

New Jersey Court of Errors and Appeals

Between

THE GERMANIA BUILDING AND
LOAN ASSOCIATION, et als.,
Complainants-Respondents,
and

B. FRANKEL REALTY COMPANY,
et als.,
Defendants-Appellants.

*On Appeal
from Court
of Chancery.*

Brief for Complainant-Respondent.

Facts.

The facts in this case, are so accurately and fully stated by the Vice-Chancellor that it would be superfluous to repeat them. The Vice-Chancellor also states very clearly the issues between the parties.

It is proposed to answer as briefly as possible the points made by the appellants.

ANSWER TO POINT 1.

This point is, that the Association had no right to pay Schneider the order of \$1,165.11, marked Exhibit C. 27, p. 131, and charge the same as an advancement under the mortgages held by it. It is contended by the appellants that the meeting of the Association, at which the payment was ordered, was illegal. While it is true that the notice did not state that the meeting was called for the special purpose of ordering the payment of the money to Schneider, it did state that important business would be transacted; and the appellants were at the meeting and did not object to the notice.

There does not seem to be any merit in this contention of the appellants.

It is also contended that the payment was not authorized by the terms of the order itself. The order was payable partly out of the third payment on the mortgages, and partly out of the fourth payment. There was no agreement proved that the money should be advanced in any particular payments. The course of dealing between the parties to the mortgages, shows that as the work progressed, money was deposited by the Association in the hands of its solicitor, Mr. Gurney, by check payable to the order of B. Frankel Realty Company or Charles B. Gurney, attorney. No doubt, enough money was thus advanced from time to time as would cover the value of the work to the extent that the Association was permitted to take a mortgage that is, 80 per cent. Out of these moneys so deposited, Mr. Gurney made payments from time to time to B. Frankel Realty Company. Mr. Gurney's testimony, p. 67, shows that he received from the Association the following amounts:—

July 10, 1910	\$2,726.00
August 13, 1910	2,000.00
September 23rd	3,638.00

Making a total of.....\$8,364.00

He paid out amounts as follows:—

July 21st, B. Frankel Realty Co....	\$275.00
July 23rd, B. Frankel Realty Co...	1,000.00
July 23rd, B. Frankel Realty Co...	152.00
July 23rd, B. Frankel Realty Co...	600.00
July 23rd, B. Frankel Realty Co...	968.00

\$2,995.00

And he says he retained \$6.00 for Application fee (p. 67)

6.00

This makes a total of payments: \$3,001.00

Mr. Gurney therefore paid out \$275.00 more than he had received from the Association up to July 23, 1910. This \$275.00 is accounted for by the fact that that amount was a payment on account of the purchase price of the lots, and was really not included in the construction of the buildings. Mr. Gurney was reimbursed however, out of the next moneys that came into his hands, and no objection has been made by any of the parties.

He paid August 13, 1910, to B. Frankel Realty Co.	\$300.00
August 13th, to B. Frankel Realty Co.	1,700.00
	<hr/>
	\$2,000.00

These two checks exhausted the \$2,000.00 which he received from the Association on August 13th. He was still a creditor of the fund for \$275.

October 7th, he paid insurance (p. 70) ..	\$45.00
February 7, 1911, he paid H. C. Schneider	1,165.11
August 21st, 1911, he paid to the Association	2,152.09
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These payments total	\$3,362.20
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Adding together the totals as follows:

2,000.00
3,001.00
<hr/>

Makes a total of payments	\$8,363.20
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His receipts were	\$8,364.00
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There appears to be a discrepancy of .80, and this is admitted by Mr. Gurney in his testimony, p. 75. It appears therefore, that Mr. Gurney undoubtedly with the consent of the Realty Company deducted out of the money that he received from the Association September 23, 1910 (\$3,638.00), \$275.00 which he had

advanced in excess of former amounts received from the Association. He also made the payment to Schneider out of the last advance of September 23, 1910. This shows the course of dealing between the parties to the mortgages. It shows also, what Frankel meant when he directed the payment of \$1,165.11 out of the third and fourth payments on the mortgages. He meant that Mr. Gurney, to whom he knew the order would be presented, should apportion the payments out of the moneys in his hands if necessary, so that he would not have to advance any more money out of his own pocket, as he had done in the item of \$275.

When the order was given, Mr. Gurney did not have any money in his hands, and the fund owed him \$275. Out of the money that afterwards came into his hands, he deducted, with Frankel's consent the \$275. and waited for authority from the Association to pay the order for the \$1,165.11.

This is a course of dealing, which it is submitted, estops Frankel Realty Company and its grantees.

It is also contended by the appellant that the association was not obligated to pay the order for \$1,165.11. The testimony of Holloway (p. 77) shows that the order was given for lumber sold and delivered at 203 and 205 Runyon street, the same properties covered by the mortgages. The Holloway Lumber Company postponed its right to file a lien claim and therefore, made its lien subsequent to the mortgage, and released its lien. The Holloway Lumber Company then assigned the order to Mr. Schneider.

Under the present Mechanic's Lien Act, Comp. Stat. p. 3302, Paragraphs 14, 15 and p. 3310, par. 28, and the authorities construing the same: *Young vs. Haight*, 69 N. J. L., 40 Vr. 453, Holloway Lumber Company would have been entitled to priority by lien claim over the mortgage to the extent of the moneys remaining to be advanced by the mortgagee.

Whether the making of the advance was optional or not, the Association would have been obliged to pay the claim of Holloway Lumber Company. Neither the Association, nor B. Frankel Realty Company can now say after the lien has been lost, there was no authority to pay the order. The parties to the order and their assigns are estopped.

One of the grantees, as found as a fact by the Vice-Chancellor, knew at the time of taking a conveyance from B. Frankel Realty Company, that the order to Union Lumber Company had been previously given. See p. 152, l. 35, conclusions of Vice-Chancellor; and also testimony of Schneider, p. 79.

ANSWER TO POINT 2.

The appellants contend that the Vice-Chancellor erred in holding that the appellants, who were the grantees of B. Frankel Realty Company, did not abandon or give up the contract for future advances under the mortgages.

The Vice-Chancellor says, conclusions, p. 152, l. 22: "These transfers were made as Frankel and Wolff both say, upon an agreement that the grantees were to take over what the Realty Company had and finish the buildings. Frankel says also, that the grantees were to sell the buildings, pay all the claims and if there was any surplus, turn it over to him." The Realty Company in effect authorized its grantees to continue the contractual relations with the association. Certainly, Frankel Realty Company could not have stopped the work on the houses and left them unfinished: no more could the grantees of Frankel Realty Company deprive the association of the full benefit of its mortgages, and that was to have completed houses in accordance with the application for the loans, and the contract arising upon the making of the loans.

The transfer of the properties was not a breach of the contract, but on the contrary, was a continuation of it and an assumption of it by the grantees.

ANSWER TO POINT 3.

This point is, that the association is only entitled to recover the first payment, because subsequent payments were made without the authority of the committee or the Board of Directors.

It seems to be sufficient to say that the moneys have been traced into the hands of the Realty Company, and the Realty Company and its assigns are estopped from disputing the authority of Mr. Gurney to pay over the money. The money came out of the treasury of the association.

ANSWER TO POINT 4.

The mortgages provide for the payment of all fines, forfeitures and other payments that may become due and payable from, and may be charged or imposed upon said B. Frankel Realty Company, or its assigns, as the holder of such shares of stock pursuant to the constitution and by-laws, rules and regulations of the complainant association. The parties having agreed that the fines may be collected, the association has the right to recover fines in this suit, as they were imposed by virtue of the constitution.

Bowen vs. Lincoln B. & L. Assn., 51 N. J. Eq., 6; Dick., 272.

The amount due upon the mortgages is stated in the testimony of Gless, p. 65, l. 20. The mortgagor is charged with the moneys actually advanced, and with interest and fines.

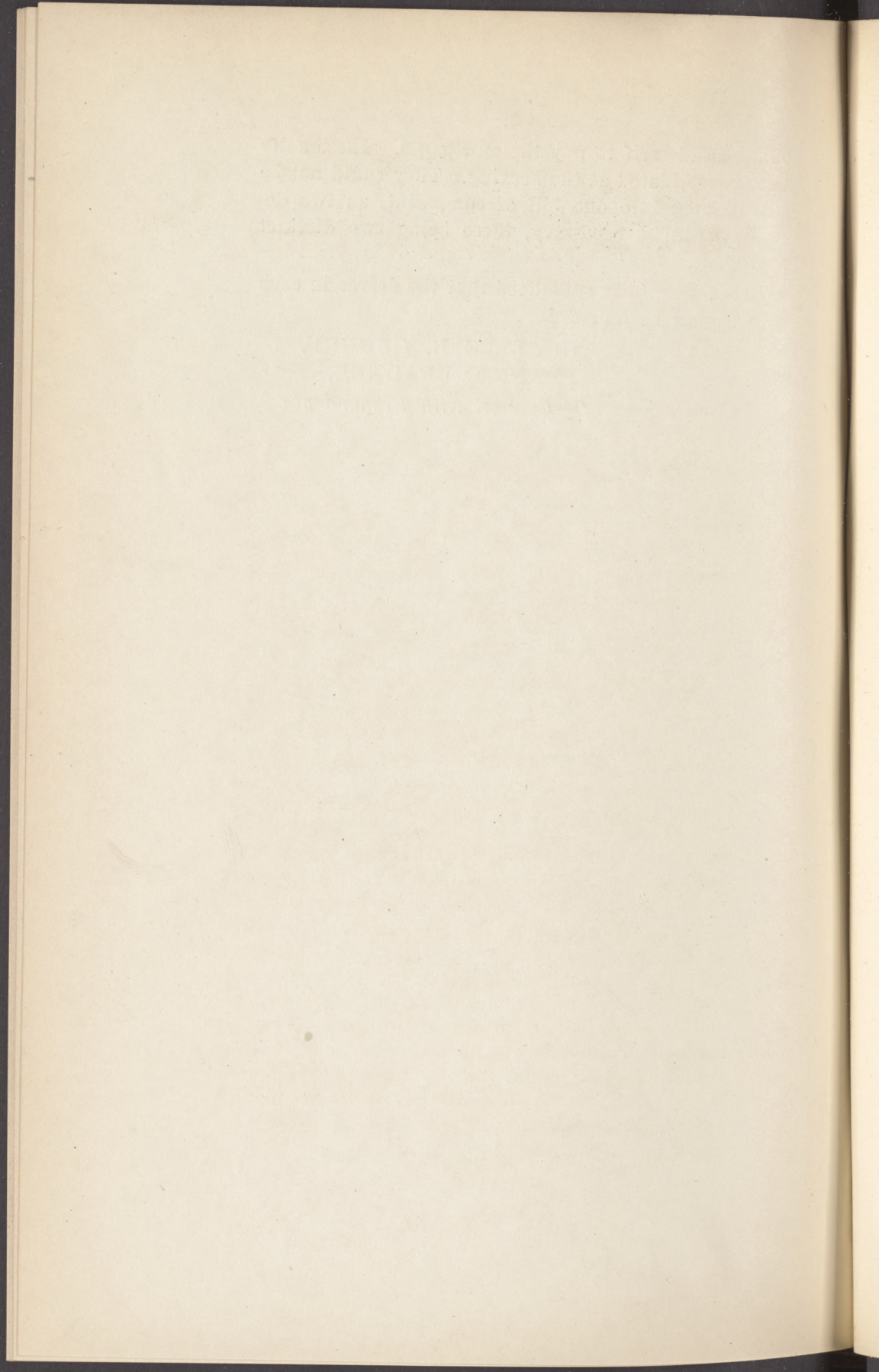
ANSWER TO POINT 5.

It is apparent that H. C. Schneider was a necessary party. He had a right to be heard, as he had

obligated himself to pay the mortgages. These suits were consolidated at the hearing. They could not be consolidated into one bill of complaint, as two decrees would be necessary, there being two distinct properties.

It is respectfully submitted that the decree in each case should be affirmed.

CHARLES B. GURNEY,
FRANK E. BRADNER,
Of Counsel with Respondents.



New Jersey Court of Errors and Appeals

BETWEEN

THE GERMANIA BUILDING & LOAN
ASSOCIATION, ET. ALS.,
Complainants and Respondents,

v

B. FRANKEL REALTY COMPANY,
ET. ALS.,
Defendants and Appellants.

On Bill Brief for
Defendants and
Appellants.

FACTS.

On June 20, 1910, complainant association, granted to defendant, B. Frankel Realty Co., two construction loans of \$4500 each, on two adjoining buildings on Runyon Street, Newark, N. J., two mortgages which were duly executed.

The erection of the buildings was proceeded with and on July 20, 1910, complainant association authorized and made a payment on account of said two loans of \$3000, less deductions of dues and interest of \$274. On August 12, 1910, a payment of \$2000 was made on said two loans by the officers of the said association, without the report of its committee or the approval of its Board of Directors. On September 23, 1911, there was paid by the officers of said association to its solicitor the sum of \$3638, purporting to be the balance of said two loans. This last payment was admittedly made before the buildings were finished, without authority of the Board of Directors of said association or its committee, and as testified, for the convenience of the secretary only, so he could close his books for the fiscal year.

Out of this last payment the solicitor of complainant association paid Herman Schneider, the President of the said association, the sum of \$1,165.11, claimed to be due to him on an assigned order given by defendants to the Union Building Company and assigned by the latter to him, and the said president gave his said association a bond to secure it against loss by reason of said payment to him. This payment to him was ordered made by the Board of Directors at a meeting which these defendants claim was illegal and after the title to said premises had been conveyed to Wolf, Stewart & Co. and Vreeland-Kearney Lumber Company, and notice to complainant association given and over the objections of said purchasers.

The said company paid back to said association quite some time later the sum of \$2,152.09.

On January 24, 1911, the said defendant, B. Frankel Realty Company conveyed the said premises to Wolf, Stewart & Co. and Vreeland-Kearney Lumber Co. and assigned to them its shares in complainant association, of which due notice was given to the complainant association and noted on its books by the secretary. A corrective deed was executed between the said parties on February 7, 1911, for a defect not affecting the premises in question.

This appeal is from the decision of the Court of Chancery reported in 88, Atl. Rep. pp. 305.

POINT ONE.

The complainant association had no right to pay to H. C. Schneider the order of \$1,165.11, marked Exhibit C27, and charge the same as an advancement under its meeting.

FIRST. Because the meeting of said association at which said payment was ordered was illegal. The notice of said meeting did not state the object of the meeting. Parker's, N. J., Cor. Vol. 1; P. 175.

SECOND. Because said payment was not authorized by the terms of the order itself. The order was payable

\$582.50 out of the third payment on the mortgage of complainant and \$582.50 out of the fourth payment on said mortgages. There never were any third or fourth payments.

I respectfully differ from the opinion of the Court of Chancery that the defendants are estopped from setting up that there was no third or fourth payment. The question is not as to whether the defendants are prevented to set up this defence but the question is what are plaintiffs entitled to charge as advances under its mortgages.

Neither can we resort to the fiction built up in the opinion that the order itself was the third payment and the fourth payment would become due at the latest when foreclosure proceedings were directed.

THIRD. Because the complainant was not obligated to pay the order above referred to under its mortgages.

As the Vice Chancellor says in his opinion in 88 Att. at pp. 308:

"Mortgages to secure future advances are valid, but, where it is entirely optional with the mortgagee whether to make future advances or not, advances made after notice of a subsequent encumbrance or transfer are not chargeable." Citing Heintze & Bentley, 34 N. J. Eq. 562.

The court below finds as a fact that the payment was made after conveyance by the B. Frankel Realty Company to the defendants, Wolf-Stewart & Co. and Vreeland-Kearney Lumber Company, pp. 305.

We deny that the complainant association was obligated to make the payment disputed by these defendants. In fact the Vice Chancellor himself says on page 309: "Any right of the association to control over the application of the advances was only incidental to their right to sufficient security for the loan, and was a right, the right of which (as between them and the mortgagors was optional as being solely for their protection."

"It was not a right which the association could be required to exercise for the benefit of the mortgagors, or

as between adverse claimants under them. On none of the previous advances had any right of such control been recognized."

The assignment was only a partial assignment of the funds which it was optional with the complainant association to pay or not as it choose. It was not obligatory on them to pay it.

The order itself says "you may please pay," this is not a direction, but an option. It was optional with the complainant association whether it would pay same or not, which option expired after notice of the sale of said premises and objection made by the defendant to said payment.

There is no evidence whatever to show that the building had progressed sufficient to justify said payment. The evidence is against such condition. The witness of the defence testify that the buildings were unfinished, the bond so recites and neither the Board of Directors or its committee found the building in a condition to justify a payment.

The complainant association was only obligated, and in fact permitted, to make advancements towards the erection of the building and the payment to said Schneider was not such a payment.

That in order to constitute an advancement as contemplated by the meeting, would, of necessity, involve a contractual relation, express or implied.

Prov. Mutual Building & Loan Association vs. Schaffer 83 Pac. 274, 2 Cal. App. 216.

Mortgagor must consent to authorization or appropriation of moneys to constitute advancement. Hoffman vs. Wanner, 29 Eq. 135.

We claim the mortgagor and those under him did not only not consent or authorize and in fact objected to the said payment.

If it be said that the complainant association had a right to pay said order to protect its status as a first lein on said premises, I reply as the Court said in Provident Mutual Building and Loan Association vs. Schaffer 83

Pac. 274, 2 Cal. App. 216, in a similar case that there were no facts alleged or found for which it might be inferred that the claim of the Union Lumber Company or its assignee, Herman C. Schneider, was an incumbrance on said premises, nor was it shown when lumber was purchased, or that any steps had been taken or even contemplated by either of them to assert a lien on account of said defedants and that the burden of establishing the existence of such a lien at the date of the payment was upon the defendant.

Besides sai dJ. N. Halloway, who was trading as the Union Lumber Company, signed a release, although under the name of J. N. Halloway & Company.

POINT TWO.

The court below finds that the defendants did not abandon or give up the contract for future advances under the mortgages.

We claim the court is in error in this contention. And that the contract was abandoned by the transfer to the defendants Wolf-Stewart & Co. and Vreeland-Kearney Lumber Company. By this transfer the B. Frankel Realty Compnay had put it out of its power to fulfill its part of the agreement with the complainant association or to compel it to make any advances or dispose of the proceeds of the mortgage.

We claim therefore that while the order might have been given while the contract was in force it was payable after breach and cannot bind the purchasers who had no notice of such assignment.

PART THREE.

We also claim the complaint is only entitled to recover the first payment of \$3,000, made under its mortgage. That all subsequent payments were made without either the authority of the committee or of the Board of Directors of the complainant association.

PART FOUR.

We claim that the complainant association, if entitled to a decree, is only entitled to recover the amounts actually expended by it, with interest at six per cent.

POINT FIVE.

We also claim the suits should have been consolidated and only one set of costs allowed. And that no costs should be allowed for making Herman C. Schneider a party or for those part of the bills which refer to him.

We respectfully submit that the decree of the Chancellor should be reversed.

Respectfully submitted,

HUGO WOERNER,

Solicitor and Of Counsel for Defendants and Appellants.

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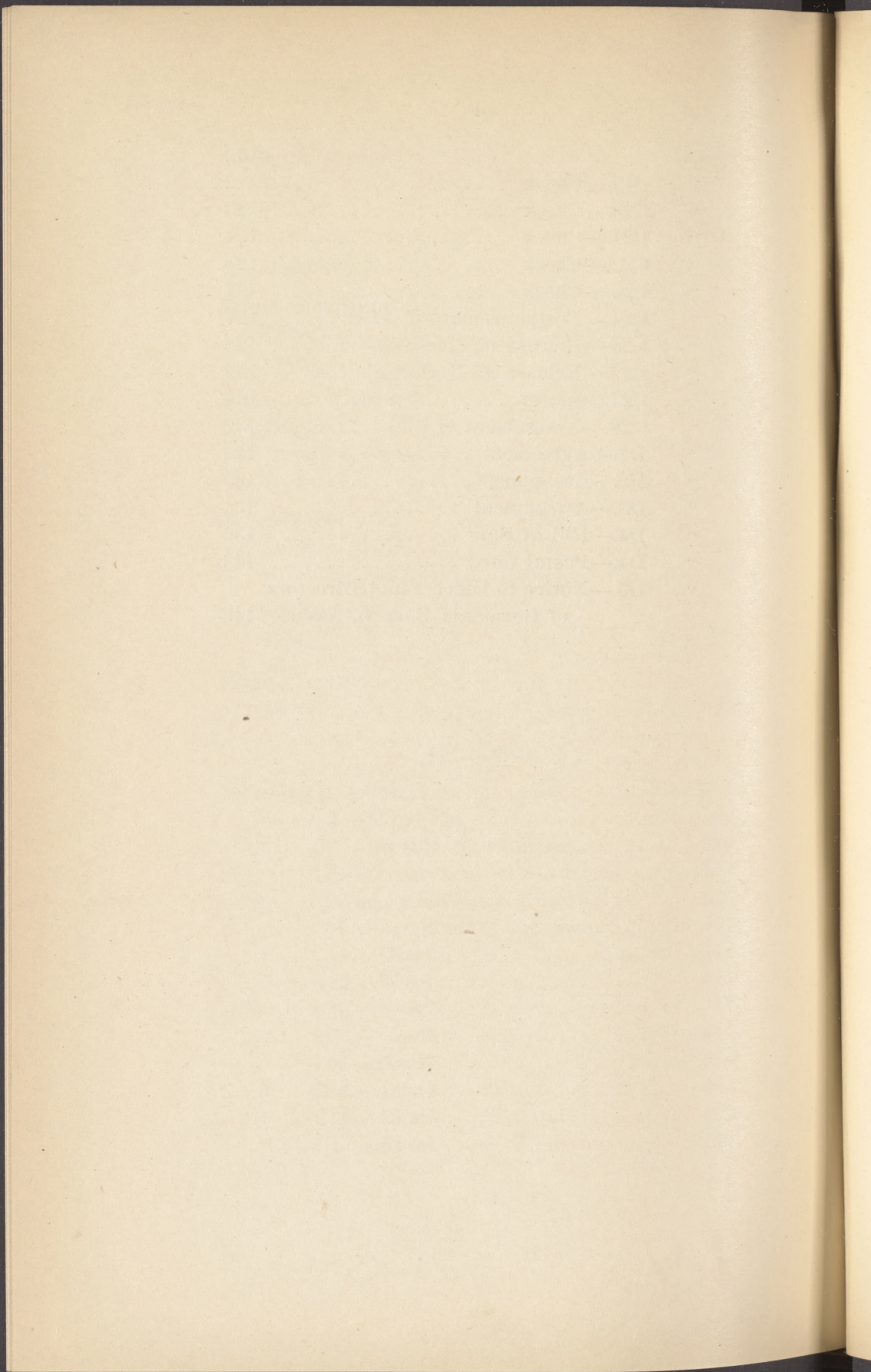
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To the Honorable the Chancellor of the State of
New Jersey:

Humbly complaining, showeth unto your Honor
your orator "The Germania Building and Loan
Association of the City of Newark in the County of
Essex and State of New Jersey that on or about the
twentieth day of June in the year one thousand
nine hundred and ten, B. Frankel Realty Co., a
corporation, of the City of Newark, in the County
of Essex and State of New Jersey, became and was
justly indebted unto your orator in the sum of
forty-five hundred dollars, and being so indebted,
the said B. Frankel Realty Co., a corporation, in
order to secure the payment of the said sum of
money, with interest, did make and execute, under
its corporate seal and deliver unto your orator a
certain bond or obligation, bearing date the same
day and year last aforesaid, in the penal sum of
nine thousand dollars, lawful money of the United
States, with a condition thereunder written, that if
the said B. Frankel Realty Co., a corporation, its
successors, should well and truly pay, or cause to be
paid, unto your orator, its certain attorney, suc-
cessors or assigns, during its continuance as such
association or until the twenty-three shares of
stock owned by said B. Frankel Realty Co. and as-
signed as the just and full sum of collateral se-
curity for the payment of the money therein speci-
fied shall have matured the sum of twenty-three
dollars per month, with interest on the sum of
forty-five hundred dollars at the rate of six per
cent. per annum, payable monthly, amounting to
the further sum of twenty-two and fifty-hundredths
dollars per month, in all amounting to the sum of

forty-five and fifty hundredths dollars per month, the first payment to be made on or before the eleventh day of July next ensuing the date thereof and all subsequent monthly payments to be made on or before the second Monday of each and every month thereafter, and shall also pay all fines, forfeitures and other payments that may become due and payable from and may be charged or imposed upon it or its assigns as the holder of such shares of stock pursuant to the Constitution and the By-Laws, Rules and Regulations of the said Association.

Then the said obligation should be void, otherwise to remain in full force and virtue; as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear. And your orator further shows, that the said B. Frankel Realty Co., in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by said B. Frankel Realty Co., a corporation of the first part, and your orator of the second part, in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto said party of the second part its successors and assigns, all the following described tract or parcel of land and premises, situate, lying and being in the City of Newark in the County of Essex, and State of New Jersey:

Beginning in the northerly line of Runyon Street distant easterly from the corner of said street and Sixth Avenue one hundred and twenty-five feet; thence northerly parallel with Sixth Avenue one hundred feet; thence easterly parallel with Runyon Street twenty-five feet; thence southerly parallel with the first course one hundred feet to the northerly line of Runyon Street; thence westerly along the same twenty-five feet to the place of beginning. Being known as 203 Runyon Street, Newark, N. J., and further described as Lot 10 on Block C, as laid down on a map of property belonging to Philip Tillinghast and being a part of the same premises conveyed to party of the first part by Stuart Lindsley and wife by deed bearing even date herewith.

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Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage and every part and parcel thereof, with the appurtenances; to have and to hold, the therein above granted and described premises, with the appurtenances unto your orator, the said party of the second part, its successors and assigns, to it and their own proper use, benefit and behoof forever; provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said party of the first part to the said indenture of mortgage, its successors, should well and truly pay, or cause to be paid, unto your orator, its certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the inter-

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est thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void. And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law proved by the oath of Rosa Frankel before Charles B. Gurney, a Master in Chancery of New Jersey, and duly registered in the office of the Register in and for the said County of Essex in Book I, 26 of Mortgages, page 170, etc., on the twenty-first day of July, in the year one thousand nine hundred and ten; as by the certificate of the Register of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator for greater certainty, begs leave to refer, if it be necessary so to do, which said bond and mortgage are in your orator's possession ready to be produced and proved as this Honorable Court shall direct.

