

INDEX

	Page
Notice of Appeal	1
Grounds of Appeal	2
Amended Declaration	5
Amended Plea and Notice of Special Matter	11
Judgment	17
Testimony	18
Motion for direction of verdict	121
Charge	125

WITNESSES

Plaintiffs':

Barton B. Hutchinson,	
Direct	19
Cross	22
George Tunnicliffe,	
Direct	24
Cross	25
Re-direct	27
Re-cross	29
Charles S. Atkin,	
Direct	30
Edward R. Taylor,	
Direct	31
Cross	32

Defendants':

George H. Knapp,	
Direct	32

	Page
Re-called:	
Direct	94
Cross	99
Re-direct	101
Thomas K. Johnston,	
Direct	45
Cross	56
Re-direct	62
Re-cross	62
Joseph M. Conklin,	
Direct	63
Wilson H. Harding,	
Direct	69
James F. Morton,	
Direct	73
Cross	87
William Woodhouse,	
Direct	105
Cross	112

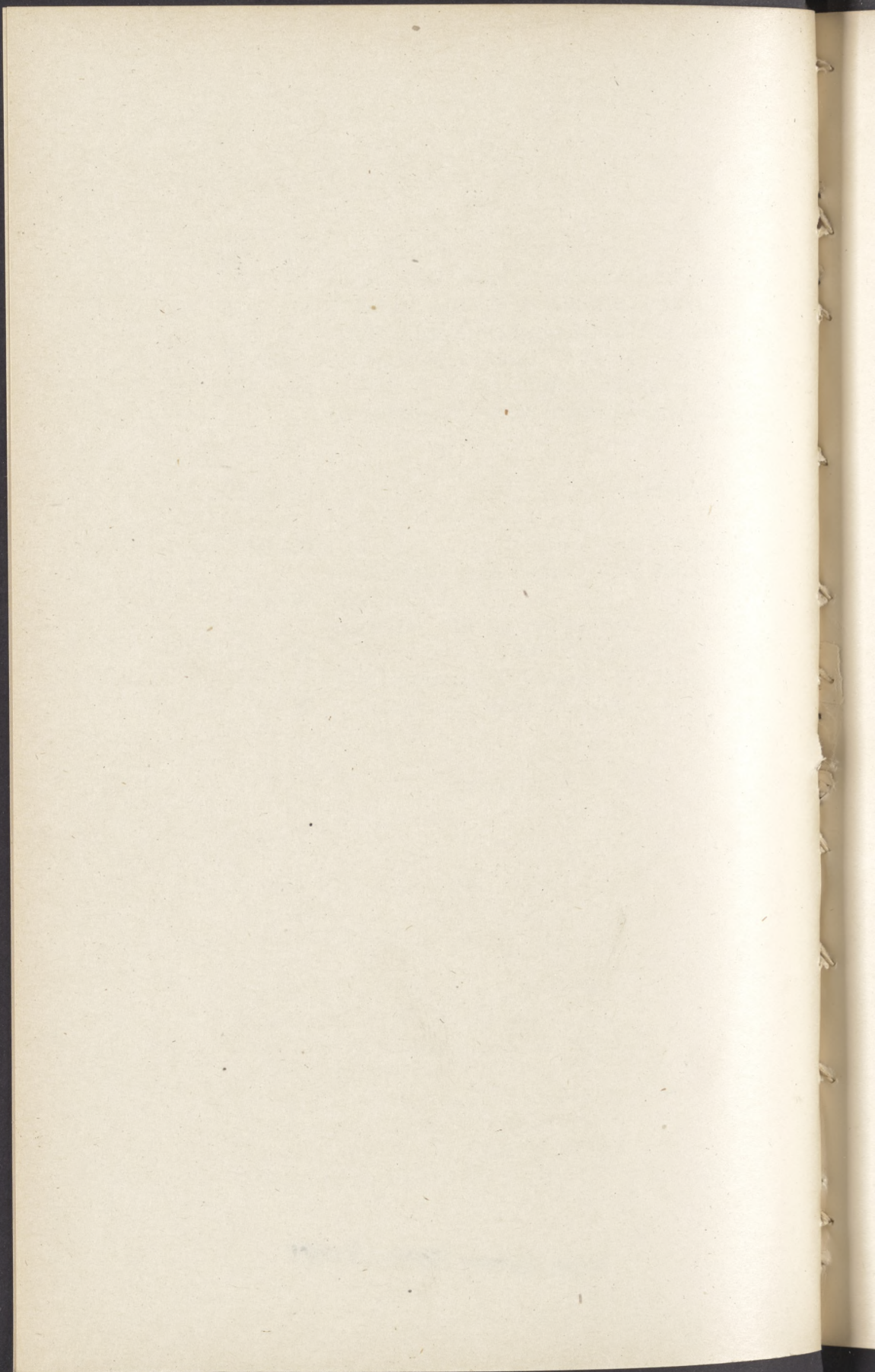
EXHIBITS

	Offered Page	Printed Page
<i>Plaintiffs'</i>		
Exhibit P-1—Agreement, dated July 29, 1908	31	127
Exhibit P-2—Bond dated July 29, 1908	20	130
Exhibit P-3—Note, dated July 6, 1908 signed by F. W. Rowe, J. F. Morton, George Tunnicliffe, J. W. West and George Noble	25	132
Exhibit P-4—Note, dated October 6, 1908, signed by F. W. Rowe, J. F. Morton, George Tunnicliffe, J. W. West and George Noble	25	132

	Offered Page	Printed Page
Exhibit P-5—Note dated October 6, 1908, and Notice of Protest attached	27	133
Exhibit P-6—Note, dated April 7, 1909, signed by F. W. Rowe, J. F. Morton, George Tunnicliffe and J. W. West	29	136
Exhibit P-7—Note, dated December 6, 1910	29	

Defendants':

Exhibit D-I—Letter	48	
Exhibit D-2—Carbon copy of Exhibit D-1	48	
Exhibit D-6—Minutes of Meeting, held March 17, 1908	78	137
Exhibit D-7—Book of Minutes and By- laws of July 30, 1908	98	



New Jersey Court of Errors and Appeals

Notice of Appeal

(Filed April 5, 1917)

MERCER COUNTY CIRCUIT COURT

EMILY C. ROWE, Executrix of Frederick C. Rowe, deceased; GEORGE TUNNICLIFFE, JAMES FREDERICK MORTON and JAMES W. WEST, Plaintiffs-Respondents,	} On Appeal.	20
vs. HARRY A. HANNUM, GEORGE H. KNAPP and WILLIAM WOOD- HOUSE, JR., (Impleaded with George Noble), Defendants-Appellants.		30

To:

Barton B. Hutchinson, Esq.,
Attorney for Plaintiffs.

Take Notice, that the above named defendants,
Harry A. Hannum, George H. Knapp and Wil-
liam Woodhouse, Jr., hereby appeal to the Court 40

Grounds of Appeal

1. Because the trial Court refused to grant a non-suit.

2. Because the trial Court refused to direct a verdict in favor of defendants and against the plaintiffs.

3. Because the trial Court overruled the defence produced by defendants. 10

4. Because the trial Court struck out the defence produced by defendants.

5. Because the trial Court submitted the case to the jury upon the evidence produced by the plaintiffs alone.

6. Because the trial Court charged the jury as follows: "The note has not been paid by anyone. It appears by the evidence that interest has been charged on it from the time of its being given, and various renewals, that is other notes, given, which I do not understand, however, have paid off the note, but are simply given as collateral or for evidential aspects regarding the original note." 20

7. Because the trial Court sustained the objection of plaintiffs' counsel to the question asked of the witness George H. Knapp: "Now, what did you hear him say to Mr. Woodhouse?" so far as the estate of Frederick W. Rowe, deceased, was concerned. 30

8. Because the trial Court sustained the objection of plaintiffs' counsel to the question asked of the witness William Woodhouse, Jr., "What did he say about that?" so far as the estate of Frederick W. Rowe, deceased, was concerned.

9. Because the trial Court sustained the objection of plaintiffs' counsel to the question asked of the witness William Woodhouse, Jr.: "What did you say to him?" so far as the estate of Frederick W. Rowe, deceased, was concerned. 40

Grounds of Appeal

10. Because the trial Court refused to permit defendants to show affirmatively that William Woodhouse, Jr., did not receive any profit from the transaction involved in the suit.

11. Because the trial Court ruled that statements by or transactions with Frederick W. Rowe deceased, were inadmissible in this suit to bind his estate, and excluded evidence of such statements or transactions offered by defendants, so far as said estate was concerned.

The following questions were overruled:

12. To the witness George H. Knapp.

“Q. What was the proposition?”

“Q. Did he dispute Mr. Noble’s connections—?”

20 “Q. Now, what did you hear him say to Mr. Woodhouse?”

13. To the witness William Woodhouse, Jr.

“Q. What did he say about that?”

“Q. What did you say to him?”

“Q. Did you, Mr. Woodhouse, after you signed the bond and agreement, ever receive any compensation or money of any kind—?”

30 14. The judgment of the Mercer County Circuit Court is in divers other respects erroneous, illegal, and void, and should be reversed, set aside and for nothing holden.

JOHN A. HARTPENCE,

Attorney of Defendants-Appellants, Harry A. Hannum, George H. Knapp and William Woodhouse, Jr.

40 (Endorsed)

Amended Declaration*(Filed October 5, 1916)***MERCER COUNTY CIRCUIT COURT**

Of the tenth day of August, in the year of our Lord one thousand nine hundred and nine. 10

Mercer County, ss:

George Noble, Harry A. Hannon, George H. Knapp and William Woodhouse, Jr., the defendants in this suit were summoned to answer unto Frederick W. Rowe, George Tunnicliffe, James Frederick Norton and James W. West, the plaintiffs therein in an action upon contract; and thereupon the said plaintiffs by Barton B. Hutchinson, their attorney, complain for that whereas the said defendants heretofore, to wit, on the twenty-ninth day of July, nineteen hundred and nine, at Trenton, in the County of Mercer, and within the jurisdiction of this Court, by their writing obligatory sealed with their seals and now shown to the Court here, the date whereof is a certain day and year above named, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound, jointly and severally, unto the said plaintiffs in the sum of Fifty-eight Hundred Dollars, to be paid to the said plaintiffs or to their certain attorney, executors, administrators or assigns, to which payment well and truly to be made the said defendants did bind themselves, their heirs, executors, administrators and assigns. 20 30

And the said plaintiffs say that the said writing obligatory was made with a condition there- 40

Amended Declaration

under written that whereas the said Frederick W. Rowe, James Frederick Norton, George Tunnicliffe and James W. West (together with George Noble) are joint makers of a certain promissory note for Twenty-nine hundred dollars, payable
10 three months after date to the order of Foresters Benefit Society of Trenton, N. J., bearing date July 6, 1908, endorsd by F. W. Rowe, J. F. Morton and Foresters Benefit Society of Trenton, N. J., F. W. Rowe, President, and discounted by First National Bank of Trenton, New Jersey, for the benefit of said society, if the Foresters Benefit Society should well and truly pay or cause to be paid the said promissory note at its maturity, or
20 at the maturity of any renewal or renewals, or part renewal or renewals thereof up to but not beyond July sixth, nineteen hundred and nine, and if the said defendants, their heirs, executors or administrators, or any of them, should from time to time and at all times thereafter save, defend, and keep harmless and indemnify the said plaintiffs, their and each of their heirs, executors, administrators and assigns, and their and each of the goods and chattels, lands and tenements, of and from the
30 said promissory note and any and all renewals or part renewals as aforesaid, and of and from all actions, costs and damages for or by reason thereof, and should pay or cause to be paid unto the said plaintiffs or to their certain attorneys, executors, administrators or assigns, such sum or sums as they or any of them might be obliged to pay on account of said promissory note or any renewal or renewals thereof without any fraud
40 or other delay, then the said bond or writing obli-

Amended Declaration

gatory to be void, otherwise, should remain in full force and virtue.

And the said plaintiffs aver that the said promissory note matured and became and was due and payable on the sixth day of October, nineteen hundred and eight, and was renewed by the said plaintiffs for a further period of three months from and after the last mentioned date for the said sum of twenty-nine hundred dollars, which renewal note was delivered to and accepted by the Foresters Benefit Society, and was discounted by the said The First National Bank of Trenton, New Jersey, for the use and benefit of the said Foresters Benefit Society, which last mentioned promissory note matured and became due and payable on the sixth day of January, nineteen hundred and nine, and was not renewed.

And the said plaintiffs further say that the said defendants not having saved harmless and indemnified the said plaintiffs against the payment of the said sum of twenty-nine hundred dollars in the said promissory note specified, by the payment thereof or of any part thereof to the said The First National Bank of Trenton, New Jersey, and the said sum of money being wholly unpaid, that the said plaintiffs afterwards, to wit, on the day and year last aforesaid at Trenton, in the County of Mercer, were compelled and obliged to pay, and did then and there pay to the said The First National Bank of Trenton, New Jersey, the sum of twenty-nine hundred dollars in the said promissory note mentioned and contained, being then and there due and payable by virtue of the said promissory note, whereof the said defendants afterwards, to wit, on the day and year last

Amended Declaration

aforesaid at Trenton, in the County of Mercer
 aforesaid had notice; nevertheless the said de-
 fendants not regarding their said promise and
 undertaking, but contriving and intending to de-
 ceive and defraud the said plaintiffs in this behalf
 10 have not yet repaid to the said plaintiffs the said
 sum of twenty-nine hundred dollars, nor any part
 thereof, nor in any manner indemnified them on
 account of their having paid the same (although
 said defendants afterwards, to wit, on the day and
 year last aforesaid and often times since have
 been requested so to do by the said plaintiffs, to
 wit, at Trenton, in the County of Mercer afore-
 said), but have hitherto wholly neglected and re-
 fused and still do neglect and refuse so to do, to
 20 wit, at Trenton, in the County of Mercer, afore-
 said, to the damage of the plaintiffs, Six Thou-
 sand Dollars, and therefore they bring their suit,
 etc.

