mortgage made by Aschenbach to Liberty Trust Company, dated May 2nd, 1913, and purporting to assign the Heidel mortgage for \$5,000, did you receive that paper at that time from Mr. Crocker? A Yes, sir.

30

*Mr. Bradner.* I offer that in evidence.

(Marked Exhibit C. 13.)

Q I show you a bond dated April 12, 1906, purporting to be made by George W. Wolbert to Frank Schwartzwaelder, in the penal sum of \$6,000; did you receive that paper at that time from Mr. Crocker? A Yes.

*Mr. Bradner.* I offer that in evidence.

(Marked Exhibit C. 14.)

Q I show you mortgage dated April 12, 1906,  
40 made by George W. Wolbert and wife to Frank

*Louis Hubing, direct.*

Schwartzwaelder, for \$3,000, on property in the 11th Ward of Newark, known as the Peck property, and lot No. 32; did you receive that paper at that time from Mr. Crocker? A Yes.

*Mr. Bradner.* I offer that in evidence.

(Marked Exhibit C. 15.)

Q I show you paper purporting to be assignment of mortgages, made by Liberty Trust Company to you, dated December 8th, 1913; did you at the same time receive this from Mr. Crocker? A Yes.

10

*Mr. English.* I think that ought to be proved. Why don't you offer it for identification?

*Mr. Bradner.* I will prove it as well as I can.

*Mr. English.* Well, is it offered in evidence or identification?

20

*Mr. Bradner.* Well, it can be marked for identification; Mr. Biggin is here, and I will undertake to prove it.

(Marked for identification C. 16.)

Q I show you a check dated December 6, 1913, signed by Louis Hubing, executor, to the order of R. D. Crocker, attorney, for \$3,000; was that made by you? A Yes.

30

Q And made to Mr. Crocker? A Yes.

Q Did you give it to him? A Yes.

Q For what purpose? A For the payment of one of these mortgages.

*Mr. Bradner.* I offer that in evidence.

(Marked Exhibit C. 17.)

Q (*By the Court.*) Is that the one of December first? A No, that is the second lot, the second two.

40

*Louis Hubing, direct.*

*The Court.* December 1st he paid \$3,000.

*Mr. Bradner.* Before he got the assignment.

Q (*By the Court.*) You paid \$3,000 before you got the assignment? A Yes.

10 Q (*By Mr. English.*) How much is the check for? A \$3,000.

Q On the same date there appears to be a receipt signed by Mr. Crocker; did you get that? A That is right.

*Mr. Bradner.* I will offer this in evidence.

*Mr. English.* I see nothing in this to connect the transaction with the Liberty Trust Company.

*Mr. Bradner.* It is part of the *res gestae*.

20 *The Court.* What stamp is that on the check?

*Mr. English.* "Manufacturers' National Bank, Newark, N. J.," I think that is it. Now he has offered a receipt which I object to, because it shows no connection with the defendant at all; it is on his own personal letter head. "Received from Louis Hubing, executor, \$3,000 for loan on mortgage, lot 902, map Weequahic Park. R. D. Crocker, attorney."

30 *The Court.* He says this is one of the papers he got from Mr. Crocker at that time.

*Mr. English.* Yes, but the paper itself bears no internal evidence of being connected with the defendant at all.

*The Court.* I will admit it.

(Marked Exhibit C. 18.)

40 *Mr. Bradner.* I will just read this: "December 1, 1913. Received from Louis Hubing, executor, \$3,000, for loan on mortgage, lot

*Louis Hubing, direct.*

902, map of the Weequahic Park. R. D. Crocker, attorney.”

Q I show you another check dated December 8th, 1913, for \$3,000; what is that? A That is right, that is for the other mortgage.

Q That is for one of those two? A Yes, the second lot. 10

Q The date is December 8, 1913, check to the order of R. D. Crocker, attorney, for \$3,000, signed by Louis Hubing, executor. That took the same course as the other check? A Yes.

*Mr. Bradner.* I will offer that in evidence.

(Marked Exhibit C. 19.)

Q When you gave that check did you get this receipt? A Yes. 20

*Mr. Bradner.* I offer the receipt, dated December 8, 1913, “Received from L. Hubing, executor, check for purchase of \$3,000 mortgage, premises South 14th street, Newark, N. J. R. D. Crocker, attorney.”

*Mr. English.* That is in the same class as the other.

(Marked Exhibit C. 20.)

Q After you got these bonds and mortgages did you make any arrangement with anybody for the collection of interest? A Well, Mr. Crocker said he would collect the interest for me, but I haven't received any, nothing. 30

Q Have you received any interest from him or from anybody else? A Nothing at all.

Q Nor any part of the principal money? A No, no principal paid, none.

Q You heard some time last fall that Mr. Crocker had disappeared? A Yes, sir. 40

*Louis Hubing, cross.*

Q Did you take any action then? A Well, everybody got suspicious what held mortgages, so I employed Mr. Schoener.

Q To do what? A To search those mortgages up in the court house, which he did.

Q And he made a report to you? A Yes.

10 Q (*By the Court*) When was that? A That was right after Crocker had run away.

Q (*By the Court*) When, what month was it in?

*Mr. Bradner.* October, 1914, wasn't it?

A Something around that.

Q It was last year, must have been? A Yes.

Q Because these transactions took place the year before?

20 *Mr. English.* Crocker got out when; in September, wasn't it?

A September 22d, I guess Crocker got out, that is what I heard, last year.

*Cross examination by Mr. English.*

Q How long had you known Mr. Crocker, Mr. Hubing? A How long did I know him?

Q Yes. A Well, I got acquainted with Mr. Crocker when I had him as my attorney.

30 Q And when was that? A Why, when that contest came up for the will case.

Q Oh, that will case. You retained him as your lawyer at that time? A Yes.

Q And that contest lasted how long, during which he represented you? A Lasted a year and a half, I think.

40 Q About a year and a half. So that during that year and a half you were in pretty close touch with Mr. Crocker? A I had to go to see him.

*Louis Hubing, cross.*

Q Saw him frequently? A Once in a while.

Q And took his advice? A Yes.

Q And he represented you and appeared for you in court? A Yes.

Q Now how long had that contest been in progress before it was that you and he discussed the investing of this money which you had? A Let me see. The contest was in 1912, I think. 10

Q Began in 1912. When was it Mr. Kirchner died? A He died in October, 1912.

Q And the contest started very shortly after that, didn't it? A No, it started eight or nine months after that.

Q In April, 1913, according to your bill? A I guess that is right. 20

*Mr. Bradner.* According to the decree in evidence.

A It is hard to remember dates.

Q The bill says on April 28th certain persons appealed. Now when was it with reference to the death of Mr. Kirchner that you began to discuss with Mr. Crocker the investing of this money? A Well, the will contest was postponed, and then is when Mr. Crocker said it might take a year before this was decided. 30

Q Yes. A And he said then that I should invest this money different, as the judge might call me down, that is his expression.

Q When was it that he said that to you, or you had that conversation? About the time, or some time before the first assignment was made? A You mean when I paid the first money to him?

Q Yes. A Why that was about three or four weeks before that. 40

*Louis Hubing, cross.*

Q So you began to be disturbed by the fact that you had in your custody, as executor, a large fund of money which was uninvested, and you consulted Mr. Crocker about it; is that it?

A I did not consult Mr. Crocker at all.

Q Well, you discussed the matter with him?

10 A No; he is the one said he was chairman of the Finance Committee of the Liberty Trust Company.

Q Wait a minute. Mr. Crocker was acting as your counsel, as the executor in this will contest? A Yes.

Q And he was generally looking after the affairs of the estate of which you were executor, as counsel? A Well, he knew I had that much money because—

20 Q Well, he was helping you in the administration of your trust, was he not? A No, he was not.

Q He was acting for you in the will contest, and he knew you had this money? A Yes.

Q And he suggested to you, that for you as executor to leave uninvested a large sum of money might subject you to criticism? A From the judge.

30 Q And that sounded reasonable to you? A Yes.

Q His advice was that you invest this money in bond and mortgage? A First bond and mortgage, yes.

Q That advice sounded good to you? A Yes.

Q Then he said that through his position with the Liberty Trust Company he could secure you first mortgages? A Yes.

40 Q Then he gave you that list which you produce here in evidence, as two first mortgages

*Louis Hubing, cross.*

which you as executor could safely buy; was that it? A Yes.

Q You took the trouble to look at the physical property to see whether they seemed worth the money? A Yes.

Q With your friend, Mr. Jaedel? A Yes.

Q You didn't have any search made of the title? A Well, he said the Liberty Trust Company just made them. 10

Q You relied on him in that respect? A No, the Liberty Trust Company I relied on, a bank.

Q The only person whom you talked to in connection with the matter was Mr. Crocker? A About searches?

Q Yes. A Well, I asked him for the search, and he said the Liberty Trust Company just made them and they were all right; he being the chairman up there, and they were good enough for the Liberty Trust Company, so I thought they were good enough for me to take. 20

Q Well, you relied on what he told you? A Yes.

Q He represented to you that the title was all right, and you relied on that? A Yes.

Q Then you paid over your money? A Yes, sir.

Q Where was it you talked to him, when you did talk to him about these matters; at his office? A At his office, 30

Q The money was paid over at his office? A Yes.

Q The papers were delivered to you at his office? A No, he sent them to me by mail.

Q You never went to the Liberty Trust Company in the matter at all, to their banking house, did you? A No.

Q (*By the Court*) Where was their banking house then? A Up in Central avenue. 40

*Louis Hubing, cross.*

Q You never saw anybody purporting to represent the Liberty Trust Company, except Crocker; that is true? A Yes, he was the main man.

10 Q You have not told us what the conversation was previous to your buying the second set of mortgages, the Aschenbach and the Wolbert mortgage; they were purchased in December? A Yes.

Q How long before the actual turning over of the money did you begin to discuss those with him? A Why, that came up right after, he said they needed that money to pay off the Christmas Fund, and they had two more mortgages to sell.

20 Q How much money all told did you have in the bank to your credit as executor? A Oh, about somewheres around twelve or thirteen thousand dollars.

Q You invested fifty-five hundred dollars of it the first time? A Yes.

Q You left the rest in the bank? A That stayed in the bank.

30 Q Then some weeks previous to December, when you paid the money, Mr. Crocker again suggested you ought to invest this other money, or did you bring it to his attention? A You mean the \$6,000?

Q Yes. Did he suggest to you that you ought to invest it, or did you say to him that you thought you ought to invest it? A He said it.

Q What did he say? A He said that the Liberty Trust Company had two more first mortgages which I could buy.

40 Q I want to know what he said with reference to your position as executor; did he say you would be criticized, or anything like that?

*Louis Hubing, cross.*

A No, he did not say that then; that was understood in the first place.

Q You had a feeling from the first conversation that you, as executor, ought to invest this money? A Yes.

Q Then he said that the Liberty Trust Company had a couple of other mortgages which you could safely buy? A Yes. 10

Q And you pursued the same tactics?

*Mr. Bradner.* I object to that question.

*The Court.* It is cross examination.

*Mr. Bradner.* I know it is cross examination, but Mr. English incorporates in his question something that the witness didn't say at all.

*The Court.* Well, he has no right to do of course, if he did it. 20

*Mr. Bradner.* His testimony was that Mr. Creker told him he had two more mortgages which were first mortgages.

A Yes.

*Mr. Bradner.* And not that it would be safe to buy them.

*The Court.* Reframe your question, and leave that part of it out.

Q Some time prior to December when you paid over the \$6,000, Mr. Crocker said to you that the Liberty Trust Company had two other mortgages? A Two first mortgages. 30

Q Two first mortgages he said, and recommended to you that you buy them? A Yes, he said—

Q And he gave you the numbers of the properties where they were, the streets? A Yes.

Q And you with your friend Mr. Jaedel looked over the physical property? A Yes. 40

*Louis Hubing, cross.*

Q What did you say to him about the title?

A Why, asked him the same thing, whether the searches were all right, and he said, why the Liberty Trust Company just got them and they were all right.

10 Q So you relied on him again, as you did in the other case? A Yes.

Q When he represented that the title was all right? A Yes.

Q You relied on him in that case, as in the other, to see that you had a proper assignment of the mortgages, didn't you? A Yes.

Q And you accepted the paper which he handed you without a question, didn't you? A Well, I ought to, the Liberty Trust did, a big bank here.

20 Q Not what you ought to. You did accept them without question, didn't you? A Yes.

Q And these discussions, and the transactions, were closed out at his office, 776 Broad street? A Yes.

Q You paid the money over there? A I gave him the check, yes, and he sent me the papers by mail.

30 Q And did you get the assignment at the time, or was it sent to you afterwards? A No, they all came together.

Q (*By the Court*) Afterwards, all came together afterwards? A Yes.

Q At the time you got the papers he had had the assignment to you put on record; is that right? A What is that again?

Q At the time you got the papers, the assignment of the mortgage to you had been recorded at the Register's office?

40 *The Court.* Well, did you have it recorded?

*Louis Hubing, cross.*

A No, he had it recorded.

Q I show you C 8 for identification, which is an assignment of mortgage, bearing on its face the stamp of the Register of Essex County; that stamp was on it when it came to you? A That is what I received.

Q You didn't put it on record, it was already stamped as having been put on record? A Mr. Crocker put it on record. 10

Q And the same is true of C 16 for identification, which I show you? A Yes.

Q So after you had arranged the matter to your satisfaction and was satisfied with the value of the property, from an inspection of it with Mr. Jaedel, you turned the transaction over to Mr. Crocker to complete; that is true? A Yes.

Q And you gave him your money, and in time he gave you the papers? A He gave me the bonds and mortgages and assignments. 20

Q And the assignments properly recorded? A Yes.

Q Did he send you the receipts along with the other papers or did he give you the receipts when you paid over the money? A When I paid over the money.

Q And the receipt was handed you in your office? A In Mr. Crocker's office. 30

Q In Mr. Crocker's office I mean. Did you read the receipts when he gave it to you? A Yes.

Q I call your attention now to C 18. Do you notice that receipt says nothing whatever about the Liberty Trust Company? A Well, that was understood.

Q Wait a minute. A He was the chairman up there.

Q Just answer my question. 40

*Louis Hubing, cross.*

*Mr. Bradner.* I object.

Q You notice that says nothing whatever about the Liberty Trust Company, don't you?

*The Court.* The paper shows for itself, of course.

10 *Mr. English.* That is only preliminary to another question.

*The Court.* Well, I understood it was a preliminary question.

Q (Question read).

A No, it doesn't say anything.

Q You noticed that at the time you took it, didn't you? A No, I didn't notice that.

Q You read it? A Yes, I read it.

Q Then you must have noticed it? A But that was understood.

20 Q I am not dealing with what was understood. I want to know if at the time you took it you did not notice, as you do now, that there is no mention whatever made of the Liberty Trust Company? A I didn't take notice.

Q What about Exhibit C 20, the receipt dated December 8, that make no mention of the Liberty Trust Company either, does it? A No, it does not.

30 Q And you noticed that at the time you took it? A No, I didn't notice.

Q Well, you had every opportunity to notice it; it was handed to you to read, wasn't it? A Well, that money that was—

Q Oh, no. Just answer my question please. You had every opportunity to read these receipts when they were given to you, didn't you? A Certainly.

40 Q You relied on Mr. Crocker to fix this thing all right, didn't you? A I relied on the Liberty Trust Company, too.

*Louis Hubing, cross.*

Q Answer my question. Didn't you rely on Mr. Crocker to fix this thing all right? A Yes.

Q Didn't you accept what he gave you without question? A When I saw the assignments from the Liberty Trust Company, and properly signed, I did.

Q Before that you accepted these receipts without any question? A When I paid over the money for those mortgages. 10

Q Because you were relying on Crocker to fix the thing all right for you, weren't you? A Yes.

Q Who paid the fees to the Register for recording those assignments and mortgages? A I don't know who paid that.

Q Did you ever get a note from Mr. Crocker for them? A No. 20

Q Who is the lawyer whom you say you engaged to search the title to the properties after Mr. Crocker had disappeared? A Mr. Schoener.

Q Mr. Schoener? A Mr. Schoener.

Q Why did you secure his services for that purpose? A There was so much in the paper about Mr. Crocker forging different things, documents, and I employed him to look after those.

Q You found that Mr. Crocker's clients generally were becoming very much alarmed after he disappeared, didn't you? A What I read in the paper. 30

Q You read that in the paper, didn't you? A Yes.

Q So you also began to have some misgivings about the situation? A Yes.

Q You thought you had better check up and see what he had done; is that right? A Yes.

Q You said that you left the collection of the interest to Mr. Crocker? A Yes. 40

*Warren C. Biggin, direct.*

Q What was the arrangement between you and him in reference to that? A He said he would collect the interest on that, that is all.

Q And of course forward it to you? A Yes.

10 Q Did you leave him the papers for that purpose? A No, I had all the papers in my possession.

Q He said he would collect the interest and see that you got it? A Yes.

WARREN C. BIGGIN, sworn.

*Direct examination by Mr. Bradner.*

Q Were you at one time an officer of the Liberty Trust Company in the city of Newark? A Yes.

20 Q What office did you hold? A Treasurer.

Q I show you a paper purporting to be dated October 10, 1913, and purporting to be executed by the Liberty Trust Company, by A. W. Watson, president, and ask you if the signature of the subscribing witness is your signature? A It is.

Q Whose signature is over "President?" A A. H. Watson.

30 Q Was he the president of the company? A Yes.

Q And is that the seal of the corporation? A I think it is, it looks like it.

Q And on the back is an affidavit made by you; is that your signature? A Yes, it is.

Q You made that affidavit before Mr. Crocker, his name is signed there? A Well—

Q Well, I will withdraw that question. It is your signature? A It is my signature.

*Mr. Bradner.* I offer that in evidence

*Warren C. Biggin, cross.*

*Cross examination by Mr. English.*

Q Do you remember where this paper was signed, Mr. Biggin? A Why, I couldn't tell you whether I signed that in his office or at the trust company, and—

*Mr. Bradner.* One moment. I object. You need not say anything more than that.

10

*The Court.* Well, he has answered the question.

Q When it came to you was it signed by Mr. Watson?

*Mr. Bradner.* I object. He is only called on to prove his own signature.

*The Court.* This is proper cross examination I think, the order in which the signatures appear, in which the signatures were made, whether his was made first or Watson's, that would be proper.

20

Q (Question read) A They were all signed by the president first, and handed to me, because my duties took me out away from the bank a considerable part of the time.

Q Have you any specific recollection of this paper? A I have no recollection of signing it, or just what office I did sign it in, whether the trust company or Crocker's.

30

Q Any recollection of having read it over before you signed it, at all? A No.

Q Are you sure that is your signature? A Yes. I took it for granted it was all right, being passed upon and signed by the directors of the bank, and signed by the president, that it was all right to sign this thing; I never attended any of the meetings.

Q You were not the secretary of the company? A No, I was just treasurer, an honorary title, my duties being outside soliciting business.

40

*Warren C. Biggin, cross.*

Q You did not have much to do with the management of the bank? A No.

Q Well, can you show me any authority in the by-laws for you as treasurer to execute this paper?

*Mr. Bradner.* I object.

10 *The Court.* That is a matter of affirmative proof, I suppose.

*Mr. English.* I don't know about that. Here is a corporation acts by its agents, and haven't they got to show that the agents have the proper authority?

*The Court.* Yes, but you do not have to show it.

20 *Mr. English.* No, I don't have to, but if I develop on cross examination that this man had no authority to sign doesn't that throw out the paper?

*Mr. Bradner.* The corporation signs by its seal, and the seal of the corporation is on here.

*The Court.* I will take the evidence subject to the objection.

30 Q (Question read) A Well, I can't just remember what the by-laws were in regard to that; I know I was elected treasurer.

Q You know as a matter of fact that the by-laws did not provide for the treasurer signing documents, don't you? A Well, now, I can't tell you, I am not sure whether I was supposed to sign anything other than a draft or a check in payment of anything, or what, that is all I can remember.

Q Did you ever read the by-laws? A Oh, I have read them, but I can't just recall.

40 Q Would your recollection be refreshed if I read you what the by-laws say? A Yes.

*Warren C. Biggin, cross.*

*Mr. Bradner.* This paper is not executed by the treasurer, it is executed by the president.

*Mr. English.* It purports to be signed by the president and attested by the treasurer, and the acknowledgement is by the treasurer.

*The Court.* The proof I suppose is in the usual form, that it was done by the order of the board of directors. 10

*Mr. Bradner.* Yes.

*Mr. English.* No, it don't say that.

It says: "makes proof to my satisfaction that he well knows the corporate seal of the Liberty Trust Company, the assignor named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto, and the said instrument signed and delivered by A. Howard Watson, who was at the date and execution thereof the president of said company, in the presence of said deponent as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness." 20

Q Section 7 of the by-laws, section 7 of article 4, which deals with the duties of the officers, says this: 30

*Mr. Bradner.* I object.

*The Court.* You are assuming now that the paper which you hold in your hand contains the by-laws of this company?

*Mr. Bradner.* That is not in evidence.

*Mr. English.* He said his recollection would be refreshed if I called his attention to it, and I was proposing to read the by-laws; if that is improper I won't do it. 40

*Warren C. Biggin, cross.*

*The Court.* Well, I think you ought to read the by-laws from the original and not from a copy.

10 *Mr. Bradner.* It is admitted in the answer that they were both executed, and they say they have been altered since, so it is strictly a defense.

*The Court.* If you admit that you executed the two documents, why does not that entitle Mr. Bradner to offer the documents without any proof whatever?

*Mr. English.* We do not admit we signed this paper as it stands now, that is the trouble; he is putting in a paper by which he seeks to bind us, saying so and so.

20 *The Court.* You admit you signed an assignment of one of the mortgages, and you claim in your answer that the facts about the other mortgages were inserted afterward.

*Mr. English.* Yes.

*The Court.* Why does not that permit Mr. Bradner to offer the paper as a paper, the execution of which is admitted by the answer?

30 *Mr. English.* Because the answer does not admit the execution of this paper, it admits the execution of an assignment of a particular mortgage, but not of this paper which is now offered in evidence.

*The Court.* That is a matter of defense.

40 *Mr. English.* I do not know whether this particular paper is the paper which we admit we did sign; we admit we signed a paper assigning the Courter mortgage, and that is all we did do, and whether that was de-

*Warren C. Biggin, re-direct.*

stroyed and this was gotten up afterwards, we don't know.

*The Court.* I will take the testimony subject to the objection.

*Mr. Bradner.* If your honor please, if you allow this cross examination of this subscribing witness, I submit that I will have the right to cross examine him, on behalf of the complainant, on that testimony. 10

*The Court.* It is new matter brought into the case by his cross examination, yes, I think you have that right.

*Mr. Bradner.* I can go into it just the same as I would on cross examination?