That said bond contained a clause that should any default be made in the payment of the interest, or any part thereof on any day whereon the same is made payable and remain unpaid and in arrears for the space of six months, then, after the lapse of said six months aforesaid principal sum of money with all arrearages of interest should, at the option of your orator, become at once due and payable.

That such default has been made on said bond and the interest has been in arrears for over six months on said bond, and your orator hereby elects that the principal of said bond and all interest due thereon shall at once become due and payable.

And your orator further shows, that on or

about the first day of July, nineteen hundred and ten, the said B. Frankel Realty Company, executed a mortgage on the same premises to one Stuart Lindsley, to secure the sum of six hundred and fifty dollars, or some other sum, by virtue of which mortgage the said Stuart Lindsley claims to have some lien upon said premises; but your orator charges that the last mentioned mortgage was executed and recorded subsequent to your orator's said mortgage, and with full notice thereof, and if an encumbrance at all upon said premises, is subsequent to the mortgage of your orator.

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And your orator further shows, that afterwards, to wit, on or about the twenty-fourth day of January, nineteen hundred and eleven, the said B. Frankel Realty Co., a corporation, conveyed all its right, title and interest which it, the said B. Frankel Realty Co. had, or claimed to have in said premises and other lands to Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co., a corporation, and that on or about the seventh day of February, nineteen hundred and eleven, the said B. Frankel Realty Co., a corporation, gave a corrective deed to said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and Vreeland-Kearney Lumber Co., a corporation, by virtue of which conveyance the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart and Co. and Vreeland-Kearney Lumber Co., a corporation, claims to have some interest in the said premises, but your orator expressly charges that the said conveyance was made subsequent to, and with full knowledge of your orator's said mortgage.

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And your orator further shows that it has been informed that said Charles Wolf, Charles H.

Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and the Vreeland-Kearney Lumber Co., a corporation, hold the same in trust for the benefit of themselves and also for the benefit of the B. Frankel Realty Co., a corporation, and by virtue thereof, the said B. Frankel Realty Co. claim or may claim to have some interest in said premises, but your orator expressly charges that whatever right or interest the said B. Frankel Realty Co. may have in said premises, is subject to your orator's said mortgage.

And your orator further shows that on or about the seventeenth day of January, nineteen hundred and eleven, as your orator has been informed and believes, one Jacob Schachat recovered a judgment against the said B. Frankel Realty Co., a corporation, and one Marcus L. Bock, in the First District Court of the City of Newark for the sum of two hundred and three dollars and fifty cents, or some other sum, which said judgment was on a suit brought under a mechanic's lien claim and filed on the seventeenth day of January, nineteen hundred and eleven in Docketed Judgment for Mechanic's Lien No. 1, page 3, and by virtue of said judgment, the said Jacob Schachat claims to have some lien upon the said premises, but your orator charges that said judgment was obtained subsequent to the execution of your orator's said mortgage, and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the encumbrance of your orator's said mortgage.

And your orator further shows that on or about the twenty-second day of December, nineteen hundred and ten, as your orator has been informed and believes, William Blum, Isidor Meyer and Samuel Sabelotsky filed a mechanic's lien claim against the above described premises and other premises, and against said B. Frankel Realty Co., a corpora-

tion, as builder and owner, for the sum of one hundred and eighty-five dollars or some other sum, which said mechanic's lien claim is recorded in Book No. 8 of said Mechanic's Lien Claim of Essex County, pages 521, &c.; by virtue of which said mechanic's lien claim the said William Blum, Isidor Meyer and Samuel Sabelotsky claim to have some lien upon the said premises, but your orator charges that said mechanic's lien claim was obtained subsequent to the execution of your orator's said mortgage, and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the encumbrance of your orator's said mortgage.

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And your orator further shows that on or about the thirteenth day of March, nineteen hundred and eleven, as your orator has been informed and believes, one Frank Sheldon, Receiver for American Saw and Planing Mill Co., a corporation of New Jersey, filed a mechanic's lien claim against the above described premises and other premises, and against B. Frankel Realty Co., a corporation as owner, and your orator, as mortgagee, for the sum of eight hundred and sixty-seven dollars and seventy-one cents, or some other sum, which said mechanic's lien claim is recorded in Book No. 9 of Mechanic's Liens for said county, pages 19, etc., by virtue of which mechanic's lien claim the said Frank Sheldon, Receiver for American Saw and Planing Mill Co., a corporation of New Jersey, claims to have some lien upon the said premises; but your orator charges that the said mechanic's lien claim was obtained subsequent to the execution of your orator's said mortgage, and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the encumbrance of your orator's said mortgage.

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And your orator further shows that on or about the sixteenth day of December, nineteen hundred

and ten, as your orator has been informed and believes, one Henry Tamenberg, The Merchants Building and Loan Association of the City of Newark and South Orange Building and Loan Association, recovered a judgment against Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners, trading as Wolf, Stewart & Co., in the Essex County Circuit Court, for the sum of \$24.32 for costs, which said judgment is recorded in Book No. 91 of Circuit Court Judgments, pages 15, &c., by virtue of which said judgment the said Henry Tamenberg, The Merchants Building and Loan Association of the City of Newark and South Orange Building and Loan Association claim to have some lien upon the said premises, but your orator charges that the said judgment was obtained subsequent to the execution of your orator's said mortgage, and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the encumbrance of your orator's said mortgage.

And your orator further shows that on or about the sixth day of February, nineteen hundred and eleven, one Herman C. Schneider executed a certain bond bearing date the sixth day of February, nineteen hundred and eleven, to your orator in the sum of eighteen thousand dollars, which bond is upon the following condition:

"WHEREAS, The Germania Building and Loan Association of the City of Newark are the holders of two certain mortgages dated June 20, 1910, made by B. Frankel Realty Company, a corporation, for the sum of forty-five hundred dollars each on property Numbers 203 and 205 Runyon Street, in said City of Newark, and the bonds accompanying the same, and

"WHEREAS, there are on each of the said properties a three-story building in course of construc-

tion, which said buildings have been in course of construction since about the time of the date of said mortgages and the same have not been completed as yet, and

“WHEREAS, the said Herman C. Schneider claims that he has some interest or claim on said buildings and is desirous of completing the same, if possible, and of being paid moneys on account of the same by said Association,

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“NOW, THEREFORE, the condition of this obligation is such that if the said Herman C. Schneider shall save the said Association harmless from any loss or losses which it might sustain by reason of payments of moneys to him, or by reason of any suit or suits, mechanic’s liens or other causes by any person or persons claiming an interest in said buildings or otherwise and cost or costs of suit in defending the same, or by reason of the destruction of the buildings or its impairment by neglect or delay in erecting the same and should the same be destroyed and the equity of the Building and Loan in said buildings be impaired or should there be a deficiency or loss in case of foreclosure of the properties and the sale of the same or from any cause or causes whatsoever then this obligation to be void or else to be and remain in full force and virtue.”

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By virtue of which said bond the said Herman C. Schneider claims or may claim the right to redeem the same, or claims or may claim some right or interest in said premises.

And your orator further shows, that the principal money shown in the said bond or obligation and secured thereby and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your orator no part thereof having been paid to your orator, so that your

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orator greatly delayed and disappointed in the receipt of the said money, by means of which said several premises the said deed of mortgage, and the estates thereby mortgaged as aforesaid, have become absolute in your orator and its successors. And your orator further shows, that the said defendants since the execution of your orator's said mortgage, have possessed and enjoyed, and that 10 they do still possess and enjoy, the said mortgaged premises, with the appurtenances, and that they have always received, and still do receive the rents, issues and profits thereof. And your orator further shows and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid. And that it or some other person or persons for it hath frequently and in a friendly manner applied to the said defendants, or one of them, and requested them or one of them to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth; and your orator well hoped that he would have complied with such reasonable requests of your orator, and would have paid to 20 it the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience it ought to have done.

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40 In tender consideration whereof, and for as much as your orator hath not a complete and safe remedy in the premises of and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so as aforesaid due to your orator on said

bond and obligation and deed of mortgage without the aid and decree of this honorable Court,

To the end, therefore, that the said B. Frankel Realty Co., a corporation, Stuart Lindsley, Charles Wolf, Charles H. Stewart, Samuel W. Stewart, partners trading as Wolf, Stewart & Co., Vreeland-Kearney Lumber Co., a corporation, Jacob Schachat, William Blum, Isidor Meyer, Samuel Sabelotsky, Frank Sheldon, Receiver for the American Saw and Planing Mill Co., a corporation, Henry Tamenberg, The Merchants Building and Loan Association of the City of Newark, South Orange Building and Loan Association, and Herman C. Schneider may without oath (answer under oath being expressly waived), true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information and remembrance, and belief; and that the said defendants or some one of them may be decreed to pay to your orator the said principal sums so due to it on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day to be appointed by this honorable Court, and in default thereof that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either of them, may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver over unto your orator all deeds, demises and writings whatsoever relating to or concerning the same; or

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that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this honorable Court, be sold, and out of the moneys arising out of the sale thereof, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained.

And that your orator may have such further and other relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience; may it please your Honor the premises considered, to grant unto your orator a writ or writs of subpœna, issuing out and under the seal, of this honorable Court, to be directed to the said B. Frankel Realty Co., a corporation, Stuart Lindsley, Charles Wolf, Charles H. Stewart, Samuel W. Stewart, partners trading as Wolf, Stewart & Co., Vreeland-Kearney Lumber Co., a corporation, Jacob Schachat, William Blum, Isidor Meyer, Samuel Sabelotsky, Frank Sheldon, Receiver for the American Saw and Planing Mill Co., a corporation, Henry Tamenberg, The Merchants Building and Loan Association of the City of Newark, South Orange Building and Loan Association and Herman C. Schneider, therein and thereby commanding them and each of them, on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor and this honorable Court, then and there to answer all, and singular the premises and to stand to, abide by and perform such order and decree therein as your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator as in duty bound, will ever pray, &c.

Solicitor for and of Counsel with Complainant.

Answer and Cross Bill.
IN CHANCERY OF NEW JERSEY.

Between

THE GERMANIA BUILDING AND
LOAN ASSOCIATION OF THE
CITY OF NEWARK,

Complainant,

and

B. FRANKEL REALTY CO., a cor-
poration *et al.*,
Defendants.

On Bill, &c.

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The joint and several answers of B. Frankel Realty Co., a corporation, Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co., a corporation, to the bill of complaint of The Germania Building and Loan Association of the City of Newark, the complainant herein.

1. These defendants admit that the B. Frankel Realty Co. executed a bond in the penal sum of nine thousand dollars, conditioned for the payment of the sum of forty-five hundred dollars, as set forth in the said bill of complaint.

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2. These defendants admit that the said B. Frankel Realty Co. executed and delivered a mortgage to secure said bond on the premises described in the said bill of complaint, of the tenor and effect as set forth in said bill, and that the same was proved and acknowledged, as set forth in said bill of complaint.

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3. These defendants say that they have no knowledge as to whether the bond contained a clause that should any default be made in the payment of interest, or any part thereof, on any day whereon the same was made payable, and remain unpaid and in arrears for the space of six months, then after the lapse of said six months the aforesaid principal sum, with all arrearages of interest, should at the option of the complainant become at once due and payable, and leaves the complainant to make such proof thereof, as may be necessary in the premises.

4. These defendants deny that any such default has been made on the said bond, and deny that the interest has been or is in arrears. And these defendants say that the said complainant has in its hands a balance on said bond and mortgage of about the sum of two thousand dollars, due on the said bond and mortgage, the balance due these defendants, Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and the Vreeland-Kearney Lumber Co., as Trustees, and that said sum should be used to pay the dues and interest, fines and other charges on the said bond and mortgage, if any there are, and as to whether the complainant has elected that the principal of the said bond, and all interest due thereon, should at once become due and payable, these defendants have no knowledge but they allege and say that if such election has been made it is of no force or effect, because the complainant has in its hands more than sufficient to pay any arrearages of interest, dues or interest, on the said bond.

5. These defendants admit that the said B. Frankel Realty Co. executed a mortgage on said premises to one Stuart Lindsley to secure the sum of six hundred and fifty dollars, as set forth in said bill of complaint.

6. And these defendants further admit that on the twenty-fourth day of January, A. D. nineteen hundred and eleven the said B. Frankel Realty Co. conveyed all its right, title and interest to these defendants; and that on or about the seventh day of February, A. D. nineteen hundred and eleven the said B. Frankel Realty Co. gave a corrective deed to these defendants, and these defendants say that they are the owners of the legal title to the said premises, and admit that they hold the same in trust for themselves, and also for the benefit of the B. Frankel Realty Co., a corporation, and Rosa Frankel. And these defendants admit that the said premises are subject to the amount of the complainant's mortgage, which may be found due by this Honorable Court, but not to the amount which the complainant now claims.

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7. These defendants say that they have no knowledge, except that contained in the bill of complaint, as to whether one Jacob Schachat recovered a judgment against the said B. Frankel Realty Co. and one Marcus L. Bock, but that if any such judgment was recovered the same is not a lien on the said mortgaged premises.

8. These defendants admit that on or about the twenty-second day of December, A. D. nineteen hundred and ten, William Blum, Isidor Meyer, Samuel Sabelotsky filed a lien claim against the said premises, as set forth in said bill of complaint.

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9. And these defendants further admit that on or about the thirteenth day of March, A. D. nineteen hundred and eleven, one Frank Sheldon, Receiver for the American Saw and Planing Mill Company, filed a mechanic's lien against the said mortgaged premises, but these defendants express-

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ly allege and say that no further proceedings were taken on the said lien claim, and that by virtue of the Mechanic's Lien Law the said mechanic's lien claim is no lien or encumbrance on said mortgaged premises.

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10. And these defendants further admit that on or about the sixteenth day of December, A. D. nineteen hundred and ten, one Henry Tamenberg, the Merchants Building and Loan Association of the City of Newark and South Orange Building and Loan Association recovered a judgment against Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., as set forth in said bill of complaint, but these defendants allege and say that the said judgment was satisfied and a warrant for satisfaction filed in the office of the Clerk of the Essex County Circuit Court, satisfying the said judgment, before the filing of the said bill of complaint.

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11. And these defendants further say that as to whether on the sixth day of February, A. D. nineteen hundred and eleven, one Herman C. Schneider executed a certain bond bearing date on that day and of the tenor and effect as set forth in the said bill of complaint, these defendants have no knowledge.

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And these defendants further say that if such bond was executed the same was of no force or effect, so far as these defendants are concerned, and that the said Herman C. Schneider never had any interest or claim in the said mortgaged premises, nor has he now any such interest or claim in said premises, and that he should not have been made a party to the said bill of complaint, nor should the complainant be allowed any costs for that part of the bill of complaint, setting out

the said bond, or any proceedings making Herman C. Schneider a party.

12. These defendants deny that the principal money shown in the said bond or obligation secured thereby, and by the said deed of mortgage, with large arrearages of interest still remain due and owing to the complainant, and say that the complainant has more than sufficient money in its hands due on said bond and mortgage to these defendants, to pay any dues or arrearages of interest due to it. 10

13. And these defendants deny that the complainant has been delayed and disappointed in the receipt of the said money, and that the estate, so as aforesaid mortgaged, has not become absolute in the complainant, and its successors. 20

14. And these defendants admit that they have possessed and enjoyed, and still do possess and enjoy the said mortgaged premises, and have always received, and still do receive the rents, issues and profits thereof, as they have a perfect, legal and equitable right to do.

15. These defendants deny that the said mortgage is a slender and scanty security for the payment of the principal and interest moneys alleged to be due to the complainant, as aforesaid, but these defendants expressly deny that there is any principal and interest money due to the complainant. 30

16. And these defendants deny that the said complainant, or some other person or persons for it have frequently and in a friendly manner applied to these defendants, or any one of them, and requested them, or one of them, to pay and discharge the said principal and interest money so claimed to be due to the complainant on the said bond or 40

obligation and deed of mortgage, thereinbefore mentioned and set forth.

17. And these defendants deny that there is any principal and interest money due to the complainant, on said bond or obligation and deed of mortgage.

10 These defendants further answering say that at the time of the conveyance to them by the B. Frankel Realty Co. as set forth in said bill of complaint, the said B. Frankel Realty Co., assigned to these defendants, Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and Vreeland-Kearney Lumber Co. the twenty-three shares of stock then owned by the B. Frankel Realty Co., and assigned as collateral security to complainant for the payment of the moneys specified in the bond, and that due notice of said assignment was given to the said complainant.

20 That on or about the fifth day of February, A. D. nineteen hundred and eleven, these defendants were informed that the said complainant had called a meeting of the Board of Directors for the sixth day of February, A. D. nineteen hundred and eleven, at which meeting it was proposed to pay to Herman C. Schneider, the President of the said building and loan association, the sum of eleven hundred and sixty-five dollars and eleven cents, and Hugo Woerner, the solicitor for the said defendants, appeared at the said meeting, and was refused admission to the same, and though he entered the meeting room, the said association refused to hear the said Hugo Woerner, and after attempting several times to make known his objection to the contemplated action of the said Board, and being unable to do so, he retired from the said meeting. That the purpose of the said

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Hugo Woerner attending the said meeting was to protest, as solicitor for these defendants, against the payment of the said sum of money to the said Herman C. Schneider.

These defendants further say that the said meeting was illegal, due notice thereof not having been given to the Board of Directors of the same. That at said meeting Charles Wolf, one of these answering defendants, objected to the payment at the said meeting, upon the grounds that the mortgage was an advanced money mortgage, that is, a construction mortgage, and that the money is still due thereon, should be used to finish the building that was being erected on the said premises, and that the said claim of the said Herman C. Schneider was no lien on the moneys still due on the said bond and mortgage.

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And these defendants further say that the said mortgage was an advanced money mortgage, that is, the moneys which said mortgage was given to secure was to be used for the erection of a three family dwelling house upon the said mortgaged premises, that at the time of the conveyance to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and the Vreeland-Kearney Lumber Co., the said buildings were not half finished, and were encumbered with taxes, mechanic's liens and judgments, and that the complainant, although requested so to do, refused to apply the money to the erection and completion of the said building, in violation of the said mortgage, and that the said complainant paid to Herman C. Schneider the sum of eleven hundred and sixty-five dollars and eleven cents in violation of the terms and conditions of the said bond and mortgage, and against the objection of these defendants. That the said complainant violated the con-

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ditions to the said bond and mortgage in this and other respects. That the amount due on the said mortgage, at the time of the payment of the said sum of money to the said Herman C. Schneider, was not sufficient to complete the erection and finishing of the said buildings, and the same was paid without any authority by the complainant, and against the terms and conditions of the said mortgage. That the claim of the said Herman C. Schneider in other respects were void and illegal.

And these defendants further say that they have demanded a statement of the amount due on the said mortgage, and an account of the disbursements made of the moneys represented by the said mortgage, and the opportunity to inspect the orders paid by the said complainant, the vouchers and receipts and releases taken for payments on account of the said mortgage, and the complainant has refused to comply with the said demand.

And these defendants have also demanded that the complainant use the amounts represented by said mortgage in finishing the said building, and the lien claims filed against the same, and the person having a right to file the same, and these demands were refused by the said complainant.

These defendants further say that on or about the twentieth day of February, A. D. nineteen hundred and eleven, and before the payment to the said Herman C. Schneider of the said sum of eleven hundred and sixty-five dollars and eleven cents, these defendants caused to be mailed to each Director and officer of the complainant, the following notice:

"To The Officers and Directors of the
Germania B. & L. Ass'n.

Sirs:

I appeared at a special meeting of your Associa-

tion held on February 6th instant, representing the Vreeland-Kearney Lumber Co. and Wolf, Stewart & Co., owners of property mortgaged to your Association, and also stockholders thereof, and was refused a hearing by your officers and the directors who were present.

As there will be several suits arising out of their action, I take this method of bringing to your attention notice of the following facts:

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1. That the Vreeland-Kearney Lumber Co. and Wolf, Stewart & Co. hold the legal title to premises Nos. 203 and 205 Runyon Street, Newark, N. J., formerly owned by the B. Frankel Realty Co. upon which your Association holds two mortgages of \$4,500.00 each.

2. That the Vreeland-Kearney Lumber Co. and Wolf, Stewart & Co. are the owners of the stock given as collateral security for the said loans, subject possible to the lien of your Association for the dues, &c.

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3. That the mortgages made by your Association were construction loans, i. e., the money represented by said mortgages was to be used to erect and finish the two buildings on the same premises.

4. That the amounts still due on said mortgages are not sufficient to erect and finish the buildings and pay the order of the Union Lumber Co. purported to have been assigned to your President, Herman C. Schneider.

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5. That only a small part, if any, of the amounts represented by said order, is for materials used in the buildings.

6. That the said order is void and of no effect.

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I also demand of you a statement of the amount due upon the said mortgages, and an account of the

disbursements made of the moneys represented by said mortgage, also the opportunity to inspect the orders paid by your Association, the vouchers and receipts and releases taken for payments on account of said mortgages.

10 I also demand that you use the amounts represented by said mortgages in finishing the said buildings and the lien claims filed against the same, and persons having a right to file the same.

In giving the above notice and making the above demands I represent the Vreeland-Kearney Lumber Co., Wolf, Stewart & Co. and the B. Frankel Realty Co.

Dated February 20, 1911.

HUGO WOERNER."

20 These defendants pray that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Solicitor for Defendants, B. Frankel Realty Co., Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co.

Of Counsel with the said Defendants.

30 And these defendants, Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co. and B. Frankel Realty Co., by way of cross bill exhibited against the complainant, The Germania Building and Loan Association of the City of Newark, say:

40 1. That on or about the twentieth day of June, A. D. nineteen hundred and ten, the B. Frankel Realty Co. was the owner in fee simple of the following described tract of land in the City of New-

ark, Essex County, New Jersey, described as follows:

Beginning in the northerly line of Runyon Street distant easterly from the northerly corner of said street and Sixth Avenue one hundred feet; thence northerly parallel with Sixth Avenue one hundred feet; thence easterly parallel with Runyon Street twenty-five feet; thence southerly parallel with the first course one hundred feet to the said northerly line of Runyon Street; thence westerly along the same twenty-five feet to the point or place of beginning. Being known as 205 Runyon Street, and further described as Lot 11 on Block C, as laid down on a map of property belonging to Philip Tillinghast. 10

2. That on or about the twentieth day of June, A. D. nineteen hundred and ten the said B. Frankel Realty Co. executed and delivered to the said The Germania Building and Loan Association of the City of Newark, a mortgage on the said premises, for the sum of forty-five hundred dollars to secure a bond of even date made by the said B. Frankel Realty Co. to The Germania Building and Loan Association of the City of Newark in the penal sum of nine thousand dollars, conditioned for the payment of the said sum of forty-five hundred dollars. That the said bond and mortgage was an advanced money bond and mortgage, that is, the moneys due on the said mortgage, to wit, the sum of forty-five hundred dollars was to be used for the erection and construction of a three-family dwelling house upon the same premises. 20 30

3. That on or about the twenty-fourth day of January, A. D. nineteen hundred and eleven, the said B. Frankel Realty Co. conveyed the said premises, together with other lands, to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, 40

partners trading as Wolf, Stewart & Co. and the Vreeland-Kearney Lumber Co. by deed dated on that day and recorded in Book F, 48 of Deeds for Essex County on pages 416, etc.

10 4. And that on the seventh day of February, A. D. nineteen hundred and eleven, the said B. Frankel Realty Co. made a corrective deed to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and the Vreeland-Kearney Lumber Co. to correct an error in a description of a tract of land, other than the one hereinbefore set out, which said deed is recorded in Book W, 48 of Deeds for Essex County on pages 123, etc., and that the said B. Frankel Realty Co. did also assign, transfer and set over the twenty-three shares of stock then
20 owned by the B. Frankel Realty Co. to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners, trading as Wolf, Stewart & Co. and the Vreeland-Kearney Lumber Co. by a written assignment bearing date the seventh day of January, A. D. nineteen hundred and eleven. And that due notice of said assignment was given to the said The Germania Building and Loan Association of the City of Newark.

30 5. That the said B. Frankel Realty Co. had commenced the erection of the three-story frame building on the said described premises, and at the time of the conveyance to Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and the Vreeland-Kearney Lumber Co., the said buildings were not half finished and were encumbered with taxes, mechanics' liens and judgment. That at that time the said
40 The Germania Building and Loan Association of the City of Newark had in its hands the sum of two thousand dollars, or more, which was still due on the said bond and mortgage, and that the said

The Germania Building and Loan Association of the City of Newark refused to apply the said sum of money for the erection and construction of the said building.

6. And these defendants further say that on or about the fifth day of February, A. D. nineteen hundred and eleven, the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and the Vreeland-Kearney Lumber Co. were informed that the complainant had called a meeting of the Board of Directors for the sixth day of February, A. D. nineteen hundred and eleven, at which meeting it was proposed to pay to Herman C. Schneider, the President of the said The Germania Building and Loan Association of the City of Newark, the sum of eleven hundred and sixty-five dollars and eleven cents, in violation of the terms and conditions of the said bond and mortgage, and Hugo Woerner, the solicitor for the said defendants, appeared at the said meeting, and was refused admission to the same, and though he entered the meeting room, the said association refused to hear the said Hugo Woerner, and after attempting several times to make known his objection to the contemplated action of the said issue, and being unable to do so, he retired from the said meeting. That the purpose of the said Hugo Woerner attending the said meeting was to protest, as solicitor for these defendants, against the payment of the said sum of money to the said Herman C. Schneider.

7. That the said payment due to the said Herman C. Schneider was without consent of these defendants, and against their objection and was an unauthorized and unlawful payment of the moneys due on the said bond and mortgage, and that the said moneys should have been used for

the erection and construction of the said building, as requested by these defendants.

8. These defendants further say that the said meeting was illegal, due notice thereof not having been given to the Board of Directors of the same. That at said meeting Charles Wolf, one of these answering defendants, objected to the payment at the said meeting, upon the grounds that the mortgage was an advanced money mortgage, that is, a construction mortgage, and that the money is still due thereon, should be used to advance the building that was being erected on the said premises, and that the said claim of the said Herman C. Schneider was no lien on the moneys still due on the said bond and mortgage.