B. B. HUTCHINSON,
 Attorney for Plaintiffs.

NOTICE TO DEFENDANTS

The following is a copy of the bond or writing
 30 obligatory, upon which the above declaration is
 founded:

KNOW ALL MEN BY THESE PRESENTS, That we,
 George Noble, Harry A. Hannum, George H.
 Knapp and William Woodhouse, Jr., all of the
 City of Trenton, County of Mercer and State of
 New Jersey, are held and firmly bound unto Fred-
 erick W. Rowe, George Tunnicliffe, James Fred-
 erick Morton and James W. West, of said City of
 40 Trenton, in the sum of Five Thousand Eight

Amended Declaration

Hundred Dollars, lawful money of the United States of America, to be paid to the said Frederick W. Rowe, George Tunnicliffe, James Frederick Morton and James W. West or to their certain attorney, executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated the twenty-ninth day of July, nineteen hundred and eight. 10

THE CONDITION OF THIS OBLIGATION is such that whereas the said Frederick W. Rowe, James Frederick Morton, George Tunnicliffe and James W. West (together with George Noble) are joint makers of a certain promissory note for Twenty-nine hundred dollars, payable three months after date to the order of Foresters Benefit Society of Trenton, N. J., bearing date July 6. 1908, endorsed by F. W. Rowe, J. F. Morton and Foresters Benefit Society of Trenton, N. J., F. W. Rowe, President, and discounted by First National Bank of Trenton, New Jersey, for the benefit of said society. 20

Now, THEREFORE, if the Foresters Benefit Society shall well and truly pay or cause to be paid, the said promissory note at its maturity, or at the maturity of any renewal or renewals or part renewal or renewals thereof up to, but not beyond July sixth, nineteen hundred and nine, and if the above bounden George Noble, Harry A. Hannum, George H. Knapp and William Woodhouse, Jr., their heirs, executors or administrators, or any of them, shall from time to time, and at all times hereafter, save, defend and keep 30 40

Amended Declaration

harmless and indemnify the said Frederick W. Rowé, George Tunnicliffe, James Frederick Morton and James W. West, their and each of their heirs, executors, administrators and assigns, and their and each of their goods and chattels, lands and tenements, of any from the said promissory note, and any and all renewals or part renewals thereof as aforesaid, and of and from all actions, costs and damages, for or by reason thereof, and shall pay or cause to be paid unto them or to their certain attorney, executors, administrators or assigns, such sum or sums as they, or any of them, may be obliged to pay on account of said promissory note or any renewal or renewals thereof, without any fraud or other delay, then this obligation shall be void, otherwise shall remain in full force and virtue.

GEORGE NOBLE, (L. S.)
 HARRY A. HANNUM, (L. S.)
 GEORGE H. KNAPP, (L. S.)
 WM. WOODHOUSE, JR. (L. S.)

Signed, sealed and delivered
 in the presence of,
 B. B. Hutchinson.

Objectors': Virginia Kent White—Re-cross

**Amended Plea and Notice of Special
Matter**

*(Filed September 4, 1909; by consent stands as
Plea to Amended Declaration.)*

MERCER COUNTY CIRCUIT COURT

10

FREDERICK W. ROWE, GEORGE
TUNNICLIFFE, JAMES FRED-
ERICK MORTON and JAMES W.
WEST,

Plaintiffs,

vs.

GEORGE NOBLE, HARRY A. HAN-
NUM, GEORGE H. KNAPP and
WILLIAM WOODHOUSE, JR.,
Defendants.

20

And the said Harry A. Hannum, George H. Knapp and William Woodhouse, Jr., three of the defendants above named in this suit, by John A. Hartpence, their attorney, come and defend the wrong and injury when, etc., and say that the supposed writing obligatory is not their deed; and of this they put themselves upon the country.

30

JOHN A. HARTPENCE,
Attorney of Defendants,
Harry A. Hannum, George H. Knapp
and William Woodhouse, Jr.

*To Barton B. Hutchinson, Esq., Attorney of
Plaintiffs:*

TAKE NOTICE, that Harry A. Hannum, George H. Knapp and William Woodhouse, Jr., three of

40

Amended Plea and Notice of Special Matter

the defendants above named, on the trial of the cause, will give in evidence and insist that the above named plaintiffs cannot maintain their aforesaid action against them, for the reason that at and before the ensembling and delivery of the alleged writing obligatory in the plaintiffs' declaration set forth, the said plaintiffs personally and by their agents falsely, fraudulently, wilfully, maliciously, recklessly and knowingly, and with the intent that they, the said defendants, should act thereon, represented to said defendants that the "Foresters' Benefit Society of Trenton, N. J.," was duly incorporated under the laws of the State of New Jersey with full power by law to assess, collect and pay death, disability, accident and sick benefits; to make loans to its members and to assist in the purchase or building of homes or properties; to issue policies of insurance upon the endowment plan and to advance or loan upon said policies the moneys of the Society to the amount of the cash or loan value of said policies; to accept upon deposit moneys and to therewith conduct and maintain a savings fund; that the powers mentioned above and set forth and the right of the Society to exercise the same had been sustained and approved by the banking and insurance authorities of the State of New Jersey after a contest against the exercise of said powers, and that the Society had won over the State Authorities a decisive victory in this respect, and that the Society had been a great "money maker," and would be for the defendants a great "money maker," and that the said defendants relying upon the said false, fraudulent, wilful and reckless statements

Amended Plea and Notice of Special Matter

of the said plaintiffs and their agents as aforesaid, were thereby induced to execute and deliver the writing obligatory referred to in the plaintiffs' declaration: but that as a matter of fact, the said plaintiffs had on the contrary been specifically advised and informed by the commissioner of banking and insurance of the State of New Jersey, that the said "Foresters' Benefit Society of Trenton, N. J.," was without power to assess, collect and pay death, disability, accident and sick benefits, and to make loans to its members and to assist in the purchase or building of homes or properties; to issue policies of insurance upon the endowment plan, and to advance or loan upon the said policies the moneys of the Society to the amount of the cash or loan value of said policies; or to accept upon deposit moneys and therewith to conduct and maintain a savings fund, and that its powers were limited to those of a non-pecuniary profit fraternal benefit organization and that on the twelfth day of November, nineteen hundred and eight, the said commissioner of banking and insurance of the State of New Jersey, instituted a suit in the Court of Chancery of said State to wind up the affairs of said "Foresters' Benefit Society of Trenton, N. J.," and to work the forfeiture of its corporate franchises, powers and privileges, in which suit a final decree was entered against the defendant therein and a receiver appointed, said receiver being still in possession and control of the property, assets and franchises of said society.

And that the said defendants above named will further give in evidence and insist that the above named plaintiffs cannot maintain their aforesaid

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Amended Plea and Notice of Special Matter

action, for the reason that at and before the en-
sealing and delivery of the writing obligatory in
the above declaration mentioned, the said plain-
tiffs personally and by their agents, falsely fraud-
ulently, willfully, maliciously, recklessly and
10 knowingly represented to the said defendants that
they, the said plaintiffs were the directors of the
said "Forester's Benefit Society of Trenton, N.
J.," and as such, were vested with the full title
and control of the property and assets, franchises
and privileges of said Society, and that they had
the power to surrender the management of said
Society, as well as its property, to these de-
fendants; that by virtue of being directors of said
Society, they were entitled to the pecuniary pro-
fits thereof and could assign and transfer the
20 same to these defendants by installing them as di-
rectors of said Society in their place and stead,
and that if the defendants would accept the offices
of directors in said Society and execute and de-
liver the said writing obligatory in said declara-
tion mentioned, to them that they, the said plain-
tiffs, would install these defendants as directors
of said Society and vest in them the full control
and management thereof; reserving for the plain-
tiffs out of the property and assets of the said
30 Society, the charter and corporate rights, privi-
leges and franchises of a Society known as "The
McKinley Mutual Beneficial Society," which had
been acquired by the "Foresters' Benefit Society
of Trenton, N. J.," and that pursuant to said rep-
resentations and in furtherance thereof, and of
the design to defraud these defendants, they, the
said plaintiffs, personally and by their agents,
40 pretended to install these defendants as directors

Amended Plea and Notice of Special Matter

of said "Foresters' Benefit Society of Trenton N. J.," but these defendants say that as a matter of fact, the said plaintiffs were not vested with full title and control of the property and assets, franchises and privileges of said Society, and that they had not the power to surrender the management, control and title of said Society to these defendants, and that as such directors, they were not entitled to the pecuniary profits thereof and could not assign and transfer the same to these defendants, and that upon these defendants executing and delivering the said supposed writing obligatory in said declaration mentioned, the said plaintiffs failed to install them as directors of said Society and give them full control and management thereof or title thereto. And the said defendants relying upon the said false, fraudulent, willful, malicious and reckless statements of the said plaintiffs and their agents as aforesaid were thereby induced to execute and deliver the writing obligatory referred to in the plaintiff's declaration. 10 20

And that the above named defendants on the trial of this cause will further give in evidence and insist that the action of the plaintiffs cannot be maintained, for the reason that there has been no breach of the condition of the said supposed writing obligatory in the plaintiff's declaration mentioned in that the promissory note mentioned in said plaintiff's declaration and as set forth in said writing obligatory did not mature and become due and payable on the sixth day of October, nineteen hundred and eight, nor was it renewed by said plaintiff for a period of three months from and after said last mentioned date, for the sum of Twenty-nine hundred dollars; nor 30 40

Amended Plea and Notice of Special Matter

was said renewal note delivered to and accepted by the "Foresters' Benefit Society of Trenton, N. J.;" nor was it discounted by the said First National Bank of Trenton, New Jersey, for the use and benefit of the said "Foresters' Benefit Society of Trenton, N. J.;" nor did said promissory note, as aforesaid, mature and become due and payable on the sixth day of January, nineteen hundred and nine, without further renewal; nor did the said plaintiffs, on the day and year last aforesaid, nor at any other day or time prior to the commencement of this action, pay nor were they compelled or obliged to pay, nor have they paid to the said First National Bank of Trenton, New Jersey, the said sum of Twenty-nine Hundred Dollars in said promissory note mentioned, in manner and form as set forth in said alleged writing obligatory and in the said plaintiff's declaration.

And that the above named defendants, on the trial of this cause, will further give in evidence and insist that the action of the plaintiffs should not be maintained against them for the reason that the consideration of the alleged bond or writing obligatory in the plaintiff's declaration mentioned was illegal, in that the said consideration for the execution of the said bond by the defendants, Harry A. Hannum, George H. Knapp and William Woodhouse, Jr., purported to be the control of the said "Foresters' Benefit Society of Trenton, N. J.," entitling the said defendants to the pecuniary profits and emoluments thereof as if they were stockholders, whereas the said "Foresters' Benefit Society of Trenton, N. J.," was a mutual society or association and the pecuniary

Judgment

benefits, if any, would accrue to the members thereof and not to the said defendants, Harry A. Hannum, George H. Knapp and William Woodhouse, Jr.

JOHN A. HARTPENCE,
Attorney for Defendants, 10
Harry A. Hannum, George H. Knapp,
and William Woodhouse, Jr.

Judgment

(Entered February 20, 1917)

MERCER COUNTY CIRCUIT COURT 20

EMILY C. ROWE, Executrix, etc.,
of Frederick W. Rowe, de-
ceased, GEORGE TUNNICLIFFE,
JAMES FREDERICK MORTON,
and JAMES W. WEST,
Plaintiffs,

vs.

GEORGE NOBLE, HARRY A. HAN-
NUM, GEORGE H. KNAPP and
WILLIAM WOODHOUSE, JR.,
Defendants.

Action at law.

30

This action was tried before Judge Frank T. Lloyd, with a jury, at the Mercer Circuit Court, on February 20, 1917.

The cause having been heard and submitted to the jury they returned their verdict as follows: 40

Testimony

We find a verdict for the plaintiffs against the defendants for the sum of four thousand four hundred and two dollars and twenty-one cents (\$4402.21).

10 Whereupon it is adjudged that the plaintiffs recover of the defendants the sum of four thousand four hundred and two dollars and twenty-one cents (\$4402.21), and their costs, which are taxed at the sum of fifty-six dollars and fifty-eight cents (\$56.58), making in the whole the sum of Four thousand four hundred and fifty-eight dollars and seventy-nine cents.

Judgment entered February 20, 1917, on motion of

BARTON B. HUTCHINSON,
Attorney of Plaintiffs.

20

Testimony

MERCER CIRCUIT COURT

#1 January Term, 1917.

30	EMILY C. ROWE, Executrix,	} Action at	
	<i>et al.</i> , Plaintiffs,		} Law.
	vs.		
	GEORGE NOBLE, HARRY A. HAN-	} Action at	
	NUM, GEORGE H. KNAPP and		} Law.
	WILLIAM WOODHOUSE, JR.,		
	Defendants.		

Transcript of shorthand notes of testimony, etc., taken in the above stated matter before Hon. Frank T. Lloyd, Circuit Court Judge, and a Jury, at the Courthouse, Trenton, New Jersey, on Thursday, February 15th, 1917.

Barton B. Hutchinson—Direct

Appearances:

Barton B. Hutchinson, Esq., and W. Holt Apgar, Esq., for the plaintiffs.

Stephen C. Cook, Esq., and John A. Hartpence, Esq., for the Defendants.

Jury called and sworn.

10

Adjourned to Monday, February 19, 1917, at 10:20 o'clock in the forenoon.

Trenton, N. J., Monday, February 19, 1917.

Case resumed.

20

Appearances as before noted.

Counsel opened.

BARTON B. HUTCHINSON, sworn for the plaintiffs:

Direct-examination by Mr. Apgar:

Q. What is your occupation, Senator? A. Lawyer. 30

Q. And you were such in 1908, were you? A. Yes.

Q. And at that time did you represent the plaintiffs, Frederick W. Rowe, George Tunnicliff, James Frederick Morton and James W. West, who were connected with the Foresters Benefit Society? A. I represented them and the Foresters Benefit Society proper.