*The Court.* I think so.

*Mr. English.* Well, I won't pursue this now; we will put this in in our defense. 20

*Mr. Bradner.* I offer the assignment in evidence.

*Mr. English.* And we object to it for the reasons stated in the answer.

(Marked Exhibit C. 8.)

Q (*By the Court*) You have no recollection of seeing this paper before? A I have no recollection of the transaction.

Q (*By the Court*) I mean any independent recollection, any independent recollection of it? 30

A No.

Q You see your name there, you know that is your signature, and that is all? A Yes.

Q And whether it was added to or detracted from you cannot say? A I cannot say.

*Re-direct examination* by Mr. Bradner.

Q You know Mr. Watson's signature also?

A Yes. 40

*Warren C. Biggin, re-cross.*

Q I show you a paper purporting to be dated December 8th, 1913, and purporting to be an assignment of the Liberty Trust Company to Louis Hubing, executor, and ask you if that is your signature as subscribing witness? A Yes.

10 Q It is also your signature to the affidavit on the back? A Yes, with the omission of "treasurer."

Q Can you identify the signature of Mr. Watson? A Yes.

Q And he was the president of the company? A He was president of the company.

Q That is the seal of the company? A Yes.

*Mr. Bradner.* I offer it in evidence.

*Re-cross examination by Mr. English.*

20 Q When you signed the paper was this acknowledgement pasted on the back of it there? A No, sir.

Q It was not? A No.

Q Then you did not sign the acknowledgement? A That is, I recollect signing several of those in Mr. Crocker's office.

30 Q Signed this up in blank? A No, no, they were all written out, but Mr. Crocker had signed them, and then on my visits downtown here I would drop in there, and he would ask me to sign those affidavits.

Q Sign those, to be annexed to assignments as they came in? A Yes.

*The Court.* You mean you signed them in blank?

A No, these were drawn up all right, but I say he would have them signed himself, and ask me to sign my name when I visited his office.

40 Q I want to know whether this typewritten acknowledgement, which now is glued on to this

*Warren C. Biggin, re-cross.*

assignment, was physically glued on when you signed it?

*Mr. Bradner.* This particular paper?

Q (*By the Court*) Or was it a loose paper?

A There was some loose and some—I can't remember any of them being pasted on the back.

Q You signed them when they were loose papers? A Yes.

Q And what they were affixed to after you left you didn't know? A No, sir.

Q That is your signature on the typewritten acknowledgement all right? A Yes, it is.

Q What about the signature on the assignment itself? A That is all right, that is my signature, the word "treasurer," and this one hasn't the word "treasurer."

Q You mean the acknowledgement hasn't the word "treasurer?" A Yes.

Q Is the word "treas." in your handwriting, too? A Yes.

Q Have you any recollection of having acknowledged that paper before Mr. Crocker? A I have no recollection, no, sir.

Q It is quite possible that you having acknowledged a series of acknowledgements, of detached acknowledgements, that this was pasted on without having been actually acknowledged by you? A I wouldn't be surprised.

Q Have you any recollection of the contents of this paper? A I have no recollection.

Q Of having read it, or anything about it? A No, sir. These things were handed to me when I came in from my duties on the outside, and of course seeing Mr. Crocker's signature or the president of the company's signature on them I naturally applied mine on as they were needed, supposed to be needed.

Warren C. Biggin, re-direct.

10     *Mr. English.* This on its face is open to objection. The acknowledgement—assuming it was—simply says “personally appears Warren C. Biggin,” and describes him in no way whatever; as far as the acknowledgement goes he would have no more connection with the trust company than you or I.

*The Court.* The acknowledgement is not part of the instrument.

*Mr. Bradner.* That is put there for the purpose of recording.

*The Court.* It is only for the purpose of complying with the registry act.

*Mr. English.* But it seems to me it throws light on the character of the paper itself.

20     *The Court.* That is an argument on the weight of the evidence.

*Mr. English.* Well, then we will enter our objection to this, your honor.

*The Court.* I will admit it.

(Marked Exhibit C 16.)

Q Did you have any knowledge of the mortgages which the Liberty Trust Company held?

A No.

30     Q You did not have any responsibility about that at all? A No.

Q You don't know whether they held the mortgage of Aschenbach or Wolbert or Courter, or anybody else? A I don't anything about it.

*Re-direct examination by Mr. Bradner.*

Q Mr. Biggin, I understood you to say that you would go to Mr. Crocker's office and sign acknowledgements that were filled up, and with Crocker's signature at the bottom of them? A

*Warren C. Biggin, re-direct.*

I would sign some there at the office and some at the trust company, or have signed several, yes.

Q Would there be a date on them? A I believe they were dated, yes.

Q Well, for what purpose were they signed?  
A The affidavits, you mean? 10

Q Yes. A Just for the simple reason of placing the treasurer's signature with the president's, I suppose, I don't know.

Q Well, what was the occasion for having affidavits of such a nature in Mr. Crocker's office?

*Mr. English.* How is that material to this case, your honor. He is cross examining his own witness.

*The Court.* Yes, Mr. English did not go into it, he started to go into it, but did not follow it up. 20

*Mr. Bradner.* Well, he asked him the fact about his signing that paper detached from the assignment.

*The Court.* Yes, you may cross examine on that, that is new matter no doubt.

*Mr. Bradner.* I want to find out why he did it, if that is so. 30

*The Court.* That is new matter.

Q Why did you sign a detached paper? A Well, I presume because it was a mortgage that was being transacted through his office, that is through his hands.

Q Well, was it the custom then of the Liberty Trust Company to have Mr. Crocker attend to the sale and the purchase of mortgages? A Well, pretty nearly all the mortgages we bought seemed to come from that direction. 40

*Warren C. Biggin, re-direct.*

Q Come through him? A Yes.

Q And all you sold went out through him, didn't they? A Well, I couldn't remember just how many we sold, or just whether they did or not; I know a great many came through that direction, through that office.

10 Q Did Mr. Crocker have the mortgages in his possession? A Presumably he had them in his possession until we bought them. Mr. Watson always handled the mortgage department, I had nothing to do with it.

*The Court.* In answering those questions that Mr. Bradner is putting to you, you are only to answer according to your knowledge.

A Yes.

20 Q If you made a sale of a mortgage and it was necessary to have proof on the assignment, you would sign that proof in Mr. Crocker's office? A Well, some of them, after he had signed them or after the president of the company had signed them.

Q Well, would there be more than one of these papers laid out for your signature at a time? A As I recollect I think I have signed more than one at a time in his office.

30 Q The same kind of a paper that is on the back of this assignment? A Yes.

Q Made out in typewriting? A Yes, sir.

Q Filled in with your name and signed by Mr. Crocker? A Signed by the president or Mr. Crocker, and the seal of the company, before I signed my name.

40 Q That was your habit, to go to Mr. Crocker's office to do that? A Either that or they were sent up to the company; they were all prepared by the time I was to sign.

*Solomon Jaedel, direct.*

Q Did Mr. Crocker hold any office in the company? A He was chairman of the finance committee.

Q During what time? Well, during my administration there, 1912 I think it was; I resigned there in 1913, and I think I was there a year or so.

10

Q What time in 1913 did you resign? A I think it was in the beginning of the Spring, I can't remember the month.

Q You mean 1914, don't you? A Yes.

Q You resigned in 1914? A Yes, 1914 of course, yes.

*Further re-cross examination by Mr. English.*

Q The trust company had a counsel, didn't they, Mr. Pennington, William Pennington? A I believe they did, yes.

20

Q He had more or less to do with this mortgage business, didn't he? A I should think so, I can't say, I never attended a meeting.

Q You don't know much about it one way or the other? A No, I don't; I know those are my signatures.

Q And that is about all you do know? A Yes.

SOLOMON JAEDEL, sworn.

30

*Direct examination by Mr. Bradner.*

Q Do you know Roland D. Crocker? A I did.

Q And Mr. Hubing? A Yes.

Q Have you any knowledge of any transaction between Mr. Hubing, as executor of the Kirchner estate, and Mr. Crocker, in relation to the purchase of some mortgages? A Yes, sir, I have.

40

*Solomon Jaedel, direct.*

Q When did you first have anything to do with it? A The latter part of September or the early part of October.

Q 1913? A 1913, yes.

Q And what did you do? A Why, at Mr. Hubing's request I went down to see Mr. Crocker in reference to some mortgages that Mr. Crocker was going to sell to Mr. Hubing, the executor of the estate, and asked Mr. Crocker what they were.

*Mr. English.* Wait a minute. Can he testify to what he said to Mr. Crocker?

*The Court.* No, unless it may become necessary for the purpose of elucidating what Mr. Crocker said to him, and I do not know about that either, but if any portion of a conversation is admissible the whole of it is admissible, is it not?

*Mr. English.* I do not see why any of it is admissible.

*Mr. Bradner.* It is alleged in the bill that Mr. Crocker was chairman of the finance committee and had charge of the purchase and sale of bonds and mortgages, and if he had, and if that is proved in the case, I think he had a right to say something.

*The Court.* I will take the evidence.

*Mr. Bradner.* Mr. Biggin just testified that he was chairman of the finance committee.

*Mr. English.* My objection is not what he said to the complainant, but what he said to some outside person.

*The Court.* That might be an admission against interest.

Q You went there in behalf of Mr. Hubing?

A Yes, sir.

*Solomon Jaedel, direct.*

Q What did you say to Mr. Crocker? A I asked Mr. Crocker—

*Mr. English.* I object to that.

*The Court.* On what ground?

*Mr. English.* I do not think it is material what he said to Mr. Crocker.

*The Court.* I cannot tell until I hear it. I will admit it. 10

A I asked Mr. Crocker what these mortgages were that he wanted Mr. Hubing to invest his money in; he told me that they were mortgages held by the Liberty Trust Company which they wanted to sell for the purpose of getting in some cash to pay off a Christmas Saving Fund that would be due in December, early part of December, and they were first mortgages on such and such properties, gave the numbers, and they wanted to sell them, that he considered that they were good things for Mr. Hubing to buy, for the principal reason that he could get his money on thirty days' notice. 20

Q Did you report what he said to Mr. Hubing? A I did.

Q I show you Exhibit C 3, a list of two properties; did you ever see that before? A Yes.

Q Where? A In Mr. Hubing's possession. 30

Q And whose handwriting is it, do you know?

A That is Mr. R. D. Crocker's handwriting.

Q You are familiar with his handwriting? A Very.

Q (*By the Court*) When did you see that first? A Either in the latter part of September or early in October when I accompanied Mr. Hubing to look at these two properties, he wanted my opinion as to the value. 40

*Solomon Jaedel, cross.*

Q (*By the Court*) You saw it first on the day on which you and he went to look at the properties? A Yes.

Q You went with him and appraised these two properties? A Yes.

10 Q On a subsequent occasion did you go with Mr. Hubing to look at any properties? A Yes.

Q Did you have a similar list of two properties? A Yes, I had a memorandum.

Q Who made it? A Made by Mr. Crocker.

Q And what were those two properties? A The first two we went to look at were Kinney street and Twelfth street, and the other two were Lyons avenue and Fourteenth street, Lyons or Weequahic avenue, down in that section.

20 Q On Twelfth street did you find a house at the number located on the list? A At that number, yes, sir.

Q On Fourteenth street did you also find a house? A Yes.

Q You examined both those properties? A Both of them.

Q Did you have many dealings with Mr. Crocker? A Yes.

Q Do you know whether or not he was connected with the Liberty Trust Company? A What he told me, yes, sir.

30 Q Only what he told you? A Oh, yes, in various transactions I had with him, convinced me that he was.

Q Well, did you ever have any transactions that took you to the office of the Liberty Trust Company? A Not until after he absconded.

*Cross examination by Mr. English.*

40 Q Your part in this transaction was to help Mr. Hubing appraise the value of the property, was it not? A Yes, sir.

*Frank Schoener, direct.*

Q You gave your judgment on that as the physical valuation, whatever it was? A I did.

FRANK SCHOENER, sworn.

*Direct examination by Mr. Bradner.*

Q What is your business? A I do title searching. 10

Q In the fall of 1914 did you do any work for Mr. Hubing? A Yes.

Q Investigating certain mortgages he held? A I did.

Q I show you four mortgages, Exhibits C 5, C 7, C 12, and C 15; you have seen those before? A Yes, sir.

Q How did you go about it to make your investigation? A Why, Mr. Hubing came to my office and engaged me to make the searches on them, and he handed me these bonds and mortgages and assignments, and I started first on the Kinney street property, and that I found had a first lien of \$2,500. 20

Q You searched the records? A I did.

Q (*By Mr. English*) That is the Courter mortgage you are speaking of? A Yes.

Q What else did you find in reference to that? A I went to Mr. Courter's house and asked him did he sign that? 30

*Mr. English.* No.

Q No, just what you found out, not what you asked him about it; did you find anything on the record? A Showing that it was \$2,500, and still remained open on the record.

Q Was there any memorandum on the record? A Not at the time that I made my search.

Q Afterwards was there something put there? A I learned there was. 40

*Frank Schoener, direct.*

Q Did you see it? A No, sir.

Q And as to the property on North 12th street? A That was a third mortgage.

Q You found that to be a third mortgage?

A Yes.

10 Q And the property on Lyons avenue? A That was a fourth mortgage, I believe.

Q That appeared on the record? A Yes.

*Mr. English.* Is this gentleman a lawyer?

A No, sir.

*Mr. Bradner.* He is a title searcher.

*Mr. English.* Well, is he qualified as an expert on titles to testify in court?

*Mr. Bradner.* He is not testifying as an expert, he is testifying to what he found on the record.

20 *The Court.* I think this testimony is admissible. A man does not have to be a lawyer to know how to search titles.

Q And the Wolbert mortgage, what did you find on record in relation to that?

*Mr. English.* What is the North 12th street mortgage?

A The Heidel mortgage .

30 Q And the Lyons avenue mortgage is the Aschenbach mortgage? A Yes, and that is a fourth mortgage.

Q What did you find out about the Wolbert mortgage on the record? A That was a bogus mortgage on the record.

Q What do you mean by "bogus"? A There was no claim of title in to Wolbert.

Q He had no title at all? A No title at all.

40 Q Did you try to find the property? A I did, I went there and I made inquiries for the purpose of finding George Wolbert, and in going

*Frank Schoener, cross.*

to that address I asked the tenant there who owned the property, and he said he did, and I asked him did he know—

*Mr. English.* I don't think all this conversation is proper.

*The Court.* He made a search for Wolbert and could not find him. 10

A Yes.

Q And there is no title in Wolbert on the record? A That is right.

Q Do you know Mr. Watson? A I met him.

Q Where? A At the Liberty Trust Company.

Q When did you meet Mr. Watson? A The following Thursday after we had learned that Mr. Crocker had gone away, that was really about ten days after his disappearance. 20

Q Where did you see him? A Mr. Watson?

Q Yes. A At the Liberty Trust; I went up there to find out whether he signed his name as president to the assignments of mortgages.

Q To the two assignments? A To the two assignments.

Q The two assignments that have been produced here, purporting to be signed by him? A Yes.

Q Did you show him the two assignments? A I did. 30

Q What did he say? A He said that was his signature, and he believed that was the seal, and he believed that was Mr. Biggin's signature.

*Cross examination by Mr. English.*

Q Where is your office? A 740 Broad, Newark.

Q You say Mr. Hubing came and engaged you to make these searches? A Yes. 40

*Frank Schoener, cross.*

Q What did he say at the time? A Why he said that Mr. Crocker had gone away, he had learned, and he was anxious about these mortgages, and asked me would I go up and search the mortgages to see if they were O. K.

10 Q Did he say anything to you about his previous relations with Mr. Crocker? A No, sir, he did not.

Q Did he say the mortgages had been placed through Mr. Crocker? A No, sir.

Q In what connection did he mention Mr. Crocker's name? A Why, at a general conversation, we learned that he ran away and we talked about it, because he came in my office.

20 Q Then the fact that Crocker had run away was the thing which was uppermost in the conversation when he asked you to make these searches? A Yes.

Q Did Mr. Hubing say how that affected his interests? A No, sir, he did not.

30 Q Or why he was interested in the fact that Crocker had run away? A Why, I believe in the matter of conversation he said that the estate had some mortgages which he had purchased from Mr. Crocker, from the Liberty Trust Company.

Q He mentioned the fact that Crocker had handled the transaction for him? A No, not necessarily, I don't recollect it.

Q You found the Courter mortgage to be all right on the record? A Yes.

Q And the Heidel mortgage a third one? A Yes.

Q And Aschenbach a fourth? A Yes.

40 Q And Wolbert not in existence? A That is right.

*William L. Brunyate, direct.*

Q Did you find the mortgages themselves recorded? A Yes, sir.

Q And you found these assignments recorded?  
A Yes, sir.

WILLIAM L. BRUNYATE, sworn.

*Direct examination by Mr. Bradner.*

10

Q You are a counsellor at law, practising in Newark? A Yes.

Q Are you foreclosing on behalf of Mr. Hubing, as executor of the Kirchner estate, the Courter mortgage, Exhibit C 5? A Yes, I am.

Q And in what state is the case in the court of Chancery, in what situation is it rather, now?

A It is at issue, ready to be tried, it is at issue before your honor, set down for hearing tomorrow.

20

*The Court.* Set down for hearing today.

A Your honor set it down for today, but there was an understanding that this case would take two days.

Q Have you the answer filed in that case? A Yes, I think I have it in my papers.

*The Court.* Well, the files are here.

A Yes.

30

*Mr. Bradner.* And I offer the files in the suit in evidence for the purpose of showing the issue.

*The Court.* That is Hubing vs. Courter?

*Mr. Bradner.* Yes.

*Mr. English.* How is that material?

*Mr. Bradner.* We allege in our bill that the title is disputed to that; if we succeed in the foreclosure, why that would establish the fact that that is a first mortgage and

40

*William L. Brunyate, direct.*

we have a good title to it; if we do not succeed we lose the mortgage.

10 *Mr. English.* How can this be evidence, one side says one thing and the other side says another, how can that be evidence; of course if the case went to a decree the decree would settle the issue, but the mere fact that there is an issue does not help this case in any way, I think it works confusion.

*The Court.* I do not see just now how the fact that that mortgage is being foreclosed affects this case. You say it affects it because the record shows that the title to the mortgage is disputed. I do not see that.

20 *Mr. Bradner.* Our case is that this was represented to be a first mortgage, and that the Liberty Trust Company had good title to it. Now we allege that the title is doubtful, that there is a notice on the record, which I will prove by Mr. Brunyate, forbidding the cancellation of that mortgage, and the title claimed by somebody else, and that an issue has been framed in this court on that mortgage, somebody else claiming the title to it, and claiming that the Liberty Trust Company had no title. I would show  
30 further that I notified the Liberty Trust Company that I proposed to foreclose that mortgage, and it was agreed that this case should not be prejudiced by it at all, by taking that action; we did that in order to have that question settled.

*The Court.* And yet I do not see how those matters can affect this case. The great issue in this case is whether Crocker  
40 was acting as agent for the complainant or

*William L. Brunyate, direct.*

as agent for the defendant. I will rule against you on that offer, Mr. Bradner, but allow you to renew your offer in case it appears, as we get further along in the case, that it is necessary for you to have that record in; I do not think it is necessary, as I look at it now.

10

Q Mr. Brunyate, did you make a search in the records of Essex County relating to the Courter mortgage? A I did.

Q And what did you find on the records?

*Mr. English.* When did he make it?

A I made it directly before beginning action, I can tell you in a moment exactly.

*The Court.* The bill was filed March 22, 1915.

A March 13, 1915.

20

Q And what did you find on the record? A The mortgage, the Courter mortgage of \$2,500, apparently it was a first mortgage, but on the side of the mortgage in the book was a—

Q (*By the Court.*) On the margin of the record? A On the margin of the record, was a notice which was as follows: "This mortgage not to be cancelled. See order on file. Thomas P. Alworth, Register," Then there was an order on file, of which this is a copy; shall I read it?

30

Q Yes. A "Newark, N. J., September 26, 1914. To the Register of Essex County, Newark, N. J. Sir: If any person or persons present the following mortgages for cancellation do not cancel of record them or any of them, and do not cancel of record any mortgage belonging to the estate of A. Loehnerberg, and do not cancel of record any mortgage belonging to the estate of William Rowman, and be particular not to

40

*William L. Brunyate, direct.*

cancel any of the following mortgages." Then there was a long list, including this mortgage.

Q What does it say in respect to this mortgage? A In relation to this mortgage the note was as follows: "Albert C. Courter and wife, present owners, Max and Annie Rosenthal, dated September 19, 1896, in A 13, 282, Essex County records, assigned by Lizzie Hess Loehberg to Roland D. Crocker, and by Roland D. Crocker to said executors of August Loehberg, deceased, \$2,500"; and the whole notice was signed by Thomas S. Henry, counsel for said estate.

Q When you foreclosed the mortgage you made that estate a party to the suit? A Because of that notice, yes.

Q And they claimed title? A They have filed an answer claiming title.

Q Have you also started the foreclosure suit of the mortgage on the North 12th street property? A Yes.

Q (*By the Court.*) The Heidel mortgage? A Yes. I began foreclosure, and the foreclosure is in the same state at present, at issue.

Q That is a question of priority there? A Yes.

Q You made the search also against that title? A I did.

Q What did you find on the record? A I found that the mortgage in question is really a fourth mortgage, there are three prior mortgages.

Q Give the result of your examination, stating the mortgages as they appear on the record?

A The first mortgage is a mortgage recorded in M 24, page 533, in the amount of \$750.

Q To whom? A To one Charles H. Coffin.

40 There is a mortgage recorded in C 28, 427, in

*William L. Brunyate, direct.*

the amount of \$4,000, on the same premises, to Lizzie H. Leithof, Frank Schwartzwaelder, surviving executors and trustees under the will of August Loehnberg deceased.

Q Is that assigned?

*Mr. English.* Are you reading from your search? 10

A Yes. That mortgage is not assigned, apparently. Now there is a third mortgage of \$5,000.

Q A third mortgage on the North 12th street property? A Recorded in Z 30, page 48, in the amount of \$5,000, a mortgage to the Liberty Trust Company, a corporation of the State of New Jersey.

Q What is the date of that? A That mortgage was dated March 20, 1913. 20

Q (*By Mr. Slingerland.*) Made by whom? A By Albert B. Aschenbach and Maud P., his wife. That mortgage was, very curiously, assigned.

Q By the mortgagee? A By the mortgagor, it was assigned by Albert B. Aschenbach to the Liberty Trust Company.

Q It is the same mortgage on record as made by Aschenbach to the Liberty Trust Company? 30

A Yes, so that in my judgment it is still open. Q What is the fourth mortgage on the record? A The mortgage in question here.