9. And these defendants further say that the said mortgage was an advanced money mortgage, that is, the moneys which said mortgage was given to secure was to be used for the erection of a three family dwelling house upon the said mortgaged premises, that at the time of the conveyance to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and the Vreeland-Kearney Lumber Co., the said buildings were not half finished, and were encumbered with taxes, mechanics' liens and judgments, and that the complainant, although requested so to do, refused to apply the money to the erection and completion of the said building, in violation of the said mortgage, and that the said complainant paid to Herman C. Schneider the sum of eleven hundred and sixty-five dollars and eleven cents in violation of the terms and conditions of the said bond and mortgage, and against the objection of these defendants. That the said complainant violated the conditions to the said bond and mortgage in this and other respects. That the amount due on the

said mortgage, at the time of the payment of the said sum of money to the said Herman C. Schneider, was not sufficient to complete the erection and finishing of the said buildings, and the same was paid without any authority by the complainant, and against the terms and conditions of the said mortgage. That the claim of the said Herman C. Schneider in other respects were void and illegal.

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10. And these defendants further say that they have demanded a statement of the amount due on the said mortgage, and an account of the disbursements made of the moneys represented by the said mortgage, and the opportunity to inspect the orders paid by the said complainant, the vouchers and receipts and releases taken for payments on account of the said mortgage, and the complainant has refused to comply with the said demand.

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11. And these defendants have also demanded that the complainant use the amounts represented by said mortgage in finishing the said building, and the lien claims filed against the same, and the person having a right to file the same, and these demands were refused by the said complainant.

12. These defendants further say that on or about the twentieth day of February, A. D. nineteen hundred and eleven, and before the payment to the said Herman C. Schneider, of the said sum of eleven hundred and sixty-five dollars and eleven cents, these defendants caused to be mailed to each Director and officer of the complainant, the following notice.

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"To The Officers and Directors of the
Germania B. & L. Ass'n.

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Sirs:

I appeared at a special meeting of your Associa-

tion held on February 6th, instant, representing the Vreeland-Kearney Lumber Co., and Wolf, Stewart & Co., owners of property mortgaged to your Association, and also stockholders thereof, and was refused a hearing by your officers and the Directors who were present.

10 As there will be several suits arising out of their action, I take this method of bringing to your attention notice of the following facts.

1. That the Vreeland-Kearney Lumber Co. and Wolf, Stewart & Co. hold the legal title to premises Nos. 203 and 205 Runyon Street, Newark, N. J., formerly owned by the B. Frankel Realty Co. upon which your Association holds two mortgages of \$4,500.00 each.

20 2. That the Vreeland-Kearney Lumber Co. and Wolf, Stewart & Co. are the owners of the stock given as collateral security for the said loans, subject possible to the lien of your Association for the dues, &c.

30 3. That the mortgages made by your Association were construction loans, *i. e.*, the money represented by said mortgages was to be used to erect and finish the two buildings on the same premises.

4. That the amounts still due on said mortgages are not sufficient to erect and finish the buildings and pay the order of the Union Lumber Co. purported to have been assigned to your President, Herman C. Schneider.

40 5. That only a small part, if any, of the amounts represented by said order, is for materials used in the buildings.

6. That the said order is void and of no effect.

I also demand of you a statement of the amount

due upon the said mortgages, and an account of the disbursements made of the moneys represented by said mortgage, also the opportunity to inspect the orders paid by your Association, the vouchers and receipts and releases taken for payments on account of said mortgages.

I also demand that you use the amounts represented by said mortgages in finishing the said buildings and the lien claims filed against the same, and persons having a right to file the same. 10

In giving the above notice and making the above demands I represent the Vreeland-Kearney Lumber Co., Wolf, Stewart & Co. and the B. Frankel Realty Co.

Dated February 20, 1911.

HUGO WOERNER."

In consideration whereof, and for as much as these defendants have not a complete and safe remedy in the premises by the strict rule of the common law. 20

To the end, therefore, that the said The Germania Building and Loan Association of the City of Newark may, without oath (answer under oath being hereby expressly waived) full, true and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and the said defendants thereto particularly interrogated, according to the best of their respective knowledge, information and remembrance, and belief. 30

And that the said The Germania Building and Loan Association of the City of Newark may be compelled by this honorable Court to perform the agreement made between the said Association and the said B. Frankel Realty Co., and to pay the amount due on said bond and mortgage, less the 40

lien of the Association for dues, interest, fines and other charges to these defendants, Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and the Vreeland-Kearney Lumber Co., to be used in finishing the erection and construction of the said building on the said described premises and toward the payment of the amount due persons who have furnished materials and performed labor in such erection and construction; that the payment to the said Herman C. Schneider, the President of the said Building and Loan Association, of eleven hundred and sixty-five dollars and eleven cents, may be declared null and void, and that the said Association be compelled to furnish the said money toward completing the erection and construction of the said building. That the said The Germania Building and Loan Association of the City of Newark may account to these defendants for the amounts paid out by them on the said bond and mortgage, and allow these defendants to examine the checks, vouchers, receipts and releases for the amounts paid out by the said Association, on account of the said bond and mortgage. That the said The Germania Building and Loan Association of the City of Newark be compelled to pay to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co., the amounts paid by them in finishing the erection and construction of the said building; which exceeds the balance still due from the Association, disregarding the payment made to the said Herman C. Schneider, of eleven hundred and sixty-five dollars and eleven cents. That the resolution passed at the special meeting of the said Association authorizing the payment of the said sum of eleven hundred and sixty-five dollars and eleven cents to the said Herman

C. Schneider, the President thereof, may be set aside and declared null and void.

That the said Association be compelled to remit the interest, fines and other penalties imposed by it upon and after the twenty-fourth day of January A. D. nineteen hundred and eleven.

And these defendants may have such other and further relief in the premises as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

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May it please your Honor the premises considered to grant unto these defendants the State's writ or writs of subpœna issuing out and under the seal of this honorable Court, to be directed to the said The Germania Building and Loan Association of the City of Newark, therein and thereby commanding it on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor in this honorable Court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

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And these defendants, as in duty bound, will ever pray, &c.

HUGO WOERNER,

Solicitor for Defendants, Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., Vreeland-Kearney Lumber Co., and B. Frankel Realty Co.

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M. J. QUIGLEY,

Of Counsel with the said Defendants.

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Replication.

IN CHANCERY OF NEW JERSEY.

10	Between THE GERMANIA BUILDING AND LOAN ASSOCIATION OF THE CITY OF NEWARK, Complainant, <i>and</i> B. FRANKEL REALTY Co., a cor- poration <i>et al.</i> , Defendants.	} On Bill, &c.
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The complainant joins issue on so much of the defendants' answer as is not in the nature of a cross bill, and as to that part of said answer which is in the nature of a cross bill, it says:

1. That the complainant admits that on or about the twentieth day of June, nineteen hundred and ten, the said B. Frankel Realty Co. was the owner in fee simple of the following tract of land in the City of Newark, Essex County, New Jersey.

Beginning in the northerly line of Runyon Street distant easterly from the corner of said street and Sixth Avenue one hundred and twenty-five feet; thence northerly parallel with Sixth Avenue one hundred feet; thence easterly parallel with Runyon Street twenty-five feet; thence southerly parallel with the first course one hundred feet to the northerly line of Runyon Street; thence westerly along the same twenty-five feet to the place of beginning. Being known as 203 Runyon Street, Newark, N. J., and further described

as Lot 10 on Block C as laid down on a map of property belonging to Philip Tillinghast.

2. That on or about the twentieth day of June, A. D. nineteen hundred and ten, the said B. Frankel Realty Co. executed and delivered to the said The Germania Building and Loan Association of the City of Newark, a mortgage on the said premises, for the sum of forty-five hundred dollars to secure a bond of even date made by the said B. Frankel Realty Co. to The Germania Building and Loan Association of the City of Newark in the penal sum of nine thousand dollars, conditioned for the payment of the said sum of forty-five hundred dollars. 10

That the said bond and mortgage was an advanced money bond and mortgage, that is, the moneys due on the said mortgage, to wit, the sum of forty-five hundred dollars was to be used for the erection and construction of a three family dwelling house upon the same premises, and also for the purpose of procuring the lands in the cross bill and bill of complaint mentioned. 20

3. That on or about the twenty-fourth day of January, A. D. nineteen hundred and eleven, the said B. Frankel Realty Co. conveyed the said premises, together with other lands, to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and the Vreeland-Kearney Lumber Co. by deed dated on that day and recorded in Book F 48 of Deeds for Essex County, on pages 416, etc. 30

4. And this complainant admits that on or about the seventeenth day of January, A. D. nineteen hundred and eleven, the said B. Frankel Realty Co. made a deed wherein it was recited that it was a corrective deed to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trad- 40

ing as Wolf, Stewart & Co. and the Vreeland-Kearney Lumber Co., to correct an error in the description of the tract other than the one heretofore set forth, which said deed is recorded in Book W 48 of Deeds for Essex County, pages 123, etc., but this complainant neither affirms nor denies that the facts therein stated are correct, but leaves the said defendants to prove the same as best they can; and this complainant neither affirms nor denies that the said B. Frankel Realty Co. did also assign, transfer and set over the twenty-three shares of stock owned by the said B. Frankel Realty Co. to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and the Vreeland-Kearney Lumber Co. by a written assignment bearing date the seventh day of January, A. D. nineteen hundred and eleven, and that due notice was given to the said The Germania Building and Loan Association of the City of Newark, but leaves the defendants to prove the same as best they can.

5. This complainant admits that the said B. Frankel Realty Co. had commenced the erection of the three family frame building on the said described premises, but neither affirms nor denies that at the time of the said conveyance to said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and the Vreeland-Kearney Lumber Co., that the said buildings were not half finished and were encumbered with taxes, mechanics' liens and judgments, but this complainant denies that at that time, said The Germania Building and Loan Association of the City of Newark, had, in its hands, the sum of two thousand dollars or more which was still due and owing on the said bond and mortgage and that the said The Germania

Building and Loan Association of the City of Newark refused to apply the said sum of money for the erection and construction of said building, but that these defendants refused to pay the interest and dues which were payable monthly, according to the constitution and by-laws of said association, and that, if they had complied with the payments of said monthly dues and interest according to the rules of said association, the balance of the funds would have been paid to them, but which, by the neglect of such payments and defaults, the loan reverted to said association.

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6. This complainant neither affirms nor denies that on or about the fifth day of February, A. D. nineteen hundred and eleven, the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and the Vreeland-Kearney Lumber Co. were informed that the complainant had called a meeting of the Board of Directors for the sixth day of February, A. D. 1911, at which meeting it was proposed to pay to Herman C. Schneider, President of The Germania Building and Loan Association of the City of Newark, the sum of eleven hundred and sixty-five dollars and eleven cents, but leaves the said defendants to prove the same as best they can, but this complainant denies that any payment made to said Herman C. Schneider was in violation of the terms and condition of said bond and mortgage, and this complainant neither affirms nor denies that Hugo Woerner, the solicitor for the said defendants, appeared at said meeting, and was refused admission to the same.

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7. This complainant denies that the payment to said Herman C. Schneider was an unauthorized and unlawful payment of the moneys due on said bond and mortgage, and this complainant further

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says that the payment to said Herman C. Schneider was for lumber and materials used in the erection and construction of said building as this complainant had been informed by Benjamin Frankel, who was, at that time, the President and agent of said defendant, the B. Frankel Realty Co.

10 8. This complainant denies that the meeting was illegal and that due notice thereof had not been given to the Board of Directors of the same; and this complainant neither affirms nor denies that Charles Wolf, one of the answering defendants, objected to the payment of the said meeting upon the grounds that the mortgage was an advance money mortgage, that is, a construction mortgage, and that the money is still due thereon and should
20 be used to finish the building that was being erected on said premises, and that the claim of Herman C. Schneider was no lien on the moneys still due on said bond and mortgage; but this complainant says that the said Charles Wolf, one of the defendants, had full knowledge that the claim of eleven hundred and sixty-five dollars and eleven cents was due and owing to the said Herman C. Schneider and that the same was for
30 materials furnished in the building mentioned in the bill of complaint, this complainant says that the said conveyance made to Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and the Vreeland-Kearney Lumber Co. was for the purpose of defrauding the said Herman C. Schneider and other creditors of their just claims.

40 9. This complainant denies that the payment to said Herman C. Schneider of eleven hundred and sixty-five dollars and eleven cents was in violation of the terms and conditions of the said bond

and mortgage, and that the said complainant denies that they violated the conditions of said bond and mortgage in any respect.

10. And this complainant further says that the defendant, Charles Wolf, copied the statement from the books of Charles B. Gurney, of the actual amount paid out by him in the payment of claims against said building.

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11. This complainant further says that the said payment to said Herman C. Schneider of the sum of eleven hundred and sixty-five dollars and eleven cents was paid to said Herman C. Schneider on the seventh day of February, nineteen hundred and eleven, and that the same was before the twentieth day of February, nineteen hundred and eleven, and before the alleged notice which the said defendants say that they mailed to each Director and officer of the complainant.

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And this complainant further says that it neither affirms nor denies that the notice set forth in said cross bill by the defendants was mailed as therein stated or that the same was in the form as therein stated.

And this complainant denies all the other allegations of said cross bill and hereby prays that it may be hence dismissed with its reasonable costs and charges in its behalf most wrongfully sustained.

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CHARLES B. GURNEY,
Solicitor and of Counsel
with Complainant.

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Replication to Answer to Cross Bill.

(Filed Nov. 13, 1911.)

IN CHANCERY OF NEW JERSEY.

Between

10 THE GERMANIA BUILDING AND
LOAN ASSOCIATION OF THE
CITY OF NEWARK,

Complainant,

On Bill, &c.

and

20 B. FRANKEL REALTY CO., a cor-
poration *et al.*,
Defendants.

The replication of B. Frankel Realty Co., Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co., defendants, to the answer of The Germania Building and Loan Association of the City of Newark, complainant, to their answer by way of cross bill.

30 The defendants, B. Frankel Realty Co., Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co., join issue on the answer of The Germania Building and Loan Association of the City of Newark to their answer in the nature of a cross bill.

HUGO WOERNER,

40 Solicitor for Defendants, B. Frankel Realty Co., Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co.

Final Decree.

(Filed July 28, 1913.)

IN CHANCERY OF NEW JERSEY.

Between

THE GERMANIA BUILDING AND
LOAN ASSOCIATION OF THE
CITY OF NEWARK,

Complainant,

and

B. FRANKEL REALTY CO., a cor-
poration *et al.*,
Defendants.

On Bill, &c.

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This cause coming on to be heard before the Court, in the presence of Charles B. Gurney, of counsel with the complainant, and Hugo Woerner, of counsel with the defendants, B. Frankel Realty Company, a corporation, Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Company, a corporation, and John Francis Cahill, of counsel with the defendant, Stuart Lindsey, no one appearing for the defendant, Jacob Shachat, and the complainant's bill having been heretofore taken as confessed against the other defendants, 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 entitled to the relief sought and prayed for by it in the said bill of complaint;

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It is thereupon, on this twenty-second day of July, in the year of our Lord one thousand nine hundred and thirteen, by his Honor Edwin R. Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this Court, doth hereby order, adjudge and decree that there is due to the complainant in the first place, for principal and interest, on this day the sum of thirty-nine hundred and thirty-three dollars and sixty-five cents, together with lawful interest thereon, to be paid from the date of this decree, and in the second place that there is due unto the defendant, Stuart Lindsley, the sum of six hundred and fifty-two dollars and thirty-one cents, the principal and interest on his said mortgage, together with lawful interest thereon, as aforesaid; and that the said mortgaged premises be sold to raise and satisfy the money so due to the complainant on its said mortgage, that is to say, to pay and satisfy unto the complainant, in the first place, the sum of thirty-nine hundred and thirty-three dollars and sixty-five cents, together with lawful interest thereon from the twenty-second day of July, nineteen hundred and thirteen, with the complainant's costs in this suit to be taxed; and, in the second place, to pay and satisfy unto the defendant, Stuart Lindsley, the sum of six hundred and fifty-two dollars and thirty-one cents, principal and interest on his said mortgage, together with lawful interest from the twenty-second day of July, nineteen hundred and thirteen, with the defendant's costs to be taxed.

And it further appearing that the complainant produced before him certificate of search necessary to be made for the proper foreclosure of said mortgage, showing an expense of thirty-five dollars incurred in making the same, which amount I order to be allowed as part of its taxed costs, and to the

complainant a counsel fee of sixty-five dollars and a counsel fee to defendant Stuart Lindsley of six dollars and fifty cents; and it is further ordered, that a writ of *feri facias* do issue out of this Court, directed to the Sheriff of the County of Essex, commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale, he pay to the complainant or to its solicitor, its said debt, interest and costs, and to the defendant or his solicitor, his said debt, interest and costs, and in case more money should be raised by the said sale than shall be sufficient to answer such payments, that such surplus be brought into this Court, to abide the further order of the Court, unless otherwise previously disposed of by order of this Court, and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

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And it is further ordered, adjudged and decreed, that the defendants B. Frankel Realty Company, a corporation, Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., Vreeland-Kearney Lumber Co., a corporation, Jacob Shachat, William Blum, Isidor Meyer, Samuel Sabelotsky, Frank Sheldon, Receiver for the American Saw and Planing Mill Co., a corporation, Henry Tamenberg, The Merchants Building and Loan Association of the City of Newark, South Orange Building and Loan Association, Herman C. Schneider, Stuart Lindsley, Wilhelmina Wolf, Hannah L. Stewart and Josephine Stewart, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said

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mortgaged premises, when sold as aforesaid by virtue of this decree.

E. R. WALKER,
C.

Respectfully advised.

John R. Emery,
Vice-Chancellor.

10 A true copy.

SAML. K. ROBBINS,
Clerk.

Approved as to form.

Hugo Woerner,
Solicitor.

Petition of Appeal.

20 NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

THE GERMANIA BUILDING AND
LOAN ASSOCIATION OF THE
CITY OF NEWARK,
Complainant and Respondent,

30

and

B. FRANKEL REALTY Co., a corporation *et al.*,
Defendants and Appellants.

On Bill, &c.

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To the Honorable the Court of Errors and Appeals
in the last resort in all cases.

The petition of B. Frankel Realty Co., Charles
Wolf, Charles H. Stewart and Samuel W. Stewart,

partners trading as Wolf, Stewart & Co., Vreeland-Kearney Lumber Company, a corporation, Stuart Lindsley and Jacob Schachat, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the twenty-second day of July, in the year of our Lord one thousand nine hundred and thirteen, wherein The Germania Building and Loan Association of the City of Newark is complainant, and B. Frankel Realty Co., a corporation, Stuart Lindsley, Charles Wolf, Charles H. Stewart, Samuel W. Stewart, partners trading as Wolf, Stewart & Co., Vreeland-Kearney Lumber Co., a corporation, Jacob Schachat, William Blum, Isidor Meyer, Samuel Sabelotsky, Frank Sheldon, Receiver for the American Saw and Planing Mill Co., a corporation, Henry Tamenberg, The Merchants Building and Loan Association of the City of Newark, South Orange Building and Loan Association and Herman C. Schneider, Wilhelmina F. Wolf, Hannah L. Stewart and Josephine Stewart were defendants, in this respect, to wit: that the said decree adjudged that there is due on the mortgage of the complainant, in the pleading in the cause mentioned, the sum of thirty-nine hundred and thirty-three dollars and sixty-five cents (\$3933.65), together with lawful interest thereon from the date of said decree, and also to so much of said decree as orders the said mortgaged premises to be sold to raise and satisfy said amount to complainant, together with interest and costs, and to so much of said decree as orders that a writ of *feri facias* should issue to the Sheriff of the County of Essex, commanding him to make sale of said mortgaged premises and that out of the money arising from such sale he pay to the

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complainant, or its solicitor, said debt, interest and costs.

10 And your petitioners humbly appeal from that part of said decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for the testimony taken at the final hearing showed, and the Vice-Chancellor to whom the case was referred on final hearing should have found as a matter of fact, that the complainant had no right or authority to pay the order held by Herman C. Schneider of eleven hundred and sixty-five dollars (\$1165) (marked Exhibit C27) and charge the same as an advancement under said mortgage; that the complainant under its said mortgage was confined to advances made for the erection of the building on said mortgaged premises, at least until such building was finished and
20 that the payment of said order was not an advancement for said purpose; that said advancement was made after notice of the conveyance of said mortgaged premises to said Vreeland-Kearney Lumber Co. and Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and over their protest; that the order does not operate as an equitable assignment; that the order is payable five hundred and eighty-two dollars and fifty cents (\$582.50) out of the third payment and five hundred and eighty-two dollars and fifty cents (\$582.50) out of the fourth payment on two mortgages, one on the premises concerned in this suit and the other on the adjoining premises, and that no third or fourth payment were ever made on said mortgages by complainant; that the meeting of the Directors at which the said payment was made was illegal because it did not
30 state the object of said meeting; that only the first payment of three thousand dollars (\$3,000) on said mortgage was authorized by complainant's
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proper officers; that the complainant is only entitled to recover the amount found by the Court to have been actually advanced by it with interest and bonus thereon and the said Chancellor should not, therefore, have made the aforesaid final decree.

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

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HUGO WOERNER,
Solicitor for and of Counsel with Appellants.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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Between

THE GERMANIA BUILDING AND
LOAN ASSOCIATION OF THE
CITY OF NEWARK,
Complainant and Respondent,

and

B. FRANKEL REALTY Co., a corporation
et al.,
Defendants and Appellants.

On Bill, &c.

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The answer of the above-named respondent to the petition of appeal of the above-named appellants:

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This respondent, not acknowledging all or any

of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the twenty-second day of July past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and it prays that the same may be affirmed with costs to be adjudged to this respondent.

CHARLES B. GURNEY,
Solicitor and of Counsel with Respondent, The
Germania Building and Loan Association of
the City of Newark.

Order of Severance.

(Filed Jan. 19, 1914.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

THE GERMANIA BUILDING AND
LOAN ASSOCIATION OF THE
CITY OF NEWARK,
Complainant and Respondent,

and

B. FRANKEL REALTY Co., a cor-
poration *et al.*,
Defendants and Appellants.

On Bill, &c.

It appearing to the Court, that Stuart Lindsley

and Jacob Schachat, and each of them refuse to join in the said appeal, and are content with the decree below, and desire to be regarded as respondents in this cause in this Court and they, by their solicitors consenting to the making and entry of this order,

It is now, on this 19th day of January, in the year one thousand nine hundred and fourteen,

Ordered by the said Court, that the said Stuart Lindsley and Jacob Schachat be and they are hereby severed from the said B. Frankel Realty Co., Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co., in the prosecution of the said appeal, and that they stand and be regarded as respondents in the prosecution thereof, together with The Germania Building and Loan Association of the City of Newark, who was the complainant below, and that the said B. Frankel Realty Co., Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and Vreeland-Kearney Lumber Co. have leave to amend and file an amended petition of appeal in this cause accordingly.

On motion of

HUGO WOERNER,

Solicitor of Appellants, B. Frankel Realty Co., Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co.

We hereby state that the defendants, Stuart Lindsley and Jacob Schachat have not appealed from the decree made by the Chancellor in this cause, nor from any part thereof, and that their names have been used as appellants in the peti-

tion filed in this Court by the said B. Frankel Realty Co., Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and Vreeland-Kearney Lumber Co. without their consent and against their will, and they hereby refuse to join in the said appeal; and they consent to the making and entry of the above order.

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JOHN FRANCIS CAHILL,
Solicitor of Stuart Lindsley.
CHARLES ELIN,
Solicitor of Jacob Schachat.

Amended Petition of Appeal.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

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Between

THE GERMANIA BUILDING AND
LOAN ASSOCIATION OF THE CITY
OF NEWARK, STUART LINDSLEY
and JACOB SCHACHAT,

Complainants and Respondents,

On Bill, &c.

and

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B. FRANKEL REALTY Co., a cor-
poration *et al.*,
Defendants and Appellants.

To the Honorable the Court of Errors and Appeals
in the last resort in all causes:

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The amended petition of B. Frankel Realty Co.,
Charles Wolf, Charles H. Stewart and Samuel W.
Stewart, partners trading as Wolf, Stewart & Co.

and Vreeland-Kearney Lumber Company, a corporation, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the twenty-second day of July, in the year of our Lord one thousand nine hundred and thirteen, wherein the Germania Building and Loan Association of the City of Newark, is complainant, and B. Frankel Realty Co., a corporation, Stuart Lindsley, Charles Wolf, Charles H. Stewart, Samuel W. Stewart, partners trading as Wolf, Stewart & Co., Vreeland-Kearney Lumber Co., a corporation, Jacob Schachat, William Blum, Isidor Meyer, Samuel Sabelotsky, Frank Sheldon, Receiver for the American Saw and Planing Mill Co., a corporation, Henry Tannenberg, The Merchants Building and Loan Association of the City of Newark, South Orange Building and Loan Association and Herman C. Schneider, Wilhelmina F. Wolf, Hannah L. Stewart and Josephine Stewart were defendants, in this respect, to wit: That the said decree adjudged that there is due on the mortgage of the complainant, the Germania Building and Loan Association of the City of Newark, in the pleading in the cause mentioned, the sum of thirty-nine hundred and thirty-three dollars and sixty-five cents (\$3933.65), together with lawful interest thereon from the date of said decree, and also to so much of said decree as orders the said mortgaged premises to be sold to raise and satisfy said amount to complainant, the Germania Building and Loan Association of the City of Newark, together with interest and costs, and to so much of said decree as orders that a writ of *fiery facias* should issue to the Sheriff of the County of Essex, commanding him to make sale of said mortgaged

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premises and that out of the money arising from such sale he pay to the complainant, The Germania Building and Loan Association of the City of Newark, or its solicitor, said debt, interest and costs.