40

Barton B. Hutchinson—Direct

Q. As a result of certain negotiations yourself did you prepare the agreement which I ask to be marked for identification P-1? A. I did.

Q. And did you witness the signatures of the individuals thereto? A. Yes.

10 Q. And these are the signatures of the individuals whose names are— A. They signed before me.

Mr. Apgar: Do you want to see it, Mr. Harpence?

Q. I show you another paper marked Exhibit P-2 for identification, designated as the bond in this case and ask you whether you were the witness to the signatures there? A. I was the witness, yes.

20 Q. And the four names signed there were signed in your presence?

Mr. Apgar: We want to offer both of them. Have you any objections?

Papers heretofore marked P-1 for identification and P-2 for identification are marked respectively Exhibit P-1 and Exhibit P-2.

30 Q. I show you two notes, Senator, one dated July 6th, 1908, for \$3,000, payable three months after date, marked for identification P-3 and ask you whether you know the signatures thereto? A. I did not see it signed; but, comparing them, they are the same signatures as on the bond and agreement.

Q. Both of which you witnessed?

The Court: Is not this admitted?

Mr. Apgar: I asked Mr. Hartpence if he would admit it, and he said I would have to prove everything.

40 The Court: Does the answer deny the note?

Barton B. Hutchinson—Direct

Mr. Apgar: The answer is in the old form, prior to 1912, and is a plea of general issue.

Q. I show you another note dated October 6th, 1908, three months after date, for \$2,900, and ask you whether the signatures of Noble, Rowe, Morton, Tunncliffe and West as thereon appear are their signatures. A. I can only tell by a comparison. 10

Mr. Hartpence: I object, unless the Senator qualifies as a handwriting expert.

A. I did not see the note signed.

Mr. Apgar: I can bring the men here and put them all on, if necessary.

Mr. Hartpence: I do not want to be captious, but I do want the documents proved in a formal manner. 20

Mr. Apgar: Upon the Senator's statement that from a comparison of the agreement and bond, he believes them to be the signatures, I offer them in evidence.

Mr. Hartpence: I object on the ground that the parties whose names are there are in Court.

The Court: The objection is not sustained.

Mr. Hartpence: The further objection is the witness is not qualified. 30

The Court: No, no. You said the objection was that the men who made the notes were here in Court, and the objection stands on the record as that alone, and upon that the notes have been admitted.

Mr. Hartpence: I certainly made the other objection. 40

Barton B. Hutchinson—Cross

The Court: I know you did, but you practically withdrew it when the Court asked for a specific reason. Is there any question that they are not the signatures?

Mr. Hartpence: I don't know.

10 The Court: You can submit it to them if they are here in Court.

Mr. Hartpence: They are here in Court. They are not my people. They are the plaintiff's.

Mr. Apgar: It is the notes the bond is given to indemnify.

Mr. Hartpence: They are signed by the plaintiff. That is the trouble.

20 Mr. Apgar: We can prove the signatures alright, but I thought I would save a whole lot of time by not swearing the witnesses.

The Court: I hoped you would. But I do not think there is any legal objection to their being admitted.

Mr. Hartpence: We have never seen them up to the present moment.

The Court: You better call them, then.

30 Mr. Apgar: Alright. I will do that. I offer Exhibits 1 and 2 for identification. That is the agreement and the bond.

CROSS-EXAMINATION by Mr. Hartpence:

Q. At the time this agreement marked P-1 was executed, where was it executed, do you recall?

40 A. I do not exactly recall, but my impression is it was at the office of the Forester's Benefit Society in the Elmore Building, because it must have been if all were present, and I don't think they were all at my office at any time. However, they might have come in relays.

Barton B. Hutchinson—Cross

Q. You are not certain whether the gentlemen whose names appeared to this agreement P-1 were present at that time or not? A. No, I am not. It has been nine years, and it is rather difficult to recall the exact circumstances.

Q. where is the Elmore Building? A. Next door to what is now the Broad Street Bank, on East State Street, near the corner of Montgomery. 10

Q. And the office of the Forester's Benefit Society has been in the Elmore Building, had it, just about that time? A. Yes.

Q. And was the bond itself, Exhibit P-2, executed at the same time that this agreement was? A. Well, I do not know whether the dates are the same or not. 20

Q. Well, the dates are the same, the 29th day of July, 1908, as you will see if you wish to look at them. A. I think that they were all part of the same transaction, because the agreement covers matters not contained in the bond, of course; that is, like the transfer of the association or the control of the association. I think that agreement was executed in addition to the bond because of the fact that there was an agreement to transfer the control of the organization. 20

Q. On both of these exhibits, P-1 and P-2, you saw the persons whose names are signed to those instruments, actually signed them? A. I haven't any doubt about it all because I would not sign my name as a witness. As to visualizing now, those men before me at that time, I could not do that at all. 30

Q. On Exhibit P-2, the bond, appears the name of George Noble. A. Yes. 40

George Tunnicliffe—Direct

Q. Did you know Mr. Noble? A. Oh, yes.

Q. How long had you known him before you signed this? A. I think two or three months. It might have been less than that.

10 Q. And you had come in contact with him in your professional capacity as counsel for the For-
ester's Benefit Society? A. Yes.

Q. He was connected with that society? A. Yes.

GEORGE TUNNICLIFFE, sworn for the plaintiffs:

20 Direct-examination by Mr. Apgar:

Q. Mr. Tunnicliffe, you are one of the plain-
tiffs in this action, are you not? A. Yes, sir.

Q. I show you Exhibit P-3 for identification.
Do you know the written signatures to that note?
A. I do.

Q. And were they the five signatures made
there in your presence? A. Yes, sir.

Q. Your own name is there? A. Yes, sir.

30 Q. And whose are the other signatures? A.
George Noble, Frederick W. Rowe, J. F. Morton,
J. W. West.

Q. And the endorsement on the back? "For-
ester's Benefit Society of Trenton, N. J. F. W.
Rowe, Treasurer," do you know that signature?
A. Yes, that is Mr. Rowe's signature.

Q. I show you Exhibit P-4, a note, and ask you
whether you know the signatures to that note? A.
Yes, sir.

40 Q. And whose are they? A. George Noble,
F. W. Rowe, J. F. Morton, J. W. West and myself.

George Tunnicliffe—Cross

Q. The signatures were made in your presence?

A. Yes, sir.

Mr. Apgar: I offer those two notes in evidence, and notice of protest that was attached to the last note, Exhibit P-4.

Mr. Hartpence: May I see them, Mr. Apgar? 10

Mr. Apgar: You certainly may. (Hands papers to Mr. Hartpence.) Attention is called by counsel for the defendants that in the amended declaration inadvertently the date of the bond is mentioned as July 29th, 1909, when it should have been July 29th, 1908, And I call attention to that.

Mr. Hartpence: I consent to the amendment. 20

Q. I show you another note dated April 7th, 1909, marked P-5 for identification, and ask you whose signatures are to that note? A. F. W. Rowe, George Tunnicliffe, James F. Morton and James W. West.

Q. And you saw those signatures made? A. Yes, sir.

Q. They were all made at the same time? A. Yes.

The Court: What is the amount of that? 30

Mr. Apgar: Twenty-nine hundred dollars.

CROSS-EXAMINATION by Mr. Hartpence:

Q. This Exhibit P-3 for identification, Mr. Tunnicliffe, whose signature is that first one? A. F. W. Rowe.

Q. Do you say you were present at the time he actually signed that note? A. Yes, sir. 40

George Tunncliffe—Cross

- Q. Who is the next one? A. James F. Morton.
- Q. Were you present when he signed that? A. Yes.
- Q. And the next is yours, the third signature?
- 10 A. Yes.
- Q. And the fourth is whose? A. James W. West.
- Q. Were you present when he put his signature there? A. Yes, sir.
- Q. And the next one? A. George Noble.
- Q. Did you see that signed? A. Yes.
- Q. And this "Forester's Benefit Society of Trenton, N. J., F. W. Rowe, Treasurer," did you see Mr. Rowe sign that? A. Yes, sir.
- 20 Q. And did you also see F. W. Rowe and J. F. Morton sign their names there as endorsers? A. Yes, sir.
- Q. Where were these people when they signed the note and endorsed it? A. In the Elmore Building.
- Q. And that was the office, was it not, of the Forester's Benefit Society? A. Yes, sir.
- Q. How long had the office been there prior to the signing of that note? A. Oh, I don't just re-
- 30 member.
- Q. Three months? A. I could not say just exactly.
- Q. You could not say jsut exactly as to that?
- A. No.
- Q. Had it always been there from the time of the organization of the Society? A. Yes, sir.
- Q. Wasn't it in the Broad Street Bank first?
- 40 A. No, sir.
- Q. Not to your knowledge? A. No, sir.

George Tunnicliffe—Cross

Q. Now I show you Exhibit P-4 for identification dated October 6th, 1908, and ask you if you were present and saw these gentlemen sign their names: F. W. Rowe, J. F. Morton, George Tunnicliffe, George Noble and J. F. West? A. Yes, sir.

Q. You saw them sign their names to that renewal note also? A. Yes, sir. 10

Q. Where was that done? A. In the same place.

Q. In the Elmore Building? A. Yes, sir; if I remember right. Yes, sir; I think it was.

Q. Now I call your attention to the endorsement on that note, "Forester's Benefit Society, Harry A. Hannum, Treasurer." Did you see Mr. Hannum sign that? A. No; I don't remember seeing him sign that. 20

Q. Are you familiar with Mr. Hannum's signature? A. No.

Q. When did Mr. Rowe cease to be the treasurer of the society, do you know? A. When it went out of existence, I suppose.

Q. When was that? A. When the transfer was made to the defendants in this case.

Mr. Hartpence: That is all.

Mr. Apgar: There are one or two matters I forgot. 30

Paper heretofore marked P-3 for identification is marked Exhibit P-3. Paper heretofore marked P-4 of identification is marked P-4. Paper referred to as notice of protest is marked P-5.

By Mr. Apgar: Q. Mr. Tunnicliffe, I show you P-5 for identification and ask you for what purpose was that note given by you to the First National Bank, you and the three men whose names 40

George Tunnicliffe—Cross

are signed thereto? A. I suppose to release the other one.

Q. As a fact, was that note given to take up the notes that were in favor of the Forester's Benefit Society? A. Yes; that was my understanding of it.

10 Q. Did you and the other three gentlemen then become liable personally, outside of the Forester's Benefit Society, to the First National Bank for the payment?

Mr. Hartpence: I object to that as calling for a conclusion of law.

Question withdrawn.

Q. Did the First National Bank accept this note I show you P-5 for identification, in place of the notes that the Forester's Benefit Society had been an endorser on? A. That was my understanding, yes.

Q. Since the note was given by you and your three colleagues to the First National Bank, have Mr. Noble, Mr. Hannum, Mr. Knapp and Mr. Woodhouse, Jr., paid to you or any of your colleagues, that you know, any money on account of this bond to save you from the payment on account of that note? A. No, not to my knowledge.

30 Q. Not to you personally? A. No, sir.

The Court: Are the notes paid?

Q. The note in the First National Bank, it is not paid, is it? A. No, sir.

The Court: Is any part of it paid?

The Witness: The interest has been paid up to date and \$100, that is all.

The Court: Then it is a liability that is being sued for?

40 Mr. Apgar: Yes. I was going to prove by the bank that they hold that note.

George Tunnicliffe—Re-cross

Paper heretofore marked P-5 or identification is marked Exhibit P-6.

Q. I show you another note marked P-7 for identification dated December 6th, 1910, payable to the First National Bank for \$2,900 and ask whose signatures are to that note? A. F. W. Rowe, J. F. Morton, James W. West and George Tunnicliffe. 10

Q. You saw those signatures made there? A. I don't know now about that. I recognize all the writing. I do not know whether I saw that or not.

Q. Do you know whether that is the note that is now in the bank and held by the First National Bank? A. Yes, sir.

Mr. Apgar: I offer it in evidence.

Marked Exhibit P-7. 20

RE-CROSS-EXAMINATION by Mr. Hartpence:

Q. The note Exhibit P-6, dated April 7th, 1909, does not contain the name of George Noble. Do you know why that was omitted from that note?

A. I presume because George Noble had disappeared.

Q. Now the Exhibit P-7, the note dated December 6th, 1910, does not bear the signature of George Noble. Do you know why it is his signature is not on that note? A. I could not say. 30

Q. Well, would it be for the same reason that it was not on the preceding one of April 7, 1909?

A. I presume so.

Q. When you say you presume it was because he had disappeared, what do you mean by that?

A. Well, because he left town. I don't know his whereabouts. 40

Charles S. Aitkin—Direct

Q. Well, did you and your co-signers of those notes make any effort to find him at the time those notes were signed? A. I don't remember that we did.

10 Q. You just knew he had disappeared and so you four signed the notes. Is that right? A. I suppose so.

Q. And the bank accepted them without Mr. Noble's signature? A. It must have, yes.

The Court: Is the action on behalf of five of the makers?

Mr. Apgar: Four.

The Court: Four. Noble is not joined?

20 Mr. Apgar: Noble is not joined. He is not on the note which the bank accepted in lieu of the original obligation. So that, insofar as Noble is concerned, he has suffered no loss and has no claim on the bond as we view it, and the four who have paid all the interest from the time 1909, to the present time, are the ones to be indemnified, and not Mr. Noble.

30 CHARLES S. ATKIN, sworn for the plaintiffs:

Direct-examination by Apgar:

Q. Mr. Atkin, you are an attache of the Secretary of State's office? A. I am.

Q. And did you come from there this morning? A. I did.

40 Q. I show you a paper which I have marked P-8 for identification—

Edward R. Taylor—Direct

The Court: Is there objection to that, Mr. Hartpence?

Mr. Hartpence: I have not seen it yet.

The Court: I have no doubt there will be no objection to that.

By Mr. Hartpence: Q. This was produced from the files of the Secretary of State? A. It was. 10

Mr. Hartpence: I have no objection to that.

The Court: Haven't you got copies?