Q The one made by Aschenbach to Heidel? A Yes—no, the fourth mortgage is the mortgage that was made by Heidel to the Liberty Trust Company and assigned to Hubing.

Q And in foreclosing this Heidel mortgage on North 12th street, have the prior mortgagees answered and claimed priority? A Some of them have, the Coffin mortgage has answered. 40

*William L. Brunyate, cross*

Q Has the Liberty Trust Company? A And the Liberty Trust Company has answered.

Q And that case has been set down for hearing before Vice Chancellor Howell? A Today.

Q Following this case? A Yes.

*Cross examination by Mr. English.*

10

Q The record of the Courter mortgage is that it is a first mortgage, the only cloud against it being this suggested something signed by Judge Henry as counsel? A That is all.

Q If that does not pan out, so to speak, why then the record stands as the first mortgage? A Yes.

20

Q This mortgage, third mortgage on the other property, that Aschenbach assigned as mortgagor, did you make him a defendant in the bill? A Aschenbach?

30

Q Didn't you say that Aschenbach had assigned a mortgage, although he was the mortgagor, and that you described as curious? A Yes, Aschenbach made the mortgage to the Liberty Trust Company, and after having made the mortgage assigned the mortgage to the Liberty Trust Company, assigned a mortgage which the Liberty Trust Company already owned, made by himself.

Q He made it in the first place, and then he assigned it afterwards? A Yes.

Q What is your conclusion about that, as a matter of law? A I don't see that that assignment is worth anything.

Q So that it is simply on the record, as you have it, as a third mortgage? A Yes, I should think so.

40

Q Then that is the same mortgage which purports to be assigned by the Liberty Trust

*William L. Brunyate, re-direct.*

Company to Mr. Hubing? A Oh, no, there was a fourth mortgage, made to the Liberty Trust Company, assigned to Mr. Hubing.

*The Court.* Fourth mortgage made by Aschenbach?

Q So Aschenbach made two mortgages on the same property? A Oh, no, it is made by the subsequent holder of the title. 10

Q Who is that?

*Mr. Bradner.* Rudolph Heidel.

A Yes, Mr. Heidel, it is the Heidel mortgage.

Q Then Aschenbach made two mortgages on the same property, one direct to the trust company and one to Heidel? A No, you are confused there.

Q Well, straighten me out. 20

*The Court.* He conveyed title to Heidel, and then Heidel made the fourth mortgage.

Q So the Liberty Trust Company, according to the record, held two mortgages on the same property, one direct by Aschenbach, and one by assignment from Heidel? A No, the other one direct from Heidel.

*Mr. Slingerland.* That third mortgage, by the way, has been paid; we have received our money for that third mortgage, although it does not appear on record; we are not claiming any right there. 30

*Re-direct examination* by Mr. Bradner.

Q Who did you find to be the owner of the property covered by the Courter mortgage? A The present owner is the wife of Max Rosenthal, Annie Rosenthal.

Q Did you ascertain whether any interest had been paid on that mortgage? 40

*William L. Brunyate, re-direct.*

*Mr. English.* To whom?

Q There is no credit on the bond, is there?

A No, there is not.

Q Has the owner filed an answer? A Yes.

Q To what effect?

*Mr. English.* I object.

10

*The Court.* I do not think it is necessary to go into that.

*Mr. Bradner.* I would like to have the right to prove that subsequently, if necessary.

*The Court.* If it turns out to be important.

*Mr. Bradner.* I can state to the court what I want to prove, and that is that Mrs. Rosenthal has been paying the interest to the executors of the Loehnberg Estate for some time; the Liberty Trust Company has never collected a cent of interest on this mortgage.

20

*The Court.* How does that bear on the issues?

*Mr. Bradner.* It bears on the issue that they did not own the mortgage, the Courter mortgage.

30

*The Court.* I do not think that is important or material to the issues in this case. You cannot get any recovery on the covenant in this suit, can you? You are suing here for your money back with interest.

*Mr. Bradner.* Yes, I am not suing on the covenant; the covenant is only evidence of the transaction, that is all.

40

*The Court.* If you were suing on the covenant then possibly this evidence that

*Howard S. Kinney, direct.*

you are now offering would be material and relevant testimony.

*Mr. Bradner.* But if the covenant is false, that is one thing that is false in that assignment, and it raises a pretty strong inference that other statements are false. The covenant is that the money is due with interest. 10

*The Court.* Well, I do not think it is material to this case now.

HOWARD S. KINNEY, sworn.

*Direct examination by Mr. Bradner.*

Q Are you the secretary of the Liberty Trust Company? A Not now; I was until the first of January of this year. 20

Q And for how long had you been? A I don't know the exact date, but about the time that they started in business.

Q When was that? A That was along in November, 1912.

Q Do you know Mr. A. W. Watson? A Yes, sir.

Q Was he the president of the company in 1913? A Yes, sir.

Q All through the year 1913? A Yes, sir. 30

Q And Mr. Biggin was the treasurer? A Yes, sir.

Q Did the company during that year have a finance committee? A Yes, sir.

Q And who were on that committee? A Do you want their first names?

Q Yes. A Well, there was Mr. Gottlob Kautzmann, Mr. William B. Power, A. Howard Watson, Andrew O'Kiefer, Albert H. Peal, myself, Crocker, and I think Doctor Richmond, Edward M. Richmond. 40

*Howard S. Kinney, direct.*

Q And how was that committee selected, from what body? A Board of directors.

Q Does it constitute the whole board of directors? A No, sir.

Q Only a part of them? A A part of the board.

10 Q And was the committee appointed annually? A Yes, sir.

Q When was the appointment made in 1913? A The exact date I don't recall, it was after the annual stockholders meeting.

Q Who was the chairman of the finance committee? A Crocker.

Q Roland D. Crocker; all through the year 1913? A Yes, sir.

20 *Mr. English.* I have no cross examination, but while he is on the stand I would like to prove the minute book, if there is no objection.

*Mr. Bradner.* Part of your case.

*Mr. English.* I know, but only for the purpose of economizing on time.

Q (*By Mr. English*) You were secretary and kept the minutes? A Yes.

30 Q (*By Mr. English*) And this big book I show you, labelled, "Minutes Liberty Trust Company" is the official minute book? A Yes.

*Mr. Bradner.* I would like to have the benefit of cross examination, if anything is brought out in those minutes.

*The Court.* The rule is that if the book is admissible, after it is identified and proved, to offer the whole book and then call attention of opposing counsel to such portions of the record as they rely upon.

*Howard S. Kinney, direct.*

*Mr. English.* That is what I propose to do.

*Mr. Bradner.* All I had in mind was the fact of the testimony of an adverse witness; I do not want to call this witness as my witness on certain matters, but I want to cross examine him on certain matters though, if he testifies to these minutes. 10

*Mr. English.* Well, Mr. Kinney will be here this afternoon, so I won't pursue this; you can finish your case first.

*Mr. Bradner.* I want to put in evidence the decree, the files and the decree in the case of the Hearthstone Building and Loan Company.

*The Court.* That is not here.

*Mr. Bradner.* Well, I will offer it. The decree in the case of the Hearthstone Building and Loan Association against Lane, which was a foreclosure of the mortgage on the Lyons avenue property, and the suit was tried before your honor, and the decree adjudicated that the Hearthstone Building and Loan Association's mortgage was a first mortgage, and that the mortgage held by the Weequahic Park Company was the second mortgage, and the mortgage assigned by the Liberty Trust Company to Mr. Hubing is a third mortgage. I offer that decree in evidence for the purpose of proving that fact. 20  
30

*Mr. English.* Then that wipes out this fourth mortgage idea.

*Mr. Bradner.* In the trial of the case it appeared that the third mortgage was open of record but had been paid, and we had 40

*Howard S. Kinney, direct.*

the owner of it here to testify it had been paid but never been cancelled.

*Mr. English.* Well, we have no objection to the decree being offered in evidence.

RECESS.

10

*Mr. Bradner.* I want to offer in evidence the files and final decree in the case of Hearthstone Building and Loan Association, complainant, and Clarence E. Lane and others, defendants, in the Court of Chancery of New Jersey, in which the bill was filed November 16, 1914, and final decree is filed March 25, 1915—for the purpose of showing that that decree adjudicates that the mortgage on the Lyons avenue property was the third mortgage on the property, two mortgages unpaid are prior to it.

20

Exhibit C 21 (not marked).

HOWARD S. KINNEY, resumed for

*Direct examination by Mr. Bradner.*

A The executive committee were elected by the stockholders and not by the board of directors; that was a stockholders' meeting of January 4, 1913, and also the chairman of the executive committee elected by the stockholders and not by the board of directors.

30

Q The executive committee and finance committee constitute the same committee? A We always refer to it as the executive committee and not finance committee.

Q You called it executive committee? A Call it executive committee.

40

*Louis Hubing, direct.*

Q And that committee did have charge of the finances of the Liberty Trust Company? A Yes, sir.

Q And Mr. Crocker was the chairman of that committee? A He was the chairman.

Q All through 1913? A Yes, sir. Then I think also on the executive committee I left out the names of John W. Phillips, he was a member of the executive committee during 1913, and Rennselaer H. Isman, he was also a member of the executive committee, and was at that time. I am not sure whether I added those names or not. 10

Q I might ask you while you are there, did the Liberty Trust Company deal in bonds and mortgages? A What do you mean by dealing in bonds and mortgages?

Q Do you buy bonds and mortgages? A I wouldn't say that was part of its regular business, no. 20

Q But it did buy mortgages at times? A Well, it is rather a broad question; I wouldn't say that that was part of our business; we did actually buy bonds and mortgages.

Q You did not make any loans on bonds and mortgages, do you? A Yes.

Q Directly? A Yes, sir. 30

Q And you sold mortgages? A I couldn't answer that.

LOUIS HUBING, recalled.

*Direct examination by Mr. Bradner.*

Q I understood you to testify this morning, in answer to Mr. English's question, that the first assignment of \$5,500 was recorded, and after it had been recorded it was sent to you by Mr. Crocker, is that right? A Yes. 40

*Louis Hubing, cross.*

Q Was it done in the same way on the second assignment? A No, it was not; Mr. Schoner, he recorded the second assignment.

Q I show you the second one, which seems to have been recorded on September 22, 1914?

A That is the one.

10 Q How did Mr. Schoner get it to record it?

A When he made the searches.

Q When he made the searches? A Yes.

Q Did you have it in your possession all that time? A Yes, sir.

Q Did you give it to him to have it recorded? A Yes, sir.

Q Well, how long had you had it? A Why, quite a while.

Q How did you get it? A Through Mr. Crocker.

20

*Cross examination by Mr. English.*

Q You bought this mortgage or these mortgages in December of 1913, didn't you? A Yes.

Q And at that time you got this assignment, at the time you paid over your money?

A Yes, sir.

Q And you kept it and never put it on record for all that intervening time? A Yes.

30

Q And then, when Mr. Crocker disappeared, then you had Mr. Schoner, who was searching the title for you, put it on record, is that right?

A Yes, sir.

Q Where did you keep it in the meantime?

A Why, it belonged with the rest of the papers.

Q Just filed it with the papers? A Yes.

*Howard S. Kinney, direct.*

WILLIAM L. BRUNYATE, recalled for

*Further cross examination by Mr. English.*

Q Now, turn to your search on the Lyons avenue property. A I didn't search the Lyons avenue property, Mr. English.

Q Oh, you did not? A No; my testimony did not relate to that. 10

Q Which one did you search? A The Courter mortgage and the Heidel mortgage.

Q What do you say you searched? A The Courter mortgage and the Heidel mortgage.

Q Just referring to the Courter mortgage for a minute, did you find that had been assigned to Morehouse? A Yes.

Q What was his name? A Harry W. Morehouse, Jr. 20

Q And Morehouse assigned to whom? A Liberty Trust Company.

Q But you did not search the Lyons avenue property nor the property supposed to be owned by Wolbert? A I have no association with those cases at all.

*Mr. Bradner. We rest.*

HOWARD S. KINNEY, recalled by the defendant. 30

*Direct examination by Mr. English.*

Q It already appears that you were the secretary of the Liberty Trust Company? A Yes.

Q I show you a big book entitled "Minutes of the Liberty Trust Company," and ask you if they are the minutes of the board of directors of that trust company? A And also of the meetings of the executive committee. 40

*Howard S. Kinney, direct.*

Q Did you report those as secretary also?

A Yes, that is, from the time that I was secretary.

Q That is what I mean? A Yes.

Q Does this book contain the by-laws of the company? A Yes.

10 Q Found beginning at page 1 and running over through page 8? A Yes.

Q Thirteen articles in all? A Yes.

Q And the balance of the book contains the minutes of the executive committee and directors' meetings? A Yes, sir; the by-laws have been amended since then, they include the amended by-laws.

Q Where are they? A They were amended subsequent to—

20 Q Since Mr. Crocker's disappearance? A Yes, sir.

Q The by-laws, I refer to page 1 to 8, were in force at the time of his connection? A Yes; there have been one or two amendments since then.

Q I don't care anything about since then. A I mean even during Crocker's regime.

30 Q Were these as they stand now in the front of the book the by-laws in force at that time? A Yes, with one or two amendments.

Q Can you tell me what the amendments are? A I couldn't without going through the minutes.

Q Well, what do they relate to? A Well, the subjects I couldn't tell without going through the minutes.

Q Can you go through and find them? A Yes.

40 Q You can do that while somebody else is testifying? Then these minutes are signed by you as secretary? A Yes, sir.

*Howard S. Kinney, direct.*

Q And your signature appears here, Howard S. Kinney? A Yes, sir.

*Mr. English.* Pursuant to the suggestion your honor made before lunch I will offer the book in evidence then and point out what I desire.

(Marked Exhibit D. 1.)

10

A (Continuing) I would like to add, Mr. English, that Mr. William P. Powell has signed these as secretary also.

*The Court.* Now, call Mr. Bradner's attention to the portion you are relying on.

Q Mr. Kautzmann suggested to me that the only time the minutes were amended was the annual meeting held the first of each year. Can you turn to the minutes and just tell us in a moment whether there was any amendment, turn to the January meeting; when does this mean? A That would be January 13th.

20

Q Have you any amendments there? A No amendments here.

Q Look at the next meeting.

*Mr. Bradner.* That would be after this transaction.

Q I want to show you a paper I want to identify. I show you a paper dated April 4, 1913, having at the bottom purporting to have the names of Roland D. Crocker, John W. Phillips and William Pennington, committee.

30

Q Do you know those signatures? A Yes.

Q Are they the signatures of Crocker, Phillips and Pennington, respectively? A I would say that they were.

Q You have seen each of those gentlemen write? A Yes; the only thing that I might express a doubt about would be the Phillips signature.

40

*Howard S. Kinney, direct.*

Q Do you express any doubt about it or do you think it was his signature? A Well, it looks like his signature; I would say that it was his signature.

10 Q Now, I show you a similar paper, which is dated May 1, 1913, and has the same three signatures on it; are they the genuine signatures, as far as you are able to say? A Well, I would say that they were the signatures of the three men that signed it.

(Paper dated April 4, 1913, marked 1 for identification.)

(Paper dated May 1, 1913, marked 2 for identification.)

20 *Mr. English.* Now, your honor, please, I will mention these by-laws and parts of the by-laws that we specifically refer to.

*The Court.* Find the places and read them aloud.

30 *Mr. English.* "Article IV, Section IV. The Chairman of the Executive Committee shall keep or cause to be kept a daily record of the moneys received at the company's office on every account whatever. He shall countersign or certify all bonds issued by the company as trustee. He shall be the trust officer and title officer of the company. He shall take charge of and keep under his control all certificates of stock and personal securities of every description held or owned by the company with a full statement of the same, and shall receive all interest and dividends on the stock, United States bonds and state bonds.

40 "Whenever any stock shall be hypothecated with the company as security for a debt or loan the chairman of the Executive Com-

*Howard S. Kinney, direct.*

mittee shall be authorized at his discretion to transfer the same to the company. He shall also have the power to make loans and to make any and all transfers of the securities of the company as may be authorized by the Executive Committee. He shall at all times exercise such general direction and supervision of all of the business of the company and its interests as security may require, and shall nominate and appoint all such agents, clerks and employes as may be found necessary to transact the business of the company, subject to the confirmation of the Executive Committee; he shall have the control and direction of all agents, clerks and employes of the company, and with the consent of the Executive Committee, may suspend or remove any agent, clerk or employe of the company.”

Then next I refer to Section I, Article V. There are a number of paragraphs, but the ones I refer to specifically are the last two that deals with the Executive Committee.

“Section I, Article V. The Executive Committee shall superintendent and advise all investment of the funds of the company; shall superintend all special trusts and shall have full power to manage and control the entire business of the company when the board is not in session.

“Every disbursement exceeding five hundred dollars (\$500) shall be reported to the Executive Committee at the next meeting after the making of such disbursement.”

*Howard S. Kinney, direct.*

Then Article VI, Sections I and II, relating to the seal of the company.

10 "Article VI, Section I. The president shall have the custody of the seal of the company, and shall have the power to affix the same to certificates of the capital stock of the company; to certificates acknowledging satisfaction of judgment and mortgages, and to assignments of mortgages, when the whole amount due, or to be paid thereon, shall have been paid; and to releases of portions of the mortgaged premises when authorized by the board of directors or Executive Committee; to transfers and powers of attorneys for the transfer of hypothecated stock and for the collection of interest and dividends; to legal proceedings; to any assignment of mortgages or stocks to the superintendent of the banking department; also to all deeds and releases of any real estate or portions thereof, which have been or may be conveyed to the company, on or by any trust, deed or mortgage; and to any contract in relation to any real estate or portions thereof so conveyed when such deed, release or contract is authorized or required by the provisions of said deed of trust or mortgage; to any certificate of deposit to which a seal may be requisite; and to receipts for money or property; to acceptances of appointments as executor, administrator, guardian, receiver or other special trust ordered by any court having jurisdiction; and to such transfers of the securities of the company as may be authorized by the board or by the Executive Committee."

20

30

40

*Howard S. Kinney, cross.*

Section II. "The seal of the company shall not be affixed to any other deed, conveyance or instrument, whatever, unless by authority of the board or Executive Committee."

Now, the next one is Article VII, Section I.

10

"Article VII, Section I. No loan on bond and mortgage shall be made without the approbation and concurrence of the Executive Committee, and that committee shall take no action on loans secured by real estate until after report in writing shall be made to it by the committee on appraisals."

"Section III, Article V. There shall be a committee on appraisals consisting of not less than three members of the board. This committee shall be appointed by the chairman of the Executive Committee, and vacancies shall be filled in the same manner. They shall hold office during the pleasure of the board or until others are appointed in their stead."

20

"This committee shall examine all applications for loans on real estate, and shall report in writing to the Executive Committee as to the value of the property offered as security."

30

*Mr. Bradner.* It has no relevancy; this is not a loan.

*Cross examination* by Mr. Bradner.

Q Section IV of Article IV is under the title, "Duties of officers," and prescribes the duty of the chairman of the Executive Committee, and Mr. Crocker was that chairman during 1913? A Yes, sir.

40

*Howard S. Kinney, cross.*

Q It was his duty to keep a daily record of the moneys received at the company's office on every account whatever. Did he do it? A I couldn't answer that.

Q Have you got a daily record on the file made by Mr. Crocker of the moneys received?

10 A Not to my knowledge.

Q "He shall countersign or certify all bonds issued by the company as trustee." Did he do that during that year? A Well, I couldn't answer whether he did that, just what he did and what he didn't do; I presume that he did.

Q You don't know. During the year 1913 did the company issue any bonds? A No.

Q He was also the trust officer and title officer of the company, that is right? A Yes.

20 Q "He shall take charge of and keep under his control all certificates of stock and personal securities of every description held or owned by the company." Did he do that? A That I don't know.

Q Did he have in his possession the personal securities held and owned by this company? A They were presumed to be kept at the bank.

Q I don't ask you that. Did he have them in his possession?

30 *The Court.* At the bank or elsewhere?

Q At the bank or elsewhere? A Well, I would say that he had them in his possession, if they would be at the bank in his possession, then I would answer that yes.

Q Did he have any other of them at his office, his private office? A I think he did, yes.

Q And if he had them at the bank they were entirely under his control and he had access to them and could get them if he pleased? A  
40 That I couldn't answer.

*Howard S. Kinney, re-direct.*

Q Didn't he in fact take them out back and forth just as he pleased? A I presume he did, that is, at that time.

Q Yes, during 1913. A Yes.

Q Did this executive committee hold meetings regularly? A Yes.

Q And a part of Article V provides the executive committee shall meet regularly at such times as the committee may itself appoint, and also on the call of the chairman of the executive committee. Do you know whether the executive committee appointed any regular days for meeting? A I think at that time it was Thursday morning. 10

Q Every Thursday morning? A Yes.

Q And then the chairman could call a meeting whenever he desired to do so? A Yes, sir. 20

Q Have you in this book the minutes of the meetings of the executive committee? A Yes, sir.

Q All through this book? A Yes, sir.

*Re-direct examination by Mr. English.*

Q There were a couple of minutes of the executive committee meetings I was going to refer to when Mr. Kautzman is on the stand; do you want me to point them out now? One of the meetings of the executive committee as reported on page 69 and again on page 75. You reported on page 69 and again on page 75 the committee meetings? A Yes. 30

*The Court.* What are the matters you want to call Mr. Bradner's attention to?

*Mr. English.* Nothing else.

*Mr. Bradner.* You want to use these with another witness?

*Mr. English.* Yes. 40

*Gottlob Kautzmann, direct.*

GOTTLOB KAUTZMANN, sworn.

*Direct examination by Mr. English.*

Q What is your present connection with the Liberty Trust Company? A I am president.

10 Q And when did you become president? A On December 1, 1914.

Q Prior to that did you have any connection with the company? A Yes, I was a member of the executive committee.

Q Also a member of the board of directors? A Yes, sir.

Q As a member of the executive committee did you have anything to do with the financial side of the company? A Only in acting  
20 on applications for loans that came before the committee.

Q Now, what was the general practice with reference to applications for loans secured by mortgage?

*Mr. Bradner.* Was that in 1913?

A Yes. Why, the usual procedure was that the application would be made by the individual desiring the loan.

30 Q Either personally or through his attorney? A The written application would be signed by the person.

Q How would it be presented? A It would be presented—

*Mr. Bradner.* I object to this because it is not relevant to this issue. We did not borrow any money; we purchased some mortgages, and if they have any practice relating to the sale of mortgages, that  
40 might be relevant; but the practice relat-

*Gottlob Kautzmann, direct.*

ing to loans on mortgage to people has nothing to do with this case.

*The Court.* I am not so sure, Mr. Bradner, that the issue is so narrow as that. I think I will take the testimony. I think it would be, in some aspects of the case it would be entirely proper, perhaps in others not; but I will let it in. 10

Q What was the practice with reference to the purchase of mortgages in 1913? You say application was signed by the individual. How was it presented to the committee? A It was presented in writing, usually through the attorney of the party who was making the application.