10 And your petitioners humbly appeal from that part of said decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for the testimony taken at the final hearing showed, and the Vice-Chancellor to whom the case was referred on final hearing should have found as a matter of fact, that the complainant, The Germania Building and Loan Association of the City of Newark, had no right or authority to pay the order held by Herman C. Schneider of eleven hundred and sixty-five dollars (\$1165.00) (marked Exhibit C27), and charge the same as an advancement under said mortgage; that the complainant, The Germania Building and Loan Association of the City of Newark, under its said mortgage was confined to advances made for the erection of the building on said mortgaged premises, at least until such building was finished and that the payment of said order was not an advancement for said purpose; that said advancement was made after notice of the conveyance of 20 said mortgaged premises to said Vreeland-Kearney Lumber Co. and Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and over their protest; that the order does not operate as an equitable assignment; that the order is payable five hundred and eighty-two dollars and fifty cents (\$582.50) out of the third payment, and five hundred and eighty-two dollars and fifty cents (\$582.50) out of the 30 fourth payment on two mortgages, one on the premises concerned in this suit and the other on the adjoining premises, and that no third or fourth 40

payments were ever made on said mortgages by complainant, The Germania Building and Loan Association of the City of Newark; that the meeting of the Directors at which the said payment was made was illegal because it did not state the object of said meeting; that only the first payment of three thousand dollars (\$3,000.00) on said mortgage was authorized by the complainant's (The Germania Building and Loan Association of the City of Newark) proper officers; that the complainant, The Germania Building and Loan Association of the City of Newark is only entitled to recover the amount found by the Court to have been actually advanced by it with interest and bonus thereon and the said Chancellor should not, therefore, have made the aforesaid final decree.

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

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HUGO WOERNER,
Solicitor for and of Counsel with Appellants.

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IN CHANCERY OF NEW JERSEY.

Between

THE GERMANIA BUILDING AND
LOAN ASSOCIATION OF THE
CITY OF NEWARK,

Complainant,

On Bill, &c.
Case No. 1.

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and

B. FRANKEL REALTY Co., a cor-
poration,
Defendant.

Between

THE GERMANIA BUILDING AND
LOAN ASSOCIATION OF THE
CITY OF NEWARK,

Complainant,

On Bill, &c.
Case No. 2.

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and

B. FRANKEL REALTY Co., a cor-
poration,
Defendant.

30 Testimony taken in the above entitled cause
before Hon. John R. Emery, Vice-Chancellor, at
the Chancery Chambers, Newark, New Jersey, on
May 16, 1912, at 10:30 A. M.

APPEARANCES:

Mr. FRANK E. BRADNER and Mr. CHARLES
B. GURNEY, for Complainant.
Mr. HUGO WOERNER, for Defendant.

40 Court: I will make an order that for the pur-
poses of hearing, the cases be consolidated and
reserving leave to apply for future order.

You claim, Mr. Bradner, that there is now due how much?

Mr. Bradner: Their Secretary keeps the account; we claim a total of \$7,047.59 with interest from July 17, 1911.

Court: Why is that date fixed?

Mr. Bradner: That is the date on which we ordered the foreclosures.

Court: Is that \$7,047 equally divided between the two mortgages? 10

Mr. Bradner: Yes; the payments will not be as great as that if we take the actual payments that went out. They have charged up interest and dues and fines.

Court: They will have to give credit for the surrender value of the shares?

Mr. Bradner: Yes.

Court: That does not take that into account? 20

Mr. Bradner: Yes, that is the actual amount due on July 17, 1911, allowing all credits for payments upon the shares.

I offer in evidence the bonds and mortgages; bond dated June 20, 1910, made by B. Frankel Realty Company, a corporation, to the Germania Building and Loan Association, in the penal sum of \$9,000, conditioned for the payment of \$4,500. 30

Marked Exhibit C1.

Also, mortgage accompanying said bond, made by B. Frankel Realty Company, a corporation, to the Germania Building and Loan Association of the City of Newark, dated June 20, 1910, acknowledged July 14, 1910; registered in the Register's office of Essex County, Book I, 26 of Mortgages, on page 169.

Marked Exhibit C2. 40

Also, a certificate for twenty-three shares of the Germania Building and Loan Association, No. 890, issued to B. Frankel Realty Company for twenty-three shares of thirtieth series of the Germania Building and Loan Association, dated April 11, 1910, and the assignment of the certificate for twenty-three shares, dated June 28, 1910, by B. Frankel Realty Company to the Germania Building and Loan Association, as collateral security for \$4,500 on bond and mortgage.

Marked Exhibits C3 and C4.

Bond, mortgage, certificate and assignment of certificate offered in the second case and marked Exhibits C5, C6, C7 and C8.

JOHN J. GLESS, sworn for complainant.

20

Direct examination by Mr. Bradner:

Q. You are the Secretary of the Germania Building and Loan Association? A. Yes.

Q. Have you the books showing the account with B. Frankel Realty Company? A. Yes.

Q. Have you them with you? A. Yes, sir.

Q. Did you keep two accounts with B. Frankel Realty Company, or only one? Two individual accounts, \$4,500.

30

Q. On the same page? A. Yes, sir, page 57.

Q. What do you call this book? A. Shareholders' book.

Q. Do the entries on page 57 show your entire account? A. No, it is transferred from a previous page.

Q. Get the page where it commences and give the pages it runs through. When was that series opened? A. April 11, 1910.

40

Q. And when were the loans made to B. Frankel Realty Company? A. I think some time in March.

Mr. Bradner: I offer in evidence the two applications made by B. Frankel Realty Co., each dated May 20, 1910, for the loan of \$4,500.

Marked Exhibits C9 and C10.

Court: Have you the action of the Association on it?

Q. The loans were made? A. Yes, sir.

10

Q. Have you a resolution passing the loan? A. Yes, minute book, page 147, dated May 16, 1910.

Q. Read the entry relating to the loan. A. "Committee on Frankel Realty Company reported favorably. B. Frankel Realty Company made an application for \$5,000 on each property, 203 and 205 Runyon Street. Committee appointed on loan Mr. Strebinger, Buhl and Muller. Committee reported in favor of granting \$4,500 on each house instead of \$5,000, and motion was made and passed to accept the committee's report and grant the loans at \$4,500."

20

Q. What is the next action taken? A. June 20, 1910, page 149: "Committee on Frankel Realty Company loans reported progress." July 18, page 150: "Committee on Frankel Realty Company loans reported favorably the first payment of \$1,500 on each house. Upon motion made and passed, payment was granted."

30

Q. After a payment is granted how is that payment made? A. In check of the association drawn to the B. Frankel Realty Company or Mr. Gurney as attorney. Check No. 1312, dated July 19, 1910; that is the first transaction to the order of B. Frankel Realty Company, of Charles B. Gurney, attorney.

Q. To whom is that delivered? A. To Mr. Gurney.

40

Q. That check has been paid and returned, has it? A. Yes. The first payment was \$1,500 on

each property; that is \$3,000 less the amount they were to pay, then for the arrears of dues, the thirtieth series; they had to take twenty-three shares for each mortgage of \$4,500, so there was deducted from the \$3,000, four months' dues in the thirtieth series.

10 Q. How much was that? A. One hundred and eight-four dollars.

Q. Anything else? A. And two months' interest, \$90; \$274 was deducted from that first payment of \$3,000, which left a balance of \$2,726.

Check No. 1312 offered in evidence and marked Exhibit C11.

Mr. Woerner: The check is endorsed "Charles B. Gurney."

20 Q. The check has been paid and taken out of the Association's funds in the bank? A. Yes, sir.

Q. What is the next action that was taken? A. August 15, when the committee reported progress on the buildings. Next meeting, September 19, 1910, committee on B. Frankel Realty Company reported progress in the meeting.

Q. I show you a check here of August 12; see if you find any action for that. A. I do not find any entry.

30 Q. I show you a check of August 12th, for \$2,000, payable to the order of B. Frankel Realty Company, or Charles B. Gurney, attorney; can you explain that? A. Yes.

Q. Look at some other book; perhaps you will find an entry of that? A. It may be that in the July Directors' meeting it was decided among the Directors and the committee reported for the further payment of the \$2,000.

40 Mr. Woerner: I ask that that be stricken out; the minutes are here.

Q. This was in the hands of the committee? A. Yes.

Q. All the time? A. Yes, the entire loan was in the hands of the committee on the payments.

Q. Did you make up this typewritten statement? A. Mr. Gurney made it up on my figures. I made up the statement; Mr. Gurney's stenographer did the typewriting. Here are my figures here (indicating).

10

Q. The typewritten statement is made up from figures supplied by you? A. Yes.

Q. Where did you get the facts to make those figures? A. From the books.

Q. Find the book showing that \$2,000 payment.

Court: You have here a book showing an account of the actual payments?

Witness: Yes, sir, Ledger 1, page 155, under bond and mortgage accounts in the ledger.

20

Q. That is the general account of all mortgages? A. Yes.

Q. You find on that an entry of what? A. Entry July 19, \$3,000, bond and mortgage.

Q. Does it refer to what bond and mortgage? A. The first payment \$3,000, July 19th, B. Frankel Realty Company, and refers to page 53.

30

Q. What is that? A. The cash book page. July 12, 1910, B. Frankel Realty Company second payment, cash book page 54, \$2,000.

Q. Is this, then, the check for \$2,000 for that second payment August 12? A. Yes.

Mr. Bradner: I offer that.

Mr. Woerner: I object to the check unless there is some authorization.

40

Court: The proof isn't finished yet.
Check for \$2,000 marked Exhibit C12.

Q. You do not find anything on the minutes as to any subsequent payments? A. No.

Q. Look at your ledger; what is the next payment made? A. September 23rd, page 55, B. Frankel Realty Company \$4,000.

10 Q. Will you turn to your cash book and find the record of that \$4,000 payment in your cash book and see if anything was deducted? A. Cash book, page 55.

Q. Read the entries there that make up the \$4,000 payment. A. On the credit side it says "bond and mortgage B. Frankel Realty Company \$4,000." I charged him on the other side of the cash book page, "B. Frankel Realty Company instalment, dues \$92, interest \$90, premium \$180, making a total of \$362."

20 Q. That was deducted from the \$4,000? A. Yes, sir.

Q. I show you a check, September 23, 1910, \$3,638. A. That is the check for that payment.

Check for \$3,638 offered in evidence and marked Exhibit C13.

Q. That disposed of the whole \$9,000, then? A. Yes.

30 Q. By September 23, 1910, the whole amount was advanced on the loan? A. Yes.

Q. That is, it was paid into the hands of your attorney? A. Yes.

Q. Did you afterwards receive any of this money back from Mr. Gurney? A. Yes.

Q. How much did you receive back from Mr. Gurney? A. I received \$2,152.09.

40 Q. And under what date have you entered that? A. I cannot recall the exact date I received it from Mr. Gurney; it was entered in the cash book, page 74, under the bond and mortgage account, under date of January 9, 1912.

Q. When, according to the entries you first gave us, September 23, 1910, the whole amount was advanced, from that time on did you keep an account with these loans, in which you charged them regularly with the monthly dues and payments? A. Yes, sir.

Q. Where does that appear? A. It shows in the shareholders' book.

Q. It would be on different pages in the shareholders' books? A. It is transferred forward every six months.

Q. No credit was given on that account until January 9, 1912, when it was credited \$2,152?

A. Yes, sir, that was the amount that was handed to me by Mr. Gurney.

By the Court:

Q. And then, up to that time, you charged interest and dues on the whole \$9,000? A. We didn't charge it up to 1912; I think the date of the foreclosure comes in before that.

Q. Up to the time you got the check you charged interest on the entire \$9,000 in keeping the account, did you? A. Oh, yes.

Q. Then, from the time when you got that check, what is the amount on which interest was charged? A. \$9,000 less the \$2,152; the date I stopped charging seems to be July 17, 1911.

Q. You stopped charging interest on what? A. On the dues and on the interest.

Q. You mean stopped making any charges? A. Yes.

By Mr. Bradner:

Q. I show you check of Charles B. Gurney, dated September 15, 1911, for \$2,152.09, certified; does that represent the money that you received from him on this matter? A. Yes, sir; it was only entered in January, but was received before; we

stopped July 17, 1911, that was the date of the foreclosure.

Q. Was there any action taken by the Directors relating to these mortgages about July, 1911; do your minutes show? A. Yes.

10 Q. You have something in the minutes of June 19, 1911? A. "A motion was made and passed that the solicitor was authorized to proceed with foreclosure proceedings in the B. Frankel Realty Company matter." That is June 19, 1911.

Q. I presume then, the papers were turned over to Mr. Gurney to proceed with the foreclosure? A. Yes, sir.

Q. I show you a book; is this a printed copy of the constitution and by-laws and rules and regulations of the association? A. Yes, sir.

20 Mr. Bradner: I offer this book in evidence.

Marked Exhibit C14.

30 Section 4 of Article 10 of the Constitution provides that "Shareholders taking loans from the Association shall pay interest monthly to the Treasurer, at the rate of one-half of one per cent. per month. Such borrower refusing or neglecting to pay the interest on their loans, shall incur a monthly fine of five cents for each loan of two hundred dollars by him or her held. If the interest is suffered to remain unpaid more than six months, the Directors may compel payment of principal and interest by ordering proceedings on the bond and mortgage according to law."

40 Q. Have there been any payments made? A. Not by Mr. Frankel, no; simply the deductions that were made from the check.

Q. Did Frankel pay anything from September, 1911? A. No.

Q. I understood there hadn't been anything paid and credited here at all, except the payments that we have deducted from the loan in the way of interest and dues? A. Yes, sir, that is so.

Q. The B. Frankel Realty Company hasn't paid any money at all? A. No, sir.

10

Cross examination by Mr. Woerner:

Q. Can you account for the fact that your minutes show that the loan was granted on May 16, 1910, and application made on May 20, 1910? A. No, I cannot account for that.

Court: Don't they often make these applications for loans with the understanding that the papers will be executed afterwards?

Witness: That often happens.

20

Court: It wouldn't make any difference in this case; the loan was granted and the question is, how much.

Q. As I understand it, your mortgage book shows July 19, 1910, B. Frankel Realty Company \$3,000. Have you in there Charles B. Gurney, attorney, or just B. Frankel Realty Company? A. B. Frankel Realty Company.

30

Q. August 12, 1910, \$2,000? A. Yes.

Q. And September 23, 1910, \$4,000? A. Yes.

Q. That makes \$9,000? A. Yes.

Q. Does anything else appear on that cash book, credits or debits? A. The charges to be credited to the respective amounts that were deducted—premium, interest and dues.

Q. I mean this particular account? A. No, sir.

Court: Not on the ledger?

40

Witness: It shows the return on deposit of January 9, \$2,152.09.

Q. As I understand it, the only authorization of the Board of Directors that you can find is for the payment of \$3,000 on July 19, 1910? A. I do not say that is the only one; there must be an authorization of the final payment, but I cannot just now find one for the second payment of \$2,000.

10 Q. You looked through September, didn't you?
A. It shows progress every month; the matter was brought up in the Directors' meeting and the committee reported from month to month.

Q. What does your minute book show? A. Progress during the time of construction.

Q. How did you come to make these payments; simply because Mr. Gurney asked you to? A. No, the committee were instructed that they wanted the payment, and he informed the attorney and he notified me.

20 Q. Do you know anything about the buildings themselves? A. No, sir, I do not.

Q. Did you know the buildings were not finished when you paid that \$4,000? A. I didn't know.

30 Q. So you couldn't have had a committee report for that, providing it wasn't finished at that time; you couldn't have had a committee report for that last payment, if it had not been finished at that time? A. No, sir, if it had not been finished.

Q. What do you claim is due you on these bonds and mortgages at the present time?

Court: Give the date to which you have figured.

A. \$7,047.59 on July 17, 1911.

Q. And from that time you only claim interest?

A. Yes, sir.

40 Q. At what rate did you charge six months' fine?

A. Five per cent.

Mr. Gurney: I am not certain, but I think the Building and Loan Act only allows three months. I wish that on the record.

Q. You charge ten months' interest from September 10 to July 17, 1911, \$450? A. Yes, sir.

Q. And that is figured on \$9,000? A. Yes, sir.

Q. You have here "Profit on shares, \$16.56;" is that the whole profit or the surrender value or what? A. That is the surrender value on the 23 shares in the thirtieth series as per the report. 10

Q. Will you tell us the actual profit on those 46 shares in the thirtieth series? A. I haven't got the 1910 report with me. The year ends October 31, 1910. I haven't that report with me. It may be in the minute book; just a moment.

Q. Give the actual value. A. \$55.20; \$1.20 on each share is the profit. 20

Q. The surrender value is what? A. Thirty-six cents on each share.

Q. And the only thing your association claims is interest on the amount you have indicated here, \$7,047.59 from July 17, 1911; is that right? A. Yes, sir.

Q. What does your shareholders' book show as to the account of B. Frankel Realty Company? A. Entry under date of April 11, 1910, the opening of the thirtieth series, although it does not show any payment all through for the first six months on that page. 30

Q. It says "paid." A. That was the reduction; that is right.

Q. April 11, 1911? A. It shows twenty-three shares, Certificate 890, and twenty-three shares, Certificate 891.

Q. That they were paid? A. Yes, it shows they were paid up to September 12, 1910. 40

Q. What does your book show after that date?

A. It shows open until the time it was to be foreclosed. No payments have ever been made by the B. Frankel Realty Company.

Q. What does this lead pencil mean October 10, 1910, Vreeland-Kearney Lumber Company?

10 A. A memorandum there that I understood the property was transferred to them; for my own convenience that memorandum was made; there was no official assignment in my hands at the time.

Q. Turn to the next page where that account appears. A. It shows no payments after September, 1910.

20 Q. February 12, 1912, what do those items mean? A. Simply amount he owes for dues and interest as they accumulated right along; it simply shows the amount in arrear from the loan, deduction of the check.

Q. That was what time? A. September 23, 1910; deducted August and September dues and interest.

Q. That is from the \$4,000? A. Yes, and previous to that there was four months' dues which covered the first months.

30 Q. When you got that check from Mr. Gurney for the balance—when that was returned and creditor, \$2,152.09—you had charged him with \$4,000, was that \$2,152.09 the result of any credits up to the time of its receipt—credits of interest to the Frankel Realty Company? A. No, sir, I simply credited that balance returned by Mr. Gurney to the bond and mortgage account; that is the amount still due on the loan of \$9,000.

Q. Where does the account next appear? A. Page 57.

40 Q. The account shows nothing further after February 12, 1912? A. No, sir; it is continued for this whole year; it is transferred, page 57,

beginning October 9, 1911, to be continued for the current year up to September, 1912; the account is carried along.

Q. Nothing else appears? A. No, sir.

Q. No items whatsoever? A. No, sir.

Q. On each of the payments you made you deducted the dues and interest to date, didn't you? A. Yes, sir.

Q. Is that your usual custom? A. Yes, sir; it is the custom and practice wherever the shareholder paid. 10

Q. In a construction loan? A. Yes; if he does not pay monthly payments, when the payments come due, I deduct what is due up to that time for the dues and interest.

Redirect by Mr. Bradner:

Q. How do you make up the \$7,047.59 due? Give us the items. A. Two mortgages 20

at \$4,500 each, \$9,000.00

Due for six months' fines, up to September, 1910, inclusive, 42.24

Due for ten months' interest, September, 1910, to July 17, 1911, 450.00

Total \$9,492.24

Q. Give the credits. A. August 21, 1911, check returned by Mr. Gurney to the Association, unexpended balance in the loans, \$2,152.09 30

Credits for April, May, June, July, August and September dues 276.00

Profit on the shares 16.56

Total 2,444.65 40

Leaves a balance of \$7,047.59

Q. I notice that you have there on your statement the date of August 21, 1911—the date of Mr. Gurney's check; can you explain that? It wasn't credited on your books until January. A. I received the check on the twenty-first and I didn't know to what to credit it, and I held the check in the safe for several months, thinking the matter would be adjusted so the check would be returned to the Realty Company to balance the \$9,000 due. Sometime after, the State Examiner came along and I took the matter up with him, told him I had the check lying in the safe, and he advised me to deposit it and credit it to the bond and mortgage account temporarily.

10

Recross by Mr. Woerner:

Q. You didn't deposit this check until January, 1912? A. No, sir, I didn't.

20

Q. That was the first time it went into the Building and Loan Account? A. Yes, sir, although it was in my possession for some time.

Q. Do your minutes show anything else in relation to this loan beside what you have read? A. I do not think so. In relation to what?

Q. The foreclosure or committee's reports. A. It shows the date of the loan granted and the date ordered to be foreclosed and the reports of the committee from month to month, progress.

30

Q. Does anything appear on August 6, 1911, under date of August 21? A. The solicitor reported that he proceeded with foreclosure suit on the B. Frankel Realty Company loans.

Q. Haven't you any record of the special meeting held on August 6, 1911? A. Aren't you mistaken in the date; I have a record under February 6, 1911, special meeting. "A special meeting was held this day regarding the B. Frankel Realty Company loans. Mr. Herman C. Schneider of-

40

ferred the Association his personal bond of \$18,000 securing the Association against any losses whatsoever in the loan, also agreeing to complete the buildings against the lumber bill of Holloway Lumber Company \$1,165. Under these conditions a motion was made and passed to authorize the solicitor to pay the Holloway Lumber Company bill of \$1,165." No further business being on hand and motion being passed to adjourn.

10

CHARLES B. GURNEY, sworn for complainant.

Direct examination by Mr. Bradner:

Q. You are the attorney of the Germania Building and Loan Association? A. Yes, sir.

Q. And you were in 1910? A. I was.

20

Q. Have you received from that Association the amount of the mortgages made by B. Frankel Realty Company? A. I have.

Q. What is the total amount that you received? A. On July 20, 1910, I received a check for \$2,726.

Q. What is the next? A. On August 13 I received \$2,000; I haven't got the date here, but I have a note here "check dated September 23, 1910, \$3,638;" that was the end of the fiscal year and the Secretary gave me that amount in order to clear up his books and have it in the annual report; that is the reason that that check was given to me at that time.

30

Q. Have you made any payments to the B. Frankel Realty Company? A. Yes.

Q. Have you the vouchers for those payments? A. Yes.

Q. What was the first payment made? A. I retained \$6 for application fee which was paid over to the Treasurer in cash; there is no doubt about

40

that, as it is a small item. On July 21, 1910, payment was made to B. Frankel Realty Company for \$275, being a payment on account of the purchase price of the property which he got from Stuart Lindsley, and the check bears the endorsement of the various parties.

10 Q. Is that the check (witness shown check)? A. Yes, sir, that is my check. That is the date of the acknowledgment of the mortgage and the deed.

Q. The check appears to be endorsed. "Pay to the order of John F. Cahill, attorney of Stuart Lindsley. B. Frankel Realty Company, by B. Frankel, President. John F. Cahill, Attorney of Stuart Lindsley." To whom did you deliver the check? A. I delivered it to Mr. Frankel for endorsement and he turned it over to John Francis Cahill.

20 Check referred to offered in evidence and marked Exhibit C14.

Q. What is the next payment? A. July 23, to the order of B. Frankel Realty Company, \$1,000; that is the check I delivered to the B. Frankel Realty Company.

Q. Actually to whom, what person? A. For the benefit of Wolf, Stewart—the endorsement will show.

30 Q. That is your own check? A. Yes, sir.

Mr. Bradner: I offer check dated July 23, 1910, made by Charles B. Gurney to the B. Frankel Realty Company for \$1,000, endorsed "Pay to the order of Wolf, Stewart & Co. B. Frankel Realty Co., B. Frankel, President. Wolf, Stewart & Co."

Marked Exhibit C15.

40 Q. On July 23, 1910, check for \$152 to B. Frankel Realty Company; what was that for? A. For fees, expenses, etc.

Mr. Bradner: I offer the check in evidence; it is endorsed "B. Frankel Realty Co., B. Frankel, President."

Marked Exhibit C16.

Q. You have charged a small item on July 23, \$2; what is that for? A. The recording fee for the second mortgage of Stuart Lindsley; it is altogether in the one check of \$152.

10

Q. The next check is July 23, 1910, for \$600, "Pay to the order of B. Frankel Realty Co." endorsed "B. Frankel Realty Co., B. Frankel, President, B. Frankel individually?" A. Yes.

Mr. Bradner: I offer that check for \$600 in evidence.

Marked Exhibit C17.

Q. What is the next payment? A. July 23, 1910, \$968.

20

Mr. Bradner: I offer in evidence check for \$968, dated July 23, 1910, Mr. Gurney's check to the order of the company, and endorsed "B. Frankel Realty Co., B. Frankel, President. B. Frankel individually;" a certified check.

Marked Exhibit C18.

Q. August 13, \$300? A. Yes, my check to the order of B. Frankel Realty Co., endorsed "B. Frankel Realty Co., B. Frankel."

30

Mr. Bradner: I offer that check in evidence.

Marked Exhibit C19.

Q. What is the next payment? A. Same date, August 13, 1910, check for \$1,700 to B. Frankel Realty Co., my check certified, and endorsed "B. Frankel Realty Co. B. Frankel, Prest. B. Frankel."

40

Mr. Bradner: Check for \$1,700 offered in evidence.

Marked Exhibit C20.

10 Q. I find an item of October 7, "Paid insurance \$45;" what does that mean? A. Mr. Frankel didn't pay the insurance and the company demanded payment on them or they would cancel the policies and I paid that to the Fielder Real Estate Corporation for the insurance; I have a check here in payment of that and others, but my receipt will explain that \$101.69, and included in that is \$45 on these houses on Runyon Street.

Mr. Woerner: Have you the policies here?

Witness: Yes.

Check and receipt for \$101.69 marked Exhibit C21.

20

Q. Next? A. February 7, 1911, H. C. Schneider, \$1,165.11. The stenographer made a mistake and made it "11," and it was February 7, 1911; that is in the book, \$1,165.11.

Q. That is the check (witness shown check to the order of Herman C. Schneider, dated February 7, 1911, for \$1,165.11)? A. Yes.

30 Mr. Woerner: I object to this check going in evidence as any payment on this account.

Court: Unless something further is shown; I will note your objection. He will have to go further.

Mr. Bradner: It is endorsed "Herman C. Schneider. F. D. Holloway." I offer it in evidence.

Marked Exhibit C22.

40 Mr. Bradner: I will produce the authority for paying it.

Q. August 21, to the Germania Building and Loan, \$2,152.09? A. That was the balance of funds in my hands, ordered after foreclosure proceedings, which were on July 17, 1911.

Q. I show you a check with your name torn off, dated August 21; what is that? A. Mr. Gless informed me that he had lost this check and he asked me to send him a check to cover it, and I did, and he subsequently found this and returned it to me.

10

Q. Then you sent a check in place of it for \$2,152.09? A. Yes.

Q. What is the date of that? A. Dated September 15, 1911, one month after that.

Q. That is a certified check of Charles B. Gurney to the order of the Building and Loan? A. Yes, sir.

20

Check for \$2,152.09, dated September 15, 1911, offered in evidence and marked Exhibit C23.