Mr. Apgar: I thought we had, but I cannot find my copy, and Mr. Hartpence said he had one, but he could not find it.

Mr. Hartpence: I think there is one annexed to the papers from the department of Banking and Insurance.

Mr. Apgar: If we have a copy I want to let Mr. Atkin take that back. 20

Mr. Hartpence: There is a certified copy.

The Court: Let that be offered instead of the original and the original can go back.

Paper referred to is marked Exhibit P-1.

EDWARD R. TAYLOR, sworn for the plaintiffs: 30

Direct-examination by Mr. Apgar:

Q. Mr. Taylor, you are the note teller of the First National Bank of Trenton? A. Yes, sir.

Q. I show you P-7 and ask you whether you produced that note this morning? A. I did.

Q. And that is now held by the First National Bank of Trenton, New Jersey? A. Yes, sir.

Q. What has been paid upon that in the line of 40

George H. Knapp—Direct

interest? Can you tell from the reverse side? A. Why, the interest is paid to January 1st, this year.

Q. It has been paid from the date? A. Yes, sir.

The Court: What is the date?

The Witness: December 6th, 1910.

10 Q. Do you know who paid this interest, whether Mrs. Rowe, for the estate of F. W. Rowe? A. Paid by the estate of F. W. Rowe.

Mr. Apgar: I will be responsible for this, Mr. Taylor, I want to keep it here in Court.

CROSS-EXAMINATION by Mr. Hartpence:

Q. What is your position, Mr. Taylor? A. Note teller.

20 Q. In the First National Bank of Trenton? A. Yes, sir.

Q. Do you have charge of the receipt of moneys when notes are paid? A. Yes, sir.

Q. And if this note which has been shown to you had been paid, would the money have gone to you for its payment? A. Yes, sir.

Q. And it has not been paid, you say? A. No, sir.

30 By Mr. Apgar: Q. Has there been a claim made to the estate of F. W. Rowe, deceased? Do you know? A. Yes, sir.

Mr. Apgar: That is all. We rest.

The Court: Proceed, Mr. Hartpence.

GEORGE H. KNAPP, sworn for the defendants:

Direct-examination by Mr. Hartpence:

40 Q. Mr. Knapp, where do you reside? A. Eight hundred and thirty-seven West State Street.

George H. Knapp—Direct

Q. Trenton, N. J. A. Yes, sir.

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

Q. Do you know the plaintiffs in this case, George Tunncliffe, James Frederick Morton, James W. West and did you know Mr. Frederick W. Rowe in his lifetime? A. I did. 10

Q. I show you paper marked Exhibit P-1 an agreement of July 29, 1908, and ask you whether you remember ever having seen that before? A. Yes.

Q. I show you also Exhibit P-2, a bond, dated July 29, 1908, and ask you if you ever saw that before? A. Yes, sir.

Q. Now, your signature appears on each of them doesn't it? A. It does. 20

Q. Referring to Exhibit P-1, the agreement, were all these persons whose names appear at the end of that agreement present at the time it was executed? A. Yes.

Q. Do you know? A. Yes; they were.

Q. They were altogether, were they? A. Altogether.

Q. And signed it at that time? A. Yes, sir.

Q. Where was that? A. In the Elmore Building, on the second floor.

Q. In whose office was it? A. In the Forester's Benefit Office. 30

Q. Do you know whether the four persons whose names appear on the bond, Exhibit P-2, were all present at the time their signatures respectively were affixed? A. Yes, they were.

Q. And where was that paper signed? A. Why, in the same building.

Q. The same office? A. The same office. 40

George H. Knapp—Direct

Q. Do you know whether it was signed before or after the agreement P-1? A. I don't recall that, but it was signed about the same time.

Q. On Exhibit P-1 I observe the name of William J. Purdue. Did you know Mr. Purdue? A. Yes.

10 Q. Who was he? A. He was associated with them in some way, as a trustee, I believe.

Q. With whom? A. With the Forester's Benefit.

Q. And did you know George V. Meakin, whose name is also on P-1? A. Yes, sir.

Q. Who was he, do you know? A. He was an agent or something of that sort, for the Forester's Benefit.

20 Q. Did you know George Noble, whose name also appears on each of these documents? A. Yes.

Q. Who was George Noble? A. He was the fellow that seemed to originate the thing.

Q. For how long had you known him before these papers were signed? A. Not long; for three or four weeks, possibly.

Q. How did you first become acquainted with him? A. He came into our office in the Broad Street Bank Building—and said he had a proposition—

30 By Mr. Apgar: Q. Who was that? A. Mr. Noble. He said he had a proposition to offer us. I don't know who sent him there, but he related it to me and it sounded very very good, and I told him I would like to investigate it.

Q. Who was present when Mr. Noble came? A. Mr. Hannum.

Q. Who else? A. At that time, no one.

Mr. Apgar: I object to any conversation

George H. Knapp—Direct

between Mr. Noble and Mr. Knapp in the absence of—

The Witness: It is quite a way back.

By Mr. Hartpence: Q. As a result of this visit of Mr. Noble's and what he said to you, what did you do? Did you see anyone else about the matter he spoke about? A. Yes, Mr. Tunncliffe. 10

Q. Mr. George Tunncliffe, the gentleman who just preceded you on the witness stand a moment or so ago? A. The former witness, yes, sir.

Q. What did you say to Mr. Tunncliffe?

Mr. Apgar: I do not know just how far this may be going, but here is a suit by an executrix now. Mr. Rowe has died since this and here is the widow—

The Court: How does that affect its competency? He is not now going into transactions with the deceased; he is giving something entirely outside. 20

After argument.

Mr. Apgar: We will let it go for the present.

Q. What did you say to Mr. Tunncliffe and what did he say to you? A. I asked Mr. Tunncliffe why it was that they were getting out of it and he told me it was on account of friction with this man Noble; that they could not get along with him. He said it was one of the best things we had ever seen, and one of the biggest money makers he had ever known. 30

Q. To what did he refer then? A. The Forester's Benefit.

Q. The Forester's Benefit Society? A. Yes, sir.

Q. And was it concerning that society that Mr. 40

George H. Knapp—Direct

Noble had spoken to you on the occasion of the visit you refer to? A. Yes, sir.

Q. Did you say anything to Mr. Tunnicliffe at that time about Noble's visit to you? A. I did. It was I that asked Mr. Noble to get Mr. Tunnicliffe
10 to come to see me.

Q. What was said by Mr. Tunnicliffe to you about Mr. Noble's visit to you at that time? A. He said they couldn't get along with him, and that was their reason for getting away from him.

Q. What else did Mr. Tunnicliffe say to you about getting out of this society? A. He said he regretted very much that he was about to get out, that they were in the position they were in.

Q. What did he say to you about the society? A.
20 He said it was a money maker.

Q. What did he want you to do, anything? A. He wanted me to take hold of it.

Q. In what way? A. To get someone in it. I thought I could.

Q. What did Mr. Tunnicliffe say about his staying in it? A. He said that if we could get rid of Noble he would like to get back in it again.

Q. Did he offer to sell you the society, or what did he do? A. He offered to sell us the society—
30 this man Noble did.

Q. Did you tell him Noble had been to see you about it? A. I did.

Q. Did he say anything to you about having sent Noble to see you? A. No, sir.

Mr. Apgar: Why don't you suggest the answers?

Mr. Hartpence: That is what I am doing now. Repeat the question, please.

40 Mr. Apgar: I object. It is a leading

George H. Knapp—Direct

question and the witness has answered it.

The Court: Read the question.

(Last question and answer read.)

Q. What was said to you by Mr. Tunncliffe, if anything, about Noble acting for the society or for Tunncliffe in any way? A. He said that they were about to sever their connections and that I think they had advised Mr. Noble to— 10

Mr. Apgar: I object to his saying what he thinks.

Mr. Hartpence: I will consent that part be stricken out.

Q. Answer the question, please, if you know, Mr. Knapp. If you don't, of course you cannot.

The Court: Is there anything further except that he said they were about to sever their connections? 20

Witness: It is a long way back.

The Court: If you don't remember, say so.

A. I don't recall, Mr. Hartpence.

Q. Was anything else said between you and Mr. Tunncliffe at that time regarding the society? A. I recall very vividly by his remarks that he was very sorry that they had to get out; that the thing was so good it was simply on account of Noble that they were getting out. 30

Q. Did he want you to come in with him in any way? A. Yes.

Q. What was his proposition that he made? What did he want you to do? A. Mr. Noble made the proposition.

Q. What was the proposition?

Mr. Apgar: I object. There is an agreement here and it is presumed that all things that took place prior to the signing of that 40

George H. Knapp—Direct

agreement are embodied in that agreement, and you cannot offer parole testimony now to show something different.

10 Mr. Hartpence: We are not offering parole testimony or varying the contents of the paper. We have, I think, a right to show matters which induced the making of this agreement, especially when we plead that those matters were fraudulent and misrepresentation.

Mr. Apgar: But as to Mr. Noble?

Mr. Hartpence: That is a different proposition.

The Court: Do you press the question as to Noble's communication?

20 Mr. Hartpence: Yes, sir.

Mr. Apgar: I object to it. In the first place—

By the Court: Q. Were you present when the conversation took place between Noble—the conversation which took place between you and Noble? A. Between myself and Noble.

Mr. Hartpence: And he said Noble told him to go and see Tunnicliffe.

Witness Tunnicliffe came to see me.

30 The Court: Is this directed to the conversation between Tunnicliffe and the witness?

Mr. Hartpence: I asked the witness what that conversation was, and the witness said the proposition came from Noble on a previous visit, and he went to see Tunnicliffe about it. It seems to me that connects it up.

40 The Court: Yes, but you are going into a conversation between a deceased party—

George H. Knapp—Direct

Mr. Apgar: Noble is one of the parties to the bond, and one of the other side of the case, and anything Mr. Noble said to Mr. Knapp cannot be binding upon us.

The Court: Oh, it is Rowe who is deceased.

Mr. Apgar: Yes, sir.

10

The Court: I think that is probably so, Mr. Hartpence. You will have to show there was authority to deal for the plaintiffs and that the representations were in their behalf before it is admissible, of course.

By Mr. Hartpence: Q. After you talked with Mr. Tunncliffe on this occasion, did you see Mr. Rowe and Mr. West and Mr. Morton at any time after that? A. Yes; I saw Mr. Tunncliffe several times after.

20

Q. Did you see Mr. Noble at any time after that? A. Yes.

Q. Did you talk to him about this society after that? A. Yes. He almost camped in our place.

Q. What do you mean by "your place"? A. In our office.

Q. Whose office was it? A. Mr. Hannum and myself.

Q. When did you next see Mr. Tunncliffe after this occasion you just referred to? I don't know whether it was a day or two days after. It was very soon after.

30

Q. Had Mr. Noble been to see you in the intervening time? A. Yes.

Q. Had he again talked to you about the society? A. Yes.

Q. Did he say anything to you about any of

40

George H. Knapp—Direct

these gentlemen, Mr. Tunnicliffe, Mr. Morton, Mr. West or Mr. Rowe in any of his conversations?

A. He said—

Mr. Apgar: Wait.

10 Q. Never mind what he said, did he say anything to you about those gentlemen at any time?

A. Yes, he did.

Q. When you saw Mr. Tunnicliffe on the several occasions when you say you saw him, did you discuss with him in any way Mr. Noble? A. I did.

Q. And did you discuss with him in any way what you and Mr. Noble had been talking about?

A. I did.

20 Q. Did he say anything to you at any of those times about Mr. Noble not having anything to do with it? A. Why, no.

Q. Did he dispute Mr. Noble's connections—

Mr. Apgar: I object.

The Court: Yes; that is very leading.

Q. On any of these occasions after this first talk with Mr. Tunnicliffe, when you talked to him, did he in any way talk to you about Mr. Noble having been to see you on this proposition? A. Yes.

30 Q. Now what did he say to you about Mr. Noble? A. He said they had authorized Mr. Noble to get someone else to take it over.

Q. And did you tell him Mr. Noble had been talking to you about it? A. I did.

Q. And then did you go on and talk with Mr. Tunnicliffe about the proposition he presented to you? A. Yes. I had several conversations with Mr. Tunnicliffe regarding it.

40 Q. Now, on the second occasion that you saw Mr. Tunnicliffe, what did he say to you, if anything, about the society that he wanted you to take

George H. Knapp—Direct

over? A. He spoke about the friction they had had—

The Court: You have told us that.

Q. What did he say about the society itself? A. He said it was a great money maker.

The Court: He said that two or three times. There is no use repeating it. 10

Q. Did he say anything to you about who it would be a money maker for? A. For the owners.

Q. Did he say to you at that time who the owners were? A. We understood—

Q. Did he tell you who the owners were? Never mind what you understood. A. That was the way I took it.

Q. Was anything said to you about who the owners were? A. We understood— about it? A. The only way—I figured it was that he came to me as one of the owners of the society to sell it. 20

Q. That is the way he came to you? A. That is the way he came to me.

Q. What did he say about it on any of these visits, down to the time or prior to the time of the agreement? A. He spoke about its possibilities, about what a chance there was to make money with it, if he hadn't done that, we would not have considered it. 30

Q. Did he tell you who was associated with him in the society? A. Yes.

Q. Who did he say was associated with him? A. Mr. Rowe, Mr. Morton, Mr. West, Mr. Meakin and Mr. Noble.

Q. When you speak of them in that general way do you mean the gentlemen whose names appear on these exhibits, P-1 and P-2? A. Yes. 40

George H. Knapp—Direct

Q. Did he tell you what sort of business the society had been doing? A. He said it was an insurance and a building and loan.

10 Q. When was the last time you saw Mr. Tunnicliffe prior to the signing of the Exhibits P-1 and P-2? A. I could not say. I saw him several times in between the first visit and the closing of it.

Q. When you say you saw him what did you see him about? A. Regarding it. I asked him as to the legality of it. I asked him about several things and he said—

Q. What did he say about the legality of it?

Mr. Appar: Who was this, Mr. Tunnicliffe?

Witness: Yes, sir.