Q And when it came up to the committee what would the executive committee do with it? A Refer it to the appraisal committee. 20

Q And what would be the next step? A The report of the appraisal committee being received, the loan was either granted or rejected.

Q And assuming that it was granted, then what? A If the value was considered favorably, or the loan was considered favorably, it would be referred to our counsel to search the property to see whether we were getting a first and valid lien. 30

Q Who was the counsel? A William Pennington.

Q And assuming that his report was favorable, then what would you do? A Then the loan would be granted on the receipt of his search signed by William Pennington.

Q Now, I am going to direct your attention to the mortgage from Courter to the Loehberg estate that has been mentioned, and I show 40

*Gottlob Kautzmann, direct.*

you a paper marked D. 1, for identification, and ask you what it is? A This is the regular form that we had for the application for a loan with the annexed report of the appraisal committee.

10 Q Of course, before that got on you got the application first? A We got the application first.

Q Now, was that application received by the board, by the executive committee? A Yes.

Q Presented by whom on behalf of the owner? A By Mr. Crocker.

Q (*By the Court*) Who was the applicant? A In this case it was Max Rosenthal.

20 Q Now, turn to the minute book at page 69 and see whether there is any reference to this application? A The reference on there is on page 69, "Upon motion by Mr. Kiefer duly seconded and carried it was decided to purchase of H. W. Morehouse, Jr., a mortgage of \$2,500 on property located at 341 West Kinney street, Newark."

Q And does this application speak of property 341 West Kinney street, Newark, for \$2,500? A Yes.

30 Q And it already appears, I think, that Mr. Morehouse had the mortgage by assignment. Now, following that motion, which is referred to on page 69 of the minute book, what was done? A Why, the legal papers being produced, the money was paid for the bond and mortgage.

Q Well, before that, where did the appraisal committee come in? A I meant that after the report of the appraisal committee had been received.

40 Q This motion was made after the report of the appraisal committee? A Yes, sir.

*Gottlob Kautzmann, direct.*

Q Now, that report is annexed to or written on the bottom of this application D. 1 for identification? A Yes; that is the usual form that we had.

Q Just read the report of the appraisal committee on this application? A "We have examined the property within described and value it as follows: Land \$2,000, building, \$2,000, and recommend that a loan of \$2,500 be granted. (Signed), Roland D. Crocker, John W. Phillips, William Pennington, Committee." 10

*Mr. English.* I offer in evidence that application and the appraisal committee report. It is already marked D. 1 for identification.

(Marked Exhibit D. 2.)

Q Then following that report the motion was made, and as stated on page 69, that the loan be granted, is that right? A Yes. 20

Q Now, I hold in my hand an envelope with the word, "Loan," in large print up at the top. What is that envelope? A That envelope contained the papers in the mortgage loan as we listed it as mortgage loan No. 3, for \$2,500, which is this one referred to.

Q Now, whose handwriting is the written notation on the outside? A Mr. Watson, the former president. 30

Q And that is designed to show what? What is the purport of those endorsements on the outside of the envelope? A This envelope is supposed to contain and I believe it contained the bond of Albert C. Courter to Lizzie Hess Loehner, dated December 19, 1896.

Q That is written there? A That is written there. 40

*Gottlob Kautzmann, direct.*

Q What else is written? A "Mortgage as above; abstract of title on above, and above same date, Firemen's Fund Insurance Company policy 409,898, for \$2,500, due April 8, 1916; appraisal report dated April 4, 1913; assignment Harry W. Morehouse to the Liberty Trust Company, \$2,500."

10

Q Do you know whether the trust company purchased that mortgage from Mr. Morehouse?  
A Yes.

20

Q I show you a check of the Liberty Trust Company, dated April 7, 1913, to the order of H. W. Morehouse, Jr., \$2,500, signed by Roland D. Crocker, Chairman Executive Committee, and A. W. Watson, President, endorsed "For deposit only, H. W. Morehouse." Is that the check that paid for it? A Yes.

(Check offered in evidence and marked Exhibit D. 3.)

30

Q Now, I see on this envelope, which you have previously referred to, a rubber stamp, "Liberty Trust Company, paid October 11, 1913, First Teller." What does that mean? A It means that the mortgage was redeemed or paid on that date, that we received the money at any rate, October 11, 1913.

Q That is the date that the Liberty Trust Company got the money for the sale of that mortgage, or assignment, of it, as the case may have been? A Yes.

Q Will you produce at our request any of the papers of the bank referring to that? A Yes.

40

Q I show you a bunch of loose leaf sheets. I suppose you took them out of the bound book? A That is out of our records of the daily proof sheets.

*Gottlob Kautzmann, direct.*

Q It is headed, "Paying Teller's cash proof." Just point to anything on that that relates to that transaction? A This is October 11th item. The reason I brought the paying teller's proof sheet to check up the total amount of the check received in payment of the mortgages of that date, on that date mortgage loans Nos. 2 and 3 were paid, one for \$5,000 and one of \$2,500, making a total of \$7,500. 10

Q Just wait a minute. You spoke of mortgage loan 2 and 3. Before you go any further let me show you a book entitled "Supplementary ledger, Liberty Trust Company," and I call your attention to a page numbered 3, bond and mortgage, and ask you if that refers to the same transaction? A This is the Courter mortgage that we held and was paid on October 11th, mortgage loan No. 3, here is the copy. 20

Q And how do the notations on this page compare with the notation on the envelope? A They are identical, with the exception that the interest payments are here noted October 7, 1913, interest paid \$75, on October 11th, \$1.25.

Q They appear on the supplementary ledger and not on the envelope? A Yes. 30

Q (*By the Court*) That is only a matter of ready reference, isn't it, endorsements on the back? A Yes.

(Envelope offered in evidence and marked Exhibit D. 4.)

*Mr. English.* Now marked in evidence the page in the supplementary ledger, which he refers to as loan No. 3, and which is identical with the one set up on the envelope D. 4.

(Marked Exhibit D. 5.) 40

*Gottlob Kautzmann, direct.*

Q Now, on these paying teller cash proof sheets, which you brought, you refer to loan No. 3. Are you referring now to the loan which is referred to in Exhibit D. 5 in the supplementary ledger book? A Yes.

10 Q All right. Now, go on with your explanation of these figures. A These figures, I brought the teller's sheet to account for the item of \$7,743.42, deposited in the National State Bank, that date.

Q You are testifying to a duplicate deposit slip dated October 11, 1913? A Yes.

Q From which it appears that the Liberty Trust Company deposited in the National State Bank \$7,743.42 on that day, is that right? A Yes.

20 Q (*By Mr. Bradner*) Don't you keep a cash book? A Yes, sir.

Q (*By Mr. Bradner*) Where is your cash book? A What do you mean in reference to the cash book? I have got the general ledger there, that will show you. I don't know what you mean by cash book.

*Mr. Bradner.* I object to this because he is only guessing at it here.

A No, I am showing you the figures.

30 *The Court.* If he is only guessing that is not evidence.

Q In whose handwriting is this duplicate deposit slip? A Mr. Watson's.

Q And does it show how many deposits, does it show, I mean, how many items? A Two items.

Q And does it show what they were? A One item of \$5,167.17.

40 Q What was that? A That was a mortgage loan, No. 2, for \$5,000.

*Gottlob Kautzmann, direct.*

Q We are not concerned with that. What was the second entry? A The second item is \$2,576.25.

Q And is there any notation on the margin as to what that is? A Yes, that represents check from—

Q Read it. A Check of R. D. Crocker 10  
on Newark Trust Company.

Q And in whose handwriting? A In Mr. Watson's writing.

Q Do you know what that refers to, check of R. D. Crocker, check for what purpose? A Yes.

Q What? A It refers to the payment of mortgage loan No. 2 and 3 with interest and past due interest added to it.

Q And mortgage No. 3 is this Courter mortgage we are talking about, is that correct? A Yes. 20

Q Now, show us the figures on this teller's cash book in order to account for this total, mortgage loan No. 2 as \$5,000? A Mortgage loan No. 3 was \$2,500, interest on \$5,000 was \$167.17, and interest on \$2,500 was \$76.25 making a total of \$7,743.42, which was deposited, and there is one check of Roland D. Crocker.

Q So that shows on that date you got the money for the principal and interest on this Courter mortgage which went out of your possession on that date? A Yes, sir. 30

*Mr. English.* I offer in evidence the duplicate deposit slip referred to by the witness.

(Marked Exhibit D. 6.)

I also offer in evidence the loose leaf from the paying teller's cash book, dated October 11, 1913, being two sheets.

(Marked Exhibit D. 7.) 40

*Gottlob Kautzmann, direct.*

Q Now, did you keep an account at that time of mortgage loans, of cash on hand, and can you point out where the mortgage loan was reduced and cash increased? A Yes.

Q Well, from what can you do it? A In the general ledger, October 11th.

10 Q I show you here a big book labeled, "General Ledger No. 1," on the back; is that the book? A Yes.

Q Just point to what is necessary to establish this fact? A Here is October 11th, mortgage loans on the day previous was \$34,200 and on the day after the \$7,500 credit, there is the two mortgages referred to.

Q \$5,000 and \$2,500? A \$5,000 and \$2,500 credit, it reduced it to \$26,700.

20 Q You have got just \$7,500 less? A Yes; and you will find it goes on there until another change in the mortgage loans was made; previous to that you will find it was \$34,200 for a considerable length of time.

*Mr. English.* I offer in evidence the page in the general ledger book containing the entries for October 10th and October 11, 1913.

(Marked Exhibit D. 8.)

30 Q Now, is there anything else beside that which you referred to on this exhibit? A Yes; deposit amount received from mortgages with interest \$7,743.42 deposited in the National State Bank on that day, October 11th.

Q That corresponds with the duplicate deposit slip D 6? A Yes; there is the amount, reduction in mortgages, increase in cash.

40 Q Now, I am going to direct your attention to the mortgage from Heidel to Aschenbach for \$5,000, reduced to \$3,000, and I show you an ap-

*Gottlob Kautzmann, direct.*

plication for a loan which has already been marked D 2 for identification and is dated May 1, 1913. Do you identify that? A Yes.

Q (*By the Court.*) Who signed it? A Albert B. Aschenbach made the application, and the appraisal committee is the same as on the other, Roland D. Crocker, John W. Phillips and William Pennington. 10

Q Tell us who appears to be the owner of the property and on what property the application was made, and how much? A "The undersigned desires to procure a loan of \$5,000 on the bond of R. J. Heidel, secured by mortgage on the following property located at No. 80 on the south side of Lyons avenue, dimensions of ground 36x93, dimensions of building 30x60, material, wood; purpose of use, dwelling; Sewered? Yes; value of ground, \$2,100; value of building, \$8,500; annual rent, left blank. In consideration of the said loan I agree to pay all necessary search fee and for drawing of papers. (Signed) Albert B. Aschenbach." 20

Q That was reported on by appraisal committee you say? A Yes.

Q Just read that report? A "We have examined the property within described and value it as follows: Land, \$1,800, building, \$8,200, and recommend a loan of \$5,000 be granted. (Signed) Crocker, Phillips and Pennington." 30

Q Now I want you to turn to the minute book in evidence at page 75 and tell me if there is any reference to this application? A On page 75 the reference to this loan is "Upon motion by Mr. Watson, duly seconded and carried, it was decided to purchase a mortgage on property of R. H. Heidel, \$5,000 at six per cent., property located at No. 80, south side, Lyons avenue, Newark, New Jersey." 40

*Gottlob Kautzmann, direct.*

*Mr. English.* I offer in evidence application and appraisal committee report already marked D 2 for identification.

(Marked Exhibit D. 9.)

10 Q Now, I produce here another envelope similar to the previous one; is that the envelope which is supposed to have contained the papers on this loan? A Yes, sir; known as mortgage loan No. 6.

Q In whose handwriting? A Mr. Watson's.

Q Just read the endorsement on the envelope? A "Appraisal certificate dated May 1, 1913. R. D. Crocker, John W. Phillips, William Pennington. Bond Rudolph J. Heidel to Albert B. Aschenbach, \$10,000."

20 Q Is the date of the bond given? A Dated 4-'15-13.

Q April 15, 1913? A Mortgage Albert B. Aschenbach, the same date, \$5,000; certificate of search by William Pennington; assignment of mortgage Albert B. Aschenbach to the Liberty Trust Company, dated May 2, 1913. Firemen's Insurance Policy, B528,170, due September 29, 1914, \$5,000.

Q You said that was loan No. 6? A Yes, sir.

30 Q I call your attention to the supplementary ledger and ask you if you can refer me to the same loan? A This is a copy of what is on the envelope, loan No. 6; in addition you have items of interest paid; October 30, 1913, interest paid \$150.00; November 17, 1913, interest paid \$14.17.

Q Now does it appear whether that mortgage was either paid off or assigned? A There is only a reference in pencil.

40 Q No, I am talking about this stamp now? A Oh, it was paid on November 17th.

*Gottlob Kautzmann, direct.*

Q Does it show the trust company parted title with it and got its money?

*Mr. Bradner.* I object to that; it does not show that at all.

Q What does that stamp mean? A It means that the trust company received its money for that mortgage.

10

Q On the date given, namely November 17, 1913? A Yes, sir.

*Mr. English.* I offer in evidence the envelope which the witness has referred to.

(Marked Exhibit D. 10.)

Also offer the page of the supplementary ledger referring to the same loan, No. 6.

(Marked Exhibit D. 11.)

Q Now going back to the date of the appraisal committee's report, did the trust company pay Mr. Aschenbach for that mortgage? A Yes, sir.

20

Q I show you a check dated May 1, 1913, to the order of Albert B. Aschenbach, \$5,000, signed by Messrs. Biggin & Watson; was that the check that paid for it? A That is the check that represents the payments of that mortgage loan.

(Check offered in evidence and marked Exhibit D. 12.)

30

Q Now, can you show us from the paying tellers's proof sheets and any deposit slips whether the payment off of this mortgage on November 17, 1913, was actually made and the money received? A Yes.

Q What do you point to now? A The paying teller's cash proof dated November 17, 1913. On that date we received \$5,000 in cash on the Aschenbach mortgage, Loan No. 6. In order to prove the reduction of the mortgage loan that

40

*Gottlob Kautzmann, direct.*

day I will have to show you other payments of \$3,300, a check to William Pennington, attorney, which paid for two other mortgages, one of \$900 and one of \$2,400, making a total of \$8,300.

Q In other words, \$8,300 worth of mortgages were paid off that day? A Yes; here is the  
10 bookkeeper's proof sheet; here is \$3,300 and \$5,000 in cash represented in the cash total of that day.

*Mr. English.* I offer in evidence paying teller's cash proof of November 17, 1913.

*Cross examination by Mr. Bradner.*

Q In whose handwriting is this paying teller's cash proof? A That is in the handwriting of Mr. Biggin.

Q He made all the entries? A He was paying  
20 teller, acting as paying teller with the title of treasurer at the time.

*Mr. Bradner.* I object to it; if Mr. Biggin is here he can be produced.

*Mr. English.* I will mark it for identification.

(Marked No. 3 for identification.)

*Further direct examination by Mr. English.*

Q You pointed to a duplicate deposit slip of  
30 the Liberty Trust Company in the National State Bank dated November 17, 1913; in whose handwriting is that? A That looks like Mr. Biggin's handwriting also.

(Marked No. 4 for identification.)

Q Now, I show you the general ledger, which you have already referred to in connection with the other matter; will you show us the reduction of the mortgage loan in this, increase in  
40 cash to correspond with the figures you have

*Gottlob Kautzmann, direct.*

already given? A On November 17, according to the general ledger, mortgage loans were reduced \$8,300, and the cash increased proportionately; that is, the reduction of \$8,300 on mortgage loans November 17. By the way, that day the bank examiner examined us, which is fairly good evidence. There is an amount the day previous of \$29,100, comes down to \$20,800, reduction \$8,300, cash was increased proportionately; here is the deposits to the National State Bank of the \$8,300. Of the several deposits on that day, \$3,450, submitted here, and the other—

Q You say, "Here"; you mean set forth in the deposit slip? A Yes, marked D. 4, for identification, and the other was cash deposits \$10,210 referred to here on the proof sheet.

Q Referred to on D. 3, for identification? A Yes, sir.

Q Whose handwriting are these figures in this ledger in? A On this date that is the handwriting of Mr. Watson.

*Mr. English.* He is out of the state. I offer page headed "November 17, 1913" of the general ledger in evidence.

*Mr. Bradner.* I don't think the general ledger is competent, your honor. It is nothing but figures, which mean nothing, subject to explanation by somebody who knows something about them.

Q (*By the Court*) What personal knowledge have you of these transactions? A What personal knowledge? None whatever, but what records are here. This was before my time.

Q (*By the Court*) Is there anybody here that has personal knowledge of them? A I don't think so; Mr. Biggin knows very little

*Gottlob Kautzmann, direct.*

about the mortgage matter; Mr. Watson is the only man.

*Mr. English.* Mr. Watson is the man who knows, your honor, and he is away.

10 *The Court.* Mr. Bradner, those books are books of account, kept in the regular course of business and I think they are admissible.

(General Ledger under date of November 17, 1913, marked No. 5 for identification.)

20 Q Now, Mr. Kautzmann, after the loan was passed up by the executive committee and the title reported "correct" by the counsel of the company, and the loan had been made, then of course, it was treated as any other investment, I suppose. Now, when you came to sell it, what authority did the officers of the company have to make the sale? A Under the existing by-laws at that time they had the authority under the by-laws without any action of the board or the committee.

Q Do you refer to section 1, Article 6, dealing with the authority of the president to affix the seal of the company to assignment of mortgages? A Yes.

30 Q And that says that he can put on the seal to assignments of mortgages when the whole amount due or to be paid thereon shall have been paid. Do you know of any case when he properly affixed the seal where the money had not been paid? A Not to my knowledge.

40 Q Now, have you gone through the minute book of the company, which is now in evidence, to see whether there is any record of any purchase by the company, by the Liberty Trust Company, of the second mortgage, which is

*Gottlob Kautzmann, direct.*

mentioned in the first assignment in evidence, namely, the mortgage or alleged mortgage of \$3,000 of Rudolph J. Heidel to the Liberty Trust Company? A On what property?

Q On North Twelfth street. A What number North Twelfth.

Q No. 157 North Twelfth street? A I have no knowledge of any mortgage being purchased by the company on that property. 19

Q Is there any record of any such purchase in the book? A There is not. I went through the book carefully searching for it when this trouble was first called to our attention by Mr. Bradner.

Q So there is neither any record of it nor have you any personal knowledge of any such thing? A No.

Q Now, I ask you the same question with reference to an alleged mortgage of \$3,000 made by George W. Wolbert and wife, to Frank Schwarzwaelder? A That name I could not find in any part of our records, George Walbert. 20

Q It was on Fourteenth street. Is there any record of any such transaction? A To my knowledge we never had any mortgage on any property on Fourteenth street and never had the name of George Wolbert in our records. 30

Q Have you examined the minutes of the company to see if there is any such thing to corroborate your recollection? A I have.

Q Do you find anything? A I find nothing.

Q Did you go through the loan book to see if you could find any such record? A Yes.

Q Did you find any? A I did not.

Q When I say "Loan Book" I mean this supplementary ledger here, and that in the course of business was supposed to contain a record of all 40

*Gottlob Kautzmann, direct.*

the loans of the company, was it not, I mean on bond and mortgage? A Yes; it was what we call a supplementary ledger, keeping all the loans, bonds and mortgages and other securities listed.

Q Could you find any application for a loan by Rudolph J. Heidel on this 157 South  
10 Twelfth street? A I had the young lady go through our entire files.

*The Court.* He can't testify to that.

Q What personal effort did you make? A I superintended her efforts.

Q Looked the papers over with her? A Yes.

Q She got out all the papers and you went over them with her, is that what you mean?

*The Court.* Don't lead.

20 Q Tell us what you did in making the search?  
A I had the stenographer bring out the records she had wherever she was in the habit of filing those records, and I could find nothing in any of them with reference to these two mortgages in question.

Q Did she look over them with you? A Yes.

Q You looked them over together? A Yes.

30 Q Then you made the same effort with reference to this same mortgage from Wolbert to Schwarzwaelder? A Yes.

Q Could you find any record of that? A I had all the appraisal certificates brought out that we could find and I looked them over.

Q Is there any record, anything on the books of the company of any moneys received for the supposed sale by the trust company of either of these two mortgages? A No, sir.

40 Q Have you any personal knowledge or recollection of any such transaction? A No, sir; I

*Gottlob Kautzmann, cross.*

have no personal knowledge, only the records I have examined carefully.

*Mr. Bradner.* That is contrary to the answer. They admit they received \$5,500 and admit they assigned two of the mortgages.

*The Court.* He is inquiring about two other mortgages. 10

*Mr. Bradner.* Confine it to that then.

Q Can you find any record of any moneys received by the Liberty Trust Company for the alleged \$3,000 mortgage made by Heidel to the Liberty Trust Company on 157 South Twelfth street? A No, sir.

Q I ask you the same question with reference to the supposed \$3,000 mortgage made by Wolbert to Schwarzwaelder, supposed to have been assigned to the Liberty Trust Company? A 20  
No, sir; no such record.

Q The only records you have of moneys received, as I understand it for mortgages mentioned in this suit are the Courter mortgage, \$2,500, and \$5,000 on the Aschenbach? A Yes, we received \$7,500.

Q You have already mentioned William Pennington Esq., as counsel of the bank; was Roland D. Crocker ever counsel of the bank? A Never. 30

Q He did not act in the capacity of attorney at all? A No, sir.

*Cross examination by Mr. Bradner.*

Q When did you become connected with the Liberty Trust Company? A At its organization.

Q And were you a member of the executive committee? A Yes, sir.

Q From its organization? A Yes, sir. 40

*Gottlob Kautzmann, cross.*

10 Q It was the practice of the corporation to purchase bonds and mortgages, was it not? A Well, I don't know whether you would call it that. I can answer your question by illustration of what I presented here in the form of applications made and appraisal committee's reports. I assumed at the time we passed on this that we were making mortgage loans, not purchasing mortgages.

Q If you take the case of the Kinney street mortgage, the fact is that an application was made by the owner of the property, and the mortgage was assigned to you on that property by Mr. Morehouse, is that so? A Yes, that is the record.

20 Q So you did not make a loan directly to the owner of the property? A That may be the record and may be the fact, but it did not appear that way to the committee at the time of making the loan, and this is only as we find it now; of course, that is the case, that is the record of the mortgage assigned to us by Mr. Morehouse.

Q Were you a member of the committee that acted on that application? A Yes, but we did not receive it before the committee again after it was purchased or passed.