Q. You first gave a check when? A. August 21, 1911.

Q. And afterwards gave him another check September 15; this one of August 21, then, was mislaid? A. Yes.

Q. It was afterwards found, was it? A. Yes, sir.

30

Q. Moneys were paid into your hands as the attorney for the company; how would you disburse them? A. Upon the report of the committee to the Secretary a check was sent to me and upon that report, upon receiving, in a construction loan proper, postponements and releases of all mechanics and materialmen, the amount was paid out.

40

Q. In each one of those cases of payments made by you can you say whether you did receive post-

ponements and releases? A. At the time when I made the payment of July 20 and August 13, 1910, I did, I received postponements and releases.

Q. You have the original papers? A. I have them.

Q. From whom did you receive those? A. The signatures will show there.

10 Q. From whom? A. From Mr. Benjamin Frankel; he produced them.

Q. He produced them to you? A. Yes.

Q. He got the papers and gave them to you? A. And I took his affidavit.

Q. There is an affidavit on each release? A. There is.

20 Q. There are two releases and one postponement with an affidavit on each release? A. Yes. In one case in particular there wasn't a release given, but a postponement. That pertains to the Union Lumber Company, or whatever the name of that company is.

Mr. Bradner: I offer the three papers: Postponement of lien is dated July 1, 1910 (Exhibit C24); one release, dated July 1, and the affidavit on it is July 20 (Exhibit C25); the next release is July 30, 1910, with affidavit July 12 (Exhibit C26).

30

Q. On February 11 you made a payment to Mr. Schneider; what have you which shows your authority to make that payment? A. An order from B. Frankel Realty Company to the Union Lumber Company, who is Mr. James N. Holloway doing business as the Union Lumber Company, and an assignment of it.

40 Q. I show you a paper purporting to be an order; is that the one you refer to? A. That is the order.

Mr. Brander: It is on the letterhead of the Union Lumber Company, Wholesale Lumber, 142 Market Street, Newark, New Jersey, and dated August 23, 1910.

"Germania B. & L. Assn.
Newark, N. J.

You may please pay to Union Lumber Co. \$582.50 out of 3d payment and \$582.50 out of 4th payment, total \$1165.11 on (2) mortgages \$4500 each now being taken by you on properties 203 and 205 Runyon St. Newark N. J.

10

B. FRANKEL REALTY CO.

B. Frankel Predt."

Offered in evidence and marked Exhibit C27.

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Q. Did you see Mr. Frankel sign it? A. No, but he subsequently acknowledged it.

Q. Who brought it to you? A. I cannot say; it may have been left on my desk, but I was subsequently called up by Mr. Holloway and likewise saw Mr. Frankel about it and he acknowledged it.

Q. That order directs the payment of the money to Union Lumber Company; you paid it to Mr. Schneider; have you anything to show a transfer to Mr. Schneider? A. Yes, shortly after that Mr. Schneider told me that he was entitled to that and he and Mr. Holloway called on me—who represents the Union Lumber Company—and made an assignment of it.

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Q. The paper I show you is signed by Mr. Holloway? A. Yes, sir, in my presence.

Q. You are the witness on it? A. Yes.

Mr. Bradner: The paper reads as follows:

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"Newark, N. J., August 15, 1910.

"In consideration of the sum of One Dol-

lar and other valuable consideration, I, the undersigned, doing business under the name of the Union Lumber Company, hereby assign my claim of the sum of Eleven hundred and sixty-five dollars and eleven cents which the said company holds against B. Frankel Realty Co. and also the order for that amount directed to the Germania Building & Loan Association to Herman C. Schneider, he being authorized to sign all releases and give all acquitances and receipts for the same to any claim for lumber sold to said B. Frankel Realty Co. for the houses Nos. 203-205 Runyon Street, Newark, N. J.

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JAMES N. HOLLOWAY,
Individually and doing business
under name of Union Lumber Co.

20

Witness

Charles B. Gurney."

The date was prior to the order, which is dated August 23.

Witness: I can explain the reason that that was dated that way. Mr. Schneider, who is interested in the claim, suggested that it be dated as of the date of some claim which he had against Holloway.

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Q. Then it was actually delivered later and after the order? A. A short time after.

Q. And it was actually signed in your presence after you received the order? A. It was.

Assignment dated August 15, 1910, offered in evidence and marked Exhibit C28.

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Mr. Woerner: I object to the assignment, on the ground that the assignment was executed before the order was made, and that parol evidence cannot be introduced to vary the assignment itself.

The Court: He don't change it, he merely proves although dated the 15th, it was delivered after the 23rd. I will admit the evidence.

Q. That accounts for all the money that you have received, doesn't it? A. It does. I received \$8,364 and paid out \$6,211.11, and it shows a discrepancy there of eighty cents.

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Q. In addition to the assignment of the order to Mr. Schneider, did you have special authority from the Building and Loan to make the payment? A. Yes, I think the date was February 6, 1911; I think the Secretary so said from his minutes.

Q. There was some action taken by the Directors? A. There was, that we pay this amount over to Mr. Schneider.

Cross examination by Mr. Woerner:

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Q. All except the last three checks are made to the B. Frankel Realty Co., are they not? A. They are.

Q. And the check for the insurance and the disputed payment to Mr. Schneider and the check back to the Building and Loan were made direct in each case? A. They were.

Q. You stated that it was your custom to send to the Building and Loan for a check after the committee reported to the Secretary? A. No, frequently the borrower would communicate to me that he was entitled to payment and I would notify the Secretary; the Secretary having the records, would notify the committee, and he would get the order from the committee that the payment was all right and make the payment to me.

30

Q. How many payments have been made on this loan? A. I cannot say offhand.

40

Q. What fixed the payments under the contract? When he speaks of third and fourth payment, what

did he mean, payments under the third contract?

A. He did the work himself and furnished the materials and labor and there were no contracts filed, as I recall at this time, unless it might have been for labor.

10 Q. Was any arrangement made between the company and the Building and Loan Association as to how many payments should be made? A. There might have been an arrangement between the committee and Mr. Frankel.

Q. But you don't know of any? A. I cannot say positively.

20 Q. Do you know whether or not the building was finished when you received this check of \$4,000 on September 23, 1910? A. That was given to me to close the books for the balancing of the year, just before the annual meeting, and the Secretary in order to have his books clear and the loan agree with his annual report, turned that check over to me, and I believe it was deposited. I held that check in my safe, not depositing it until the date it is stamped, January 26, 1911.

Q. That does not answer the question yet, whether you knew whether or not the building was finished at that time? A. I don't believe it was.

30 Q. Do you know whether or not it was finished at the time you made the payment to Mr. Schneider? A. I didn't see it at that time.

Q. Why did you return the check back to the Building and Loan for \$2,150? A. Because about ten or twelve months' default had been made and no payments by any of the parties who owned the property, and according to the constitution we commenced foreclosure proceedings. We didn't know whether it would ever be paid.

JAMES N. HOLLOWAY, sworn for complainant.

Direct examination by Mr. Bradner:

Q. In August, 1910, and prior to that were you carrying on business in the City of Newark? A. Yes.

Q. Under what name? A. Union Lumber Co.

Q. Anybody else interested in that company? 10

A. No, sir.

Q. I show you Exhibit C27, the order from B. Frankel Realty Co.; who signed it? A. Mr. Frankel.

Q. How do you know? A. I saw him do it.

Q. That was given to you? A. Yes, sir.

Q. Do you know what the debt was contracted for? A. \$1,165.11, lumber sold and delivered.

Q. By you? A. By me to the B. Frankel Realty Company. 20

Q. Where was the lumber delivered? A. At their jobs, 203 and 205 Runyon Street.

Q. I show you Exhibit C28, whose signature is that? A. Mine.

Q. You assigned your claim to Mr. Schneider? A. Yes, sir.

Cross examination by Mr. Woerner:

Q. Did you have notes covering your account? 30
A. Yes.

Mr. Bradner: Does it make any difference?

Court: I will hear you on that.

Q. Have you a record of those notes? A. Not here, no, sir.

Q. Can you get them? A. Yes, I think I can.

Q. Do you know whether or not this so-called order was given for notes bearing date back in May, 1910? A. I cannot say without the records. 40

Q. How do you know your stuff went into this building? A. Because I ordered it delivered there by the teams; it was all to go there.

Q. You delivered stuff to Tenth Street? A. Yes.

Q. Do you remember about what time of the year? A. That was previous to this stuff, and this account was no part of the Tenth Street account.

10

Q. Do you know how long you usually made your notes with B. Frankel Realty Co.? A. In notes of two, three and four months; sometimes two months, sometimes thirty days; sometimes sixty days or ninety days.

Mr. Bradner: I object to these mortgages of the equity or as creditors going into the question; if they had lien claims, they might contest it.

20

Court: I will take the evidence; your objection is overruled with leave to renew it at the hearing.

Q. You did have three notes at the time this order was given, did you not? A. I believe so, although I don't recollect whether it was two or three notes; whatever the order shows indicates the amount of money he owed me at that time.

30

Q. I ask you whether that is your signature on paper dated August 23, 1910? A. Yes.

Mr. Woerner: I offer that for identification.

Marked Exhibit D1 for identification.

Q. This reads: "On payment from the Germania Building and Loan Association of \$1,165.11, as per order of this date, we agree to return to B. Frankel Realty Co. their note \$522.11 due September 14, \$488 due August 23, \$195 due Sep-

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tember 2nd, total \$1,165.11. Union Lumber Company, J. N. Holloway, President." Do you know whether that is correct or not? A. That is correct.

Q. And at the time you received this order, two of the notes had not matured? A. That is correct.

Q. There was only the one note due of \$448? A. Exactly.

Q. And you say you will produce these three notes? A. I think I can produce those three notes.

Q. Or a record of them? A. Yes.

10

HERMAN C. SCHNEIDER, sworn for complainant.

Direct examination by Mr. Bradner:

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Q. Did you receive the \$1,165.11? A. Yes, sir.

Q. Through Mr. Gurney's check? A. Yes.

Q. Do you know Mr. Wolf, of Wolf, Stewart & Co., or Mr. Stewart? A. Yes.

Q. Can you say whether either of them knew of the existence of the order for \$1,165.11? A. I know Mr. Wolf did; I think the committee knows also.

Q. You and Mr. Wolf are both members of the Building and Loan Association? A. Yes.

30

Q. What is your office? A. President.

Q. What is his office? A. Director.

Q. Do you know when these two houses were finished? A. I do not.

Q. Do you know whether they were finished at the time you received the \$1,165.11? A. No, I never saw them.

Q. You have no claim for any material that you sent there? A. No.

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Cross examination by Mr. Woerner:

Q. Did you receive the three notes the B. Frankel Realty Company gave to the Union Lumber Company? A. I don't know whether we did or not; if we did, I probably will have the notes yet; we received many notes from the Union Lumber Company. If I had some man from the office here I could tell whether we received the three notes.

Q. You say that Mr. Wolf had knowledge that you had this order? A. Yes.

Q. Was that before or after they took title? A. That was before.

Q. They took title about January 24, 1911, didn't they? A. Yes—I don't know, I don't know the date when they took title.

Q. But it was before? A. It was before that I know; it is a year and a half ago.

Q. Did you know who owned the property at the time of the meeting of February 6, 1911? A. Yes.

Q. Who? A. I saw a record of, I think, Mr. Kearney and Wolf; I saw that record in the Evening News.

Q. Wasn't it stated at that meeting that Mr. Wolf was one of the owners? A. No.

Q. And you say that he had knowledge of this order before the time of that meeting? A. Yes.

Q. And before you saw this notice in the paper? A. Yes.

Q. You say you didn't know when these buildings were finished? A. I didn't know anything about these buildings, about the construction of the buildings; I know we granted a loan.

Q. Do you recall that I appeared at the special meeting held February 6, 1911? A. I do.

Q. Do you know what I came there for? A. No.

Q. There was at that meeting an objection made to the payment of the amount to you, was there not? A. No objection; you came in there and said something and you were out of order and the Board of Directors decided not to listen; and that is all I know.

Q. Didn't Mr. Wolf object to the payment to you of \$1,165.11 at that meeting? A. Yes, sir.

10

Q. Was there anyone else objecting? A. No, sir.

Q. Why did Wolf object to the payment of this amount to you? A. I don't know really what his objection was any more; I am sorry I cannot remember why he objected.

By the Court:

Q. What were the objections which he then made so far as you can now recollect them? A. Because he wanted to get this balance of this money as he then had title to the property; I believe that is what the objection was.

20

Q. And is that the statement that was made at the meeting? A. What Mr. Wolf made.

Q. Because he was one of the owners of the property and he wanted the money for himself? A. I think that is what it was.

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Complainant Rests.

Mr. Abram Freiman: I appear for Stuart Lindsley, the holder of the second mortgage. We practically admit the validity of the first mortgage in whatever amount may be found to be due, and merely wish to prove our mortgage, so in case decree for sale is made, our mortgage would be on record and paid out of whatever funds may be realized. I offer in evidence bond and purchase money

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10 mortgage dated July 1, 1910, made by the B. Frankel Realty Company to Stuart Lindsley in the sum of \$650, and recorded in the Register's Office of Essex County, on July 21, 1910, in Book I, 26 of Mortgages, pages 172, etc.; and the other bond and mortgage is exactly the same as to parties and amount, and is recorded in Book I, 26 of Mortgages, page 171 the same date.

Mr. Bradner: What time of the day was the mortgage registered?

Mr. Freiman: Being part of the purchase money herein described and second in priority of one other mortgage for \$4,500. We waive the priority and claim merely priority as to the other defendants.

20 Bonds and mortgages offered in evidence are marked Exhibits D1 and D2 for defendant Stuart Lindsley.

STUART LINDSLEY, sworn.

Direct examination by Mr. Freiman:

30 Q. I show you two bonds and mortgages which I have just offered in evidence, in the sum of \$650 each, on the property being foreclosed, and ask you whether any amount has been paid on account of principal? A. Nothing whatever.

Q. And from when is interest due on each of these mortgages? A. Interest is due from the time of the last payment, the time the last payment was due, the first of January, this year; interest is paid up to that time.

40 Q. Interest is due from January 1, 1912? A. Yes.

Q. And 650 of principal on each bond and mortgage? A. Yes, sir.

Mr. Freiman: The principal is due within one year from date.

BENJAMIN FRANKEL, sworn for defendant.

Direct examination by Mr. Woerner:

Q. You are the President of the B. Frankel Realty Co.? A. Yes.

Q. During the year 1910 were you such President? A. Yes.

Q. You made this application for a loan to the Germania Building and Loan Association? A. I did. 10

Q. And that loan was for the purpose of constructing two new buildings on the two properties in question? A. Yes, sir.

Q. Who finished those buildings? A. Mr. Kearney and Mr. Wolf:

Q. Do you know whether or not the buildings were finished in accordance with the arrangement with the Building and Loan Association? A. Yes, sir. 20

Q. As to this payment to Herman C. Schneider of \$1,165.11 for materials claimed to be due to the Union Lumber Company, can you tell us to what buildings the Union Lumber Company delivered their materials? A. They didn't deliver to any buildings; I took them away from the yard and distributed them in different buildings.

Q. Where did you use the material? A. Most of them I used in Tenth Street, in Ames Street, and in Chadwick Avenue. 30

Mr. Bradner: I claim it does not make any difference in this case.

Q. Do you know how much was delivered on the Runyon Street houses? A. I cannot tell you exactly how much, but I think a few thousand feet of ship lap hemlock; then I had, I think, about 200 joists and some flooring. 40

Q. How much about in dollars and cents? A. About \$250.

Q. Who furnished the rest of the lumber? A. Vreeland-Kearney Lumber Company; I had some from Hecht & Kugel.

10 Q. It has been testified that the Union Lumber Company had three notes to cover the order; can you tell when the original notes were given? A. I should judge it was given about—it was long before I had an application even to the Building and Loan Association; these notes were renewed from time to time.

Q. Do you recollect whose notes they were? A. I think I signed personally the notes "B. Frankel" and endorsed by B. Frankel Realty Company, but I don't remember exactly.

20 Q. At the time of the payment of this sum of \$1,165.11 to Mr. Schneider, were the buildings finished? A. I don't know when the payment was made.

Q. February 7, 1911. A. I think it was finished.

Cross examination by Mr. Bradner:

Q. What is your business? A. Builder.

Q. How long have you been in Newark? A. About three years or three and a half.

Q. Where did you come from? A. Brooklyn.

Q. Were you a builder there? A. Yes.

30 Q. How long had you been in business in Brooklyn? A. For about twenty or twenty-two years.

Q. Did you have plans and specifications for the two houses? A. I did.

Q. Where are they? A. I haven't got them now. As soon as the buildings were finished I destroyed them, but the Building and Loan Association has a copy of it.

40 Q. You destroyed them? A. I didn't have to use them any more after the building was completed.

Q. Did you, yourself, finish the building? A. I superintended for—

Q. You had charge of finishing the building? A. Yes.

Q. When you commenced to put up the buildings, did you have a contract with anybody to do the work? A. No sir; with some of them—with the plumber, I think I had a contract.

Q. But you were doing all the other work yourself? A. Most of it I done myself and some of them I had contracts.

Q. From whom did you buy lumber? A. I bought lumber from different people; I bought lumber from Vreeland-Kearney and from Mr. Holloway, from the American Saw and Planing Mill Company; I bought it from the Jersey Box & Lumber Company.

Q. Did you buy lumber from Vreeland-Kearney Lumber Company as soon as you commenced to put up these buildings? A. Yes, I did.

Q. How much lumber did you buy, altogether, from the Vreeland-Kearney Lumber Company? A. I don't know, because I used to buy from them for different buildings.

Q. Do you know how much lumber you bought from the Vreeland-Kearney Lumber Company for these two buildings? A. I should judge it should not amount to over \$1,500 or \$1,200; I cannot exactly tell offhand. I haven't my books here or nothing to remind me.

Q. What kind of lumber did you buy from the Vreeland-Kearney Lumber Company? A. Floor-beams; everything used and necessary for beams I bought from Vreeland & Kearney; I bought from them some siding—all the siding I bought of them.

Q. I show you Exhibit C27, the order to the Union Lumber Company; you gave that? A. I did.

Q. At that time, on August 23, 1910, had you bought any lumber from the Vreeland-Kearney Lumber Company? A. I did.

Q. How much, up to that time? A. I cannot tell you exactly. I told you all the lumber I used there, I bought all the siding, most of the flooring, I bought all the beams.

10 Q. You bought almost all the lumber for these buildings from the Vreeland-Kearney Lumber Company? A. Not all of them.

Q. Had you bought any lumber from the Union Lumber Company on August 23 for these buildings? A. The time when I gave the order?

Q. Yes. A. No, sir, I did not; this order was given only for notes.

20 Q. At that time, how much did you owe the Vreeland-Kearney Lumber Company for lumber? A. I owed some money for this building and some other buildings.

Q. Did you make these affidavits on Exhibit C25 and C26, the releases? A. Yes, I did.

Q. Will you look in there and see if you have Vreeland-Kearney Lumber Company in any of them? A. No, I don't think I have. The counsellor didn't ask me for that and I didn't give it to him.

30 Q. Then you didn't put them in the releases because you were not asked for it? A. He didn't ask for it.

Q. Didn't you state to Mr. Kearney that the releases contained the claims of all people who had furnished any material? A. I did not; he asked me to bring a list from the lumber people and I brought from the Union Building Company and the American Planing Company, I think.

40 Q. At that time you owed the Vreeland-Kearney Lumber Company? A. I did.

Q. How much? A. I don't know, I cannot tell.

Q. Do you owe them just as much now as you

did then? A. I don't think so, with the exception of putting up the money to finish the building, but for material.

Q. What additional lumber did you buy when they finished the buildings? A. I didn't keep no record, because it was charged to the buildings.

Q. So, when you turned the buildings over to the Vreeland-Kearney Lumber Company, you didn't buy anything more? A. They furnished it, whatever I needed. 10

Q. How much did you owe the Vreeland-Kearney Lumber Company when you turned the buildings over? A. I don't know.

Q. Could you tell within \$500? A. No, because I had too big a company.

Q. Did you owe any more then than you did at the time you signed these releases? A. I don't remember. 20

Q. What kind of houses are these, what material are they built of? A. Of frame and stucco.

Q. How large are the houses? A. I think they are 22 by 56 or 54, something like that.

Q. Three-family houses? A. Yes.

Q. How much was it estimated that that would cost? A. In my estimation they should cost about \$5,600 to \$5,700 to build each.

Q. You made an estimate that they would cost \$5,750 each? A. Something like that. 30

Q. How much did they cost? A. I cannot tell you, because I didn't have the last figuring, when it was finished, I didn't have it at all.

Q. How much in total amount did you contract in dollars for material and labor while you were working there? A. I don't understand the question.

Q. While you were building and had charge of it, how much did you put on the property which 40

you either paid for or agreed to pay for; up to the time you stopped, how much had it cost you?

A. Over \$9,000; I figured in the lots and everything.

Q. How much did the lots cost? A. \$1,000 each.

Q. So, the buildings cost you a little over \$7,000?

A. Something like that, yes.

10 Q. I call your attention to Exhibit C24, postponement of lien, which is signed by J. N. Holloway & Co. (Lumber); did you see that signature put there? A. Yes.

Q. You went and had Mr. Holloway sign it? A. Yes.

Q. Did you consider he had a lien claim at that time? A. Yes. I did, for a few hundred dollars, whatever material I used for it.

20 Q. Before you had him sign the postponement of lien? A. Yes.

Q. Did you know how much his claim was? A. No, because I didn't know at the time how much lumber I used on these buildings.

Q. You transferred these properties to Wolf, Stewart & Co. and Vreeland-Kearney Lumber Company? A. I did.

30 Q. What did you get for the transfer? A. I didn't get only except what money I owed him and for the money what he allotted to finish the buildings, because I didn't have any money to do it and they did finish it.

Q. Then they agreed to finish the buildings for you? A. I don't know; it was given to them in trust.

Q. Was there a paper signed? A. Yes.

40 Q. At the time you transferred the property, did you tell Vreeland-Kearney Lumber Company and Wolf, Stewart & Co. how much you owed on these buildings? A. To them?

Q. Yes? A. No, I don't think I gave them any statement at that time; on this building I didn't owe very much; I didn't give no statement how much is due.

Q. There had been lien claims filed, hadn't there? A. I don't remember; I don't think there was any lien; a lien afterwards, after I transferred it, and if it was a lien, it was a lien for \$150 or \$175, which was paid right away.

10

Q. Did you make any agreement with them about paying off the mortgages? A. Not specially, I don't think so; I give them away to finish it, because they wasn't finished and I didn't have no money to finish it and I give them away to finish up the buildings, and they furnished all the money to finish it.

Q. Then, I understand you to say you didn't have any agreement with them about the mortgages held by the association? A. I transferred to them to attend to all the business what was necessary. I didn't give them the details to do that or the other thing. I told him I got from the Building and Loan Association so much money and so much is due yet, and the buildings has got to be finished, and they attend to that.

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Q. Did you make out a statement in writing? A. No, sir.

30

Q. Did you tell them how many bills you owed? A. I told them about each contractor, what I owed everybody; I didn't include any notes what is given what didn't concern these two buildings.

Q. Was the agreement this, that they would finish up these buildings and sell them and pay all the claims, and if there was any surplus, turn it over to you? A. Yes.

Redirect by Mr. Woerner:

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Q. These assignments of shares which secure

these mortgages, were they executed by the B. Frankel Realty Company? A. Signed by me and by the Secretary.

Mr. Woerner: I offer the two assignments in evidence.

Marked Exhibits D2 and D3.

Recross examination by Mr. Bradner:

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Q. Mr. Frankel, did you sign these two assignments before you signed the deeds of the property? A. I don't remember that.

Q. Did you sign all the papers at the same time? A. I cannot remember that, because it was signed with some other things there, and I don't know if it was on one day it was signed or not.

20

FRANK KEARNEY, sworn for defendant.

Direct examination by Mr. Woerner:

Q. You are an officer of the Vreeland-Kearney Lumber Company? A. Yes, sir.

Q. What office do you hold? A. Treasurer.

Q. Are you familiar with these buildings on Runyon Street? A. I am.

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Q. And your company together with Wolf, Stewart & Co. received a deed for that property? A. Yes, sir, January 24, 1911.

Q. At the time the deed was delivered, were the buildings finished? A. No, sir.

Mr. Woerner: I will offer the two deeds in evidence, dated January 24, 1911, and February 7, 1911.

Marked Exhibits D4 and D5.

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Mr. Woerner: The second one was a corrective deed.

Q. Who finished the two buildings? A. Wolf, Stewart & Co., and the Vreeland-Kearney Lumber Company.

Q. Did your company furnish any lumber on these buildings prior to the transfer of the property to you? A. Yes, sir.

Q. During what year? A. The year that the buildings were started in; we furnished the first lumber on the job—I don't just know the year—1910, I believe.

Q. Do you know what lumber you furnished, general character? A. The first lumber, the one that I have the best recollection of, we furnished the corner posts and ties and the beams, and I believe, the girders.

10

Q. You don't keep the books, do you? A. I do not.

Q. Your bookkeeper is here? A. He is.

Q. He has a record of the cost of finishing these buildings, so far as you are concerned? A. He has.

20

Cross examination by Mr. Bradner:

Q. Who negotiated the transfer of the property to the Vreeland-Kearney Lumber Company? A. Mr. Frankel and his daughter, the Secretary of the company.

Q. On your behalf? A. Myself.

Q. I notice that the deed to you is made subject to all encumbrances on the property—"expressly subject"—now thereon; did you have from Mr. Frankel any statement of what encumbrances were on the property? A. Nothing except his word that he had received a certain amount of money on account of the buildings and there was still a certain amount due him amounting, as near as I can remember his figures, to \$3,800.

30

Q. Did you at that time have any search made to find out what encumbrances were on the property? A. That we left in the hands of Mr. Woerner, our attorney, entirely.

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Q. Did Mr. Frankel tell you, or give you the names of any persons whom he owed for material or labor? A. He gave me the name of the carpenter and the masons; nobody else.

Q. He didn't tell you, then, that he at that time owed the Union Lumber Company any money? A. Not at that time; no, sir.

10

HARRY A. MADDEN, sworn for defendant.