20 A. He said it was all right and they had counsel to investigate it and it had been passed upon.

Q. Did he say whom it had been passed upon by? A. Mr. Hutchinson.

Q. Anybody else? A. No.

Q. Did he say how it had been passed upon, favorably or unfavorably? A. Favorably.

Q. Did you see him at any time in the presence of Mr. George Noble? A. I think I did; I could not swear to that; it is a long time.

30 Q. How about the time the Exhibits P-1 and P-2 were executed, the agreement and the bond? A. Then they were altogether.

Q. Was anything said to you prior to the signing of either one of those instruments by Mr. Noble with regard to the society itself at that occasion, when they were all present? A. Why, at the meeting, do you mean? When it was closed?

40 Q. When it was closed, yes, before the documents were signed. A. We had an argument there.

George H. Knapp—Direct

Q. My question is, was anything said to you at that time by Mr. Noble about the society? A. I cannot say.

Q. Was anything said to you by any of these West, about it? A. Yes.

Q. By whom was it said? A. Why, Mr. Rowe. I was standing with Mr. Woodhouse—we had a dispute about the balance that was in the bank. According to their statement it should have been nine hundred dollars and it dwindled down to seven, and then there were other bills that were to be paid, and I wanted to throw my hands up. I did not want to have another thing to do with it, and Mr. Rowe remarked to Mr. Woodhouse—

Mr. Apgar: I object to any conversation Mr. Rowe may have uttered, or that they had with Mr. Rowe. He is a deceased party.

Mr. Hartpence: Well, there are other parties to this suit, if your Honor please, beside the executors of Mr. Rowe.

The Court: Is this a joint or several obligation?

Mr. Apgar: I think it is joint and several.

The Court: So there is a right of action by individuals?

Mr. Hartpence: Yes.

Mr. Apgar: Jointly and severally.

The Court: It would not affect the testimony as to the others. It would affect it as to Rowe's estate.

(After argument).

Mr. Apgar: We can put our objection on the record this way: We object to any con-

George H. Knapp—Direct

versations between Mr. Knapp and Mr. Rowe on the ground of his estate being one party, the other parties being joined and all connected therewith, that no statement by him is admissible.

10 The Court: Then I am not to get the benefit of any research by counsel on either side?

(After discussion.)

The Court: Is there no other way of proving this except by this witness?

The Witness: Mr. Woodhouse.

Mr. Hartpence: The person to whom the remarks were made can testify also.

20 The Court: Well, he is another defendant.

Mr. Hartpence: Yes.

The Court: That is the same thing.

Mr. Hartpence: Yes. I have no other parties here now who can testify to it except the parties to the suit.

(After argument).

The Court: Gentlemen, suppose you proceed along other lines and see how far we can get.

30 Mr. Hartpence: May I withdraw this witness then and call another witness, for I would like to take the witness up at the same place.

The Court: Yes.

Thomas K. Johnston—Direct

THOMAS K. JOHNSTON, sworn for the defendants:

Direct-examination by Mr. Hartpence:

Q. Mr. Johnston, you are the Deputy Commissioner of Banking and Insurance of New Jersey? 10

A. Yes, sir.

Q. How long have you held that position? A. Since 1891.

Q. Do you know the plaintiffs in this suit, Mr. George Tunnicliffe, Mr. James W. West and Mr. James F. Morton? A. I do not.

Q. Did you know Mr. Frederick W. Rowe in his lifetime? A. No, sir.

Q. Did you know Mr. George Noble? A. No, sir.

Q. You do know Mr. Hannum and Mr. Woodhouse and Mr. Knapp do you not? A. I know Mr. Knapp, but I do not recall Mr. Hannum. 20

Q. Do you know Mr. Woodhouse? A. Yes, sir.

Q. You also know Senator Hutchinson, do you not? A. Yes, sir.

Q. Now, Mr. Johnston, did your department have anything to do with an investigation of the affairs of a society called The Forester's Benefit Society some years ago? A. Yes, sir.

Q. Do you know who directed that examination? A. I directed it. 30

Q. Do you recall how the situation was first brought to your attention? A. The first notice in regard to the association that was received at our department came in a letter addressed by someone in New York City, making an inquiry about its affairs.

Q. Have you that letter? A. Yes, sir.

The Court: Can we not get along a little 40

Thomas K. Johnston—Direct

faster, Mr. Hartpence? This is not competent, any of it.

10 Mr. Hartpence: If your Honor please, it is competent in this way, I think: I want to show the gentlemen who are now the plaintiffs in the suit at the time they were making their negotiations with the defendants, had knowledge of the infirmities of this society.

The Court: That may be true, but what third people write in the way of letters is not admissible.

Mr. Hartpence: I am not going to offer what is written in the letter.

20 The Court: The witness is referring to it, and it is not of any consequence here.

Mr. Hartpence: I want to fix the date by that letter?

Q. Have you that letter, Mr. Johnston? A. Yes, sir.

Q. Can you state when that letter was received by you, by referring to it and refreshing your memory? Will that enable you to state when that letter came in? A. April 22d, 1908.

30 Q. After you received that letter did you in any way get into communication with the society itself or any of the gentlemen conducting it? A. Yes, sir.

Q. When was that? A. April 25th, 1908.

Q. In what way did you get into communication with them? A. I wrote Mr. George Noble, as president of the Forester's Benefit Society, requesting him to furnish—

Mr. Apgar: Wait. Don't give us the contents of it.

Thomas K. Johnston—Direct

Q. You wrote Mr. Noble, the president of the Society? A. Yes.

Q. Did he in any way respond to your communication? A. Yes.

Q. In what way?

Mr. Apgar: That is practically asking 10
for the contents of the letter.

Q. Did he submit anything to you or come to see you personally, or did you have any conversation with him, or what? A. He sent a letter.

Q. Did he send you what you in any requested him to send you?

Mr. Apgar: I object. I do not know just where he is going or what it is for, unless—

The Court: Well, if it is a letter and he is dependent on what it shows, the letter 20
is the best proof.

Mr. Apgar: They say this is a liability they ought not to be held on, because the individuals or the obligees had misrepresented something—

The Court: The point here is now what was the condition of this society? That is what Mr. Johnston called for.

Mr. Apgar: Oh, if he is asking that—I did not understand Mr. Hartpence's question at all. I suppose that comes from the president of the company and refers to its condition. 30

Q. Will you produce the letter which you got from Mr. Noble? A. Yes, sir. (Produces papers).

Mr. Apgar: My further objection to that going in is; that unless it is connected with the plaintiffs in the action, to show that they had knowledge of the conditions which 40

Thomas K. Johnston—Direct

the president may have said existed, it cannot have any effect.

(After argument).

10 The Court: The evidence may not go to the extent that it becomes helpful, but I cannot deny the defendant an opportunity to substantiate its case.

Q. Is this the letter you received from Mr. Noble, Mr. Johnston? A. Yes, sir.

Mr. Hartpence: I will ask to have it marked for identification.

Marked D-1 for identification.

The Court: Is it offered?

Mr. Hartpence: I will offer it.

20 Mr. Apgar: I haven't any objection to the letter or the carbon copy.

Paper referred to and offered in evidence is marked Exhibit D-1. Paper referred to as carbon copy is offered in evidence and marked D-2.

Mr. Hartpence: The letter from Mr. Noble is May 4th, and the acknowledgement is May 5th.

30 Q. Now, this letter reads "Enclosed you will find a copy of our amended by-laws. Kindly return the old copy and oblige, Yours very truly—George Noble." Did he send the copy of the by-laws at that time of the society? A. Yes, sir.

Q. Have you that copy of the by-laws? A. No, sir.

Q. Do you know where the copy is? A. My impression is, while I don't know, my impression is it is attached to the bill of complaint in the Court of Chancery on application for a receiver.

40 Mr. Hartpence: Do you want me to pro-

Thomas K. Johnston—Direct

duce the files from the Chancery Clerk's office, Mr. Apgar?

Mr. Apgar: Oh no, not at all. If they are admissible they won't be objected to on any ground of that kind at all.

Q. I show you what purports to be a bill of complaint in the Court of Chancery between David O. Watkins, commissioner of Banking and Insurance of New Jersey, complainant, and the Forester's Benefit Society of Trenton, New Jersey, defendant, filed November 12th, 1908, and call your attention to what purports to be the by-laws of the Forester's Benefit Society of Trenton, New Jersey annexed to that bill, and ask you if that is the set of by-laws that was sent to you by Mr. Noble at the time this letter of May 4th came in? A. To the best of my recollection that is the copy of the amended by-laws. 10 20

Q. Now, I direct your attention to an affidavit annexed to the bill, purporting to be made by you, and ask you, after having read it, whether you can make your statement certain as to those by-laws?

A. Yes, sir.

Q. What is your statement now in regard to those by-laws annexed to the bill? A. It is a true copy of the amended by-laws as furnished by Mr. Noble in his letter. 30

The Court: Is there a copy of that by-law here?

Mr. Hartpence: Not outside of the bill.

The Court: Can you not make one in some way so as to avoid keeping the records of the other Court here?

Mr. Hartpence: I think the records will have to be kept here. I do not suppose it 40

Thomas K. Johnston—Direct

is proper to mark it, and it being an original record it is only a matter of identifying it.

10 Q. Now, after Mr. Noble had thus communicated with you, did you have any further communication with the society or with Mr. Noble? A. No written communications.

Q. Do you remember, Mr. Johnston talking with Mr. Noble after that about the society and its affairs? A. Yes, sir.

Q. When was that? A. It is very difficult for me to fix the time.

20 Q. Was it soon after or long after this communication was made? A. I think it was between the presentation of what we might call the original by-laws and the amended by-laws enclosed in Mr. Noble's letter, which I have just testified to.

Q. Do you know whether any other literature of the society was submitted to you by Mr. Noble?

The Court: Was this about the time, April or May, Mr. Johnston?

Witness: Yes, sir.

The Court: That you had the conversation?

Witness: Yes, sir.

30 The Court: What is the present question?

Mr. Hartpence: Whether he had any other literature submitted.

40 A. I don't find any among the papers on file in the department regarding the society—I beg your pardon. I wish to withdraw that answer. (After examining papers). Here is what appears to be a prospectus of the society, printed prospectus, and a leaflet issued by it explanatory of the kind of business it transacts.

Thomas K. Johnston—Direct

Q. Can you state when this yellow leaflet was submitted to you and by whom? A. It was received April 25th, 1908, in a letter to the then Commissioner of Banking and Insurance, David O. Watkins, signed by Mr. George Inglis, of New York City, he being the gentleman who wrote the letter to which I first testified to. 10

Mr. Hartpence: Have you any objection to that leaflet being offered, Mr. Apgar?

Mr. Apgar: (After examining papers) I confess that I do not see the pertinency of that. I object to it going in.

Mr. Hartpence: The pertinency of it is to show in conjunction with all the literature of the society, just what sort of a business they were purporting to do, and just what finally led to the discussion with the department of banking and insurance and the final act of the closing up of the concern, and them, of course, I will have to show this was known to the present plaintiffs in a way to affect their action when they came to negotiate with the defendants. 20

The Court: I do not think it is admissible in the present state of the proofs. I will overrule it.

Mr. Hartpence: May I have it marked for identification? 30

The Court: Yes.

Marked D-3 for identification.

Q. The prospectus from Noble that you have referred to, will you produce that, please? A. Yes.

Q. Can you state when that was received by your department? A. I cannot. That lacks any date. 40

Thomas K. Johnston—Direct

Mr. Hartpence: I ask to have that marked for identification also.

Marked D-4 for identification.

Q. And that is produced from the files of your department pertaining to the Forester's Benefit Society? A. Yes.

10 Q. Do you recall having had any conversation with Senator Hutchinson about the Forester's Benefit Society along about this time? A. Yes, sir.

Q. And do you recall what the purport or object of the conversation was; just how you came to have conversation with him or he with you? A. Mr. Hutchinson called with Mr. Noble between the receipt of the original by-laws, as I term them, and the amended by-laws, and they were discussed, that is, the contents of the first mentioned by-laws, and it would seem, to the best of my recollection, that Senator Hutchinson was going over these by-laws, the original ones, and put them in shape to satisfy the department, that is, to eliminate features which we consider—powers, rather, which we considered beyond those which the society could legally transact.

Q. And did you at that time inform Senator Hutchinson or Mr. Noble that it was the department's opinion that they were exercising powers that were beyond the powers of the society to exercise? A. I am quite positive that I did.

Q. Now, did the society thereafter, in any way act in accordance with your directions at that time? A. They submitted a copy of amended by-laws.

Q. Did you have any further communication with them after that, to your recollection? A. No, I will withdraw that. I recall meeting Mr. Noble

40

Thomas K. Johnston—Direct

on West State Street and passing remarks with him about the society, just what the purport of it was, I cannot recall, but I told him we would be around and see the society later on, meaning that we will send an examiner to investigate its affairs.

Q. Do you recall what the objectionable feature or features were that they were attempting to exercise, that you called their attention to? 10

Mr. Apgar: I am perfectly willing to make no objection to the question, if you mean to substitute the last few words for what you put in. You have two questions, and one is objectionable and the other is not. Just read the question, please?

(Last question read).

Mr. Hartpence: I will put it to avoid the objection. 20

The Court: Did you call their attention to any objectionable features, Mr. Johnston?

Witness: Yes, sir.

Q. What were the features you called their attention to? A. The building and loan feature, particularly.

Q. Do you recall whether that feature was eliminated in the amended by-laws that were submitted to you? A. It was not. 30

Q. And was that what you referred to in your conversation with Mr. Noble when you say you met him after the by-laws came in? A. Yes, sir.

Q. In your experience as Deputy Commissioner of Banking and Insurance, Mr. Johnston, have you become familiar with the laws and the requirements of the laws with respect to building and loan associations? A. Yes, sir. 40

Thomas K. Johnston—Direct

Q. And the saving banks or associations? A. Yes, sir.

Q. And trust companies? A. Yes, sir.

Q. Have you examined the charter or certificate of incorporation of the Forester's Benefit Society? A. Yes, sir.

10 Q. Do you know under what statute that society was incorporated? A. I am quite positive it was under the statute passed in 1898 for the incorporation of associations not for pecuniary profit.