30 Q Well, the application was presented to you? A Yes.

Q And who presented it to you? A Why, Mr. Crocker.

Q He was the attorney for the owner, was he not? A For his client, I presume.

Q Who was his client? A I presume that Max Rosenthal, the man that made the application.

40 Q And wasn't Mr. Morehouse his client, also? Mr. Crocker was one of the committee that ap-

*Gottlob Kautzmann, cross.*

proved this loan to his client, is that a fact? A He was one of the committee that sat on the passing of that.

Q Did you ever see that application before you looked it up after this trouble came up? A Yes, that was presented at the meeting.

Q The committee who recommended the loan was Roland D. Crocker, John W. Phillips and William Pennington? A Yes, sir. 10

Q Crocker was the chairman of the executive committee? A Yes, sir.

Q And he was the attorney of the applicant for the loan? A Yes.

Q Pennington was the counsel for the company? A Yes.

Q And made the searches? A Yes.

Q Do you recall whether you were told that that would be a first mortgage on the property? A Yes, we were told that. 20

Q Does it say anything about that in the application? A I don't think it does, but when these matters were referred to our counsel he gave us that assurance with the search signed by himself.

Q Then you did not intend to make a loan except on first mortgage? A Most assuredly not. 30

Q You did not consciously purchase any second or third or fourth mortgages? A No, sir.

Q All the mortgages taken by the trust company were supposed to be first mortgages? A Yes.

Q And when you made a loan or took an assignment of a mortgage did you keep a record of your loans in any book? A Yes, sir.

Q In what you call a supplementary ledger? A Yes. 40

*Gottlob Kautzmann, cross.*

Q Did you keep a list of your mortgages?

A A list? What do you mean?

Q A list of all the mortgages together in one list? A No, this is the only record that I know of.

10 Q In making a statement of the mortgages held by you, would you specify them in any list? A You mean a statement to the department?

Q Yes. A Only as a total.

Q You gave the total amount of the mortgages you held? A Yes, sir.

Q And have you got in any book or any paper a list of the mortgages that you held on October 1, 1913? A No, sir.

Q No list at all? A No, sir.

20 Q Never had any? A Never had any other record but the records in this supplementary ledger and the envelopes containing the papers.

Q Then this mortgage assigned to you by Morehouse, and which covered the Rosenthal property on Kinney street, with the bond, came into your possession? A Yes.

Q And interest was paid to you on it? A Yes.

Q When did you get it, can you fix the time?

30 A When we received the bond and mortgage?

Q Yes. A On April 7, 1913.

Q And when you got interest paid on bonds, did you credit the interest on the bond? A I couldn't say; I had nothing to do with that.

Q Now look and see if there is any credit on that Courter bond of any interest received by the Liberty Trust Company? A There is not.

Q The last credit of interest on that bond is September 19, 1906, isn't it? A Yes.

40 Q Who collected interest? A Why, we had nobody to collect interest; it was paid to the

*Gottlob Kautzmann, cross.*

trust company either by mail or through Mr. Crocker, if it happened to be one of his clients, and he took care of it for his clients and paid it to the trust company.

Q If the loan was made to one of Mr. Crocker's clients, he would collect the interest and remit it to you? A Yes.

10

Q And he would generally have the possession of the bond and mortgage also, wouldn't he? A No, sir.

Q Wouldn't he sometimes have them? A He had them at times when he called for them for some legal matter.

Q He had them under his control, as your secretary said, at the office, did he not? A Well, I will have to differ with the secretary there; he is not as familiar with the system of the business of the company as I am; the bonds and mortgages and securities of the bank are kept in the security box to which there is only access in the presence of two men, each possessing a key; neither can open it without the other.

20

Q Who were those two men? A Mr. Watson and Mr. Crocker.

Q They were the two men? A They were the two men at the time.

Q Mr. Watson and Mr. Crocker could get into that box at any time? A Yes.

30

Q Now turn to your supplementary ledger of the Rosenthal loan. A Rosenthal, that is the Courter, isn't it?

Q Yes, that is on page 3 of the supplementary ledger, Exhibit D. 5; there is an entry "October 7, 1913, interest paid \$75.00;" is that correct? A Yes.

Q "October 11, 1913, interest paid \$1.25." A Yes.

40

*Gottlob Kautzmann, cross.*

Q In whose handwriting are those entries?

A Mr. Watson's.

Q Except the date, October 7, which is in blue print? A Yes.

Q And do you know who paid the interest?

10 A I don't know; I can only presume that it came through the client or the attorney for Mr. Morehouse.

Q That was Mr. Crocker? A Yes.

Q And on the same page there is a rubber stamp "Paid Liberty Trust Company, October 11, 1913; First Teller"? A Yes, sir.

Q Do you know who put that on there? A Mr. Watson.

Q Did you see him do it? A No.

20 Q How do you know he did it? A Because he had charge of those matters and nobody else had anything to do with the mortgage matters in the bank at that time.

Q Do you know when he stamped it? A I presume he stamped it on the day it was paid, because the records all show he did receive money on that day.

Q But you don't know he stamped it then? A No.

30 Q That was a changeable date stamp, wasn't it? A Yes.

Q Could go back, put the date back just as well as forward? A Yes.

Q Right across the page is "Paid October 11;" how much was paid then? A \$5,000.

40 Q And that is the other one you refer to? A That is the other one, that makes up the total of the reduction of mortgage loans that day. While this date can be changed the records on the general ledger cannot be changed.

*Gottlob Kautzmann, cross.*

Q Have you looked through this book to see if there are any other payments made October 11? A I have. There is none, to my knowledge.

Q Except these two? A Except these two.

Q Then, as you understand the situation, on October 11, 1913, the Liberty Trust Company received payment in full for the Kinney street mortgage? A Yes. 10

Q The principal and interest? A Yes, sir.

Q And you delivered the bond and mortgage to Mr. Crocker? A Yes, sir.

Q And that is the only record you have? A That is all.

Q Nothing in the minutes relating to it? A No.

Q And nothing in the minutes relating to the assignment of that bond and mortgage to Mr. Hubing? A Never made any records of those assignments because the officers had authority to do it without special action of the board. 20

Q Oh, you made no records of assignments? A No, sir.

Q That was the fact, that the officers had authority to make assignments without special action of the board? A That was the authorization we worked under, that our by-laws gave the officers that authority. 30

Q Then if Mr. Crocker had requested the president, instead of cancelling the bond and mortgage, the assigning of it to somebody, the president would have been authorized to do that? A Yes, or, in other words, if the client came in and wanted to pay off their mortgage that was due, he had the authority to accept the money and cancel or assign the mortgage, as they requested. 40

*Gottlob Kautzmann, cross.*

Q Without any further action? A Yes, sir.

Q Well, would he keep any record of the fact that he had made an assignment? A That I don't know.

10 Q Do you find any such records? A I only find the pencil mark in this case "Assigned to Hubing"; that is the only record I have been able to find.

Q You don't know when that was made? A No, haven't any idea.

Q But in any other case in the book do you find any record of an assignment of a mortgage having been made? A Only what has been made since I have had charge.

Q Before that they didn't put it down? A No.

20 Q When they got the money for a mortgage, whether it was paid or assigned, they marked it paid on the book? A Yes.

Q Now find for me in that supplementary ledger the Heidel mortgage. A Exhibit D. 4?

Q Exhibit D. 4, on page 6 of the supplementary ledger. Have you got the application for that here? This Exhibit D 9, dated May 1, 1913, is an application made by Albert D. Aschenbach for a loan of \$5,000? A Yes, sir.

30 Q That is on the Lyons avenue property, is that right? A Yes.

Q And was he represented by an attorney?

A Yes, he was represented by Mr. Crocker.

Q As his attorney? A Yes, sir.

Q And Mr. Crocker and Mr. Phillips and Mr. Watson recommended the loan? A No, Mr. Pennington.

Q Mr. Pennington, I mean. A Yes.

40 Q Mr. Crocker, Mr. Phillips and Mr. Pennington recommended the loan? A Yes, sir.

*Gottlob Kautzmann, cross.*

Q In making that loan you supposed you were getting a first mortgage? A Yes.

Q And instead of making the loan directly, you took an assignment of a mortgage, did you not? A I presume that is what the record shows.

Q Well, I show you a mortgage dated April 15, 1913, on Lyons avenue property, Exhibit C 12, made by Heidel to Aschenbach, do you recognize that mortgage? A Never seen it. 10

Q You have never seen it before? A No.

Q When you had any bonds and mortgages come into the possession of the Liberty Trust Company do you mark them in any way to identify them? A The officers did, but I was not an officer at that time, and the committee, the finance committee, never handled those papers after the loans were granted. 20

Q And who had charge of the papers after the loans were granted? A Why, the officers of the bank, Mr. Watson, and in connection with Mr. Crocker as chairman of the executive committee.

Q So when a mortgage was turned over by assignment it would go directly into the hands of either Mr. Crocker or Mr. Watson? A Presumably to Mr. Watson. 30

Q It might have gone into Mr. Crocker's hands? A That I can't answer.

Q You don't know? A I don't know.

Q You paid \$5,000 to Mr. Aschenbach? A Yes.

Q In that transaction? A Yes, sir.

Q Now what have you got here to show that you ever received that money back again? A Why, I have the proof sheet of the paying teller, which includes the cash— 40

*Gottlob Kautzmann, cross.*

*Mr. Bradner.* That is the one I objected to?

A (Continuing) which includes the cash payment of \$5,000.

Q You need not testify from that; I don't care anything about that. Take your supplementary ledger in this Aschenbach mortgage, that shows that on October 30, 1913, the interest was paid of \$150.00? A Yes.

Q And on November 17, 1913, \$14.70 was paid? A Yes.

Q And in whose handwriting are those entries? A Mr. Watson's.

Q The 30 in October has been written over, has it not? A It appears to be.

Q And there is a stamp in blue "Paid November 17, 1913?" A Yes.

Q Is there anything on this book other than that stamp to show that was paid? A Nothing on that book, no.

Q And who would have personal knowledge of the fact of the payment? A Well, in this case you could call the State Examiner because he examined the bank on that day and he can testify the mortgage loan was reduced that amount and the cash increased that amount.

Q That does not necessarily prove that this mortgage was paid, does it? A Well, I don't know.

Q (*By the Court*) How do you identify the mortgage that was paid? A By the cancellation of it on the leaves of the supplementary ledger and the absence of all papers in these envelopes, and the reduction of that amount of the mortgage loans in total, and the increase of the cash on that day, that all those things agree to a penny on that day; I don't know what

*Gottlob Kautzmann, cross.*

more there is, I don't think there is anything more.

Q Then that might either have been a payment for cancellation or a payment for an assignment from the Liberty Trust Company? A That it does not state.

Q You don't know? A The only thing it states and shows we received the money. 10

Q You received \$5,000? A That is the idea.

Q Now the bond connected with that mortgage has endorsed on it under date of December 1, 1913, "Received on principal \$2,000, leaving balance of principal due \$3,000. Roland D. Crocker, attorney." That is all in Mr. Crocker's handwriting, and signed by him, isn't it? A I assume that is his handwriting.

Q You are familiar with it, aren't you? A It looks like it. 20

Q Then it is possible that Mr. Crocker requested Mr. Watson to execute an assignment of the Courter mortgage and also of the Aschenbach mortgage, and Mr. Watson could do that without any action of the directors or of the executive committee? A Yes.

Q You said that you did not know of any mortgage on 157 No. Twelfth street. Do you know of any mortgage that you received from Aschenbach on any number North Twelfth street? A There was one, I don't remember the exact number, the description of it here is "North Twelfth, 435 feet south of Fourth avenue." 30

Q That is on page 2 of your supplementary ledger? A Yes.

Q Under date of February 20, 1913, Albert B. Aschenbach \$5,000? A Yes. 40

*Gottlob Kautzmann, cross.*

Q Does that mean that he made an application then for a loan of \$5,000? A It was granted on that day.

Q It was granted then? A Yes, sir.

Q And the interest was paid on September 20, 1913? A Yes.

10 Q And another payment on October 11, 1913, of \$17.17 would show a very short time, wouldn't it? A Yes.

Q And that is stamped "Paid October 11, 1913"? A That represents the other \$5,000 of the \$7,500, that was on North Twelfth street, what number I don't know; it describes that as 435 feet south of Fourth avenue, I don't know whether that is correct.

Q And you assume that you got \$5,000? A I don't assume that at all, I know that.

20 Q You know you got \$5,000 on October 11, 1913, for North Twelfth street mortgage? A For a mortgage on property on North Twelfth street.

Q You are very particular to say it was not 157; why were you so careful about that? A Because we had looked it up.

30 Q You might just as easily have said you had a mortgage up there but was not so sure about the number, couldn't you? A Yes, but we looked this matter up very carefully, our counsel, we have been working on it since last September.

Q You could not recognize that \$5,000 bond and mortgage, could you? A I never handled it.

Q And that was also under the control of Mr. Crocker and Mr. Watson? A Yes.

40 Q So that on October 11, 1913, you received from Mr. Crocker at least \$5,500? A On October 11 we received \$7,500.

*Gottlob Kautzmann, cross.*

Q \$7,500 from Mr. Crocker? A Yes, and interest, some \$7,700, I believe; we have the amount there.

Q Look in your cash receipts for December, 1913; have you got those here? A No, I can look at the general ledger; if there are any large receipts they will be noted there. What date? 10

Q Begin December 1st. A December 1st, mortgage loans were \$26,300; there is no reduction up to December 18, when there was \$5,000 debit, that was received, \$5,000, increased to \$31,300.

Q How do you mean "increased to," increased your loans? A Increased the loan; we purchased a mortgage for \$5,000, or loan of \$5,000 mortgage. 20

Q You did not sell anything during that time? A No, we didn't sell anything; we purchased; it continues there at \$31,000 up to December 27; then we received \$3,000.

Q On December 27th you received \$3,000? A Yes.

Q Do you know where that came from? A Not unless I look up the other records; I did not bring the entire records of the bank; I only brought the record referring to those matters. 30

Q Now go on and see when you next received any money. A When we next received any?

Q Yes. A We purchased another one January 24 for \$2,000; we did not receive any money there; here we purchased another, \$2,500; we didn't receive any there.

Q That is February 18? A Yes, we increase on there \$1,500. 40

*Gottlob Kautzmann, cross.*

Q April 3, 1914, you bought another mortgage of \$1,500? A Yes. This is running up to May 20, 1914.

Q And you received \$5,000 May 20, 1914? A Yes, sir.

10 Q A great many of your loans were made to Mr. Crocker's clients, weren't they? A Very many of them, mortgage loans, with the exception of two or three, most all of them.

Q Were his clients? A Yes.

Q For whom he acted as attorney? A Yes, sir.

Q And when the mortgages were paid to you you would receive the money from Mr. Crocker? A As a rule, yes.

20 Q And surrender the bonds and mortgages to him? A Yes; he represented the—

Q In addition to that did you make loans to Mr. Crocker on his notes? A No, sir, never made a loan to Mr. Crocker on any note.

30 Q Did you purchase any notes made by him or endorsed by him? A We purchased one note made by Mr. Crocker, that is not made by him, but endorsed by him, Central Lands Security Company, that was secured by the mortgage on the property on which the bank building was on.

Q Did Mr. Crocker have the seal of the company in his private office? A That I couldn't answer, not supposed to.

Q Eh? A He is not supposed to.

Q Don't you know that he had it there? A I don't know.

Q You don't know that? A No.

40 Q You never saw it there? A Not to my knowledge; if he had it there it must have been temporary.

*Howard S. Kinney, direct.*

Q What would he have it there for temporary? A I say if he did; I don't know.

Q Do you know of any occasion when he had the seal of the company in his private office? A I do not.

Q Do you know whether Mr. Watson used to go to his private office to execute papers as president of the company? A I don't know. 10

*Re-direct examination by Mr. English.*

Q When you were speaking about how those various papers containing those figures relate to one another, is there anything on the deposit slip which relates to the number of the loan?

A This relates to mortgage loan No. 6 representing \$5,000 cash, and the other slips refers to loans No.'s 2 and 3, representing \$7,500. 20

Q Where is it? A Here on the bookkeeper's proof.

Q You are pointing now to Exhibit D. 7 in evidence as referring to loan No. 3, which is the Courter loan, is that right? A Yes, that is right.

Q And you pointed in the other case to No. 3 for identification which refers to the Aschenbach? A Mortgage loan No. 6, \$5,000.

*Mr. Bradner.* I object to the use of that. 30  
The witness did not make the entries, and they are made in lead pencil, too.

A We have the verification of that here.

HOWARD S. KINNEY, recalled.

*Direct examination by Mr. English.*

Q Have you since you were on the stand examined the minute book to see whether there were any amendments to the by-laws? A Yes. 40

*Howard S. Kinney, direct.*

Q And what do you find? A Referring to the minutes themselves I find that there was a stockholders meeting held October 15, 1912, wherein there were certain amendments made to the by-laws.

10 Q And those minutes are recorded on what pages of the minute book? A 22, 23 and 24.

Q And do they contain amendments to the by-laws? A Yes.

Q What by-laws were amended as appears from those minutes? A You mean what part of the by-laws?

Q Yes, what part of the by-laws, what section and article?

*The Court.* Or what was the subject matter of the amendment?

20 A It refers to the articles in sections; article 4, section 1 is amended.

Q All right, what else? A Article 4, section 4; article 4, section 7; article 8 and section 1.

30 *Mr. English.* Now, your Honor please, I specifically called attention to article 4, section 4, as one of the material parts of the by-laws: "The chairman of the executive committee shall keep or cause to be kept a daily record of the moneys received at the company's office on every account whatever. He shall countersign or certify all bonds issued by the company as trustee. He shall be the trust officer and title officer of the company. Whenever any stock shall be hypothecated with the company as security for a debt or loan the chairman of the executive committee shall be authorized at his discretion to transfer the same to the company. He shall also have the power to

40

*Howard S. Kinney, cross.*

make loans and to make any and all transfers of the securities of the company as may be authorized by the executive committee. He shall at all times exercise such general direction and supervision of all of the business of the company and its interests as security may require, and shall nominate and appoint all such agents, clerks and employes as may be found necessary to transact the business of the company, subject to the confirmation of the executive committee; he shall in conjunction with the president have control and direction of all agents, clerks and employes of the company, and with the consent of the executive committee, may suspend or remove any agent, clerk, or employe of the company.”

10

20

*The Court.* That is very nearly the same thing, too.

Q Can you point out the difference between section 4, article 4, as amended at the meeting held—

*The Court.* I guess you had better not do that; better do it on the argument.

*Cross examination* by Mr. Bradner.

Q Were you secretary of the company in October, 1912? A Yes, sir.

30

Q And did you sign that amended amendment to the by-laws on October 15, 1912? A Yes, sir.

Q That was signed then and put in the book? A Yes. May I add that at the time that the original by-laws were passed, in April, 1912, that I was not then secretary, but Mr. William P. Powell was, but I compared the by-laws as they existed at that time when they were inserted

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*Howard S. Kinney, cross.*

in this minute book, and I put my name at the bottom of each page, so these are the by-laws which were in existence in April, 1912.

10 Q But you did not write them in originally, you just certified them? A That is what that means, my name at the bottom is a certification as to their correctness. You will notice that the secretary at that time is William P. Powell, and he signs them.

Q Where is the amendment? A The amendment is on page 22.

Q This is a loose leaf book, isn't it? A Loose leaf book, yes.

Q And this typewriting has to be done out of the book? A Yes.

20 Q These amendments are signed on the back by the members of the committee? A I think that was a waiver of notice of the special meeting of stockholders; yes, it is a call, request of meeting for stockholders' signatures on back of this sheet; those are the signatures.

Q Mr. Crocker's signature is not there, is it? A No, sir.

30 Q You don't know whether he ever had any notice of this meeting? A Yes, I do, because he was one, with Mr. Pennington, I think they proposed the amendments that is set forth in the notice.

Q He was present at the meeting? He is recited as being present at that meeting, is he not? A Present Messrs. Kautzmann, Phillips, Baker, Crocker—

Q Crocker was present? A Yes.

Q And you were there? A Yes, sir.

40 Q And you know he was there? A Yes, sir.

*Howard S. Kinney, cross.*

Q And you know he participated in these amendments? A Yes, sir.

Q That is waiver of notice there? A That is waiver of notice of the directors, I think, not stockholders.

Q Now do you know whether Mr. Crocker as chairman of the executive committee made daily records as called for in that amendment? A Oh, I couldn't answer that, no sir; I don't know what he did. 10

Q "He shall keep or cause to be kept a daily record of the moneys received at the company's office on ever account whatever." Did he do that? A I couldn't answer that, I don't know.

Q Did he make any report whatever to the company of moneys received or loaned by him? A Moneys received and loans by him personally, do you mean? 20

Q Yes. A I don't know of any report he made.

Q Did he make any as chairman of the executive committee? A Well, at each meeting of the executive committee we had report of all the loans made.

Q Whenever you had a meeting you had a report? A Yes, of the notes purchased, etc.

Q Did you have a daily record kept? A I presume there was, but I don't know anything about that. 30

Q (*By Mr. English*) Did you find any other amendments than those you pointed out? A I went through the year 1913; I did not find any for the year 1913.

*Frank Schoner, direct.*

FRANK SCHONER, sworn.

*Direct examination by Mr. English.*

Q You made an examination of the title to the Courter property? A Yes, sir.

10 Q Did you find that mortgage had been assigned to H. W. Morehouse? A I believe that is so.

Q And then by him afterwards assigned to the Liberty Trust Company? A Yes.

*The Court.* He has already testified to that.

Q Did you find Max Rosenthal owned that property? A Yes.

*Mr. Bradner.* We proved that.

20 Q You examined the titles to the property upon which the mortgage from Heidel to Aschenbach was placed? A Yes.

Q And did you find any change in the title between the 8th day of December, 1913, and the 28th day of September, 1914? A I don't think so.

Q No liens or transfers or assignments or anything of the kind? A No, sir, I don't think so.

30 Q Are you sure about it? A No, I am not, because that happened over a year ago, don't you know, and I haven't those papers in my possession, therefore I wouldn't know.

Q Where are those papers? A I handed them to Mr. Bradner, I think.

Q Did you search the Lyons avenue property? A Yes, I did.

Q And the notes you gave those to Mr. Bradner? A I believe so.

*Frank Schoner, direct.*

*Mr. English.* All I want to know is whether there is any change in the title between the date the assignment was given and the date it was put on record. You see he held it between eight and nine months.

*Mr. Bradner.* I will look that up and tell you just the fact about it.

10

Adjourned until tomorrow.

October 7, 1915.

IN CHANCERY OF NEW JERSEY.