Direct examination by Mr. Woerner:

Q. You are the bookkeeper for the Vreeland-Kearney Lumber Company? A. I am.

Q. Have you a record of the amount expended by that company to finish the two buildings in question? A. I have.

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Q. Have you made out a statement of the amount? A. No, just a memorandum.

Q. From your books? A. Yes.

Court: Give that.

Q. What is the amount approximately? A. \$2,091.55.

Q. And the particulars of those items are set out in those books? A. Yes, sir.

30

Q. Does this sum of \$2,091.55 include what was spent by Mr. Wolf? A. No, sir, that is our expense.

Mr. Bradner: No cross examination.

CHARLES WOLF, sworn for defendant.

Direct examination by Mr. Woerner:

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Q. You are a member of the firm of Wolf, Stewart & Company? A. Yes.

Q. And you are one of the owners of the property in question? A. Yes, sir.

Q. You are also a Director in the Germania Building and Loan Association? A. Yes, sir.

Q. Are you familiar with the properties in question, 203 and 205 Runyon Street? A. Yes.

Q. Who finished these buildings? A. Myself and Vreeland-Kearney; mostly Vreeland-Kearney.

Q. You are not the bookkeeper for the concern? A. No.

Q. At the time the property was conveyed to your concern and the Vreeland-Kearney Lumber Company, were the buildings finished? A. No, sir.

10

Q. Were you present at the meeting of the Germania Building and Loan Association held February 6, 1911? A. Yes.

Q. Is this the notice of the meeting which you received? A. Yes, sir.

20

Mr. Woerner: It has the title of the Building and Loan Association on it (reading same).

Offered in evidence and marked Exhibit D4.

Q. What took place at that meeting in relation to a payment to Herman C. Schneider of \$1,165.11?

A. They had a discussion about it; some of the members got up and said the reason the meeting was called was to see that the buildings were finished, as they thought it was a long time that nothing had been done, and they ought to be finished up. One of the Directors spoke and said that Mr. Schneider would agree to finish the buildings, and then they would agree to do that, and Mr. Schneider gave his bond for \$18,000, and then they ordered the bill paid for lumber for the Holloway Lumber Company.

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Q. What position did you take? A. I objected to it, because I said, "There may be liens and other

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claims against it and I don't think this money ought to be paid until the buildings are finished?"

Q. Do you recollect my attempting to attend that meeting? A. Yes.

Cross examination by Mr. Bradner:

Q. This meeting was February 6, 1911? A. Yes, sir.

10 Q. At that time you had a deed of conveyance of the property? A. Yes, sir, before that.

Q. Your objection of the payment of the money to Mr. Schneider was that it ought not to be paid until the buildings were finished and you ascertained what liens there were? A. For that purpose, to see if there was money to pay for it after the buildings were completed.

20 Q. Had you not at that time agreed with Mr. Frankel and the Vreeland-Kearney Lumber Company to finish the buildings? A. He turned the buildings over to us and we attended to it, had to.

Q. Did you agree with Mr. Frankel that you would finish the buildings? A. We took over what he had and we were to finish the buildings.

30 Q. Did you tell the association at this meeting that your company and the Vreeland-Kearney Company had undertaken to finish these buildings? A. That is so long ago I cannot remember those exact words, but I opposed the paying of any of this money, because I said we didn't know what they would cost to finish.

Q. You had been furnishing materials for those buildings right from the start? A. Yes.

Q. You received a payment of \$1,000? A. Yes.

Q. Is that the check, Exhibit C15? A. Yes.

40 Q. At the time you received that payment, how much in amount of material had you furnished and delivered?

Mr. Woerner: I object.

Q. How much was your total bill against these buildings, do you know?

Mr. Woerner: Objected to.

Q. You went into the putting up of these buildings at the start with Mr. Frankel? A. No, sir, I furnished the materials; I never thought I was going to have the buildings. I furnished other jobs for Frankel.

10

Q. Did you give Frankel any estimate of the cost of the material that you would be required to furnish for those buildings? A. No, sir.

Q. You just delivered as orders came in? A. Yes.

Q. Is there anything due to your company for material delivered up to the time that the deed of conveyance was made to you, January 24? A. There was due before I got this payment, for some of the material, this thousand dollars.

20

Court: Mr. Bradner asks whether at the time you got this deed, January 24, 1911, when you took over the Runyon Street properties, Frankel or the Frankel Company owed you any money.

Witness: Yes, sir; B. Frankel and Frankel Realty Company, both.

30

Q. Did they owe you any money on these buildings? A. My books showed that they owed—

Q. How much? A. I had two accounts; I had one for B. Frankel Realty Company and one for B. Frankel, and this money I credited to B. Frankel on his account, according to my books.

Q. The thousand dollars? A. Yes.

Q. Did the thousand dollars then go to pay for material that you had put into these two buildings? A. I applied it to his account; I had two accounts and it was applied to the B. Frankel account.

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Q. Don't you know? A. I got the thousand dollars from him and I applied it to the B. Frankel account. I had two accounts, B. Frankel Realty Company and him personally. The B. Frankel Realty Company didn't owe me quite that much money.

10 Q. How much did the B. Frankel Realty Company owe you?

Mr. Woerner: I object to this.

Court: This would be right on the status of the deed; I will take the evidence.

Q. For material furnished to these two buildings, on January 24, 1911? A. About \$685; of course that thousand dollars went off on that— would go off on that.

20 Q. You would have to credit a thousand dollars on that? A. If he paid it on that, he would have overpaid that account.

Q. Have you applied the thousand dollars on the two buildings? A. We furnished stuff afterwards for the buildings.

Q. January 24, then, as a matter of fact, there was nothing due to you at that time from B. Frankel Realty Company?

30 Court: He had a check and applied it to the other account.

Witness: He was virtually the same one; we just kept the two accounts.

By the Court:

40 Q. Then, at the time when you applied the thousand dollar payment to the B. Frankel account, the B. Frankel Realty Company owed you about \$685 and that was the amount which they still owed you at the time the deed was taken; is that correct? A. Yes, sir.

Q. It was neither increased nor diminished between the time you got the payment and the time when you got the deed? A. No, sir.

Q. After you got the deed you yourself or your company, made some additional expenditures to finish the houses? A. Yes.

Q. Do you recall how much that was? A. About \$1,263, we paid the plumber and hardware and stuff.

10

By the Court:

Q. That was your bargain for the completion of the house? A. Yes.

Q. At the time you received the check for a thousand dollars, you executed this release, Exhibit C25? A. Yes, sir.

SAMUEL W. STEWART, sworn for defendant.

20

Direct examination by Mr. Woerner:

Q. You are a member of the firm of Wolf, Stewart & Company? A. Yes.

Q. And keep the books? A. Yes.

Q. Have you the books here? A. Yes.

Q. Have you made a calculation from your books of the amount which it cost you to finish the two buildings, 203 and 205 Runyon Street? A. I have the amount.

30

Q. What is the amount? A. \$1,263.29.

Q. And the particulars of those items are in your books? A. Yes, sir.

Q. And your books are here? A. Yes.

Q. Have you got your books here? A. Yes.

Q. Have you looked at them recently? A. No, sir, to-day I looked at the books.

Q. Were those accounts kept in a way that would enable you to take off from them directly the amount that went to these buildings; did

40

you keep a separate account of these buildings?

A. It is all charged to one account. I had a mark in the book with lead pencil, the street.

By the Court:

Q. How was the account kept in your books?

A. We got it marked down "B. Frankel, Trustees."

10 Q. You commenced an account with B. Frankel, Trustees? A. Yes.

Q. When did that happen, before or after you got the deed, or about that time? A. I cannot tell you about that; the first account I have here is February 21.

Q. Does that represent material only that you furnished? A. That is material, yes, sir.

Q. Nothing else? A. The bills are paid cash.

20 Q. What bills did you pay? A. Labor, chandelier man, electrician, cement contract, shades, mantels.

Q. How much was the cement contract? A. I give cash, I don't know if the cement contract is \$10.50.

HUGO WOERNER, sworn for defendant.

Direct examination by Mr. Quigley:

30 Q. You are a counsel for Wolf, Stewart & Co. and the Vreeland-Kearney-Lumber Company, and the B. Frankel Realty Company? A. Yes.

Q. Handling this matter under dispute? A. Yes.

Q. Did you make a visit on February 6, 1911, to the meeting place of the Board of Directors of the Germania Building and Loan Association? A. I did.

40 Q. Will you tell the Court what took place at that time? A. I asked Mr. Wolf to inform the Building and Loan Association that I would like

to be heard on the attempted payment to Mr. Schneider, and I waited a considerable time and he came out and told me they wouldn't hear me, so I entered the meeting room and they wouldn't listen to me, and one party made a motion to put me out, and another, not to listen to me, and the President declared me out of order. I went there representing those people, to object to the payment to Mr. Schneider.

10

Q. Did you take any further steps to get notice to the Building and Loan of your objections? A. I drew a notice on February 20, 1911, a copy of which I sent to each Director and officer of the Germania Building and Loan Association.

Q. By mail? A. Yes, I have a carbon copy.

Q. And their addresses you took from the city directory, did you? A. Yes.

Q. This is a true copy of the notice that you sent (witness shown paper)? A. Yes.

20

Mr. Bradner: What is the date of that?

Witness: February 20.

Mr. Bradner: That was after the money was paid.

Mr. Woerner: I offer the declaration of trust and the minute book of the B. Frankel Realty Company and the minutes authorizing the execution of these papers.

30

Court: The deed is an out and out deed and this is a declaration of trust under which it is held.

Mr. Woerner: This is made April 25, 1911.

Mr. Bradner: I would like to reserve the right to object to it.

Mr. Woerner: I also offer in evidence Exhibit D1 for identification.

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Marked Exhibit D1.

Defendants Rest.

HARRY A. MADDEN, recalled:

Cross examination by Mr. Bradner:

Q. Turn to your account against the B. Frankel Realty Company for 1910. A. There is an account with them in 1910; there is a trust account after we took over the houses.

10 Q. Did you sell any lumber for these houses before you opened the trust account? A. We did.

Q. Where is that? A. We sold to the Bock Realty Company.

Q. You sold lumber to Bock Realty Company which went into these two houses on Runyon Street? A. Yes, charged to the two houses.

Q. When did you sell that lumber? A. 1910.

Q. How much? A. That we don't know, unless I had the tickets; we can show that.

20 Q. This is your ledger? A. Yes.

Q. Have you any book to show where the item of the ledger account— A. Yes, the original ticket is made out on a manifolding machine which will constitute a journal.

Q. This begins in August; where is it before that? A. Over the other page.

30 Q. On July 28, 1910, how much did the Bock Realty Company owe you? A. That is a different account from this; there is \$2,525.81.

Q. Did that include any lumber that went to those two houses? A. That I cannot say.

Q. Can you ascertain from any source just what lumber you sold and delivered to these two houses prior to January 24, 1911? A. I can.

Q. Have you any idea how much it was? A. No, not now.

40 Q. Cannot tell within \$100 or \$200 of it? A. No.

Q. You could tell by looking over the original tickets? A. Yes.

Q. But whatever you did sell, was charged to Bock Realty Company? A. Yes, before we took over the houses it was charged to the Bock Realty Company.

Redirect examination by Mr. Woerner:

Q. Do you know whether Mr. Frankel was a member of that company? A. He was.

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Exhibit C1.

BOND.

KNOW ALL MEN BY THESE PRESENTS: That it, B. Frankel Realty Co., a corporation of the City of Newark in the County of Essex and State of New Jersey, is held and firmly bound unto The Germania Building and Loan Association of the City of Newark, located in the said City of Newark, in the County of Essex, and State of New Jersey, their successors and assigns, in the sum of Nine thousand dollars, lawful money of the United States of America, to be paid to the said The Germania Building and Loan Association, or to their certain attorney, successors or assigns, to which payment well and truly to be made, it binds itself, its successors and each of them, firmly by these presents. Sealed with its corporate seal and dated the Twentieth day of June in the year of our Lord One Thousand Nine Hundred and Ten.

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THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the said B. Frankel Realty Co. hath borrowed from the said The Germania Building and Loan Association of the City of Newark the sum of Forty five hundred dollars.

NOW, THEREFORE, if the said B. Frankel Realty Company, its successors or any of them,

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shall well and truly pay or cause to be paid, unto the above named The Germania Building and Loan Association, their certain attorney, successors or assigns, during their continuance as such Association, or until the twenty three shares owned by the said B. Frankel Realty Co. and assigned as collateral security for the payment of the money here-
10 three dollars per month, with interest on the sum of forty five hundred dollars, at the rate of six per cent. per annum, payable monthly, amounting to the further sum of twenty two and fifty hundredths dollars per month, in all amounting to the sum of Forty five and fifty hundredths dollars per month, the first payment to be made on or before the Eleventh day of July next ensuing the date hereof, and all subsequent monthly payments to
20 be made on or before the Second Monday of each and every month thereafter, and shall also pay to the party of the second part, or to their successors or assigns, during the period aforesaid, all fines, forfeitures, and other payments that may become due and payable from and may be charged or imposed upon it or its assigns as the holder of such share pursuant to the Constitution of such Association, and the By-Laws, Rules and Regulations thereof, without any fraud or other delay, then the
30 above obligation to be null and void, otherwise to remain in full force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED, That should any default be made in the payments of the said interest, or any part thereof, or any day whereon the same is made payable, as herein-
before expressed; And should the same remain unpaid and in arrear for the space of six months,
40 then and from thenceforth, that is to say, after the lapse of the said six months, the aforesaid principal sum of money, with all arrearages of inter-

est thereon, shall at the option of the said The Germania Building and Loan Association, their successors or assigns, become and be due and payable immediately thereafter, although the time above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

B. FRANKEL REALTY CO.,

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Benjamin Frankel,

(Corporate seal.)

President.

Signed, Sealed and Delivered }

in the presence of }

Charles B. Gurney.

Attest:

Rosa Frankel.

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Exhibit C2.

MORTGAGE.

THIS INDENTURE, Made the Twentieth day of June in the year of our Lord One Thousand Nine Hundred and Ten, Between B. Frankel Realty Co., a corporation of the State of New Jersey, having its principal office in the City of Newark in the County of Essex and State of New Jersey, of the First Part, AND The Germania Building and Loan Association of the City of Newark, located in the said City of Newark, in the County of Essex, and State of New Jersey, of the Second Part.

30

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Forty five hundred dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt

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whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, hath given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the second part, and their successors and assigns forever.

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ALL that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey,

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BEGINNING in the Northerly line of Runyon Street distant Easterly from the Northerly corner of said Street and Sixth Avenue One Hundred feet; thence Northerly parallel with Sixth Avenue One hundred feet; thence Easterly parallel with Runyon Street Twenty five feet; thence Southerly parallel with first course One Hundred feet to the said Northerly line of Runyon Street; thence Westerly along the same Twenty five feet to the point or place of BEGINNING. Being known as 205 Runyon Street, Newark, N. J., and further described as Lot 11 on Block C as laid down on a map of property belonging to Philip Tillinghast and being a part of the premises conveyed to party of the first part by Stuart Lindsley and wife by deed bearing even date herewith.

30

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, profits, privileges and advantages thereof. ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the above described premises, and of, in and to every part and

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parcel thereof. TO HAVE AND TO HOLD, all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, their successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, their successors and assigns forever.

PROVIDED ALWAYS, and it is agreed by and between the parties to these presents, that if the said B. Frankel Realty Co., its successors or assigns, shall regularly pay unto the said party of the second part, or their successors, or assigns, during their continuance as such Association, as aforesaid, the sum of Forty five and fifty hundredths dollars per month, the first payment to be made on or before the Eleventh day of July next ensuing the date hereof, and all subsequent monthly payments to be made on or before the Second Monday of each successive month thereafter; AND shall also pay to the parties of the second part, or their successors, or assigns, during the period aforesaid, all fines, forfeitures and other payments that may become due and payable from, or may be charged or imposed upon it or its assigns, as the holder of such share pursuant to the Constitution of the said Association, and the By-Laws, Rules and Regulations thereof, according to the conditions of a certain Bond or obligation given by the said B. Frankel Realty Co. to the said The Germania Building and Loan Association of the City of Newark, in the penal sum of Nine thousand dollars, and bearing even date herewith; AND shall also, during the period aforesaid, insure and keep insured the building or buildings now erected, or hereafter to be erected, upon the land and premises above conveyed, against loss or damage by fire, in some safe and responsible insurance company, to be approved of by the party of

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the second part, or their successors, to an amount not less than Forty five hundred dollars, and assign the policy or policies of insurance to the said party of the second part, their successors, or assigns; AND shall keep the premises, above conveyed, free and clear from all charges for arrears of ground rent, insurance, taxes, assessments, both ordinary and extraordinary, and all other impositions whatever.

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AND the said B. Frankel Realty Co. for itself, its successors, doth covenant and grant to and with the said party of the second part, their successors and assigns, that the said party of the first part, its successors and assigns, shall not, nor will, apply for or claim any deduction, by reason of this mortgage, from the taxable value of the said lands and premises; AND the said party of the first part agree and covenant to and with the party of the second part, their successors and assigns, that it will and do hereby waive every and all right or benefit which it may claim or have by reason of the provisions of "An act concerning proceedings on bonds and mortgages given for the same indebtedness and the foreclosure and sale of mortgaged premises thereunder, and the supplement thereto," approved March 12th, 1880; And shall, also, well and truly keep, abide by and perform all other covenants, engagements, promises and agreements, entered into by the said B. Frankel Realty Co. to and with the said Association, according to the true intent and meaning of the Constitution and By-Laws thereof; that then, and from thenceforth, these presents and said obligations, and everything herein and therein contained, and the estate hereby granted, shall cease, determine, and be null and void, anything herein or therein contained to the contrary in anywise notwithstanding. And if the said party of the first part, its

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successors or assigns, shall neglect to pay all or any municipal, county, state or special taxes, assessments, premiums for insurance, and all or any other charges, liens or encumbrances whatever against the premises on any day whereon the same shall become due and payable, and to deliver receipts for the same to the party of the second part, then it shall be lawful for the said party of the second part, or their successors, to pay such charges out of the funds of said Association, and the sum or sums so paid shall be a lien on the said mortgaged premises, added to the amount secured hereby, and the whole payable with lawful interest, on demand.

10

AND if said party of the first part, its successors, shall at any time during the period aforesaid fail, neglect, refuse or be unable to insure, or keep insured, the building or buildings now erected, or to be erected, upon the land and premises above conveyed, and to assign the policy or policies of insurance as above provided and stipulated, then at once upon the happening of said default, neglect refusal or being unable, the aforesaid principal sum of money, with all arrearages of interest thereon, shall at the option of the said The Germania Building and Loan Association of the City of Newark, their successors and assigns, become and be due and payable immediately thereafter, although the time above limited for the payment thereof may not then have expired, anything herein before contained to the contrary thereof in anywise notwithstanding.

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AND the said party of the first part doth hereby covenant and grant, to and with the said The Germania Building and Loan Association of the City of Newark, their successors and assigns, that if default be made in the payment of the said monthly or other payments or charges as above specified

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for the space of six months, or the said Association become dissolved before its expiration, as provided for in the Constitution thereof, then and from thenceforth the said Association, or their successors or assigns, shall and may from time to time, and at all times peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy, all and singular the said granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, its successors and assigns or any other person or persons whatsoever.

IN WITNESS WHEREOF, the said party of the first part, hath caused its corporate seal to be hereto affixed and attested by its secretary; and these presents to be signed by its president the day and year first above written.

B. FRANKEL REALTY CO.,

Benjamin Frankel,

(Corporate Seal.)

President.

Signed, Sealed and Delivered}

in the presence of }

Charles B. Gurney.

Attest:

Rosa Frankel.

State of New Jersey, }
County of } ss.:

Be it remembered, that on this fourteenth day of July in the year of Our Lord one thousand nine hundred and ten, before me, the Subscriber, a Master in Chancery of New Jersey, personally appeared Rosa Frankel, who being by me duly sworn, doth depose and make proof to my satisfaction, that she well knows the corporate seal of the B. Frankel Realty Co., the grantor named in the foregoing deed; 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 Benjamin Frankel 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.

ROSA FRANKEL.

10

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

Charles B. Gurney,
Master in Chancery,
New Jersey.

MORTGAGE.

B. Frankel Realty Co., a corporation,

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To The

GERMANIA BUILDING AND LOAN ASSOCIATION OF THE CITY OF NEWARK.

Dated June 20, 1910.

Received in the Register's Office of the County of Essex, New Jersey, on the 21st day of July, A. D. 1910, at 3.48 o'clock in the afternoon and registered in Book I 26 of Mortgages for said County, on pages 169-170.

30

EDWARD S. PERRY,
Register.

Exhibit C3.

Number 890

23 Shares.

THE GERMANIA BUILDING AND LOAN ASSOCIATION
of Newark, N. J.

40

This Certifies that B. Frankel Realty Co. is entitled to twenty three Shares of the thirtieth Series of the Germania Building and Loan Association of Newark, the Par Value of which is Two Hundred Dollars per Share, subject to the By-Laws and Constitution of this Association.

Dated April 11th, 1910.

10

JOHN J. GLESS,

Secretary.

HERMAN C. SCHNEIDER,

President.

Par Value per Share \$200.

Printed at Side: The Germania Building & Loan Assn. Incorporated October 14, 1901. Newark, N. J.

20

Exhibit C4.

Newark, N. J., June 28, 1910.

For value received, it hereby assigns and transfers unto the Germania Building and Loan Association of the City of Newark, all its right, title and interest in twenty three shares of stock in the thirtieth series of the Germania Building and Loan Association, standing in its name on the books of the Association, which said certificate is numbered 890 and assigned as collateral security for a loan of Forty five hundred dollars on bond and mortgage.

30

B. FRANKEL REALTY CO.,
Benjamin Frankel,
President.

(B. Frankel Realty Co. Seal.)

Witness:

Charles B. Gurney.

40

Attest:

Rosa Frankel

Exhibit C9.

APPLICATION FOR LOAN.

From B. Frankel Realty Co.
To The Germania B. & L. A.

Dated, May 20, 1910.

The undersigned desires to procure a loan of \$4500 00/100 at 6 per cent. interest per annum, on the Bond of the owner secured by a first Mortgage on the following property: Location: City of Newark, New Jersey. Number 205 on North side of Runyon street near corner of Hedden Terrace street. Dimensions of lot 25 x 100. No. of buildings, One. Dimensions of Building 22 x 52. When Built Height 3 ~~and one half~~ stories. Building frame. Roof No. Rooms on 1st 5 & bath. 2nd 6 & bath. 3rd 6 & bath. Condition of Building . Occupied by tenants. Rents for \$50 monthly.

The improvements included are as follows:

Hot Air or Steam Furnace in Cellar No. City water in House Yes. Range and Boiler with Fixtures for Hot Water Yes. Bathroom and W. C. Yes. Gas pipe and Fixtures Yes. Stable on Premises No. Mortgaged at Present for \$ Value of ground \$1000. Insurance for \$ Value of Buildings \$5700. Owners Total Value \$6750. Is any portion of this loan to be used in improving the Property? To be used to erect house.

If this loan be granted, I agree to pay the expense of having the necessary papers prepared and approved by the Counsel of said Assn. a bonus 2%

N. B. The owner will please specify the above

particulars, as far as practicable, and in all cases sign the application.

Signature B. FRANKEL REALTY
P. O. Address 206 Hunterdon St.

We have examined the property within described and appraise it as follows:

	Value of Ground	\$ 800.00
10	Value of Buildings	\$5200.00
	Total Value	\$6000.00
	Insurance required for	\$

We recommend that this application be \$4500.00

Dated June 20, 1910.

FRED C. STREBINGER }
JOHN BUHL } Committee.

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Exhibit C10.

APPLICATION FOR LOAN.

From B. Frankel Realty Co.
To The Germania B. & L. Assn.

Dated, May 20, 1910.

30

The undersigned desires to procure a loan of \$4500 at 6 per cent. interest per annum, on the Bond of the owner secured by a first Mortgage on the following property:

40

Location: City of Newark, New Jersey. Number 203 on North side of Runyon street near corner of Hedden Terrace street. Dimensions of lot 25 x 100. No. of Buildings. One. Dimensions of Building 22 x 52. When Built Height 3 ~~and one half~~ stories. Building flat Roof. No. Rooms on 1st 5 & bath. 2nd 6 & bath. 3rd 6 & bath. Condition of Building Occupied by tenants. To Rent for \$50 monthly.

The improvements included are as follows:

Hot Air or Steam Furnace in Cellar No. City
 Water in House Yes. Range and Boiler with
 Fixtures for Hot Water Yes. Bath Room and
 W. C. Yes. Gas pipe and Fixtures Yes. Stable
 on Premises Mortgaged at Present for \$
 Value of ground \$1000. Insured for \$
 Value of Buildings \$5750 Owners Total Value 10
 \$6750. Is any portion of this loan to be used in
 improving the Property?

If this Loan be granted, I agree to pay the ex-
 pense of having the necessary papers prepared and
 approved by the Counsel of said Assn. & a
 bonus 2%.

N. B. The owner will please specify the above
 particulars, as far as practicable, and in all cases
 sign the application. 20

Signature B. FRANKEL REALTY,
 P. O. Address 206 Hunterdon St.

We have examined the property within described
 and appraise it as follows:

Value of Ground	\$ 800.00	
Value of Building	\$5200.00	
Total Value	\$6000.00	
Insurance required for	\$	30

We recommend that this application be \$4500.00

Dated June 20, 1910.

FRED C. STREBINGER)
 JOHN BUHL) Committee.

Exhibit C11.

No. 1312

GERMANIA BUILDING AND LOAN
ASSOCIATION

Newark, N. J., July 19, 1910.

10 Pay to the order of B. Frankel Realty Co. or
Charles B. Gurney Atty. Twenty seven hundred
twenty six and no/100 Dollars.
To Union National Bank, Newark, N. J.
\$2726 00/xx

GEO. C. PFREUNDSCHUH
Vice-President

LEOPOLD DASSING
Treasurer

20 Perforated stamp—PAID 7-21-10

Endorsements:

Charles B. Gurney Atty
Pay Federal Trust Co.,
Newark, N. J., or order,
Chas. B. Gurney.