Q. And could a corporation incorporated under that act exercise building and loan powers? A. It is my view that it cannot.

Q. Could it exercise banking powers? A. No, sir.

20 Q. Could it exercise savings and loan powers? A. If by "Savings and loan" you mean building and loan, my answer is no.

Q. Could it receive moneys on deposit and pay interest? A. No, sir..

Q. To be paid out on check or otherwise? A. No, sir.

Q. Could it carry on an insurance business? A. In that respect it could pay disability and death benefits, as authorized by its incorporated act.

Q. As a benevolent or fraternal association?

30 The Court: It could not make money, Mr. Johnston.

Mr. Hartpence: No, sir.

Q. It could not carry on a business for the purpose of making money, could it? A. No, sir.

The Court: I am very glad to have all this, Mr. Hartpence, but it is not competent, of course.

Mr. Hartpence: If, at the end of the case it is not I shall be very glad to apologize to

40

the Court.

Thomas K. Johnston—Direct

The Court: You need not apologize, because I know Mr. Johnston's familiarity with the subject is very helpful and it is stated by a recent opinion of the Supreme Court that societies incorporated under that branch of the corporation laws have no right to carry on insurance business. I had to non-suit a case on that very ground the other day, where suit was brought by an administrator for an estate. 10

Q. Mr. Johnston, later on Mr. Woodhouse and Mr. Knapp, or both of them, came to see you, did they not, about the Foresters benefit Society? A. Yes, sir.

Q. And following their visit to you your department took some action with regard to the society, did it not? A. Yes, sir. 20

Q. And is that the action you referred to in the early part of your testimony, on investigation of the company? A. Yes, sir.

Q. Whom did you designate to make the examination? A. Joseph M. Conklin.

Q. What was his position in your department? A. He was an examiner for the department.

Q. A regularly appointed examiner? A. Yes, sir.

Q. And as a result was a report made by Mr. Conklin to your department? A. Yes, sir. 30

Q. Have you that report with you? A. It is in the Court room. Mr. Conklin has it.

Recess until 1:30 p. m.

The Court: Mr. Hartpence, there is a great deal of this that is not competent at all. His own acts cannot be helpful at all 40

Thomas K. Johnston—Cross

unless they are brought home to the plaintiffs.

Mr. Hartpence: I called Mr. Johnston a little out of turn so as not to keep him from the department any longer than necessary.

10 The Court: Yes, all right.

By Mr. Hartpence: Q. Mr. Johnston, is this the report submitted to your department by Mr. Conklin upon the examination that we referred to? A. Yes, sir.

Marked D-5 for identification.

Q. Following the submitting of that report by Mr. Conklin what action was taken by your department regarding this society? A. A report was submitted to the Attorney General who made application for a receiver.

20 Q. Was a receiver appointed, do you know? A. Yes, sir.

Q. And were the affairs of the company terminated then? Did they continue on in business? A. All I can say in answer to that is it is my understanding they ceased business when the receiver was appointed.

CROSS-EXAMINATION by Mr. Apgar:

30 Q. Mr. Johnston, the certificate which has been offered in evidence here is a certified copy of the one on file in your office, is it not? A. Yes, sir.

Q. And in addition to the certificate being filed in your office, were the by-laws and constitution, and so forth, of the society filed with you? A. The certificate of incorporation was filed with the Secretary of State.

40 Q. And a certified copy was filed with you? A. Yes.

Thomas K. Johnston—Cross

Q. And this was a certified copy brought from your office? A. Yes.

Q. Now, you always have that, do you not, in all the corporations that your department has jurisdiction over, a certified copy filed? A. Yes.

Q. In addition to that you have the constitution and by-laws of these different societies? A. Not in all cases. 10

Q. Do you know whether the constitution and by-laws of this particular society were filed with you, and that a certified copy of the certificate was also filed? A. That I don't remember.

Q. How did it happen the amended by-laws were filed with you if you did not have the others? A. The amended by-laws came through the mail.

Q. Didn't you have the originals and wasn't that the reason you sent for the amended by-laws? A. (No response). 20

Q. I will withdraw that question. There came a complaint and you wanted to know what kind of business they were doing and you would naturally refer to their articles of incorporation and the constitution and by-laws on file with you? A. Yes, sir.

Q. And not finding authority to do that which this letter suggested they were doing, you communicated with them and got a copy of the amended by-laws? A. Yes, sir. A copy of the original by-laws which I did not have. 30

Q. Oh, you did not have them? Well isn't it one of the requirements of the department that they should be filed with you? A. In cases of associations under the department's jurisdiction. Not in all instances.

Q. If, however, the constitution and by-laws 40

Thomas K. Johnston—Cross

were not filed with you and somebody made an inquiry concerning that particular society, you always do write them and are invariably given a copy of the constitution and by-laws? A. That is our general rule, yes, sir.

10 Q. If any citizen of the state, or outside the state, should write you about any institution incorporated under the laws of the state of New Jersey, being a business that was under the supervision of your department, you would answer those inquiries? A. Yes, sir. The department always does that. Yes; that is the practice.

20 Q. Therefore, anyone who wanted to know anything about what the powers of the Forester's Benefit Society were, could have applied to you or have gotten a copy of the certificate of incorporation from the Secretary of State by application to the department for it? A. Yes.

Q. And you made an investigation for someone who inquired? A. Yes.

Q. The statute under which this society was incorporated was passed in 1898, was it not? A. Yes, sir.

Q. And there have been other amendments since that time? A. Yes.

30 Q. Do you recollect what the title of that statute is, and if so just read it? A. "An act to incorporate associations not for pecuniary profit."

Q. It states clearly, doesn't it, in the title? A. Very clearly.

Q. That it is not for profit or gain? A. Yes.

Q. And they recite that in every one of the certificates, do they not, that you have ever seen? A. Yes, sir.

40 Q. Do you know who the officers of the associa-

Thomas K. Johnston—Cross

tion were, beside Mr. Noble, in April 1908, when you got this letter of inquiry? A. I don't think so, no, sir.

Q. Have you any record, or did you not have in your office any records, showing who the trustees, incorporators, or other men in charge of, and managing that society, were? A. All that I know in that connection was that this certificate set forth the names of the incorporators and trustees. 10

Q. Had there been filed with you anything, up to the time, April 22d, 1908, showing that there were other trustees than those named in the original articles of incorporation which were acknowledged July 15th, 1907? A. I don't know of any.

Q. Did you have at that time or thereafter, and before the bill in Chancery was filed for a receiver, anything to show who the trustees were? A. Not to the best of my recollection. 20

Q. Did you ever at any time have any knowledge that Mr. Tunnicliffe, Mr. Rowe, Mr. Morton and Mr. West were trustees there? A. I cannot answer that positively, but I can say that I think the names of those trustees were mentioned at the interview at our department between myself and Messrs. Woodhouse, Hannum and—I have just forgotten that gentleman's name—Woodhouse, Hannum and the gentlemen that sat over in the chair there this morning that testified here? 30

Q. Do you mean Mr. Tunnicliffe? A. No.

The Court: Mr. Knapp?

Witness: Mr. Knapp.

Q. Was there any time when it was brought to your attention that Mr. Rowe, Mr. Tunnicliffe, Mr. Morton and Mr. West, these men, were trus- 40

Thomas K. Johnston—Cross

tees or had anything to do with the management of that concern? A. Not to my recollection.

10 Q. At the time when the bill for a receiver was filed did either of those four last named gentlemen, Mr. Rowe, Mr. Morton, Mr. West or Mr. Tunnicliffe, have anything to do with it? A. Anything to do with the association?

Q. With the association. A. I understood that the other gentlemen had assumed control.

Q. By "the other gentlemen" you mean Mr. Knapp, Mr. Woodhouse, Mr. Hannum and Mr. Noble? A. Yes.

Q. And you did not know those four gentlemen you named, Mr. Rowe, and those, at all in the matter, did you? A. No, sir.

20 Q. His Honor spoke this morning about a decision that had been recently given by our Supreme Court in which the power of associations under this act of 1908 had been distinctly limited, but prior to that decision, had your department ever held that those societies had any broader powers than that which the act itself signified? A. No, sir.

30 Q. And had it not been your invariable answer to any persons interested in those societies that they were limited to the certain specific line of business delineated by the statute and incorporated in the certificate of incorporation? A. Yes. That is as to the disability and death benefit feature they were authorized to engage in by section nine of the act.

40 Q. Was there anything in the act, or was there anything in any certificate of any of those societies, which could pay a sick or death benefit which indicated that they were for profit or gain or that

Thomas K. Johnston—Cross

anybody interested in them could make money out of them? A. No, sir.

Q. Do you remember, Mr. Johnston, whether Mr. Noble, Mr. Woodhouse, Mr. Knap and Mr. Hannum all came to see you in regard to the matter and talked with you about it, or did they appear through an attorney, or how was it that you had the conference with them about which you spoke? A. I don't recall that Mr. Noble called at the department at any time with the various other gentlemen named, but he did call with Senator Hutchinson. 10

Q. At the time that these three gentlemen called, they were trustees then of the society, were they not?

Mr. Hartpence: That is objected to as incompetent and leading to a conclusion of a law to be drawn from the facts. 20

The Court: I do not suppose it is a conclusion of law. I do not know whether Mr. Johnston may know it or not.

Mr. Hartpence: He has not shown he has knowledge of the situation to state it as a fact.

Mr. Apgar: Possibly he has not. I will not press that question anyhow.

By the Court: Q. Mr. Johnston, do I understand that all of your dealings were with the new people, and none with the old people? A. Except Mr. Noble. 30

Q. He was connected with it apparently both before and after? A. Yes.

Q. But you had no connection with Rowe or Mr. Tunnicliffe or those men? A. No, sir.

Q. You had no communication with them at all? A. No, sir. 40

Thomas K. Johnston—Re-Cross

RE-DIRECT-EXAMINATION by Mr. Hart-
pence:

10 Q. You did have communication with Senator Hutchinson, though, did you not, Mr. Johnston, in addition to Mr. Noble? A. My recollection is that Senator Hutchinson and Mr. Noble called at the department.

RE-CROSS-EXAMINATION by Mr. Apgar:

Q. Are you quite certain, Mr. Johnston, that they called together? A. I think so. I am quite positive, to the very best of my recollection.

20 Q. It is a fact, is it not, that they both called to see you about this same thing, and there may be a difference in recollection as between you and the Senator now as to their coming together? Are you quite positive that the Senator and Mr. Noble came together? A. I am quite positive that they came and discussed the first by-laws of the association. The understanding was a revised edition was to be submitted. I am quite positive that was the time when the Senator and Mr. Noble came together.

30 Q. Were those by-laws the first copy of the by-laws of the association that you had seen? A. Yes, sir.

Q. And then were revised by-laws sent to you afterwards? A. Yes, sir, what they called amended by-laws.

Q. Which are those that have been offered in evidence, the first set or the amended set? A. The first set was returned to Mr. Noble in a letter of ours.

Q. And then you got back the amended set? A. Yes.

40

Joseph M. Conklin—Direct

Q. And did you get those in a letter from Mr. Noble? A. A letter that I testified to here.

The Court: That is the letter of May 4th?

Witness: April. The original by-laws were returned and amended ones sent.

Q. When those by-laws came to you did Senator Hutchinson ever have any talk with you about those amended by-laws? A. As to that, my recollection is that when the Senator called with Mr. Noble I got the impression that he was acting as Mr. Noble's counsel, and that they would submit revised by-laws, that is, the Senator would prepare by-laws that would be satisfactory to the department. 10

Q. They were revised and sent to you? A. Yes.

Q. Did Senator Hutchinson have anything to do, so far as you know, with sending that revision to you? A. No, sir. 20

JOSEPH M. CONKLIN, sworn for the defendants:

Direct-examination by Mr. Hartpence:

Q. What is your official position? A. Examiner.

Q. What department? A. The Department of Banking and Insurance. 30

Q. Of the state of New Jersey? A. The state of New Jersey.

Q. How long have you been in that position? A. Since 1899.

Q. Was Mr. Johnston, who just preceded you, your superior officer? A. Yes.

Q. You made an examination of the Forester's Benefit Society, did you not? A. Yes, sir. 40

Joseph M. Conklin—Direct

Q. Some years ago? A. Yes, sir.

Q. At whose designation did you make that examination? A. Mr. Johnston authorized me to make the examination.

10 Q. Can you state when that was? A. November, 1908.

Q. Where did you go to make the examination?

A. I went to one of the large office buildings in Trenton, I don't remember where it is now; to the office of the society.

Q. And following the examination that you made, did you submit any reports to the department of Banking and Insurance? A. I did.

20 Q. I show you this document and ask you if that is the report, marked D-5 for identification, that you made? A. Yes, sir, it is.

Q. Now, what did you examine when you made your examination?

Mr. Apgar: It does not seem to me it is pertinent to go into a detailed examination of what happened there.

(After discussion.)

30 The Court: It will have to be connected of course. That is to say, it will have to be shown either by direct evidence or reasonable inference, that the condition of this society was not as it is alleged it was represented to be. I do not know if this evidence goes that far or not. Counsel ought to know. You know whether this shows the condition that existed at the time of the alleged representation?

Mr. Hartpence: That is the purpose of it.

40 The Court: Upon the assumption that

Joseph M. Conklin—Direct

will be shown the testimony will be received.

By the Court: Q. What books did you examine?

A. I first examined the minute book and the books of account, that is, the financial books.

By Mr. Hartpence: Q. I show you a book and ask you if that is one of the books that you examined at that time. 10

The Court: Mr. Hartpence, what is the plea in this case as to this particular aspect of the case?

Mr. Hartpence: That there was conveyed, or purported to be conveyed to these defendants, a corporation or a society that was a great money maker, and that if it were not for certain things, these gentlemen would not withdraw and turn it over to somebody else. 20

(After discussion.)