*Between*

LOUIS HUBING, Executor, &c.,  
of Henry Kirchner, de-  
ceased,

20

*Complainant,*

*and*

LIBERTY TRUST COMPANY, a  
corporation,

*Defendant.*

Transcript of shorthand notes of testimony taken in the above entitled cause on October 7, 1915, at Chancery Chambers, Newark, N. J., before the Court and in the presence of the parties as before.

30

FRANK SCHONER, resumed for further

*Direct examination* by Mr. English.

Q Now, Mr. Schoner, since you left the stand yesterday have you examined your search notes?

A Yes, sir.

40

*Frank Schoner, cross.*

Q To see with reference to this Lyons avenue property? A Yes, sir.

Q What I wanted to know was whether you found any changes in the title either with reference to the title to the land or assignments of the mortgage from October until the following September, 1914? A Why, I didn't carry that down any further, because I had all the bonds and mortgages in the two assignments up to the time that the instrument was executed and did not think it was necessary to carry it down any further.

Q I see the instrument was executed on December 8, 1913? A Yes, sir.

Q And was recorded the following September? A That is right.

Q And you did not run beyond December? A That is right.

Q So you don't know whether there were any changes or not? A No, sir, not in the assignment.

*Cross examination by Mr. Bradner.*

Q But all the mortgages you found were prior to the date of the Lyons avenue mortgage assigned to Mr. Hubing? A Yes, sir.

*The Court.* I don't catch that.

Q All the mortgages you found on record were dated prior to the date of the mortgage assigned to Hubing and recorded prior to that mortgage? A Yes.

*The Court.* I understand that now.

Q The assignment then had no effect whatever on it? A No, sir.

*Gottlob Kautzmann, direct.*

*Re-direct examination* by Mr. English.

Q If some other mortgages had been put on between December 8th and the recording of this assignment that would have—

*Mr. Bradner.* I object.

*The Court.* It don't appear there were any others. 10

*Mr. English.* He didn't search; he don't know.

*The Court.* I say there is no evidence.

*Mr. English.* No, there is no evidence.

GOTTLOB KAUTZMANN, recalled.

*Direct examination* by Mr. English.

Q I show you D 3 for identification, which is the paying teller's cash proof, which you say related to the Aschenbach mortgage, and I call your attention to some figures on the lefthand side of the first sheet, \$5,000, and also in writing, "Aschenbach mortgage loan No. 6;" whose handwriting is that? A I wish to correct what I testified yesterday. 20

Q (*By the Court*) Whose handwriting? A This is Mr. Watson's handwriting.

Q Now, what do you want to correct? A I testified this sheet was in the handwriting of Mr. Biggin, but I failed to state that this item here was in the handwriting of Mr. Watson, who had charge of all mortgage matters. 30

Q The part of it which is in the handwriting of Mr. Watson is that which relates to this loan, isn't it? A Yes, loan No. 6, \$5,000, Aschenbach mortgage.

Q And that is the same loan which appears in the supplementary loan ledger already in evidence? A Yes. 40

*Gottlob Kautzmann, cross.*

Q And also on the envelope which is D 10 in evidence, is that correct? A Yes.

10 *The Court.* I do not see, Mr. Bradner, any good solid objection to the admission of those pages from the ledger. When you come to put them all together it is a record of a series of transactions with reference to the mortgage in question, and I think the mortgage in question is fully identified by the records, and I am not inclined to think that it is a matter of proving handwriting.

*Mr. Bradner.* May I cross examine a little further on it before we pass on the admissibility of it?

*Cross examination by Mr. Bradner.*

20 Q Mr. Kautzmann, this is your paying teller's cash proof sheet dated November 17, 1913? A Yes.

Q The date is stamped on it, isn't it? A Yes, sir.

Q By one of those changeable date stamps? A Yes.

Q The first column is "Debtor?" A Yes.

30 Q And second column is "Creditor," is that so? A Yes.

Q Has there not been an alteration made in the footings of the first column? A There has.

Q Over an erasure? A Yes.

Q And also in the footings of the credit column over an erasure? A Yes.

40 Q Can you see on this paper what the alteration was, what the original footing of the debtor column? A Why, it appears that there is a 3 under this and an 8 under this (indicating).

*Gottlob Kautzmann, further direct.*

Q The original footing was \$8,000 and something? A \$8,020.92, as it appears under that heavy pencil mark.

Q And that was erased to \$10,000? A Yes.

Q And the original footing under the credit column was ten thousand and some dollars and raised to \$12,000? A It appears that way. 10

Q Then the paper has been altered, hasn't it? A That evidently was a clerical error on the part of the teller, and Mr. Watson evidently discovered it as there was a difference in the cash, and corrected it; you will find other changes there.

Q You find in the entry of the \$5,000 Aschenbach mortgage that has been altered from three, hasn't it? A It appears to be, yes.

Q From three to five? A Yes. 20

*Mr. Bradner.* I object to the paper upon the ground that there has been an alteration made in it; that will have to be explained by the party who made it.

*Mr. English.* It depends upon when the alteration was made.

*The Court.* You will have to explain it, the alteration.

*Further direct examination by Mr. English.* 30

Q Whose handwriting is this down here, the \$10,000 figures?

*Mr. Bradner.* The footing of the debtor column?

*Mr. English.* Yes.

A It doesn't look like Mr. Watson's.

Q Whose handwriting is this here, the footing of the credit column? A That is Mr. Biggin.

*Warren C. Biggin, direct.*

WARREN C. BIGGIN, recalled.

*Direct examination by Mr. English.*

10 Q I call your attention to D 3 for identification; there is some apparent alteration in the figures \$5,000 in the debtor column and in the footing of the debtor column amounting to \$10,000 and odd, and some apparent correction in the credit column of this same sheet. Are any of those figures in your handwriting? A Yes, sir.

Q Which one? A The credit column.

Q What about the footing of the debtor column? A And part of the debtor column.

Q Which part of the debtor column? A The totals, with the exception of this balance here.

20 Q That ten thousand and odd? A That is mine, yes.

Q Can you explain to the Vice Chancellor why there seems to be an apparent alteration there, or correction, I think that is a better word? A Why, it appears that that originally was \$3,000.

Q What was originally \$3,000? A That \$5,000.

Q (*By Mr. Bradner.*) In the debtor column? A Yes.

30 Q The figures opposite the Aschenbach loan No. 6? A Yes. Now, either there was a \$3,000 check with \$2,000 in cash accompanying that check, which, of course, the \$2,000 being in cash was placed in our cash which we have in our teller's department; to offset that change of \$2,000 we shipped to the National State Bank that day \$8,210 and when we got that \$2,000 we included that in that \$8,200, changing our deposit to the National State Bank and making  
40 the both sides agree.

*Warren C. Biggin, direct.*

Q (By Mr. Bradner.) Your deposit slip would show that, wouldn't it? A No, it would show \$10,210.

Q (By Mr. Bradner.) It would show just how it was made up; when checks were cashed you have to itemize them, don't you? A Yes.

*Examined by Mr. Bradner.*

10

Q Have you any personal knowledge of this? A I don't remember the transaction, no, sir.

Q If it was either three or five thousand where did it come from? A Well, it would accompany a payment of that mortgage either by cash or by check.

Q Who paid it? A That I don't remember.

20

Q Mr. Crocker? A I couldn't say.

Q The alteration was not made by you? A The alteration was not made by me.

Q Then you don't know anything about it, do you? A No, sir.

*Further direct examination by Mr. English.*

Q Was this \$5,000 written on there at the time it came to your hands, or did you have something to do with the paper first? A Apparently this cash proof sheet was made up before that was altered; that is, in other words, the cash in the paying teller's department proved, and then when it changed to \$2,000 more was put in the cash, of course, naturally we had to change the total; this might have come in at the last minute hour of the banking day.

30

Q When the \$2,000 more was added then the whole business had to be changed to corre-

40

*Warren C. Biggin, cross.*

spond? A Yes; that is our proof sheet of the paying teller's cash, which must agree.

Q So your explanation then is that originally the entry opposite the Aschenbach loan was \$3,000 and everything corresponded with it, then sometime during the day \$2,000 more  
10 was added in cash, which required a resetting up of the figures, is that right, the totals? A Yes, both sides got to agree.

Q Were those changes, alterations, made on the day of the date November 17th? A Yes, must be, got to be, because our cash must prove, our entire bank must prove each night.

*Cross examination by Mr. Bradner.*

Q The heading over the \$5,000 is, "Notes, Collections, &c.," does that include cash? A  
20 Either cash or checks.

Q Then why do you have cash items further down? A Cash items are things that are in our cash, that is, are held in our cash; once in a while I may pay out \$6.75 for expressage; I would make a cash item, I would carry that slip as a cash item; that is what that means.

Q On the debtor side? A Yes, because I have taken that out of the cash, I must have something on that side to balance it.  
30

Q I thought you charged this on the debtor side with what you took in? A The debtor side according to the bank books is—

Q I am not talking about the bank books; I am talking about this sheet of paper, the debtor side, your debtor which is \$5,000 received; now, if part of that was cash why didn't you put it under cash items? A Because the cash goes right into our cash, it is cash.

40 Q You do not designate it though on this sheet that you got any cash? A I do by add-

*Warren C. Biggin, cross.*

ing it in here to my cash \$2,000; I shipped it away.

Q (*By Mr. English.*) On the credit side?

A Yes.

Q You haven't got it in the cash items on that side? A I have got it here (indicating).

Q Here is the cash item on that credit side; you have got nothing in that, have you? A Well, that cash item does not mean anything in particular on either side. 10

Q It doesn't mean anything? A It can be either debit or credit.

Q What is this list made up from A This is the cash in the teller's department, the actual cash that he has.

Q Why did you make it in lead pencil? A Well, because at five minutes to three you might feel like making up the cash and some fellow come in with check and you want to accommodate him and you cash the check and that will naturally change all your figures and it is easy to erase and fix it up. 20

Q It is just as easy to strike out and put another item down, isn't it, in ink? A No, not after you mix the cash up, because the banking department might come in next morning and your cash must agree exactly according to your sheet. 30

Q Is there any other book there to show the receipt of that \$5,000? A Only the payment of those mortgages in the supplementary ledger.

Q That is his stamp on there, "Paid"; it don't show who paid it or how it came in, in what form? A Well, if he paid it by check of course that is his own voucher; you couldn't find out that he had actually paid it unless you 40

*Warren C. Biggin, re-direct—re-cross.*

have got the voucher on that from his bank; if he paid it in cash it is in our cash.

Q In this Liberty Trust Company the only record you have of the payment of \$5,000 in the cash is in lead pencil on your paying teller's slip? A That was only a teller's  
 10 proof; this slip has nothing to do with anything except cash in the teller's department; the record of the mortgage is kept in the mortgage loan book, which, of course, is made out in ink and seems to be a pretty fair record.

*Re-direct examination* by Mr. English.

Q The general cash, this book general ledger means the same thing, doesn't it? A That has nothing to do with the actual cash in the paying teller's department.  
 20

Q It shows the total? A It shows the total of all grand cash; our general ledger shows that.

Q This thing corresponds exactly with the general ledger, doesn't it? A Certainly.

Q Does the entry or printed entry "Cash items," is it intended to include all cash that comes in, or, for example, if a note is paid off in cash would you put that under the heading, "Notes," or would you put it under "Cash  
 30 Items?" A "Notes or Collections," &c.; it comes under "Notes, collections and loans."

Q So whatever is collected on your note or mortgage, in whatever form it is paid, the cash or check goes under the heading of "Notes or Collections," doesn't it? A Yes.

*Re-cross examination* by Mr. Bradner.

Q I understood you to say that you did not make these alterations?  
 40

*Warren C. Biggin, re-direct—re-cross.*

*Mr. English.* Not on the \$5,000; he says he did on the others.

A No, sir.

Q And you don't know who made them? A I presume it is Mr. Watson.

Q You don't know? A I do not.

Q Then you have no personal knowledge of the transaction? A No, sir. 10

*Further direct examination by Mr. English.*

Q Are those Mr. Watson's figures, from your knowledge of his handwriting? A Yes.

*Further cross examination by Mr. Bradner.*

Q Was there anybody else there that could have made them? A No one else, because Mr. Watson and I both occasionally ran this department. 20

Q Either one or the other of you? A Yes. If I happened to be out why, he would prove this department; if I should come in just before three o'clock I would prove it.

Q Who was paying teller? A I acted as paying teller when I was there.

Q And Mr. Watson could come in and change your proof sheets and you wouldn't know anything about it, is that possible? A Yes, that is possible. 30

*Mr. English.* Does your Honor think it is explained sufficiently?

*The Court.* I am inclined to let the sheets in, Mr. Bradner. It is a case of necessity; you know no bank could prove its books under any different rule without producing here every man that had anything to do with the books or made an entry in them, and, of course, that is almost impossible. 40

*Gottlob Kautzmann, direct.*

These records show the course of business in relation to these mortgages, and upon that ground I admit the evidence.

10 *Mr. English.* Then we will have them marked. The paying teller's cash proof which is now D 3 for identification, I offer that in evidence.

(Marked Exhibit D. 13.)

And I suppose this carries with it the books which fitted in with it and testified to by Mr. Kautzmann yesterday.

*The Court.* Oh, yes; let them all go in, all the books to show the whole transaction.

20 *Mr. English.* I next offer D 4 for identification, duplicate deposit slip of November 17, 1913.

(Marked Exhibit D. 14.)

I also offer in evidence D 5 for identification, which is the general ledger entry of November 17, 1913.

(Marked Exhibit D. 15.)

30 Q If you received \$5,000 on November 17, 1913, you deposited on that day that amount of money in another bank? A National State Bank, that was a deposit of \$10,210 on that day.

Q This deposit slip, Exhibit D 14, is not the correct one then, is it? A That is not the one, no, sir.

Q Here was a deposit November 17th, \$3,450, that is right, isn't it? A Apparently so, yes.

GOTTLOB KAUTZMANN, recalled.

*Direct examination* by Mr. English.

40 Q What does the general ledger show with reference to deposits made on the 17th of Novem-

*Gottlob Kautzmann, direct.*

ber, 1913? A The general ledger shows deposits to the National State Bank of \$3,450.

Q And that is represented by deposit slip D 14, is that right? A That is right.

Q What else? A Then there is a cash deposit of \$10,210.

Q That appears in the credit side of D 13? 10  
A Yes. And there was another small deposit of these various items; I can produce all the deposit slips if you wish me.

Q What was the other small deposit, how much was that? A There was an item there of \$70.07.

Q Does that appear on this D 13 anywhere, or is that another thing? A I am not familiar enough with these items to answer now without the other records, but I can vouch for these two deposits, I can produce this deposit slip. 20

Q You have already produced the slip for \$3,450? A The others I would have to see the entries.

Q Have they any bearing on this situation at all? A No, not at all.

Q You say you can produce the deposit slip; you mean what purports to be a duplicate of it? A I can produce the original from the National State Bank if you wish it. 30

Q Have you seen it there? A I know these records are correct because this day the bank was examined by the State Examiner of New Jersey and these footings were all O. K.'d by that department; if you want anything stronger than that I don't know where I can get it unless you look up all the original records, which can be produced if you wish to go to the trouble; every one of these records can be produced.

Q How do you know the bank examiner was there on that day? A Here is the notation of 40

*Gottlob Kautzmann, cross.*

it, and my reports are on file, which I can also produce in evidence, showing the bank was examined on November 17, 1913.

Q On this Exhibit D 15 the \$10,210 is written over an erasure, isn't it? A Probably for the same reason that this was erased here; they  
10 discovered it.

Q You refer to D 13? A Yes.

Q On D 15, your general ledger \$10,210 cash is written over an erasure, isn't it? A Yes, sir.

Q That corresponds with the correction on D 13, doesn't it? A Yes.

*Cross examination by Mr. Bradner.*

Q Do you have any notice when the bank examiners are coming in? A No, sir; they come  
20 in unexpectedly, without any notice; they may be there this morning. These erasures may have been accounted for to his satisfaction on that day.

Q Who was the examiner? A H. H. Hilson; I wouldn't say that that was H. H. Hilson at that time, that was two years ago, I don't know; I will correct that.

Q When the bank examiner would come there would he check up your securities? A Yes, sir.

Q What would he have before him in order  
30 to check them up? A The documents themselves, the bonds.

Q The securities? A The securities.

Q I think you said yesterday you haven't any list of them? A We have a perfect record in our supplementary ledger.

Q The actual documents you would produce and show to the bank examiner? A Yes; he would list them and check them and check the total, O. K. every item on this day.  
40

*Gottlob Kautzmann, cross.*

Q And on that day you had securities, bonds and mortgages amounting to how much? A Bonds and mortgages amounting to \$20,800.

Q And do you know how many mortgages there were? A I do not; I can tell you by checking back, but I can't tell you now.

*Mr. English.* Now, your Honor, I think 10  
with the exception of Mr. Watson's testimony we are through, and Mr. Bradner and I agreed, if your Honor remembers, if it is satisfactory to the Court, to take his deposition in New York.

*The Court.* How can I do anything with this case or with the other two until I have Mr. Watson's testimony?

TESTIMONY CLOSED, with the exception of 20  
Mr. Watson's evidence.

30

40

*Affidavit of Commissioner.*

IN CHANCERY OF NEW JERSEY.

Between

LOUIS HUBING, Executor, &c.,  
of Henry Kirchner, Dec'd,  
*Complainant,*

10

*and*

LIBERTY TRUST COMPANY, a cor-  
poration,

*Defendant.*

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

20

I, Jesse R. Salmon, a commissioner nomi-  
nated by the counsel in the above entitled cause,  
do solemnly swear that I will fairly and im-  
partially take the testimony of A. Howard Wat-  
son; and that I will carefully, faithfully and  
impartially transcribe the testimony of the above  
named witness and make a true and correct  
transcript thereof.

30

Sworn and subscribed to before me  
this Eighth day of October, A. D. 1915.

*Notary Public for New Jersey.*

*A. Howard Watson, direct.*

IN CHANCERY OF NEW JERSEY.

Between

LOUIS HUBING, Executor, &c.,  
of Henry Kirchner, Dec'd.,  
*Complainant,*

*and*

LIBERTY TRUST COMPANY, a cor-  
poration,  
*Defendant.*

10

Transcript of shorthand notes of testimony taken in the above entitled cause on Friday afternoon, at three o'clock, October 8, 1915, at the office of the United States Fidelity and Guaranty Company, No. 47 Cedar street, New York City, before Jesse R. Salmon, Commissioner.

20

Appearances:

Mr. Frank E. Bradner, for complainant.

Mr. Conover English and Mr. Archibald Slingerland, for the defendant.

It is stipulated and agreed that the deposition of A. Howard Watson, a witness for the defendant, may be taken before Jesse R. Salmon, who is nominated as a commissioner for that purpose by the parties; that his deposition may be taken down in shorthand and transcribed by the commissioner and that the signature of the witness is waived, and that same may be read in the case with the same force and effect as if given in open court.

30

40

*A. Howard Watson, direct.*

A. HOWARD WATSON, being duly sworn on his oath according to law, testified as follows:

*Direct examination by Mr. English.*

Q Where do you live? A In Woodhaven, New York.

10 Q Have you a residence in the State of New Jersey at the present time? A I have not.

Q Did you formerly have any connection with the Liberty Trust Company? A I did.

Q What was your connection? A President of the company.

Q From when to when? A From a month prior to the opening of the institution, somewhere around there, until December the 1st,  
20 1914.

Q Who was the treasurer of the company? A At that time Warren C. Biggin, not during the entire time.

Q During the year 1913? A During the year 1913, yes.

Q And do you know Roland D. Crocker? A Yes, sir.

Q What was his connection with the bank at that time? A He was trust officer and chairman of the executive committee.  
30

Q Did the trust company have a counsel at that time? A Yes, sir.

Q Who was that? A William Pennington.

Q Now, it already appears in the case that the company, trust company, had a system or practice which it pursued in connection with mortgage loans by which an application was presented and considered and acted upon. Do you remember in a general way what that practice was? A I do.  
40

*A. Howard Watson, direct.*

Q What was it? A Roland D. Crocker was about the only man who ever made, who ever presented applications for mortgage loans.

Q And he presented them on behalf of his clients? A I wouldn't know that.

Q You don't know; they just came in through him? A He would present an application for a mortgage loan before a meeting of the executive committee and the committee would make a motion that the appraisal committee examine the property, sometimes with power to grant the loan. 10

Q Well, in this case it appears from the evidence already in that an application was presented in connection with these two mortgages, which are the subject of this suit, and they were referred to an appraisal committee. Now, I show you an envelope which is now in evidence as Exhibit D. 4; in whose handwriting are the endorsements on the outside of that? A My own. 20

Q And I show you what is contained in that envelope, an application which is in evidence as Exhibit D. 2; do you recognize that as an application for the mortgage mentioned therein? A Yes, that is the one.

Q And does that application contain a report of the appraisal committee? A It does. 30

Q Signed by whom? A Signed by Roland D. Crocker, John W. Phillips and William Pennington.

Q Do you recognize their signatures? A I recognize their signatures.

Q Now, do you know whether following the report of the appraisal committee a mortgage was purchased? A Yes, a mortgage was purchased. 40

*A. Howard Watson, direct.*

Q And I show you a check which is in evidence as Exhibit D. 3 for \$2,500 to the order of H. W. Morehouse; is that check signed by you? A That is.

Q As president? A Yes.

10 Q And who else? A Roland D. Crocker, chairman of the executive committee.

Q And can you say what relation that check bears to the loan, to the application for loan?

A This check was given to pay for the mortgage loan mentioned heretofore.

Q Now, looking at the envelope D. 4, the endorsement of which you say is in your handwriting, can you tell what papers the trust company received in connection with that matter? A Bond of Albert C. Courter to Lizzie Hess Loehnberg, dated September 19, 1896.

20 Q Just a minute. I show you a bond between the parties which you have named, which is Exhibit C. 4 in evidence; do you recognize that as the bond? A Yes; there is my handwriting on the bond; I filled this in here, that is my handwriting (indicating).

30 Q Just read what you filled in on the front of the mortgage? A On the front of the bond I filled in the amount \$5,000, and the date, September 19, 1896, one year, and the time when the interest was payable, March and September 19th, that is my handwriting.

Q What else appears by the endorsement on that envelope to have been received by the trust company? A A mortgage dated the same as the bond.

Q Between the same parties? A Between the same parties.

40 Q What do you mean, a mortgage from Courter and wife to Loehnberg, which is C. 2 in evidence; do you recognize that mortgage?

*A. Howard Watson, direct.*

A Yes, that is the mortgage which accompanies the bond.

Q What else appears on the envelope? A The abstract of title on the above, the same date.