30 CREDIT
Federal Trust Co.
Newark, N. J.
Jul 20 1910
E. F. Maguire, Treasurer.

40

Exhibit C12.

No. 1317.

**GERMANIA BUILDING AND LOAN
ASSOCIATION**

Newark, N. J., Aug. 12, 1910.

Pay to the order of B. Frankel Realty Co. or
 Charles B Gurney Atty. two thousand. . . . Dollars 10
 To Union National Bank, Newark, N. J.
 \$2000 00/xx

HERMAN C. SCHNEIDER
 President

LEOPOLD DASSING
 Treasurer

Perforated stamp—PAID 8-15-10

Endorsements:

20

Charles B. Gurney Atty.

Pay Federal Trust Co.,
 Newark, N. J., or order,
 Chas. B. Gurney.

CREDIT

Federal Trust Co.

Newark, N. J.

Aug. 13 1910

E. F. Maguire, Treasurer.

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Exhibit C13.

No. 1349

GERMANIA BUILDING AND LOAN ASSOCIATION.

Newark, N. J., Sept. 23rd, 1910.

10 Pay to the order of B. Frankel Realty Co. or
Charles B. Gurney, Atty.
Thirty-six hundred thirty-eight and no/100 Dollars
To Union National Bank, Newark, N. J.

GEO. C. PFREUNDSCHUH,
Vice-President.

LEOPOLD DASSING,
Treasurer.

\$3638 00/xx

20 Perforated stamp—PAID—1-26-11.

Endorsements:

Charles B. Gurney, Atty.

Pay Federal Trust Co.,
Newark, N. J., or order,
Chas. B. Gurney.

CREDIT

30

Federal Trust Co.
Newark, N. J.
Jan 25 1911

E. F. Maguire, Treasurer.

40

Exhibit C14.

No. 2135.

CHARLES B. GURNEY

Counsellor at Law

Newark, N. J., Jul 21 1910

Pay to the order of B. Frankel Realty Co.	
	\$275 00/100 10
Two hundred and seventy-five 00/100 Dollars	
To the Federal Trust Company of Newark, N. J.	
CHARLES B. GURNEY	

Perforated stamp—PAID—7-22-10.

Endorsements:

Pay to the order of	
John F. Cahill	
Atty of Stuart Lindsley	20
B. Frankel Realty Co.	
B. Frankel Prest.	

John F. Cahill
Atty of Stuart Lindsley
John Francis Cahill

Union National Bank

5

Jul 22 '10

30

Newark, N. J.

40

Exhibit C15.

No. 2141.

CHARLES B. GURNEY

Counsellor at Law

Newark, N. J., July 23, 1910.

Pay to the order of B. Frankel Realty Co.

10

\$1,000 00/100

One thousand and 00/100

Dollars

To the Federal Trust Company, of Newark, N. J.

CHARLES B. GURNEY.

Perforated stamp—PAID—7-25-10.

Endorsements:

20

Pay to the order of

Wolf Stuart Co.

B. Frankel Realty Co.

B. Frankel Prest.

Wolf, Stewart & Co.

Endorsements Guaranteed
Nat'l Newark Banking Co.

30

2nd T.

Pay to any Bank

Jul 23 1910

National Newark

Banking Co.

Newark, N. J.

40

Exhibit C16.

No. 2144.

CHARLES B. GURNEY

Counsellor at Law

Newark, N. J., July 23, 1910.

Pay to the order of B. Frankel Realty Co.

\$152 00/100

10

One hundred fifty-two and 00/100 Dollars

To the Federal Trust Company, of Newark, N. J.

CHARLES B. GURNEY.

Perforated stamp—PAID—7-23-10.

Endorsements:

B. Frankel Realty Co.

B. Frankel Prest.

20

Pay Federal Trust Co.,

Newark, N. J., or order,

Chas. B. Gurney.

30

40

Exhibit C17.

No. 2146.

CHARLES B. GURNEY

Counsellor at Law

Newark, N. J., July 23, 1910.

Pay to the order of B. Frankel Realty Co.

10

\$600 00/100

Six hundred and 00/100

Dollars

To the Federal Trust Company, of Newark, N. J.

CHARLES B. GURNEY.

CERTIFIED

Jul 3 1910

FEDERAL TRUST CO.

Newark, N. J.

Lent,

20

Teller.

Perforated stamp—PAID—7-25-10.

Endorsements:

B. Frankel Realty Co.

B. Frankel Pret.

B. Frankel

Union National Bank

30

5

7 23 '10

Newark, N. J.

40

Exhibit C18.

No. 2145.

CHARLES B. GURNEY
Counsellor at Law

Newark, N. J., July 23, 1910.

Pay to the order of B. Frankel Realty Co.

\$968 00/100 10

Nine hundred sixty-eight and 00/100 Dollars

To the Federal Trust Company, of Newark, N. J.

CHARLES B. GURNEY.

CERTIFIED

Jul 23 1910

FEDERAL TRUST CO.

Newark, N. J.

Lent,

Teller. 20

Perforated stamp—PAID—7-26-10.

Endorsements:

B. Frankel Realty Co.

B. Frankel Prest.

B. Frankel

Pay to the order of any Bank,
Banker or Trust Company,
Restrictive Endorsements Guaranteed
Jul 25 1910

30

West Side Trust Co., Newark, N. J.

L. L. Mays, Jr., Treasurer.

2nd T.

Pay to any Bank

Jul 25 1910

National Newark Banking Co.

Newark, N. J. 40

Exhibit C19.

No. 2198.

CHARLES B. GURNEY

Counsellor at Law

Newark, N. J. Aug. 13, 1910.

Pay to the order of B. Frankel Realty Co.
 10 \$300 00/100 Three hundred and 00/100 Dollars.
 To the Federal Trust Company, of Newark, N. J.
CHARLES B. GURNEY.

Perforated Stamp—PAID—8-12-10.

Endorsements:

B. Frankel Realty Co.

B. Frankel

20 The above endorsements are cor-
 rected and check can be paid.
 Charles B. Gurney.

30

40

Exhibit C20.

No. 2204

CHARLES B. GURNEY

Counsellor at Law

Newark, N. J., Aug. 13, 1910.

Pay to the order of B. Frankel Realty Co.
 \$1,700 00/100 Seventeen hundred and 00/100 10
 Dollars. To the Federal Trust Company, of New-
 ark, N. J.

CHARLES B. GURNEY.

Perforated Stamp—PAID—8-16-10.

CERTIFIED

Aug 13 1910

FEDERAL TRUST CO.

Newark, N. J. 20

Lent,

Teller.

Endorsements:

B. Frankel Realty Co.**B. Frankel Prest.****B. Frankel**

Pay to the order of any
 Bank, Banker or Trust Company 30
 Restrictive Endorsements Guaranteed
 Aug 15 1910

West Side Trust Co., Newark, N. J.

L. L. Mays, Jr., Treasurer.

2nd T.**Pay to any Bank****Aug 15 1910****National Newark Banking Co.****Newark, N. J. 40**

Exhibit C21.

No. 2373

CHARLES B. GURNEY
Counsellor at Law

Newark, N. J., Oct. 7, 1910.

10 Pay to the order of Fiedler Real Estate Cor.
\$101.69/100 One hundred one and 69/100 Dollars.
To the Federal Trust Company, of Newark, N. J.
CHARLES B. GURNEY.

Perforated Stamp—PAID—10-10-10.

Endorsements:

Fiedler Real Est. Corp.

Pay to the order of

20 The Merchants National Bank of Newark, N. J.

Fiedler Corporation

Wm. H. F. Fiedler, Prest.

Merchants National Bank,

4

Oct 8 1910

Newark, N. J.

30

40

(Receipt)

To Receive Prompt Attention, Communications
Should be Addressed to the Firm.

L. D. 'Phone 4060 Market.

FIEDLER REAL ESTATE CORPORATION		
Real Estate	Century Building	
Fiedler	142 Market Street	
Real Estate	(Second Floor Front)	10
Corporation		
General	Newark, N. J., Oct. 7, 1910.	
Insurance		
Mortgage Loans		

Representing		
Alliance Fire Insurance Co.		
of Philadelphia.		
United Surety Co.		20
of Baltimore.		

Mr. C. B. Gurney, 8th Flr. U. Bldg.,
to
Fiedler Corp., Dr.

Sept. 12,	Alliance 57459,	L. B. Miller\$24.19		
Aug. 10,	"	57472 Heath	32.50	
July 1,	"	57395 & 57396 Frankel		45.00	
				<hr/>	
				\$101.69	30

Fiedler Real Estate
Paid
Oct. 8—1910
Thanks Per M. C. Dux

Exhibit C22.

No. 2982

CHARLES B. GURNEY
Counsellor at Law

Newark, N. J., Sept. 15, 1911.

10 Pay to the order of Germania Building and Loan
Assn. \$2152 09/100 Twenty one hundred fifty two
and 09/100 Dollars.

To the Federal Trust Company, of Newark, N. J.
CHARLES B. GURNEY.

Perforated Stamp—1-9-12

CERTIFIED.

Jan 8 1912

Federal Trust Co.

Newark, N. J.

20

O. F. Reiss, Teller.

Endorsements:

Pay to the order of
Union National Bank
Newark, N. J.

Germania Building and Loan Association,
Leopold Dassing, Treas.

30

Union National Bank

5

Jan 9

Newark, N. J.

40

Exhibit C23.

No. 2589

CHARLES B. GUERNEY

Counsellor at Law

Newark, N. J. Feb. 7, 1911.

Pay to the order of Herman C. Schneider \$1165
 11/100 Eleven hundred and sixty five 11/100 Dol- 10
 lars.

To the Federal Trust Company, of Newark, N. J.

CHARLES B. GURNEY.

Perforated Stamp—PAID—2-7-11.

Endorsements:

Herman C. Schneider

F. D. Holloway. 20

Exhibit C24.

POSTPONEMENT OF LIEN.

We, the undersigned, contractors, mechanics and
 material men, who have done work or furnished
 materials for the erection of two buildings for B.
 Frankel Realty Company, on premises known and
 designated as numbers 203 and 205 Runyon Street, 30
 Newark, N. J., in consideration of the sum of One
 Dollar and other valuable consideration to each
 of us in hand paid, the receipt whereof is hereby
 acknowledged, do hereby postpone and waive any
 claim of lien we may have or may hereafter have
 under and by virtue of the Mechanics' Lien Law
 of the State of New Jersey on said Buildings and
 the curtilage whereon the same is erected in favor
 of two certain mortgages for the sum of Forty 40
 five hundred dollars each, made by B. Frankel
 Realty Company to the Germania Building and

Loan Association of the City of Newark, so that said mortgages may be the first liens in order of priority on said premises.

Newark, N. J., July 1, 1910.

Signed, sealed and delivered in the presence of

	J. Fishtrom	Thomas Lewis (mason)	[SEAL.]
10	H. A. Wittel	Bedford & Fishtrom (Plumber)	[SEAL.]
	J. R. Weaver	J. N. Holloway & Co. (Lumber material)	[SEAL.]
	J. Fishtrom	Samuel Sabelotsky (carpenter)	[SEAL.]
		American Saw & Plan- ing Mill Company	[SEAL.]
	N. Moskowitz	David Kugel	[SEAL.]
20	A. MacPhee	Silver Roofing Co.	[SEAL.]
		Jacob Begelman	[SEAL.]
	Emil W. Knoth	G. Bergon (carpenter)	[SEAL.]
		Wolf Stewart & Co.	[SEAL.]
	John Wittel	Art Stone Co. (Cement Blocks)	[SEAL.]

Exhibit C25.

RELEASE OF MECHANICS' LIEN.

30

Know all persons, that we, the Mechanics, Laborers, Material Men and Contractors, who have done or performed Work, or furnished Materials for the erection of a building, for B. Frankel Realty Company owner on Lot No. 203-205 Runyon Street in the City of Newark, New Jersey, For and in consideration of the sum of One Dollar, to each of us, in hand severally paid by the Owner, the receipt whereof is hereby acknowledged, do release and Discharge said House and Premises, of and from all lien Claims we have against the same.

40

WITNESS our hands and seal, this First day
of July 1910

WITNESS

J. Fishtrom	Thomas Lewis (mason)	[SEAL.]	
H. A. Wittel	Bedford & Fishtrom (Plumber)	[SEAL.]	
J. Fishtrom	Samuel Sabelotsky (Carpenter)	[SEAL.]	10
	American Saw & Plan- ing Mill Company	[SEAL.]	
N. Moskowitz	David Kugel	[SEAL.]	
	Silver Roofing Co.	[SEAL.]	
A. MacPhee	Jacob Begelman	[SEAL.]	
	G. Bergon (carpenter)	[SEAL.]	
	Wolf Stewart & Co.	[SEAL.]	

20

State of New Jersey, }
Essex County, } ss. :

Benjamin Frankel the contractor above named, being duly sworn according to law, on his oath says, that he is the President and manager of B. Frankel Realty Company, that the above named persons are either the materialmen, journeymen or laborers, who have furnished materials or performed labor, for the erection and construction of the building in the foregoing release, and that no other person or persons, have any lien upon said building or land, by reason of work done or materials furnished for the erection and construction of said building, and that they have all been paid in full to date, or released, and that the signatures of the above named persons are in their own proper handwriting.

30

BENJAMIN FRANKEL.

40

Subscribed and sworn to before me)

this 20th day of July, 1910. {

Charles B. Gurney,
Master in Chancery,
of New Jersey.

Exhibit C26.

RELEASE OF MECHANICS' LIEN.

10 Know all persons, that we, the Mechanics, Laborers, Material Men and Contractors, who have done or performed Work, or furnished Materials for the erection of a building, for B. Frankel Realty Co. owner on Lot No. 203-205 Runyon Street in the City of Newark, New Jersey, For and in consideration of the sum of One Dollar, to each of us, in hand severally paid by the Owner, the receipt whereof is hereby acknowledged, do release and Discharge said House and Premises, of and from all lien Claims we have against the same.

WITNESS our hands and seal, this Thirtieth day of July, 1910.

20

WITNESS

Harry Weiser (latherer) [SEAL.]

Harry Weiser } (latherer) [SEAL.]

Harry Weiser } (latherer) [SEAL.]

Harry Weiser } (mason) [SEAL.]

Harry Weiser } (mason) [SEAL.]

Harry Weiser } (mason) [SEAL.]

30

WITNESS

H. A. Wittel (mason) [SEAL.]

(mason) [SEAL.]

(latherer) [SEAL.]

State of New Jersey, }
Essex County, } ss.:

40

Benjamin Frankel the contractor above named, being duly sworn according to law, on his oath says, he is the President and manager of the B. Frankel Realty Company, that the above named persons are either the materialmen, journeymen or

laborers, who have furnished materials or performed labor, for the erection and construction of the building in the foregoing release, and that no other person or persons, have any lien upon said building or land, by reason of work done or materials furnished for the erection and construction of said building, and that they have all been paid in full to date, or released, and that the signatures of the above named persons are in their own proper handwriting.

10

BENJAMIN FRANKEL.

Subscribed and sworn to before me, }
 this 12th day of July, 1910. }

Charles B. Gurney,
 Master in Chancery
 of New Jersey.

20

Exhibit C27.

UNION LUMBER CO.

Wholesale Lumber
 142 Market Street

White Pine	Cypress	N. C. Pine
Yellow Pine	Hemlock	Spruce

HARDWOODS.

30

Newark, N. J., Aug. 23, 1910.

Germania B. & L. Assn.

Newark, N. J.

You may please pay to Union Lumber Co. \$582.50 out of 3rd payment and \$582.50 out of 4th payment, total \$1,165.11 on (2) mortgages \$4,500 each now being taken by you on properties 203 and 205 Runyon St., Newark, N. J.

40

B. FRANKEL REALTY CO.

B. Frankel, Predt.

Exhibit C28.

Newark, N. J., August 15, 1910.

In consideration of the sum of one dollar and other valuable consideration, I, the undersigned, doing business under the name of the Union Lumber Company, hereby assign my claim of the sum of Eleven hundred and sixty-five dollars and eleven cents which the said company holds against B. Frankel Realty Co. and also the order for that amount directed to the Germania Building and Loan Association to Herman C. Schneider, he being authorized to sign all releases and give all acquittances and receipts for the same to any claim for lumber sold to said B. Frankel Realty Co. for the houses No. 203-205 Runyon Street, Newark, N. J.

20

JAMES N. HOLLOWAY,
Individually and doing business
under name of Union Lumber Co.

Witness

Charles B. Gurney.

Exhibit D1.

30

UNION LUMBER CO.
Wholesale Lumber
142 Market Street

White Pine	Cypress	Spruce
Yellow Pine	Hemlock	N. C. Pine

HARDWOODS.

Newark, N. J., Aug. 23, 1910.

40

On payment from the Germania B. & L. Assn. of \$1,165.11, as per order of this date, we agree to return to B. Frankel Realty Co. their notes

\$522.11, due Sept. 14, \$448 due Aug 23, \$195.00 due Sept. 2nd (total \$1,165.11).

UNION LUMBER CO.,

J. N. Holloway, Prest.

Exhibit D2.

For value received, the "B. Frankel Realty Co." 10
do hereby assign, transfer and set over unto
Charles Wolf, Charles H. Stewart and Samuel W.
Stewart, partners trading as Wolf, Stewart & Co.
and "Vreeland-Kearney Lumber Co." all its right,
title and interest in the stock of "The Germania
Building and Loan Association of the City of New-
ark" held by it in said Association and assigned
by it to said Association as collateral security for
the payment of a loan of Forty-five hundred dollars 20
on property on the Northerly side of Runyon
Street distant Easterly from the Northerly cor-
ner of said Street and Sixth Avenue one hun-
dred feet, Newark, N. J., and it hereby authorizes
and directs said "The Germania Building and Loan
Association of the City of Newark" to credit all
past and future payments on said stock to the said
Charles Wolf, Charles H. Stewart and Samuel W.
Stewart, partners trading as Wolf, Stewart & Co., 30
and "Vreeland-Kearney Lumber Co." and it also
authorizes and directs said "The Germania Build-
ing and Loan Association of the City of Newark"
to pay to the said Charles Wolf, Charles H. Stew-
art and Samuel W. Stewart, partners trading as
Wolf, Stewart & Co. and "Vreeland-Kearney Lum-
ber Co." the balance of the money due it on account
of the aforesaid loan of Forty-five hundred dollars.
In Witness Whereof the said B. Frankel Realty 40
Co. has caused these presents to be signed by its

President and its common seal to be hereto affixed
this Seventh day of January, A. D. 1911.

B. FRANKEL REALTY CO. [SEAL.]

B. FRANKEL, Pres.

ROSA FRANKEL, Secy.

Witness:

Hugo Woerner.

10

Exhibit D3.

For value received, the "B. Frankel Realty Co." do hereby assign, transfer and set over unto Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and "Vreeland-Kearney Lumber Co." all its right, title and interest in the stock of "The Germania Building and Loan Association of the City of Newark" held by it in said Association and assigned by it to said Association as collateral security for the payment of a loan of Forty-five hundred dollars on property on the Northerly side of Runyon Street distant Easterly from the corner of said Street and Sixth Avenue one hundred and twenty-five feet, Newark, N. J., and it hereby authorizes and directs said "The Germania Building and Loan Association of the City of Newark" to credit all past and future payments on said stock to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and "Vreeland-Kearney Lumber Co." and it also authorizes and directs said "The Germania Building and Loan Association of the City of Newark" to pay to the said Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co. and "Vreeland-Kearney Lumber Co." the balance of the money due it on account of the aforesaid loan of Forty-five hundred dollars.

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In Witness Whereof the said B. Frankel Realty Co. has caused these presents to be signed by its President and its common seal to be hereto affixed this Seventh day of January, A. D. 1911.

B. FRANKEL REALTY CO. [SEAL.]

B. FRANKEL, Pres.

ROSA FRANKEL, Secy.

Witness:

Hugo Woerner.

10

Exhibit D4.

THIS INDENTURE, Made the twenty-fourth day of January, in the year of our Lord one thousand nine hundred and eleven.

BETWEEN Rosa Frankel and Benjamin Frankel her husband of the City of Newark, in the County of Essex and State of New Jersey, and B. Frankel Realty Co., a corporation of the State of New Jersey, having its principal office in the City of Newark in the County of Essex in said State of New Jersey, party of the first part;

20

AND Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., of the City of Newark, in the County of Essex and State of New Jersey, and Vreeland-Kearney Lumber Co., a corporation of the State of New Jersey, having its principal office in the City of Newark in the County of Essex, in said State of New Jersey, party of the second part;

30

WITNESSETH, That the said party of the first part, for and in consideration of the sum of one dollar and other valuable consideration, lawful money of the United States of America, to them well and truly paid by the said party of the second part, at or before the sealing and de-

40

livery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed and by these presents do give, grant, bargain, sell, convey and confirm to the said party of the second part, and to their heirs, successors and assigns, respectively forever

ALL those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey.

FIRST TRACT—BEGINNING in the northerly line of Runyon Street distant easterly from the northerly corner of said street and Sixth Avenue one hundred feet; thence northerly parallel with Sixth Avenue one hundred feet; thence easterly parallel with Runyon Street fifty feet; thence southerly parallel with first course one hundred feet to the said northerly line of Runyon Street; thence westerly along the same fifty feet to the place of BEGINNING. Being known as Numbers Two Hundred and Three and Two Hundred and Five Runyon Street and further described as Lot Ten and Eleven on Block C as laid down on a map of property belonging to Philip Tillinghast, Clinton Township, N. J. Being the same premises conveyed to the said B. Frankel Realty Co. by deed recorded in Book E47 of Deeds for Essex County on page 464.

SECOND TRACT—BEGINNING in the northwesterly side line of Hinsdale Place, at a point therein distant southwesterly ninety-nine feet and fifty-one hundredths of a foot from the intersection of said line of Hinsdale Place with the south-

westerly line of Chester Avenue; thence running (1) north sixty degrees fourteen minutes west one hundred feet and nine hundredths of a foot to the middle of the block; thence (2) along the middle line of the block, being rear line of lots conveyed to the Riverside Supply and Manufacturing Company by Isaac Sandusky, south twenty-seven degrees nine minutes west three hundred feet and eighty-two hundredths of a foot to a corner in line of land conveyed as aforesaid; thence (3) still along line of land conveyed as aforesaid south sixty-two degrees fifty-one minutes east seventy feet and forty-eight hundredths of a foot to the northwesterly side line of Hinsdale Place; thence (4) along the line of same northeasterly three hundred feet and ninety-one hundredths of a foot to the point of BEGINNING. Being Lots Numbers Ninety to One Hundred and One, inclusive, on map of property of Amelia F. Carter, made May 6, 1887, by Francisco & Barkhorn, surveyors. Being the same premises conveyed to the said Rosa Frankel by deed recorded in Book E 48 of Deeds for Essex County on page 60.

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20

THIRD TRACT—BEGINNING in the westerly line of South Tenth Street at a point therein distant northerly seventy-nine feet and nine hundredths of a foot from the northwesterly corner of the same and Peat Street; thence north sixty-eight degrees eight minutes west parallel with said Peat Street ninety-two feet and ninety-six hundredths of a foot to the rear line of lots surveyed February, 1910, by Harrison Van Duyne and Son; thence along the same north twenty-one degrees fifty-two minutes east fourteen feet and twenty-nine hundredths of a foot; thence westerly and along the southerly line of a lot fronting on South Eleventh Street as surveyed by George H. Gardner, May, 1909, twenty feet and thirty-nine hun-

30

40

10 dredths of a foot to a point distant easterly one hundred feet from the easterly line of said South Eleventh Street; thence northerly and parallel with South Eleventh Street twenty-three feet and ninety-three hundredths of a foot to the northerly line of said lot, according to said Gardner survey; thence along the same easterly nineteen feet and ninety-three hundredths of a foot to the continuation of the westerly line of lots surveyed by Harrison Van Duyne & Son, February, 1910; thence south twenty-one degrees fifty-two minutes west twelve feet and thirty hundredths of a foot; thence south sixty-eight degrees eight minutes east ninety-three and one hundredths of a foot to the westerly line of South Tenth Street; and thence along the same south twenty-one degrees
20 fifty-six minutes west twenty-five feet and ninety-two hundredths of a foot to the place of BEGINNING.

Being part of the same premises conveyed to the said B. Frankel Realty Co., by deed recorded in Book P 46 of Deeds for Essex County on page 480.

This conveyance is made expressly subject to all encumbrances now thereon.

30 TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining;

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part, of, in and to the same, and of in and to every part and parcel thereof.

40 TO HAVE AND TO HOLD, all and singular the above described land, premises, with the appurtenances, unto the said party of the second part, their heirs, successors and assigns, respectively to the only proper use, benefit and behoof of the said

party of the second part, their heirs, successors and assigns respectively, forever;

AND the said party of the first part, for themselves, their heirs, successors and assigns do covenant, grant and agree, to and with the said party of the second part, their heirs, successors and assigns, respectively, that the said party of the first part at the time of the sealing and delivery of these presents, are lawfully seized in their own right of a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, except as aforesaid;

10

AND that the said party of the second part, their heirs, successors and assigns, respectively, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, their successors or assigns, or of any other person or persons lawfully claiming or to claim the same.

20

AND that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever, except as aforesaid;

30

AND ALSO, that the said party of the first part, their heirs, successors or assigns, and all and every other person or persons, corporation or corporations, whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises, by, from, under or in trust for it or them, shall and will at any time or times hereafter, upon the reasonable

40

request, and at the proper cost and charges in the law, of the said party of the second part, their heirs, successors and assigns, respectively, make, do and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, their heirs, successors and assigns forever, as by the said party of the second part, their heirs, successors or assigns, respectively, or their counsel learned in the law shall, be reasonably advised or required.

AND the said party of the first part and their heirs, successors, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, their heirs, successors and assigns, against the said party of the first part, their heirs, successors and assigns, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, SHALL AND WILL WARRANT and by these presents FOREVER DEFEND.

IN WITNESS WHEREOF, the said party of the first part have caused their common seal to be hereto affixed and attested by their Secretary, and these presents to be signed by their President, and have hereunto affixed their hands and seals, respectively, the day and year first above written.

[SEAL.]

B. FRANKEL REALTY CO.,

By

B. Frankel,
President.

[SEAL.]

ROSA FRANKEL.
BENJAMIN FRANKEL.

Attest:

Lena Weill,

[SEAL.] Secretary.