The Court: What is the defense?

Mr. Hartpence: First, that there was an attempt to convey to them, or offer to convey to them, something which would do certain things, and which, as a matter of fact as well as of law, it could not do.

The Court: Then isn't it a suit for damages by the defendant? Is not that recoupment of damages? 30

Mr. Hartpence: No, sir; it is a matter of defense, going to the consideration or legality of the failure of consideration in this bond.

The Court: Is that the defense, that there was a failure of consideration?

Mr. Hartpence: That there was a failure 40

Joseph M. Conklin—Direct

of consideration as well as illegality, and also fraud, in the making of the bond.

(After discussion.)

The Court: You do not make a tender back of the property you bought?

10

Mr. Hartpence: We did not buy anything.

The Court: You undertook to get something?

Mr. Hartpence: Yes.

The Court: And there was practically a transfer and you have never offered a re-transfer?

20

Mr. Hartpence: No, sir. The receiver of the Court of Chancery came in and took possession and sold under the order of the Court, and whatever there was was sold and disposed of.

(After discussion.)

Mr. Apgar: It seems to me this agreement would simplify matters if that is read to the Court at this time.

Mr. Hartpence: I have no objection.

The Court: Just read the agreement.

(Mr. Apgar reads agreement.)

(After discussion.)

30 The Witness: (Producing book.) Those are the minutes I examined.

Book marked D-6 for identification.

Q. Do you remember examining this book also?

A. I am not sure about this.

Q. You say you examined the books of account found there also? A. Yes, sir.

40 Q. Now, what assets, if any tangible assets, did you find of the society? A. Cash in bank and furniture and fixtures.

Joseph M. Conklin—Direct

Q. How much was the cash in bank? A. I would have to refer to my report.

Q. Well, refer to your report. A. (Referring to papers) Cash in bank \$4.71; furniture and fixtures allowed at cost, \$193.00.

Q. What were the total assets? A. \$197.71. 10

Q. What were the liabilities? A. Note at First National Bank, \$2,900; claim of George Noble for salaries \$70.00; claim of Frederick Rowe for advances \$297.32; claim of Garrison (?) Printing Company for printing \$22.50; claim of Hannum for advances, \$30.00; claim of Hannum for rent, \$68.50. Total liabilities \$3,338.82.

Q. Did you find any literature pertaining to the society there at the office? A. Oh, yes.

Q. Was there any of that annexed to the report? A. Yes, sir. 20

Q. What did you find? A. There was one pink pamphlet headed "A 4% House Purchase. Room Insurance." (?)—

Q. What else? A. "The Forester's Society. How to Purchase your Home."

Q. What color is that? A. That is yellow; buff color. And a white pamphlet "Every man his own landlord. You will find this plan better than any savings bank."

Q. Then you made up a general certificate? A. 30
A large general certificate in the Forester's Benefit Society in the form of a contract, class A and class B.

Q. Are you familiar with the proceedings taken by the attorney general for the appointment of a receiver for that society? A. No, sir.

Q. You are not? A. No, sir.

Q. You did make an affidavit, did you not, for use on that application? A. I did; yes. 40

Joseph M. Conklin—Direct

Q. (Showing witness paper) Is this the affidavit you made? A. Yes, sir.

Q. Annexed to the bill? A. Yes, sir.

Q. That is your signature? A. That is my signature.

10

The Court: Mr. Hartpence, I do not see the relevancy of all this testimony. None of it is admissible if you offer it in evidence.

Mr. Hartpence: I think it would be later on.

20

The Court: No; I do not see how it is possible under any phase of the case. It is the result of his examination and no witness has a right to lay the result of his examination before the jury. He must testify. I do not want to take up any more time than is necessary, and it seems to me we are very wide on the mark on most of this.

Mr. Hartpence: Well, I suppose Mr. Johnston has gone over it.

30

The Court: It seems to me the real question in this case is whether or not the plaintiffs made representations as inducements to sign this contract and to effect this transfer and obligate themselves on this bond, whereby the defendants suffered damage.

(After discussion.)

Mr. Hartpence: I will offer Mr. Conklin's report in evidence.

Mr. Apgar: I do not know whether it is competent, but I really would like to have it in, I think.

The Court: All right. Let it go in.

40

Mr. Hartpence: That will shorten the

Wilson H. Harding—Direct

whole examination. That is all I am trying to show by Mr. Conklin.

Mr. Apgar: Well, this would encumber the record, I think, and we have gotten everything that is here, I think, nearly, with exception of what was the actual cash. 10

The Court: I suppose, as far as that is concerned, it is not important whether a little more is put on the record or not.

Mr. Apgar: I think it is encumbering the record. I will object to it because—

The Court: Objection sustained.

Mr. Apgar: There are a good many more pages here than I thought—

The Court: All right. Objection sustained. 20

Mr. Hartpence: That is all.

The Court: Have you any objections, Mr. Apgar?

Mr. Apgar: I think not.

WILSON H. HARDING, sworn for the defendants:

Direct-examination by Mr. Hartpence: 30

Q. Mr. Harding, where do you reside? A. Trenton.

Q. How long have you lived in Trenton? A. About thirty-five or thirty-eight years.

Q. What is your business? A. Floor coverings.

Q. Where do you have your office? A. In the Broad Street Bank Buildings.

Q. Did you have your office there in 1908? A. Yes, for the past eighteen years. 40

Wilson H. Harding—Direct

Q. Do you know the plaintiffs in this suit, George Tunnicliffe, Mr. West, Mr. Morton, and did you also know Mr. Frederick W. Rowe? A. Yes; I think I knew them all.

Q. You also know Mr. Knapp? A. Yes, sir.

Q. And Mr. Woodhouse? A. Yes, sir.

10 Q. Do you know Mr. Hannum? A. I think not.

Q. Did you know all those gentlemen in 1908?

A. If that was the time they had their office next door to mine, I did know them all at that time.

Q. Do you recall sometimes in the summer of 1908, meeting Mr. Tunnicliffe and Mr. West and Mr. Morton and Mr. Rowe in the corridor of the Broad Street Bank Building near your office and having a conversation with them? A. Not any particular meeting, no, sir.

20 Q. Do you recall ever meeting them there and having a conversation with them? A. I presume I frequently met all of them at different times.

Q. You have seen them in the corridor of the building? A. Probably all of them.

Q. And talked with them from time to time? A. Very likely.

Q. Now, from the 8th floor of the Broad Street Bank Building, where your office was located at that time, you could look from the corridor of the
30 Broad Street Bank Building over to the Elmore Building, could you not? A. I don't believe there was any obstruction there to the view.

Q. The addition to the Broad Street Bank Building has been built since that time? A. Yes, that is true.

Q. And the Elmore Building adjoins the Broad Street Bank Building; does it not, on the west?

40 A. It adjoins the present building, the new part

Wilson H. Harding—Direct

of it. There was a building between there at that time, though.

Q. But that was a low building, wasn't it?

A. I think probably a three story building.

Q. So you could look from the corridor on your floor over into the windows of the offices of the Elmore Building? A. Over in the rear. Not from my office, but from the hall. 10

Q. The time I refer to is an occasion when these gentlemen I have mentioned were in the corridor of the Broad Street Bank Building, and at that time called your attention to Mr. Hannum and Mr. Knapp and Mr. Woodhouse over in the Elmore Building. Do you remember seeing Mr. Hannum, Mr. Woodhouse and Mr. Knapp over in the Elmore Building on one occasion about that time? A. I have no recollection of it. 20

Q. Do you recall at any time having observed Mr. Hannum and Mr. Woodhouse and Mr. Knapp over in their office, or in an office in the Elmore Building, from the corridor of the Broad Street Bank Building? A. No; I have no recollection of it.

Q. You have no recollection of ever having seen them from the corridor of your building? A. No, sir.

Q. Well, do you have any recollection of Mr West and Mr. Tunnicliffe and Mr. Rowe and Mr Morton, or some one of them in the presence of the others, speaking to you in the corridor of the Broad Street Bank Building about Mr. Hannum, Mr. Woodhouse and Mr. Knapp? A. No, sir. It was not their custom to talk about their business affairs in the corridor. 30

Q. Do you remember any occasion at all when

Wilson H. Harding—Direct

those gentlemen or any of them in the presence of the others, said anything to you at all about the business transactions they had had with Mr. Knapp, Mr. Hannum and Mr. Woodhouse? A. I don't recall anything at all in regard to business affairs. I was a neighbor of theirs, and many things were talked of frequently, but I don't recall any business affairs being discussed.

10 Q. Now, you know there was a society called the Forester's Benefit Society that they were interested in? A. I would not have remembered that if I did not hear it here.

Q. You did know at that time that they were interested in some fraternal or benevolent association they were carrying on? A. It is so vague in my mind, and I couldn't say I hardly did know it. I do not know for what length of time they were next door to me.

20 Q. You do recall those gentlemen meeting you in the Broad Street Bank Building corridor in the summer of 1908, and calling your attention to Hannum, Knapp and Woodhouse in that building, saying they had transferred to them some business? A. I haven't any recollection of that at all.

30 Q. And at that time they laughed and said—
Mr. Apgar: I object.

The Court: Yes.

Mr. Hartpence: It seems to me it must be apparent the witness is very hostile.

The Court: He has said he has no recollection. Now, to put in his mouth something that reflects on the parties and ask him to assent to it—

40 Mr. Hartpence: I don't know how to do

James F. Morton—Direct

it unless I call his attention specifically to it.

The Court: You have directed his attention to it specifically and he says he has no recollection of any such thing between those men and the defendants.

Q. Will you say that no such conversation did occur between you and Mr. Tunncliffe, Mr. West, Mr. Morton and Mr. Rowe, or some one of them in the presence of the others, pertaining to the transfer by them of some interests to Mr. Han-
num, Mr. Wodhouse and Mr. Knapp, and if they did not call your attention to those last three named gentlemen sitting in the Elmore Building?

A. If they did it is foreign to me or I have no recollection of it.

Q. And you won't say so? A. I have no recollection of it.

JAMES F. MORTON, sworn for the defendants:

Direct-examination by Mr. Hartpence:

Q. Mr. Morton, were you at one time connected with the Forester's Benefit Society of Trenton, New Jersey? A. I was.

Q. In what capacity? A. As secretary.

Q. When was it that you were Secretary? A. Well, the association had been started some little time previous to my becoming Secretary.

Q. Do you know about what year it was in which you were Secretary? A. Well, I should say from hearing the date here—it is a long time ago, but I should say it is 1898.

Q. Or 1908? A. 1908, yes.

James F. Morton—Direct

Q. Did you keep minutes of the proceedings of the society? A. Yes.

Q. I show you a book marked D-6 for identification and ask you if you recognize that book, and, if so, what it is. A. This is the book that the minutes were kept in.

10 Q. Did you keep those minutes? A. Yes, sir.

Q. Are the minutes all in your handwriting? A. The first page is not in my handwriting.

Q. Do you know whose handwriting that was in? A. I should judge Mr. Meakin's.

Q. Do you know whether Mr. Meakin preceded you as Secretary? A. I could not say.

Q. Is that Mr. George V. Meakin? A. Yes, there was only the one Meakin connected with the society.

20 Q. In what way was he connected with the society? A. He afterward became the representative in Philadelphia.

Q. You say you kept the whole book, except the first page? A. I think so, as far as I can say. (After examining book.) Yes; this is all my handwriting excepting that first page.

By Mr. Hartpence: Q. And I show you Exhibit P-1 and call your attention to the signature of George V. Meakin and ask you if that is the same gentleman you refer to as being connected with the society? A. Yes, that is the man.

30 Q. Now, these minutes, they record the proceedings of what body acting for the society, Mr. Morton? A. The Foresters?

Q. Yes. A. They record that.

Q. What body met and held these transactions?

The Court: What are they, the minutes of the trustees or—

40 The Witness: Oh, of the board of directors.

James F. Morton—Direct

Q. And do they accurately record the transactions of that board? A. To the best of my knowledge.

Q. Are all the transactions of the board in this book? A. To the best of my knowledge, I kept them as closely as I possibly could. I must admit that I was not a— 10

Q. I call your attention to what appears to be the last entry here, July 2d, 1908, and ask you if the last minute that you made of the proceedings of that board? A. Yes.

Q. Is that the last minute you made of the proceedings of the board? A. That I made; yes.

Q. Were any of the meetings of the board held after July 2d? Do you know? A. Well, I believe there was a meeting on, but I was more familiar with the members that would gather at this meeting—I believe Mr. West took my place. 20

Q. When was that? A. Well, at this meeting.

Q. Do you recall what the date of that meeting was? A. No, sir.

By the Court: Q. Was it in July? A. I know it was mid-summer.

Q. It was before the change was made in the board? A. Before; yes, sir.

By Mr. Hartpence: Q. As a matter of fact, was it not the annual meeting on July 25th? A. That is it, the annual meeting. 30

Q. July 25th, 1908? A. Yes.

Q. And those minutes do not appear in this book, do they?

The Court: Mr. Hartpence, I do not want to sit here all day and try non-essential and non-relevant matters.

Mr. Hartpence: I want to show it is not all here.

James F. Morton—Direct

The Court: He says that is so except for the meeting held on the 25th of July, which he did not enter. You did not enter the minutes of that meeting?

The Witness: No, sir.

10 The Court: And I do not see that it would prove anything even if it were in the case or out of it.

Q. Now I call your attention to the minutes on page 3, which reads as follows: "The meeting of the board of directors was called this 24th day of April, 1908, to consider the action of the State Commissioner of Banking and Insurance, calling on the Forester's Benefit Society for its ledger, and the Commissioner having strenuously shown a disposition to retard the progress of the society, the board of directors deem it advisable to take counsel of some reputable attorney as to the legal status of the society." A. I remember that meeting, yes, sir; I remember it perfectly.

Q. And that action was taken which you recorded here? A. I went straight to—Mr. Hutchinson was then asked to become attorney for the society and I went to him directly.