Q I can't show you that, we haven't got it here. When property was sold or mortgage was sold what was the practice with reference to the transfer of the abstract of title? A Why, Mr. Crocker would 'phone to the bank and request me to come down with the seal. 10

Q No, you don't understand me. When you gave up the papers, after you got the money and assigned the mortgage, what would you do with the papers, including abstract of title? A When the money was delivered to us we would open up the loan register, the mortgage loan register, and check the contents of the envelope with what was on the book, stamp the book and envelope "Paid," calculate the interest and make the necessary entries on the books of the bank and proof sheet. 20

Q Then turn all the papers over— A Turn the papers over to the party who handed us the money.

Q That would include the abstract paper? A That would include all the papers. 30

Q And insurance policy? A All except the appraisal certificate, which does not belong to them, that we would hold.

Q You always kept that? A Yes.

Q And that in this case was Exhibit D. 2? A D. 2.

Q Now, you have spoken of stamping a paper "Paid." I see on this envelope D. 4 a stamp of the trust company "Paid"; who put that on?

A I put that on. 40

*A. Howard Watson, direct.*

Q That was after you received the money?

A After I received the money.

Q You also spoke of the loan register; is that the same book as supplementary ledger?

A It is.

10 Q And do you find here an entry of this same mortgage, which is presented by the entries on the envelope D. 4? A Yes.

Q And that was known as loan No. what?

A Loan No. 3.

Q And in whose handwriting are those entries? A My own.

Q And they correspond with the entries on the envelope D. 4? A In every respect.

Q Now, I see the stamp "Paid" on that, too? A That is right.

20 Q Was that put on by you? A It was.

Q Now, Mr. Watson, do you remember the trust company's having sold and assigned this mortgage from Courter to Loehnberg? A Yes, from Courter to Loehnberg—no—I remember holding it, yes; I don't remember assigning it because this may have been assigned a long time ago.

Q You don't understand me. You bought this mortgage? A Yes.

30 Q Which evidently came in by assignment through Harry Morehouse? A Right.

Q Which appears by endorsement on D. 4? A Right.

Q And you held the mortgage for some time apparently. Did you receive any interest payments on it; look at the supplementary ledger, loan 3, and see. A We did; we received interest on October 7th, which was six months after the time of its being taken by the trust company.

40

*A. Howard Watson, direct.*

Q How much did you get then? A \$75.

Q And did you get any other interest? A And at the time of its payment there was an additional \$1.25 which we received on the 11th.

Q Of October? A Of October.

Q And that appears in whose handwriting? A My own handwriting. 10

Q You are referring now to Exhibit D. 5?

A Yes, sir.

Q Now, some time after that, or at least, as already appears, about the 11th of October, the bank sold this mortgage? A That is the day it was sold.

Q And do you remember executing an assignment for the transfer of that Courter mortgage? A Yes, sir.

Q I show you an assignment of mortgage, which is Exhibit C. 3 in the case, and which purports to assign not only the Courter mortgage, but another mortgage from Rudolph Heidel and wife to the Liberty Trust Company, and I ask you whether the paper has your signature to it? A It has. 20

Q And it has on it the seal of the Liberty Trust Company? A Yes.

Q Now, did you put that seal on? A Yes.

Q The seal was in your custody as president, I believe? A Yes. 30

Q Now, I ask you whether the paper was signed and sealed by you in the form in which it now is, having included in it a reference to the mortgage of Heidel to the Liberty Trust Company? A No, sir.

Q What mortgage did it purport to assign, did it assign at the time you assigned it? A The Albert C. Courter and wife mortgage to Lizzie Hess Loehnberg. 40

*A. Howard Watson, direct.*

Q At the time you signed the paper did it have in it these words, "and also a certain other mortgage bearing date the second day of September, 1913, made by Rudolph J. Heidel and wife to the said Liberty Trust Company?"

A It did not.

10 Q "On lands in said City of Newark, to secure the payment of \$3,000, which mortgage is recorded in the Register's office of the said County of Essex in Book S 31, page 162 of mortgages? A No, sir.

Q Are you sure about that? A Yes, sir.

Q Where was the paper signed when you signed it? A In Mr. Crocker's office.

Q And did you take the seal down there and put it on there for that purpose? A I did.

20 Q Now, I direct your attention to the closing words of this assignment, ahead of the "In Witness Whereof," as follows: "And that each of said mortgages is a first and valid lien on the premises therein described." A No, sir.

Q Those words were not in it either? A No, sir; they were not in it.

Q When you signed this paper, as I understand it, it assigned the Courter mortgage? A The mortgage that we held.

30 Q That was the Courter mortgage? A That was the Courter mortgage.

Q And contained no guaranty of it being a first or valid lien on the premises? A No, for the reason that I would have noticed right away in the wording of the ending there, it would have called my attention to any irregularity.

Q Now, after you signed that paper did Mr. Biggin sign it or had you signed it first? A  
40 I must have signed it first.

*A. Howard Watson, direct.*

Q Then Biggin went down to Crocker's office and signed it? A He went down just as soon as I returned.

Q And the form in which you left it with Mr. Crocker is as you have described, containing only the assignment of the Courter mortgage and no guaranty of it being a first lien? 10  
A Yes.

Q Now, before I leave that subject let me show you Exhibit D. 7 in evidence; what is that paper? A These are the proof sheets for the day's work of the Liberty Trust Company as of October 11th.

Q And I also show you Exhibit D. 6; what is that? A Deposit ticket of the company showing its deposits in the National State Bank October 11th. 20

Q Was the Liberty Trust Company a depositor in the National State Bank? A It was.

Q In whose handwriting are the entries on the deposit slip? A My own.

Q And have you noted there what the deposits represented? A Yes, sir.

Q What is the second entry of the figures \$2,576.25? A This represents the amount of the mortgage loan No. 3, together with the interest thereon in full. 30

Q That is the Courter mortgage we have referred to? A Yes, sir; the one we have been speaking of.

Q Did you make any notation on the deposit slip at the time to show what it indicated? A Yes.

Q What did you write there? A It indicates it is Crocker's own personal check on the Newark Trust Company. 40

*A. Howard Watson, direct.*

Q And that is the check that Crocker gave you when you executed this assignment? A It was.

Q I see there was another deposit made on the same day and at the same time of \$5,167.17? A Yes.

10 Q Do you know what that referred to? Did it have any connection with this matter? A Why, it represents another mortgage loan of \$5,000 and the interest thereon made in favor of Albert B. Aschenbach, which was paid on that same day.

Q And what loan is that on your record? A Mortgage loan No. 2.

Q And that is set up in this supplementary ledger book? A It is.

20 Q Are the entries there in your handwriting? A They are.

Q And the stamp, "Paid October 11, 1913," put on by you? A It is.

Q So that those two mortgages were sold by the bank and it got its money at the same time?

A At the same time.

(Entry of loan No. 2 to which the witness has referred marked A for identification.)

30 Q Now, can you turn to Exhibit D. 7, which is the paying teller's cash proof sheets, and show any reference to the moneys received on that Crocker loan and the other one represented by loan No. 2, A for identification? A I can, in my own writing there appears on the proof sheet the credit to mortgage loans Nos. 2 and 3 amounting to \$7,500.

Q You point to the entries at the bottom of the second page of Exhibit D. 7? A I do.

40 Q Mr. Watson, to your personal knowledge or recollection did the Liberty Trust Company

*A. Howard Watson, direct.*

own any such mortgage, as is referred to here on this Exhibit C. 3, this assignment of the Courter mortgage? A It did not.

Q Now, I want to direct your attention to another mortgage, which the evidence shows the Liberty Trust Company owned, and I show you Exhibit D. 10, which is an envelope; what is that? A This is the holder for mortgage loan No. 6, showing that we loaned Albert B. Aschenbach on a mortgage loan \$5,000. 10

Q I show you Exhibit D. 9 and ask you what it is? A This is the appraisal certificate which was presented to our executive committee at the time the loan was granted.

Q And the appraisal certificate is written on the bottom of the application? A The appraisers have signed. 20

Q Yes, but ahead of the appraisal report is an application, is it not? A Yes.

Q Application of Albert B. Aschenbach for loan? A For the loan on bond and mortgage of Rudolph J. Heidel.

Q And the property located where? A 80 South side of Lyons avenue.

Q Do you recognize the signatures of the appraisers? A I do.

Q They are? A Roland D. Crocker, John W. Phillips and William Pennington. 30

Q You know they are the genuine signatures? A They are.

Q Do you know whether your company purchased that mortgage? A Yes, we did.

Q I show you a check, Exhibit D. 12; does that bear your signature as president? A It does.

Q And who else? A The treasurer, Warren C. Biggin. 40

*A. Howard Watson, direct.*

Q That is dated May 1, 1913, to the order of Albert B. Aschenbach for \$5,000, that is correct? A Yes, that is correct.

Q And that is the check which went to pay for the mortgage? A It was.

10 Q Now, the envelope or holder, Exhibit D. 10, you say is made out in your handwriting? A It is.

Q And that shows it contained among other things the appraisal certificate which you just identified? A Yes, correct.

Q What else was in that envelope? A It is a bond of Rudolph J. Heidel to Albert B. Aschenbach, dated April 15, 1913.

20 Q I show you Exhibit D. 1, which is a bond from Rudolph J. Heidel to Albert B. Aschenbach, dated April 15, 1913, Exhibit C. 11, and I ask you if that is the bond which is referred to on the outside of the holder? A I recognize my handwriting on the face of it.

Q You filled in the figures for the amount and the date? A Yes.

Q And the due date and the interest rate? A Correct.

30 Q I also show you a mortgage from Rudolph J. Heidel to Albert B. Aschenbach, also dated the 15th of April, 1913, and I ask you if that is the mortgage which accompanied the bond? A It is.

Q It refers to property on the southerly line of Lyons avenue? A Yes.

Q And that is also noted on this holder D. 10? A That mortgage is noted on the holder.

40 Q Now, does the outside of the holder in your handwriting contain any reference to the assignment of this mortgage? A It does; Al-

A. *Howard Watson, direct.*

bert B. Aschenbach to Liberty Trust Company, May 2, 1913.

Q I show you assignment between the parties named, C. 13 in evidence, do you recognize that as the assignment which is mentioned? A Yes, sir.

Q Now, did the trust company receive any interest payments on this mortgage? A We did. 10

Q And where do you find a record of that? A On page 6 of the supplementary ledger under "mortgage loans."

Q And that is Exhibit D. 11 in this case? A D. 11.

Q And in whose handwriting are those interest payments made? A My own.

Q And when were they paid, and how much? A October 31 interest was paid \$150, and at the date when we received payment for the same we received the interest from October 30th to November 17th, amounting to \$14.17. 20

Q Now, at the time this mortgage was transferred and the money received was it stamped paid by anybody? A By myself, I stamped it.

Q Stamped where? A On the face of the envelope and also on page 6.

Q On the face of Exhibit D. 10 and on page D. 11? A D. 11. 30

*Mr. Bradner.* That was November 17th?

*Mr. English.* November 17th, yes.

Q Now, I show you an assignment of the mortgage, which is in evidence as Exhibit C. 16, and which assigns this mortgage dated the 15th of April, 1913, from Heidel and wife to Aschenbach, and I ask you if that is signed by you as president? A It is. 40

*A. Howard Watson, direct.*

Q And the seal of the company is on there?

A It is.

Q Put on by you as president? A It is.

Q Now, I call your attention to this assignment and to that part of it which purports to assign a mortgage made on April 12, 1906, by  
10 George W. Walbert and wife to secure the payment of \$3,000; was that mortgage referred to in the assignment at the time you executed it?

A It was not.

Q Where did you sign this paper? A In Mr. Crocker's office.

Q So, I therefore ask you whether these words, "And also that mortgage bearing date the 12th day of April, 1906, made by George W. Walbert and wife on lands in said City of  
20 Newark to secure the payment of the sum of \$3,000, which is recorded in Book S. 19, page 167, of Essex County mortgages," was in the paper when you signed it? A It was not.

Q How many mortgages did the trust company own about that time, if you remember? A It would appear from the book which I have before me that it only held two.

Q You refer to the supplementary ledger?

A Supplementary ledger.

30 Q And the entries are all in your handwriting? A Yes, sir.

Q Did the trust company hold any such mortgage as that referred to here made by Walbert and wife on lands in Newark for \$3,000?

A No, sir.

Q Did not have it to sell, in other words? A No, sir.

40 Q Now, I want to show you Exhibit D. 13, which is the paying teller's cash proof of November 17, 1913; is any of that in your handwriting? A Yes, sir.

*A. Howard Watson, direct.*

Q Any reference there to the cash received for the sale of this Aschenbach mortgage? A Yes, sir.

Q Which was loan No. 6? A Yes.

Q What is there in your handwriting? A We received in cash \$5,000 at that time.

Q Is there anything to the mortgage loan it applied to? A On mortgage loan No. 6; there is also on the second sheet of Exhibit D. 13 my entry of the credit to mortgage loan. 10

Q Just read that? A Reading, "Mortgage loan No. 6, \$5,000."

Q And you entered that at the time you got the money? A I did.

Q So that upon the sale of that the bank received the money and you made the entries and stamped "Paid" the page No. 6, D. 11, and the envelope D. 10, is that correct? A That is correct. I would like to correct that answer about only two mortgages. 20

Q You a moment ago said you thought the bank held two mortgages, and you now want to correct that? A Yes, I want to correct that.

Q What is your statement now? A Make it nine instead of two. 30

Q Now, as I understand your testimony, the bank did not undertake to sell and did not have for sale and did not receive any money for the alleged mortgage from Rudolph Heidel and wife to the Liberty Trust Company, which is the second mortgage mentioned in the assignment C. 3? A No, sir.

Q Or for the alleged mortgage from Walbert and wife, which is the second mortgage mentioned in the assignment C. 16? A No, sir. 40

*A. Howard Watson, direct.*

Q When you say, "No, sir," you mean—

A That the bank never received the money, nor did the bank ever hold them.

Q And you did not by executing these papers endeavor to sell them? A No, sir.

10 Q Because they were not mentioned in these papers? A They were not known to be in existence.

Q Were they discussed at all between you and Mr. Crocker? A Never.

Q Who had the custody of the seal of the bank? A Both—well, myself.

Q And where was it kept? A In the reserve vault of the trust company.

Q At the bank building? A At the bank building.

20 Q And when you sealed these assignments in Mr. Crocker's office you took it there with you for that purpose? A I did.

Q And did you leave it there or bring it back? A I brought it back.

30 Q Now, just let me call your attention again to D 13, which is the teller's cash proof. There seems to be some evidence of the figures having been corrected, such as the figure, "\$10,210," for example, and in that connection I show you a book which we now produce for the first time in this case, which has a series of entries in, a pass book entitled, "Liberty Trust Company, in account with the National State Bank"; who kept that book? A This book lies in a drawer in the paying teller's cage, and the entries are made by the receiving teller of the National State Bank.

Q That is the original pass book, is it? A Original pass book.

40 Q Looking at that can you tell what moneys were deposited in the National State Bank on November 17, 1913? A I can.

*A. Howard Watson, direct.*

Q Tell us? A \$10,210, \$3,450, \$780.58.

Q Now, I show you a deposit slip, Exhibit D 14, of November 17, 1913; that is for how much?

A \$3,450.

Q And that entry appears in the pass book?

A It does.

Q Now, I call your attention to the figures on the teller's cash proof, D 13, of \$10,210; what about that? A That appears also in the cash book. 10

Q And does that appear on D 13 to indicate that the trust company had that much cash and deposited it? A It does, yes.

Q Now, what about the other entry in the pass book, November 17, \$780.58? A That was composed undoubtedly of miscellaneous checks received by the trust company on deposit tickets of its deposits. 20

Q Would that appear on this teller cash proof? A No, sir.

Q Does the cash proof sheet balance up with the deposit book and the other papers here? A Yes, it agrees.

*Mr. English.* I offer in evidence the pass book of the Liberty Trust Company and National State Bank to which the witness has referred, particularly the entries of November 17, 1913. 30

(Marked Exhibit DB.)

Q Do you know Mr. Hubing? A No, sir.

Q Didn't know him at all? A No, sir.

Q He never came to the bank in connection with these matters at all? A He did not, no.

Q The whole matter was closed up through Mr. Crocker? A Yes, sir.

*A. Howard Watson, cross.*

*Cross examination by Mr. Bradner.*

Q Who is John W. Phillips? A He was one of the directors of the Liberty Trust Company and also a member of the executive committee, and on the appraisal committee.

10 Q Do you know where he is now? A I do not.

Q Was he still connected with the Liberty Trust Company when you left? A No, he had resigned shortly before.

Q Had he been asked to resign? A I think it had been politely intimated to him.

Q Was he a close friend of Crocker's, do you know? A I believe that he was.

20 Q Where were the bonds and mortgages that you purchased kept? A In the vaults of the Liberty Trust Company at its office.

Q And you and Mr. Crocker had access to that vault? A Our treasurer and myself, not Mr. Crocker.

Q Didn't Mr. Crocker have a key to the safe deposit? A Not to that department, no.

Q And he had no access to the bonds and mortgages? A No.

30 Q When a sale would be made of a bond and mortgage you would take the bond and mortgage to Mr. Crocker's office? A No, sir; only at the time—only after the bond and mortgage had been paid to the Liberty Trust Company would it be delivered to him.

Q I understood you to say that Mr. Crocker would telephone you when he had made a sale and you would go down and take the seal with you? A Yes, sir.

Q And execute an assignment? A Yes, sir.

40 Q And put the seal on? A That is right.

*A. Howard Watson, cross.*

Q At the same time would you take the bond and mortgage with you? A No, sir; not until we received the money, which Mr. Biggin would generally bring up with him when he had witnessed my signature.

Q Then afterwards Mr. Biggin would go and witness your signature? A Yes.

10

Q And then bring the money with him? A Yes.

Q And then you would deliver the bond and mortgage? A Right.

Q To Mr. Biggin? A No, we would send down usually our messenger with the papers to Mr. Crocker's office.

Q That was the usual practice? A That was the usual practice, and usually occurred, unless he came up himself with the money, then we naturally would deliver the paper to him.

20

Q When you signed Exhibit C 3, being the assignment of mortgage of the Liberty Trust Company to Louis Hubing, executor, were you told by Mr. Crocker that you were making a sale to Mr. Hubing? A Yes.

Q And who he was? A No, he didn't tell me who he was.

Q Did he tell you that he was the executor of an estate? A I don't remember that he did.

30

Q Did he give any reason for selling the mortgage? A No, he never did.

Q The mortgage had come to you through Mr. Crocker, as all other mortgages had? A It had.

Q And when he was ready to sell it you assented? A We sold it; the banks usually have difficulty in keeping their money out at six per cent., so that they were glad to have the money out at six per cent., and when it came time to pay, why, of course, we had to assent to it.

40

*A. Howard Watson, cross.*

Q At that particular time do you recall that you were rather desirous of getting some money in to meet your Christmas fund? A No, yes, there had been some talk, I guess, naturally the directors were all investing their money with some idea of that in mind.

10 Q What was this Christmas fund? A It was a plan whereby depositors made weekly payments which the bank had to meet at one week before Christmas, one week or so before Christmas.

Q And then this particular fall of 1913 you were looking forward to meeting those demands? A We were.

Q And you were glad to sell some mortgages? A We were.

20 Q When you went down to Mr. Crocker's office to sign this first assignment in October did you observe that the date was written in type-writing, the date of the assignment? A I don't have any particular recollection of that.

Q You might have executed it the day before you got the money? A That I couldn't say.

30 Q Well, it appears on your supplementary ledger that you got the money on October 11th, and the date of the assignment is October 10th? A Yes, that may possibly be, because Mr. Crocker was never very prompt in his dealings.

Q And the signature of Mr. Biggin is on October 10th also? A Yes; well, it wouldn't be anything unusual.

Q How do you mean unusual? A Because he was naturally, he had been lax in his obligations.

40 Q You mean that you might have delivered the assignment to him and had it fully executed before you got the money? A As one of the

*A. Howard Watson, cross.*

officers in the bank it was in his possession the same as if it was paid at the bank.

Q And you might have got the bond and mortgage, too, before he got the money? A No, I said may possibly have been the case; in numerous cases he had often asked to have papers sent down, and they were sent down in his hands as being one of the officers of the bank for the bank. 10

Q So that if it would not have caused you to be suspicious at all if he had asked you to send down a bond and mortgage and to come down and execute an assignment and leave it to him to get the money and send it in? A Well, he never had done a thing of that kind, but still he had frequently asked for papers to be sent down, and we always made a record and placed such memorandum in the envelope that such paper had been sent down to his office, and such things was always called to the attention of the banking department when they came there; these papers were always in the envelopes. 20

Q You could not say from your recollection in this particular case whether you delivered the bond and mortgage before you got the money or not, could you? A Yes, I could, because we always sent those down by our messenger; I don't remember any case at all where papers were in his possession at the time of their being paid, and I think there is probably a letter on file showing what papers were sent down to his office. 30

Q On this occasion? A I wouldn't be a bit surprised that the files will show; whenever we let a paper go out of the place we wrote a letter stating just the documents that have gone out, as evidence of what had passed out of our hands.

Q That is, you would write a letter to Mr. Crocker we enclose such papers? A Would 40

A. Howard Watson, cross.

write, "Papers as listed below," and then enumerate these things that had gone out of our hands.

Q And that letter would be signed by you?

A That letter would be signed by me.

10 Q Since you signed this assignment dated October 10th, had you seen it again at any time prior to today? A Yes, I had.

Q Where did you see it? A It was presented to me by Frank Schoner, he said his name was, he came up to the bank and showed it to me, and I made a notation in pencil on Exhibit D 5, on the supplementary ledger, that the assignment had this in, which was a surprise to me.

Q And at that time you told Mr. Schoner that you had signed it? A Yes.

20 Q (*By Mr. English.*) When was that with reference to Crocker's disappearance? A That was after, I made a record on the book, because it was a surprise, made a pencil notation.

Q Everything else was in this paper at the time you signed it except the words that you have stated were not in it? A To the best of my knowledge and belief.

Q It was not a completely unfilled legal blank when you signed it? A Oh, no.

30 Q There was some typewriting in it? A Oh, yes.

Q On the next day, October 11, 1913, you received from Mr. Crocker \$2,500 with the interest? A That is right.

40 Q On October 7th you had received interest from him? A No, this was—October 7th, I see is six months from the period that it was made, and then October 7th is the date the interest is paid, \$75, it appears from the deposit ticket this \$75 and \$1.25 were paid at the same time.

*A. Howard Watson, cross.*

Q So you got it all in one check? A \$2,576.25.

Q Just as it appears? A Just as it appears on the deposit ticket Exhibit D. 6.

Q On the same day, on October 11th, you received some more money from Mr. Crocker, didn't you? A Yes, sir.

Q \$5,000? A \$5,000. 10

Q And some interest? A Yes, sir.

Q And what was that to pay? A That was to pay a mortgage of Albert B. Aschenbach for \$5,000.

Q When did you assign that mortgage? A I can't tell without seeing the paper, I presume on the same day that the other was.