State of New Jersey, }
 County of Essex, } ss.:

Be it remembered, that on this twenty-fourth day of January, in the year of our Lord one thousand nine hundred and eleven, before me, the subscriber, an attorney at law of the State of New Jersey, personally appeared Rosa Frankel and Benjamin Frankel her husband, who, I am satisfied, two of the grantors mentioned in the within indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed:

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And the said Rosa Frankel, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

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HUGO WOERNER,
 An Attorney at Law of the
 State of New Jersey.

State of New Jersey, }
 County of Essex, } ss.:

Be it remembered, that on this twenty-fourth day of January, in the year of our Lord one thousand nine hundred and eleven, before me, the subscriber, an attorney at law of the State of New Jersey, personally appeared Lena Weill, who, being by me duly sworn, doth depose and make proof to my satisfaction that she well knows the common seal of B. Frankel Realty Co., one of the grantors named in the foregoing deed, that the seal thereto affixed is the proper common seal of the said corporation, and that the same was so affixed thereto, and the said deed signed and delivered by

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Benjamin Frankel, who was at the date and execution thereof, President of said corporation, as the voluntary act and deed of the said corporation, and by authority of said corporation in the presence of said deponent, and that the said deponent subscribed the same as witness to the execution thereof.

LENA WEILL.

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

Hugo Woerner,
An Attorney at Law
of the State of New Jersey.

DEED.

20 Rosa Frankel and Benjamin Frankel, her husband, and B. Frankel Realty Co., a corporation, to Charles Wolf, Charles H. Stewart and Samuel W. Stewart, partners trading as Wolf, Stewart & Co., and Vreeland-Kearney Lumber Co., a corporation.

Dated January 24, 1911.

30 Received in the Register's office of the County of Essex, N. J., on the twenty-fourth day of January, A. D. 1911, at 3:58 o'clock in the afternoon, and recorded in Book F 48 of Deeds for said County, on pages 416-420.

THOMAS P. ALWORTH,
Register.

Exhibit D4.

Postal Card.

Postmarked:

Newark, N. J., Feb. 4, 1:30 A. M., 1911.

Addressed:

Mr. Chas. Wolf
Waverly & Pesline Ave.
City.

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GERMANIA BUILDING AND LOAN
ASSOCIATION.

Cor. Springfield and Morris Aves.

Newark, N. J., Feby 3rd, '11

Dear Sir:

You are earnestly requested to attend a special
meeting on Feby 6th 8 P. M. Important business
will be transacted at this meeting.

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Yours truly,
HERMAN C. SCHNEIDER,
President.
JOHN J. GLESS,
Secretary.

Exhibit D5.

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To the Officers and Directors of the Germania
B & L Ass'n:

Sirs:

I appeared at a special meeting of your Associa-
tion held on February 6th, instant, representing
the Vreeland-Kearney Lumber Co. and Wolf,
Stewart & Co. owners of property mortgaged to
your Association, and also stockholders thereof,
and was refused a hearing by your officers and
the directors who were present.

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As there will be several suits arising out of their action, I take this method of bringing to your attention notice of the following facts.

10 1. That the Vreeland-Kearney Lumber Co. and Wolf, Stewart & Co. hold the legal title to premises Nos. 203 and 205 Runyon Street, Newark, N. J., formerly owned by the B. Frankel Realty Co. upon which your Association holds two mortgages of \$4,500.00 each.

2. That the Vreeland-Kearney Lumber Co. and Wolf, Stewart & Co. are the owners of the stock given as collateral security for the said loans, subject possibly to the lien of your Association for the dues, etc.

20 3. That the mortgages made by your Association were construction loans, *i. e.*, the money represented by said mortgages was to be used to erect and finish the two buildings on the same premises.

4. That the amounts still due on said mortgages are not sufficient to erect and finish the buildings and pay the order of the Union Lumber Co. purported to have been assigned to your President, Herman C. Schneider.

30 5. That only a small part, if any, of the amounts represented by said order, is for materials used in the buildings.

6. That the said order is void and of no effect.

40 I also demand of you a statement of the amount due upon the said mortgages, and an account of the disbursements made of the moneys represented by said mortgages, also the opportunity to inspect the orders paid by your Association, the vouchers and receipts and releases taken for payments on account of said mortgages.

I also demand that you use the amounts repre-

sented by said mortgages in finishing the said buildings and the lien claims filed against the same, and persons having a right to file the same.

In giving the above notice and making the above demands I represent the Vreeland-Kearney Lumber Co., Wolf, Stewart & Co. and the B. Frankel Realty Co.

Dated, February 20, 1911.

HUGO WOERNER.

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Conclusions.

IN CHANCERY OF NEW JERSEY.

Between THE GERMANIA BUILDING AND LOAN ASSOCIATION OF THE CITY OF NEWARK, Complainant, <i>and</i> B. FRANKEL REALTY Co. <i>et al.</i> , Defendants.	}	On Bill to fore- close. (Two Cases.)	20
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Heard on bills, answers, and cross bills and replications and proofs. 30

Mr. Charles B. Gurney and Mr. Bradner for complainant.

Mr. Hugo Woerner for defendants.

These two cases (consolidated) for the purpose of hearing, are foreclosures of two advance money mortgages given to a Building and Loan Association by a Realty Company, one of its shareholders, on procuring the loans, and the principal question is whether a certain order given by the Realty 40

Company on the Association for \$1,165, which order was paid by the Association, can properly be charged as an advance under the mortgages. The propriety of the payment and the validity of the order is disputed by the answers and cross bills of the Realty Company and of grantees to whom the Realty Company conveyed its interest in the mortgaged premises and shares of stock after the making of the order and with notice of it, but before its actual payment by the Association. The payment was made after notice of the conveyance by the Realty Company. The right to deduct the payment depends, in my judgment, upon the decision of the question whether, as between the mortgagor and conflicting claimants under it, the Association was bound to pay the order as an equitable assignment prior in time to the conveyances and not postponed by any special equities of the subsequent grantees. The facts proved at the hearing are in detail substantially as follows:

On or about July 21, 1910, the Frankel Realty Company, executed and delivered to the complainant, The Germania Building and Loan Association, two mortgages securing \$4,500 each upon two separate properties, 203 and 205 Runyon Street, Newark. The loans were taken out in connection with the ownership of shares in the Association, and in the application for one of the loans of \$4,500, in answer to the question, "Is any portion of this loan to be used in improving the property?" the answer was, "To be used to erect houses." The applications were granted, the applicant agreeing to pay a bonus or premium of two per cent. besides expenses of preparing and approving the necessary papers by counsel of the Association. The applications were made on May 16 and the loan was directed to be made on May 16, 1910. Bonds and mortgages in the usual form on loans to members

were prepared and executed. The bonds (in the penal sum of \$9,000 each) were conditioned only for the payment monthly of \$23 (dues on the 23 shares of the Association) and \$22.50 interest at six per cent. on the principal sum of \$4,500, and also fines, forfeitures and other payments due as holders of the shares, and with the further provision that on six months' default in the payment of interest, the principal sum should become due at the option of the Association. The mortgages (in the usual form) secured payment as provided in the bonds. The bonds and mortgages were dated June 20, 1910, and the first monthly payment was fixed for July 11, 1910, but the mortgages were not acknowledged until July 14, 1910, and together with the bonds seem to have been actually delivered on or about July 19, 1910, when the first payment or advance of \$3,000 less dues and interest upon the mortgages was made to the Realty Co. pursuant to the application. The mortgages were recorded July 21, 1910, by two written assignments dated June 28, 1910, the Realty Co. also assigned to the Association its right in the shares of stock (represented by two separate certificates for 23 shares each) each assignment being "as collateral security for a loan of forty-five hundred dollars on bond and mortgage." These assignments were delivered to the Association with the bonds and mortgages. At the time of the original application and of the execution of the mortgages, houses were in the process of construction and the mortgages were intended by the parties as mortgages not to secure the immediate loans of the money, but future advances thereon, up to the amount of \$4,500 on each mortgage less the premium and expenses. This understanding is clear from the acts of the parties under the application and mortgage, and by the granting of the loans

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and the execution and delivery of the assignments of shares and bonds and mortgages under it, the Association became obligated, in my judgment, to make to the mortgagee the future advances for which it received and held the securities. As to the terms and conditions which (as between the mortgagor and mortgagee) these advances were to be made, there is no evidence of any formal agreement by writing or otherwise, and the only agreement as to these terms and conditions is the implied condition, derivable from the nature of the transaction and the status of the parties in reference thereto, and the subsequent conduct of the parties relating to the advances. The advances being intended to be made on buildings in the course of construction which (as appears by the applications for loans) constituted the main security for the loans, and the statutes relating to loans by the Association to its members being limited to first liens of eighty per cent. of the value of the real estate (P. L., 1906, Ch. 54, Comp. St., p.), it is clear that the conditions as to future advances must be held to have contemplated that at the time of making any future advances, the Building and Loan Association had the right to require that the property should be free from liens and of a value twenty-five per cent. above the advance. Upon making the first advance of \$3,000 on July 18, 1910, a committee reported in favor of making an advance of \$1,500 on each house, and before making it, the Realty Company delivered releases or postponement of any mechanics' liens "then existing or thereafter arising" for work or materials furnished for the erection of the buildings on the mortgaged property. These were dated July 1, 1910, and the postponement of existing or future liens was signed by J. N. Holloway & Co. (among others), to whom a few hundred dollars were then due, and the release

(of existing liens only) was signed by Wolf, Stewart & Co. (among others) to whom the Realty Company at that time owed about \$685 for materials furnished for these buildings, and to whom also B. Frankel owed at that time an individual account for material furnished by them to him for other buildings. On signing this release and from the \$3,000 payment to the Realty Company Wolf, Stewart & Company received a payment of \$1,000 by the check of Mr. Gurney (the solicitor of the Association) dated July 23, 1910, payable to the Realty Company and endorsed to Wolf, Stewart & Co. This payment was credited by Wolf, Stewart & Co., not to the Realty Company account, but to Fraenkel's individual account, and therefore still left to the Realty Company in debt for the \$685 due on the materials already furnished for the buildings in question. Out of the first payment of \$3,000, the checks given by Mr. Gurney to the order of the Realty Company (after endorsement by Fraenkel as President) were endorsed by him individually and apparently deposited to his individual credit, to the extent of \$1,568, the Association not undertaking through its attorney to supervise or be responsible for the appropriation of the money received by the Realty Company on the delivery by Fraenkel of the releases and postponement of liens. On August 12th, another payment of \$2,000 on account of the mortgage was made by a check of that date, given by the Association payable "to the order of B. Fraenkel Realty Co., or Charles B. Gurney, Atty." This check was delivered to Mr. Gurney, the attorney of the Association, and after endorsement as attorney, deposited to the credit of his individual account in the Federal Trust Company. The minutes of the Association do not show any other report by the committee than a report of progress, or any direction by

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the Committee or the Board for this payment to the Realty Co. on the mortgage. The payment, however, was made and Mr. Gurney subsequently gave his checks, dated August 13th, 1910, one of \$300, and one of \$1,700, to the order of the Realty Company, which checks were after similar endorsements, apparently deposited or used by B. Fraenkel individually. No further releases or postponements of liens seem to have been delivered in connection with this further payment to the Realty Company. On August 23rd, 1910, the Realty Co. (by Fraenkel, its President) signed and delivered to J. N. Holloway, then trading as Union Lumber Company, the following order:

"Newark, N. J., Aug. 23, 1910.

"Germania B. & L. Assn.,

"Newark, N. J.

"You may please pay to Union Lumber Co. \$582.50 out of 3rd payment and \$582.50 out of 4th payment, total \$1,165.11 on (2) mortgages \$4,500 each now being taken by you on properties 203 and 205 Runyon St., Newark, N. J.

"B. FRAENKEL REALTY CO.,

"B. Fraenkel, Prest."

At the time of receiving the order, notes of the realty company had been given to the Union Lumber Co. for the amount, one of which, for \$448, was due on the date of the order and two others due thereafter, one for \$522.11, due September 14th, and one for \$195, due September 2. The Union Lumber Company signed on August 23rd an agreement that on payment from the loan association of the order for \$1,165.11 on that date, they would return their notes. Shortly afterwards Holloway, individually and trading as Union Lumber Com-

pany, assigned to Herman C. Schneider, his claim of \$1,165.11 against the realty company and also the above order, authorizing him to sign all releases and give all acquittances and receipts for the same to any claims for lumber sold to the realty company for said houses. This assignment, expressed to be for \$1 and other valuable considerations, was actually signed and delivered after the date of the order (August 23rd), but was dated August 15, 1910, by direction of Mr. Schneider, in order to make it of a date of some claim he had against Mr. Holloway. Mr. Schneider seems to have had business dealing with Holloway and the Union Lumber Company, and says that he received many notes from the Union Lumber Company, but cannot tell whether he received the three notes referred to in the agreement of August 23rd. This order does not seem to have been formerly presented to the association at the time of its delivery, but it was delivered with its assignment to Mr. Schneider, who at that time was and still is the President of the association. On September 23rd, 1910, the association drew another check for \$4,000 (being the amount of the balance of the entire loan of \$9,000), this check being like its previous checks, drawn payable "to the order of B. Fraenkel Realty Co. or Charles B. Gurney, Atty.," and it was delivered to Mr. Gurney. Payment of this or any other amount on account of the loan was not directed to be made by the Directors or officers of the association, and Mr. Gurney's statement is that the check was given for the purpose of closing the books for the annual statement, and making the statement of loans agree with the Secretary's annual report. The final payment on the loan could not, according to the usual practice of the association, have been made until after the buildings were finished and the payment

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was recommended by the committee in charge of the loan and the approval of the Board. At this time the buildings were not finished and afterwards and before any further payments to the realty company, as contemplated by the order, the realty company discontinued work on the buildings and by assignments dated January 7th, 1911, assigned to Wolf, Stewart & Company and Vreeland-Kearney Lumber Company, defendants in this suit, its interest in the stock of the association assigned by it as collateral security for the two loans of \$4,500 each, and authorized and directed the association to credit all past and future payments on the stock to the assignees, and also to pay to the assignees the balance of the money due on account of the loans. Subsequently and by deed dated January 24, 1911, the realty company conveyed to the same persons the mortgaged premises "expressly subject to all encumbrances now thereon." These transfers were made as Fraenkel and Wolf both say, upon an agreement that the grantees were to take over what the realty company had and finish the buildings. Fraenkel says also that the grantees were to sell the buildings, pay all the claims and if there was any surplus, turn it over to him. At the time of the conveyance, the realty company still owed to Wolf, Stewart & Company, one of the grantees, \$685, and also owed the other grantees; the Vreeland-Kearney Lumber Company for materials furnished the houses, but the amount then due therefor to this company is not proved. On taking the conveyance no additional consideration was given and according to the evidence of Mr. Schneider, which is not controverted by Mr. Wolf, the latter, at the time of taking the conveyance, knew that the order to the Union Lumber Company for \$1,165 had been previously given by the realty company. At the time of these con-

veyances by which the realty company turned over the premises, the buildings were unfinished, but the realty company had, according to Fraenkel's evidence, expended over \$8,000 on the buildings, besides \$1,000 for the lots. On January 26, 1911, two days after the date of the deed, Mr. Gurney who had retained the check of the association for \$4,000 since its delivery to him September, 1910, deposited the check to the credit of his personal account in the Fidelity Trust Company. On the sixth of February, 1911, a special meeting of the association was called, of which Mr. Wolf had notice, and at which the matter of paying the order for \$1,135.11 was taken up. Mr. Wolf at this meeting protested against the payment of the order until after the buildings were finished, and either at this meeting or before, the association seems to have been notified of the transfer of the mortgaged premises and of the shares by the realty company, and that the grantees proposed to finish the buildings. And at this meeting Mr. Schneider applied for payment of the order, and offered his personal bond for \$18,000 to secure the association against losses on the loans, and also agreed to complete the buildings "against the lumber bill of Holloway Lumber Co. for \$1,165." Over the protest of Mr. Wolf and declining to hear his counsel, who had attended for the purpose, the Board directed the payment of the order, and pursuant to this direction Mr. Gurney, on the following day, gave his check for the amount of the order \$1,165.11 to Schneider, the bond of Mr. Schneider having been given. On the 20th day of February a written notice was served on the association, on behalf of Wolf, Stewart & Company, the Vreeland-Kearney Lumber Company and the realty company, notifying them (among other things) that the lumber company and Wolf,

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Stewart & Company held the legal title to the mortgaged premises and were the owners of the stock given to the association as collateral for the two mortgages of \$4,500 each; that these mortgages were for construction loans to be used in erecting and finishing the buildings, and that the amount still due on the mortgages were not sufficient to finish the buildings and pay the order of the lumber company assigned to Mr. Schneider, the President of the association; that only a small part, if any, of the amount represented by the order, was for materials used in the buildings, and that the order was void and of no effect. The notice also demanded a statement of the amount due on the mortgages, and that the association use the amount represented by the mortgages in finishing the buildings and the (payment of the) lien claims against them. After their protest and notice, the grantees proceeded to finish the buildings at their own expense, Wolf, Stewart & Company expending \$1,263.69, and the other grantees \$2,091.55. Plans and specifications for the buildings to be constructed had been given to the association on the application for the loan, and according to the estimates on these plans made by the realty company, the value of the buildings was to be \$11,400. The committee in granting the loan estimated their value at \$10,400. Assuming Fraenkel's evidence, which is not contradicted, to be correct, that he had expended \$8,000 on the buildings at the time of transferring the property, and taking cost as a basis of estimating the value at the time of ordering the payment of \$1,165.11 on February 6, 1911, the advance of this additional amount would clearly have been within the statutory limit of eighty per cent. of the value of the property. The dues and interest on the shares while the realty company held them had been retained by Mr. Gur-

ney on the moneys received by him for payment to the realty company, and the dues and interest for August and September, 1910, being \$182, as well as the premium on the loan, were charged by him against the payment of \$4,000 made to him by the check of the association on September 23rd, 1910, under the circumstances above stated.

Neither the realty company nor its assignees and grantees ever paid any interest or dues, as required by the terms of the bond and mortgage, after September, 1910, and on July 17, 1911, after more than the six months' default limited by the mortgage, the association exercised its option under the mortgage of declaring the whole principal due, and directed bills to foreclose the mortgages, which were filed August 14, 1911.

On August 21, 1911, Mr. Gurney returned to the association the balance of the \$4,000 payment made to him in September, 1910, after deducting the payment of the order.

Complainants claim as due upon the mortgages the amount actually advanced to the realty company thereon, including the \$1,165 order, together with the premium on the loan and interest and dues, payable under the terms of the mortgage, up to July 17, 1911, being \$7,002.59, with interest on that sum from that date.

Defendants deny the validity of the payment of the order as an advance under the mortgage, and also claims that only the actual advances to the realty company are recoverable under the mortgages.

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EMERY, V. C. (after statement of facts and issues):

Mortgages to secure future advances are valid, but where it is entirely optional with the mortgagee, whether to make future advances or not, advances made after notice of a subsequent encumbrance or transfer are not chargeable. *Heintze v. Bentley*, 7 Stew., 562, 566 (Err. & App., 1881). This case at bar raises the different questions as to the rights of conflicting claimants under the mortgagor, where on the delivery of the mortgages the advance was not optional. On the facts above stated, and in view of the application for loan and the granting thereof, and the actual execution and delivery of the bonds and mortgages, it is clear that the mortgages in question were mortgages upon which the mortgagee, the association, was obligated on its part to make advances to the realty company to the extent of the mortgages. That the mortgages were of this character is not contested by defendants' brief, but the right to change the payment of the order as an advance under the mortgage is disputed upon several grounds:

First. Because the association had no right to make advances or payments under the mortgages, except for the payment of debts incurred in the erection of the houses on the mortgaged premises. If this were a question between lien claimant and mortgagee under their lien law, as to their respective rights under advance money mortgages (Comp. St. P. L., 1895, p. 313), the objection might be good, but as between mortgagee and the mortgagor and those claiming under the latter by assignment, the provisions of this statute limiting the mortgagee's rights are not applicable, and their rights are to be governed by the general principles relating to advance money mortgages.

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

It was not a right which the association could be required to exercise, for the benefit of the mortgagors, or as between adverse claimants under them. On none of the previous advances had any such right of control been recognized and the realty company, on receiving them, had apparently used them (or a large part of them) to pay debts not arising out of the construction of the buildings and \$1,000 of the first advance was paid to Wolf Stewart Co., who applied to Frankel's individual account, leaving the amount then due for material used in the buildings (\$685) still unpaid and due, then they took over the property.

Second. Because it was an advance made after notice of the conveyance of the premises subject to the mortgages to the defendants and against their protest. This contention is based on the claim that the grantees took the premises subject only to the advances then actually made by the mortgagors, and ignores any right in the mortgagors, or those claiming under them, to any of the future advances, except to the extent to which these rights have been actually realized or carried out, at the time of the conveyance. As it seems to me, this claim is not well founded, and for this reason. The right of the mortgagor at any fixed or specific time to future advances under the mortgage is a property right existing at that time, and as such is, in equity at least, assignable. And when the mortgagor has duly assigned, either wholly or in part, his right thereafter personally to receive the advances, the assignee is

entitled to receive the advances from the mortgagee and is so entitled by virtue of the assignment and as deriving right thereto at that time.

10 As to the vesting and priority of estates and rights the general rule applicable both in law and equity, as between the assignor or those standing in his stead and the assignee, is "*qui prior est tempore potior est jure.*" *Jenkinson v. N. Y. Finance Co.*, Buch., 82 Atl., 36 (1911), and New Jersey cases cited, page 42.

20 The precise question then is not, as defendants claim, whether under a mortgage for future advances, the mortgagor or his grantees have generally the right to require future advances to be discontinued, but whether the mortgagor having assigned to one person for value the right to a portion of the future advances to which he is at the time of the assignment entitled, has himself the right to revoke the order or does, by a subsequent conveyance of the mortgaged property to a grantee standing only as the assignor's rights, confer on such grantee the right to countermand the advance previously directed by the grantor, and solely upon the ground that it has not been paid.

30 The grantees of the mortgaged property in this case were also assignees of the shares of stock and of the mortgagor's right to future advances payable by the mortgagee after the assignment, and having notice of the previous assignment, stand in the stead of the assignor, and payments on orders previously given which were valid assignments as against the realty company, are also valid as against them.

40 My view is that after a valid assignment of future advances, neither the assignor nor the subsequent assignee, standing only on his rights, has the right, as against the prior assignee, to revoke

the assignment. This conclusion leads to the consideration of the third objection.

Third. That the order itself does not operate as an equitable assignment. Neither of the two reasons relied on to support this objection are valid. The first is that the order is not an imperative direction for payment out of any fund, its language being, "You may please pay to Union Lumber Co. \$582.50—out of 3rd payment and \$582.50 out of 4th payment, total \$1,165.11, on two mortgages, etc." No particular form of words is necessary to constitute an equitable assignment and if the writing or act indicates the intent of the assignor to make an appropriation of the fund or part of it, it will in equity be enforced as an assignment. *Weaver v. Atlantic Roofing Co.*, 12 Dick. Ch., 547 (V. Ch. Grey, 1898), and cases cited, page 553. The test to be applied in the case is whether the contract or agreement in question between the assignor and the assignee authorized the depository of the fund to pay it directly to the assignee without the further intervention of the debtor or party originally entitled to it. *Lanigan v. Bradley & Currier Co.*, 5 Dick., Ch. 201, 206 (Pitney, V. C., 1892). Treated merely as a matter of its construction, the written order meets this test. So far as the form of the order is concerned, and for the purpose of directing control of the fund, authority to the depository to make the payment to the assignee is equally effective with a positive direction to pay. And where there is a good consideration for the assignment, the real nature of the transaction rather than the mere form of it, including all the acts of the parties in reference thereto, as well as the written documents, must, as between them, be considered to decide the question of assignment. *Malcolm v. Scott*, 8 Jur., 283; 3 Har. 39 (V. Ch.

Wigram, 1844). The Union Lumber Company, the name under which J. N. Holloway carried on business, had furnished materials for the construction of the building at the time of the first \$3,000 payment to the realty company under the mortgage, and had for the realty company's benefit postponed its existing and future liens to the mortgages in question, in order that it might receive this payment. And at the time of receiving the order in question, the lumber company further agreed upon payment, to deliver up certain notes of the realty company, one of which was due on the receipt of the order. Substantially the order was delivered as security for existing and future debts for part of which security was released and it was, therefore, upon good consideration. The second reason urged against the validity of the order as an assignment is that the order authorizes or directs payment out of the third and fourth payments on the mortgages, and it is claimed that as no further payments (outside of the order) were ever made under the mortgage, the orders were not according to their terms ever effective. There has been no proof as to any agreement between the realty company and the association in reference to the number and time of payments, and as to number of payments the only proof is that by two previous payments a portion of the advances had been made. At the time of giving the order, the realty company were proceeding in the construction of the buildings and the association also still held itself in readiness to make the advances, and did in fact, subsequently, and while the realty company was still constructing the buildings, set aside funds by its check to Mr. Gurney for the balance of the advances. The association on its part was obligated to continue the mortgage as one for future ad-

vances until by six months' default of the realty company or its assignees and grantees to make the payments required by the mortgage, or for some other abandonment of the contract by the mortgagor, the principal of the mortgage became due and the contract for future advances terminated by the act of the realty company and its grantees. At the time of directing the payment of the obligation for future advances was still in force and the right to them had been assigned to and was held by the grantees who gave notice of their rights. The grantees protested against the payment of the order at any time or out of any funds, on the ground that if paid there would not be money enough left to finish the buildings, but did not then abandon or give up the contract for future advances under the mortgage. The subsequent abandonment of the contract for future advances by the grantees, by their failure to make the payments called for by the mortgages, did not give them or the realty company the right as against the association, or against the prior assignees of the future advances, to set up that the time for third and fourth payments never arrived. If the contract for future advances was in force, the payment in question was in fact the third payment, out of which one-half of the order was payable, and the fourth payment, out of which the balance was payable, would become due at the latest, when the foreclosure was directed, and the whole amount of the order being then due and payable, the complainant was then entitled to recover the amount paid on the order as an advance to the realty company under the mortgages.

Decree including this payment will be advised and the amount due will be settled on the usual basis, including interest, dues, etc., up to the time of complainant's exercising its option of declaring the principal due because of default.