Q You assigned it at Mr. Crocker's request to somebody? A I did.

Q You got the money on October 11th? A 20  
October 11th.

Q For the Lyons avenue mortgage, that is the Lyons avenue mortgage, isn't it? A I don't know the location, for the property is not specified.

Q What mortgage was paid off on October 11th for \$5,000? A Mortgage of Albert B. Aschenbach, dated March 20, 1913.

Q A mortgage made by him? A Made by 30  
Albert B. Aschenbach to the Liberty Trust Company.

Q Directly? A Directly.

Q On what property? A I couldn't tell; there is a pencil notation here in the book made by some one saying North Twelfth street, 435 feet south of Fourth avenue.

Q (*By Mr. English*) You are speaking of No. 2 A for identification? A Yes.

Q What was the date of the bond? A 40  
March 20, 1913.

*A. Howard Watson, cross.*

Q And that was one of the Crocker loans on the North Twelfth street property? A It was.

Q Well, this assignment, dated October 10th, Exhibit C. 3, refers to a mortgage to secure the payment of \$3,000, made by Rudolph J. Heidel and wife, and you don't know anything about that mortgage? A No, sir, I do not.

Q But on October 11th you received \$7,500 from Mr. Crocker? A That is right.

Q And so far as your books show the \$2,500 was for the Courter mortgage and the \$5,000 was for the Aschenbach mortgage on North Twelfth street? A Those were the identical mortgages that were paid on that day, and papers were delivered accordingly.

Q You say loans Nos. 2 and 3? A 2 and 3.

Q Immediately upon receipt of the money would you stamp the book paid? A Yes.

Q You would not delay that sometimes? A I certainly would not, no, sir.

Q It could not have happened that you neglected to stamp it? A No, sir; if you did that you could not prove your work at night.

Q There was an Aschenbach loan No. 6, wasn't there? A Yes, sir.

Q That is on a bond dated April 15, 1913? A Yes, that is right.

Q When was that paid? A Paid November 17th.

Q And did you assign that mortgage to anybody? A That was assigned to Louis Hubing.

Q When? A On the 16th or 17th of November, I should say, I can't remember.

Q How do you know it was assigned to Louis Hubing? A Because I have got a record here, I see it.

*A. Howard Watson, cross.*

Q You have a record in your own handwriting on the loan sheets? A I have in this case.

Q That it was assigned to Louis Hubing? A Yes, sir.

Q And you received the money on November 17th? A I did. 10

Q \$5,000? A \$5,000.

Q I show you assignment Exhibit C. 16, and ask you if that is the assignment of the mortgage for which you received the money on November 17th? A Yes, that appears to be the one.

Q Now, Mr. Watson, that assignment is dated the 8th day of December, 1913? A Yes, he has filled it in.

Q "He has filled it in"; who do you mean by "he"? A Crocker, that is Crocker's writing. 20

Q It is acknowledged on the 8th of December, too, isn't it? A Yes, filled in by Mr. Crocker.

Q Then you evidently must have executed it without any date in it? A Well, it is possible that the date has been erased; it is possible the date has been erased; this man has changed documents entirely, and it is very light type, if you notice, and it is very easily erased and changed. 30

Q You can't say whether the date was in there or not when you signed the paper? A I usually sign dated papers when I sign them.

Q Well, that is the only explanation you can make that the date has been changed? A That is all I can say.

Q Everything else was in this paper when you signed it, this Exhibit C. 16, except what 40

*A. Howard Watson, re-direct.*

you have stated in your direct examination was not in there? A Yes, sir.

Q You were asked who had the custody of the seal and you started to say, "both"; who did you have in your mind? A Mr. Crocker, he had the combination to the safe where the  
10 seal was kept, so that in my absence he could get at it; he also had a duplicate seal down in his own office, although I understand it was of a different size than the one I had made; these appear to be the seal that I put on.

Q Yourself? A I should say so.

Q All your mortgage loan business was done with Mr. Crocker? A He was the man that handled it exclusively.

Q You made no other loans except those on his application? A None at all.  
20

Q You made no sales of mortgages except through him? A No, sir.

*Re-direct examination by Mr. English.*

Q You spoke of duplicate seal; have you discovered that fact since Crocker's disappearance? A Mr. Kautzmann found it down there.

Q You did not know it was in existence at the time Crocker was with the company? A No.  
30

Q Now, whose check was it that paid for these two mortgages? A Which two do you refer to?

Q The Courter mortgage and the Aschenbach mortgage? A The Courter mortgage was paid by Roland D. Crocker's personal check on the Newark Trust Company; the Aschenbach mortgage, from the records before me, was paid in cash.

Q And cash received from Crocker? A  
40 Cash received from Crocker.

*A. Howard Watson, re-cross—re-direct.*

*Re-cross examination by Mr. Bradner.*

Q Can you tell from these books whether any other mortgages were paid off in 1913? A I can.

Q Will you look, please—I mean after October? A That year, you mean?

Q Yes, that year. A There don't seem to be any other. 10

Q You don't find any in that book? A No.

Q I show you a check made to H. W. Morehouse, Jr.; was that signed by you? A That is.

Q And to whom was that delivered? A To Mr. Crocker.

Q You don't know Mr. Morehouse's writing, do you? A Yes, I know Morehouse's writing.

Q Do you think that is his writing? A I am pretty sure it is not; it went to his credit just the same. 20

Q It went to his credit where? A It went to his credit in the First National Bank of Roselle, as appears by the endorsements.

*Re-direct examination by Mr. English.*

Q Just let me call your attention to loan No. 2, which was paid off on October 11, 1913. Do you remember whether that mortgage was paid off and cancelled, or whether it was assigned? A No, I do not. 30

Q Don't remember about that one way or the other? A No.

*Mr. English.* I offer in evidence now the entry of loan No. 2 in supplementary ledger, which is already marked A for identification.

(Marked Exhibit DC.)

*Certificate of Commissioner.*

Q You said that Mr. Schoner showed you one of these assignments after Mr. Crocker disappeared? A Yes.

Q He showed you both of them that are here in suit, did he not? A He did.

10 Q And you made an entry in each case on the supplementary loan ledger in pencil? A I did.

Q Is this entry in pencil on loan No. 3, D. 5, the pencil memorandum which you made at that time? A It is.

Q And the same is true of pencil memorandum on loan No. 6, D. 11? A It is.

Q Now, is that the first time you had heard of those second mortgages and assignments? A It is; that is the reason I made the nota-  
20 tion.

## TESTIMONY CLOSED.

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

I hereby certify that the foregoing deposition was taken before me, as a commissioner, at three o'clock P. M., October 8, 1915, at the office of the United States Fidelity and Guaranty Company, No. 47 Cedar street, New York City,  
30 in the presence of Mr. Frank E. Bradner, representing the complainant, and Mr. Conover English and Mr. Archibald Slingerland, representing the defendant.

I further certify that the testimony was taken stenographically by me, pursuant to a stipulation entered into by all the counsel, and I certify that the foregoing testimony is a true and correct transcript of the testimony of the witness and the proceedings before me.

40 Dated at Newark, N. J., October 12, 1915.

JESSE R. SALMON,  
*Commissioner.*

*Stipulation.*

## COURT OF CHANCERY OF NEW JERSEY.

VICE CHANCELLOR'S CHAMBERS.

Newark, N. J., Oct. 26, 1915.

Mr. Conover English and Mr. Frank E. Bradner :

The enclosed pages go in the book of testimony of the Hubing-Liberty Trust Co. case, the first of the three tried. They were dictated to me, one by Mr. English and the other by Mr. Bradner, on days when the other two cases were going on and after the book of evidence to which they are to be attached had been delivered to counsel. I have added the two pages to the Court's copy of the Hubing-Liberty Trust Co. transcript. 10

J. R. SALMON. 20

It is stipulated that any action taken by the complainant in defending foreclosure suits relating to any of the property in question or in bringing foreclosure suits, shall not be deemed to bar a waiver of his claim for rescission and acquiescence in the situation, and shall not affect anybody's rights.

(October 20, 1915.)

*Mr. English.* In the Hubing case, the first case tried, do you remember that when we read the deposition of Mr. Watson, he referred to a letter which he said must have been sent from him to Crocker, and I asked leave to reserve and put that in. I have spoken to counsel about it, and have found it, and they say they have no objection to my doing so. 30

*Stipulation.*

I offer in evidence letter of October 10, 1913, signed by R. D. Crocker and addressed to the Liberty Trust Company.

(Marked Exhibit DD.)

10 Now I also offer in evidence a copy of a letter from Mr. Watson, president, to Mr. Crocker, dated November 17, 1913, and this relates to the Aschenbach mortgage which was in the second assignment.

(Marked Exhibit DE.)

20

30

40

*Exhibits.***Exhibits.**

## EXHIBIT C. 3.

#341 W. Kinney St.

25x100

\$2500

#157 N. 12 St.

25x100

\$3000

10

## EXHIBIT C. 9.

Newark, N. J. Oct. 10, 1913. No. 15.

## FIDELITY TRUST COMPANY

Estate of Henry Kirchner	Pay to the order of	
Louis Hubing,	R. R. Crocker, Atty.	20
Executor.	\$5500.00 (Fifty-five	
	hundred dollars).	

LOUIS HUBING,  
Executor.

Endorsed: R. D. Crocker, Atty. Roland D.  
Crocker. Credit Account Newark Trust Co.,  
Oct. 11, 1913. F. H. Kilpatrick, Treas.

## EXHIBIT C. 10.

30

## ROLAND D. CROCKER

Attorney at Law

776 Broad St., Newark, N. J.

Oct. 10, 1913.

Rec'd. from Louis Hubing Fifty-five hundred  
dollars for payment to Liberty Trust Co. for pur-  
chase of mortgages.

R. D. CROCKER.

40

*Exhibits.*

## EXHIBIT C. 17.

Newark, N. J. Dec. 1st, 1913. No. 18.

## FIDELITY TRUST COMPANY

10 Estate of Henry Kirchner Pay to the order of  
 Louis Hubing, R. D. Crocker, Atty.  
 Executor. \$3000.00 Three thou-  
 sand dollars.

LOUIS HUBING,  
 Executor.

Endorsed: R. D. Crocker, Atty. Roland D.  
 Crocker.  
 Manufacturers National Bank, Newark, N. J.

## EXHIBIT C. 18.

20 ROLAND D. CROCKER,  
 Attorney at Law  
 776 Broad St., Newark, N. J.

Dec. 1st, 1913.

Received from Louis Hubing, Executor, Three  
 thousand dollars for loan on mortgage Lot 902,  
 Map of Weequahic Park.

R. D. CROCKER,  
 Atty.

## 30 EXHIBIT C. 19.

Newark, N. J. Dec. 8, 1913. No. 21.  
 Est. of Henry Kirchner, Pay to the order of  
 Louis Hubing, R. D. Crocker, Atty.  
 Executor. \$3000.00 Three thous-  
 and dollars.

LOUIS HUBING,  
 Executor.

40 Endorsed: R. D. Crocker, Atty. Roland D.  
 Crocker.  
 Manufacturers National Bank, Newark, N. J.

*Exhibits.*

## EXHIBIT C. 20.

ROLAND D. CROCKER,  
Attorney at Law  
776 Broad St., Newark, N. J.

Dec. 8, 1913.

Rec'd. from L. Hubing, Exr. check for purchase of \$3000 mortgage premises So. 14 St., Newark, N. J. 10

R. D. CROCKER,  
Atty.

## EXHIBIT DD.

(Copy)

Newark, N. J.,  
Oct. 10, 1913.

Liberty Trust Co.,  
Newark, N. J.

20

Dear Sirs:—

I enclose checks for the following mortgages as arranged with Mr. Watson today.

For Aschenbach mortgage, property N. 12 St., \$5167.17.

For Rosenthal mortgage, \$2576.25.

Please send me in morning the papers in these cases.

Very truly,  
R. D. CROCKER.

30

Received Oct. 11, 1913  
Liberty Trust Company  
Answered October 11, 1913.

*Exhibits.*

## EXHIBIT DE.

(Copy)

Nov. 17, 1913.

Mr. R. D. Crocker,  
776 Broad St., Newark, N. J.

My dear Mr. Crocker:

10 In accordance with your request we are handing you the following papers in relation to the Aschenbach mortgage of \$5,000—which we understand will be taken up today.

Bond & mortgage

Rudolph J. Heidel to Albert B. Aschenbach  
Assignment of mortgage

Albert B. Aschenbach to Liberty Trust Co.  
Certificate of Search

Firemen's Insurance Co. policy #B528170

20 Rudolph J. Heidel.

Very truly yours,  
LIBERTY TRUST COMPANY,

President.

30

40

*Opinion.***Opinion.**

Filed.

## IN CHANCERY OF NEW JERSEY.

*Between*LOUIS HUBING, executor, etc.,  
*Complainant,**and*LIBERTY TRUST COMPANY,  
*Defendant.*

10

On final hearing on bill, answer, replication  
and proofs.

Mr. Frank E. Bradner for the complainant.

20

Mr. A. F. Slingerland and Mr. Conover Eng-  
lish for the defendant.

## MEMORANDUM.

HOWELL, V. C.

The bill in this case is filed for the purpose  
of setting aside the transfer of four bonds and  
mortgages purporting to have been made by the  
defendant to the complainant by means of two  
instruments of assignment each transferring on  
its face two mortgages. The allegation of the  
bill is that the complainant finding himself en-  
tangled in a litigation in the Orphans Court  
over the validity of the will whose executor he  
was, and having considerable cash on hand, de-  
cided upon the advice of one Roland D. Crocker,  
a solicitor, to invest the sum at once, without  
awaiting determination of the litigation. Crock-  
er informed him that the defendant the Liberty  
Trust Company had mortgages to sell and

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*Opinion.*

that he would arrange for the purchase of one or more for the complainant. The four mortgages in question are as follows: (1) A mortgage made by Courter to Loehnberg for \$2,500; (2) a mortgage made by Heidel to the Liberty Trust Company for \$3,000; (3) a mortgage  
 10 made by Heidel to Aschenbach originally for \$5,000 but paid down to \$3,000; and (4) a mortgage made by Wolbert to Schwarzwaelder for \$3,000.

The bill alleges that Crocker was the agent and attorney of the trust company for the sale of mortgages held by it, and that he represented to the complainant in order to induce him to purchase these so-called mortgages that they all belonged to the trust company and  
 20 that they were first liens upon the several tracts of land which they purported to cover. The bill further alleges and the proofs demonstrate that the complainant relied upon statements made to him by Crocker, and that in the months of October and December, 1913, he entrusted Crocker with the money with which the purchases might be made. Crocker's receipts to the complainant show that the complainant paid  
 30 to him the following sums of money in cash: October 10, 1913, \$5,500; December 1, 1913, \$3,000; December 8, 1913, \$3,000, making a total of \$11,500.

On October 10, 1913, an assignment of mortgage was executed by the defendant to the complainant; it purported to transfer two bonds and mortgages, one made by Courter to Loehnberg for \$2,500 and another made by Heidel to the defendant for \$3,000, both of which are stated to have belonged at that time to the defendant. The matter appears to have been  
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*Opinion.*

closed on either October 10 or October 11, 1913, and the assignment was recorded in the office of the Register of Deeds of Essex County on October 11, 1913; for this assignment the complainant paid \$5,500. On December 8, 1913, another assignment of two mortgages was executed by the defendant to the complainant. This included a mortgage made by Heidel to Aschenbach and a mortgage supposed to have been made by Wolbert to Schwarzwaelder. This assignment was not recorded in the office of the Register of Deeds until September 28, 1914. The complainant, however, testifies that the papers were sent to him by mail by Crocker only a short time after the matter was finally closed and the papers delivered.

It now turns out that the representations made to the complainant by Crocker in relation to these mortgages were wholly untrue; that by reason of certain manipulations of the securities which need not be gone into here the Courter bond and mortgage did not belong to the defendant, that the mortgage made by Heidel to the defendant instead of being a first mortgage was a third mortgage: that the mortgage made by Heidel to Aschenbach was a fourth mortgage, and that the mortgage made by Wolbert was a bogus mortgage and never had any legal existence. Thereupon the complainant says that he having relied upon false statements with respect to the transaction, and having lost money thereby to the extent of \$11,500, besides interest, he is therefore entitled to have this court set aside the whole transaction as fraudulent, and that he should likewise recover back the money paid out by him on the strength of these misrepresenta-

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*Opinion.*

tions, with interest. The authority upon which he relies is found in the cases of *Eibel vs. VonFel*, 10 Dick., 670, and *DuBois vs. Nugent*, 3 Rob. 145.

10 The defendant is a corporation organized under the laws of this State, and at the time of the transactions complained of and at the present time was and is carrying on the business of a trust company in the city of Newark. Being a corporation it cannot itself actually act in any transaction; it must act by agents, duly appointed, and such agents must act by authority conferred upon them, either expressly or by implication by the corporation itself. The very first step taken by the complainant in its attempt to rescind the transaction complained of is its allegation that Crocker was the agent  
20 of the corporation for the sale of mortgages, and that he had authority from the corporation, either express or implied, to make the representations with which he stands charged by the bill. It is true that Crocker was the chairman of the executive committee of the corporation and that by virtue of his position and activities undoubtedly possessed such power and influence in its business. The mere fact that he was  
30 chairman of the executive committee gave him no authority whatever except so far as the same was conferred upon him by resolution of the directors or by implication.

An examination of the by-laws and of the minutes of the corporation disclose the fact that no express authority was ever conferred upon Crocker by the trust company to sell the said mortgages or to make representations concerning them. The action of Crocker was entirely gratuitous and without any semblance  
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*Opinion.*

of authority, and as a necessary consequence the trust company was not bound by anything he did. There is no proof that the trust company ever held out Crocker as its agent for the purposes above mentioned, or that the complainant relied upon any such supposed holding out, and therefore there would be no authority conferred upon Crocker by implication. 10

The case of the complainant therefore falls and the bill must be dismissed with costs.

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*Final Decree.*

**Final Decree.**

Filed October 23, 1916.

IN CHANCERY OF NEW JERSEY.

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*Between*

LOUIS HUBING, executor of  
the Last Will and Testa-  
ment of HENRY KIRCHNER,  
deceased,

*Complainant,*

*and*

LIBERTY TRUST COMPANY,

*Defendant.*

*On bill, &c.,*

*Final decree.*

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This cause coming on to be heard in the presence of Frank E. Bradner, of counsel with the complainant, and Archibald F. Slingerland and Conover English, of counsel with the defendant, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint; and it appearing that this cause was referred to the Honorable James E. Howell, Vice Chancellor, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein; and the said Vice Chancellor having reported his findings to the Court, and counsel for the respective parties having ap-

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*Final Decree.*

peared before the Chancellor on the settlement of this decree:

It is, on this 21st day of October, 1916, on motion of Archibald F. Slingerland, solicitor of the defendant, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED that the complainant's bill be and the same is hereby dismissed with costs to be taxed, and that execution do issue for the said taxed costs according to the practice of this Court. 10

E. R. WALKER,  
C.

I consent to the form of the foregoing decree.

FRANK E. BRADNER, 20  
*Solicitor for Complainant.*

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*Notice of Appeal.*

**Notice of Appeal.**

Filed October 28, 1916.

IN CHANCERY OF NEW JERSEY.

10 *Between*

LOUIS HUBING, executor of  
the Last Will and Testa-  
ment of HENRY KIRCHNER,  
deceased,

*Complainant,*

*and*

LIBERTY TRUST COMPANY,

*Defendant.*

*On bill, &c.,  
Notice of  
appeal.*

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The complainant hereby appeals from the final decree made in the above stated cause dismissing the bill of complaint and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated October 27, 1916.

FRANK E. BRADNER,

30 *Solicitor for and of Counsel with Complainant.*

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

FRANK E. BRADNER,

*Of Counsel with Complainant.*

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*Petition of Appeal.*

**Petition of Appeal.**

Filed November 16, 1916.

**New Jersey Court of Errors and Appeals**

*Between*

LOUIS HUBING, executor, etc.,  
*Complainant-Appellant,*  
*and*

LIBERTY TRUST COMPANY,  
*Defendant-Respondent.*

*Petition of  
appeal.*

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To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

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The petition of Louis Hubing, executor of the Last Will and Testament of Henry Kirchner, deceased, the appellant in the above stated cause, respectfully shows:

That your petitioner finds himself aggrieved by a decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date October 21, 1916, wherein the said Louis Hubing, executor, etc., was complainant and the Liberty Trust Company defendant; in the following particulars to wit:—

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1. Because the said decree adjudges that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint.

2. Because the said decree orders that the complainant's bill of complaint shall be dismissed with costs to be taxed.

**New Jersey State Library**

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*Petition of Appeal.*

3. Because the complainant had proved that Roland D. Crocker was the agent of Liberty Trust Company, and made the sales of the four bonds and mortgages to the complainant while acting as such agent.

10 4. Because the complainant had proved that Liberty Trust Company had permitted Roland D. Crocker to purchase and sell bonds and mortgages for it, and that he was the only person who did act as such agent, and was the only person who had charge of the purchase and sale of bonds and mortgages for said Liberty Trust Company.

20 5. Because upon the pleadings and proofs the appellant was entitled to prevail in his suit, and was entitled to all the relief prayed in his bill of complaint.

And your petitioner humbly appeals from the said decree, and from the whole and every part thereof, upon the ground that the said decree is erroneous in the particulars hereinbefore stated and set forth.

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

FRANK E. BRADNER,  
*Solicitor for and of Counsel with Appellant.*

(Common answer filed by Respondent.)

*Extracts from Exhibits C. 7 and C. 15.*

Extract from Exhibits C. 7, p. 46 and C. 15, p. 51.

Exhibit C. 7 is a mortgage purporting to have been made by Rudolph J. Heidel and wife to Liberty Trust Co., a corporation, bearing date September 2, 1913, in the sum of \$3,000.00 on property in the Easterly line of North 12th Street, Newark, N. J. Endorsed on the mortgage is a certificate, as follows: 10

“Received in the Register’s Office of the County of Essex on the 4th day of September, A. D. 1913, at 1:02 o’clock in the afternoon, and recorded in Book S 31 of Mortgages for said County on pages 162-164. Thomas P. Allworth, Register.”

Exhibit C 15 is a mortgage purporting to have been made by George W. Wolbert and wife to Frank Schwarzwaelder, bearing date April 12, 1906, in the sum of \$3,000.00 on property in the City of Newark known as lot No. 32 on a map of Peck property in the 11th Ward, filed April 18, 1871. 20

Endorsed on the mortgage is a certificate, as follows:

“Received in the Register’s Office of the County of Essex, New Jersey, on the 13th day of April, A. D. 1906, at 9:02 o’clock in the forenoon and registered in Book S 19 of Mortgages for said County on pp. 167 and 168. Edward S. Perry, Register.” 30