Q. Then, this minute goes on to read, "Mr. Tunnicliffe made a motion that Senator Barton B. Hutchinson be consulted, and the motion was seconded." etc., that was done? A. Yes. "The members of the board decided to call on Senator Hutchinson at once in a body, as it was found he was in his office." (Reads.)

Q. That all took place there, did it not? A. Yes, sir.

Q. From that time on was there any business transacted by the society? A. Yes; quite a good deal of business.

James F. Morton—Direct

Q. What sort of business? A. Insurance.

Q. Insurance business? A. Yes.

Q. Notwithstanding the fact that you thought there was some question about your right to go on, you continued on? A. We had no question about the right to consult with Senator Hutchinson. 10

Q. Mr. Hutchinson at this meeting advised you to abstain from all further business? A. Oh, well, we did, and after we consulted with Mr. Hutchinson business went on.

Q. After this meeting, when you consulted with Mr. Hutchinson, did you stop for a time? A. Yes.

Q. For how long? A. I could not say. I know it was stopped, and we went to talk with Senator Hutchinson and I know there was everything gone over, and that was previous to our continuing business. 20

Q. On page 4 of the minutes of Thursday, April 30th (reads) was that resolution made to your knowledge, to suspend the business of the society until its legal status was established? A. Yes.

Q. This minute accurately records what took place in your board of directors? A. Anything I have got there I will stand by.

Q. As being correct? A. Yes.

Q. And as correctly reporting what took place in the board? A. I will stand by that better than what I am saying now, because to the best of my ability everything was truth—fully recorded. 30

Q. So that everything recorded you will say took place and happened in the board of directors' meetings? A. Yes, sir.

Q. So that on Thursday evening, May 7th, you record here as full attendance at the board meeting, and that is correct, is it? A. Yes. 40

James F. Morton—Direct

Q. Now who were the four members?

The Court: Oh, just a minute, Mr. Hartpence, that cannot be of any consequence.

Mr. Hartpence: I will offer it.

The Court: The book, I understand, is offered.

10

Mr. Hartpence: Yes; I will offer it in evidence.

The Court: Let it be received.

D-6 for identification is marked Exhibit D-6.

By the Court: Q. As I understand, then, the history of it was that you stopped when you got this notice from Mr. Hartpence? A. Yes.

Q. Was there a time after that when he advised you to go on and resume your business? A. Yes.

20 Q. And then you did? A. Yes, sir.

By Mr. Hartpence: Q. Did you have anything to do with the actual management of the business, Mr. Morton? A. Well, I was the constant attendant. I was in the office all the time. Nothing went on that I didn't know of.

By the Court: Q. Were these gentlemen, the officers in it, paid? A. No, sir; I never got a penny out of it.

30 By Mr. Hartpence: Q. That is, the association was not able to pay anything at the time it was organized and you were acting with it? A. Well, we had the capital, but we wanted to make it go as far as it would go.

Q. What capital did you have? A. Three thousand dollars.

40 Q. Where did you get that? A. From the First National Bank, on Mr. Rowe's note, at the First National, and endorsed by the four men as you

James F. Morton—Direct

have shown here. My name, was there and Mr. Rowe, J. F. Morton, Mr. West and Mr. Tunnicliffe and Mr. Noble.

Q. It was borrowed capital? A. It was borrowed capital, yes, sir.

Q. Now, as a matter of fact, your expenses up until that time of operating more than exceeded your income, did they not? A. Oh, yes. 10

Q. And this \$3,000 that you borrowed and were working on as working capital gradually became less and less, did it not? A. Yes; up to the time that they had the funds stopped at the bank.

Q. That was after you and Mr. Rowe and Mr. Tunnicliffe and Mr. West had withdrawn. Is that right? A. No. We had not withdrawn.

Q. You had not? A. No, sir.

Q. When that note was stopped? A. They stopped it. 20

Q. Who? A. Why, the president.

Q. The president of what? A. The president of the association.

Q. Who is he? A. Mr. Noble.

Q. When did he do that? A. Ask the bank. I couldn't give you the date, but such was the case.

Q. Was that before you transferred or attempted to transfer— A. Yes, sir; before it was transferred. 30

Q. In what way did they stop the note? A. I don't know.

Q. You say they stopped it? A. Well, yes.

By the Court: Q. What do you mean by stopping the note? That don't mean anything at all. Do you mean they stopped drawing money from the bank? Do you mean that Mr. Rowe got the bank to stop the payment of money? A. No; Mr. Noble, the president of the association. 40

James F. Morton—Direct

Q. Noble got the bank to refuse to allow you to draw the money, is that the idea? A. Yes.

By Mr. Hartpence: Q. How did you run the business after that? A. Well, how could you run it?

10 By the Court: Q. When was this done? When was the draft on this fund stopped? A. Well, it was—I don't know, but it was about the time that—

Q. Was it before or after you had made this agreement and let the other people come in and take charge? A. Oh, it was before the agreement, yes.

By Mr. Hartpence: Q. Now, Mr. Rowe knew that had been stopped? A. Yes.

20 Q. And Mr. Tunncliffe knew it had been stopped? A. Yes.

Q. And Mr. West? A. Yes.

Q. You all knew that? A. Why, of course.

By the Court: Q. Were there differences in the board at that time? A. With the president. That is why he went without any authority from the association. He went outside.

By Mr. Hartpence: Q. You knew he was going outside? A. Not right off.

30 Q. You did later on? A. Oh, yes; certainly.

Q. And you knew he went to Mr. Hannum and Mr. Woodhouse and Mr. Knapp? A. I did not know who he went to.

Q. You knew it later on? A. Yes.

40 Q. And you knew it before they signed this bond, that Mr. Noble was going to them and trying to get them to come in? A. I did not really know what he was doing. I had not the slightest idea what he was doing up to this time. He

James F. Morton—Direct

never consulted me and never had anything to say to me, or consulted me in any relation about his effort to get other people interested.

Q. How did you know, then, that he was going to other people outside? A. I don't know.

Q. You just said so? A. No, I did not.

Q. Didn't you say you knew he was going to outside people? Didn't you say there was dissension in the board that led Noble to go to outside people? A. No. I said he did. He was a very peculiar man, and he went out. He created this misunderstanding and—

By the Court: Q. I understood you to say that is the reason he got other parties to come in. A. What was the reason?

Q. I understood you to say that he stopped payments to the society of moneys that were in the bank. A. He got an injunction against the bank to stop the money.

Q. An when he stopped the bank he got them to refuse to honor the society's checks? A. Yes.

Q. I understand you to say at that time you did not know he was doing anything? A. No, sir.

Q. Did you learn afterward he was trying to get other people to come in? A. Oh, yes. He demanded the keys of me and wanted to put me out.

By Mr. Hartpence: Q. You knew he went to Mr. Hannum and Mr. Woodhouse and Mr. Knapp? A. I did not. I did not know who he was going to, and he never told me. It came out afterwards when they made their appearance, of course.

The Court: The witness is talking about events prior to the transfer, and you, Mr. Hartpence, are talking as of the present time. He says now that up to that

James F. Morton—Direct

time he did not know what Mr. Noble was doing.

The Witness: And I did not. I had no knowledge of what he was doing.

Q. You had knowledge Mr. Hannum and Mr. Woodhouse and Mr.— A. I told you what I know.

Q. Did you know that Mr. Noble had gone to Mr Knapp and Mr. Woodhouse and Mr.— A. No, sir, I did not.

Q. Had gone to them prior to the time the first bond was signed? A. No, I did not.

Q. When did you first learn he had gone to them? A. There was a Salvation Army man came up, I think—I don't know what it was, but they wanted to get me out so they could come in the office, but I was the secretary and I simply kept my position.

By the Court: Q. Mr. Morton, they are talking now about the sequence of events. A. Yes.

Q. You were very shortly after the organization of this society its secretary, and kept the minutes? A. Yes.

Q. You kept them up to July? A. Yes.

Q. You say there was a meeting on the 25th of July which you did not record? A. Yes.

Q. A regular meeting? A. Yes.

Q. This arrangement appears to have been made on the 28th of July, 1908? A. Yes.

Q. When was the first that you knew anything about Noble getting new people into the society? A. Well, I should think it must have been a little before the annual election.

Q. That is the 28th of July? A. The 25th.

Q. Yes, I should say the 25th. A. I remember it was on a Saturday.

James F. Morton—Direct

The Court: The 28th is the date of the transfer?

Mr. Apgar: The 29th, I think.

The Court: Is there anything further?

Mr. Hartpence: Oh, yes, I have a good bit more of this witness, if your Honor please. 10

The Court: Please make it relevant and competent, because I do not want to sit here— We are dealing with a thing that has got to be evidentially shown, namely, that these men misrepresented, or somebody in their behalf, the conditions of this society.

Mr. Hartpence: If we cannot show it by direct statements, it seems to me we have a right to show it by reasonable inference from facts that can be established. 20

The Court: Yes, but we must get at the thing in the most direct way. None of these questions lead to it. If you want to ask him whether he notified these people or knew of any notification to them that the company was insolvent, or made misrepresentations as to the conditions, let us have it.

Mr. Hartpence: If he knew that Mr. Noble was going to these people, and making representations, he is bound by it, is he not? I am having some difficulty in establishing the relation of Noble. 30

The Court: I do not see that it would be.

Mr. Hartpence: If your Honor wants to rule on it on the record and give me an ob- 40

James F. Morton—Direct

jection I am wililng to have it rest that way. I am trying to show by a hostile witness, one of the plaintiffs in this case, that Mr. Noble was going to these people, going back and forth, and if he did not know it he ought to have known it.

10 The Witness: How could you say I ought to have known it? I ought to have not. I ought not to know anything about it.

Mr. Hartpence: I think we have a right to establish that through this witness.

The Court: I will not restrict any offer that you may reasonably make to show the connection between any representations that Noble may have made, and these plain-
20 tiffs; but, indeed, we must get at it with some celerity. It cannot last all day, you know.

Mr. Hartpence: I do not like to have the lack of celerity of the witness blamed to me, because I am trying to get at it as quickly as I can. I am asking when he first knew—

The Court: He answered that.

By Mr. Hartpence: Q. When these agreements
30 and bonds were signed, Mr. Morton, on the 29th of July, 1908, you did know that Mr. Noble had brought in Mr. Hannum, Mr. Woodhouse and Mr. Knapp, didn't you? A. At the meeting when the bond was signed?

Q. Yes. A. Why, of course. I was there and they were there. They met in the office of the association.

Q. Didn't you know at any time prior to that
40 that Mr. Noble was going to Mr. Hannum, Mr.

James F. Morton—Direct

Woodhouse and Mr. Knapp to get them to come into this society? A. Well, I cannot postively say at the moment that I knew it was Mr. Hannum, Mr. Woodhouse and Mr. Knapp. I could not say postively just when I knew. The whole thing was in a day or two.

Q. But you did know Mr. Noble was going to someone with an endeavor to get them to take off your hands and Mr. Tunnicliffe's and Mr. West's and Mr. Rowe's hands what you were anxious to get rid of, didn't you? You knew he was doing that, didn't you? A. That was not so. There was no intention of trying to get rid of it. Now, don't put that up to me. There was no such intention. I considered that association a good association. I thought it was one of the best arrangements, and it was afterwards, as I say followed by other citizens right herein Trenton of the same idea. 10 20

Q. Weren't you trying to sell the interest that you had? A. No, sir. I had nothing to do with it.

Q. Oh, you were trying to hold your interest? A. Yes.

Q. You did not want to sell it? A. No.

Q. Why did you sell it? A. Why? He was the president, I wasn't. 30

Q. You signed this agreement. A. I was obliged to.

Q. Why did you do that if you did not want to sell it? A. What do you want me to say?

Q. I want you to say the truth, whatever it is. A. I am doing that to the best of my ability, and I want you to understand it.

Q. Why did you sign this agreement? A. I 40

James F. Morton—Direct

have told you. Didn't a majority of them sign it? I was not going to oppose the men I was associated with.

Q. So you signed it because the other men signed it? A. I presume so.

10 Q. You knew at that time it was insolvent? A. How was it insolvent when there was \$900 in the bank?

Q. But you owed the bank \$2900 didn't you? A. What are you trying to make me say? There was \$900 in the bank. It stated on borrowed money, yes. That was well-known.

Q. You had \$900 in the bank at the time? A. When the money was stopped at the bank by the president there was \$900.

20 Q. And you owed a note of \$2900. You started in with \$3000 that you borrowed, and you had \$900 left, and you say you were not insolvent? A. There was money coming in. We expected to get money in.

Q. From what? A. From policies.

30 Q. But it was not coming in as fast as it went out, was it? A. You cannot change my knowledge. I was perfectly satisfied with that association, and I believe that it could have been made a good organization, and a beneficial one. If it had been necessary to have got more money we would have got more money. Now do you understand that?

Q. What was the real reason why you did not make money when you first started in? A. Oh, I don't know. Why didn't we? We did make money, and got policies. Haven't you a list of the members?

40 Q. Your treasury kept right on going down,

James F. Morton—Cross

didn't it? A. Have you a list of the members, of the policy holders?

Q. I say you treasury kept right on going down, did it not, getting less and less all the time?

A. When you put capital into any business it don't go up at first, does it? 10

Q. Aside from that, your capital kept right on going down? A. There was money also coming in.

Q. But in spite of that income coming in it kept right on going down until you had only \$900 of your \$3000? A. There was money coming in.

Q. Yes, but in spite of that your treasury kept right on going down didn't it? A. I don't know.

CROSS-EXAMINATION by Mr. Apgar: 20

Q. Mr. Morton, the fact that the \$3000 of capital was borrowed, did you or anybody in your presence tell Mr. Knapp and Mr. Woodhouse and Mr. Hannum? A. What is that?

Q. The fact that you owed a note in the bank, was told, was it not, to Messrs, Woodhouse and Knapp and Mannum? A. Oh, certainly.

Q. They knew that the capital upon which the company was started in business had been borrowed money secured by a note upon which five of your makers, to the order of the society, did they not? A. Well, I am under the impression it was under their influence the money was stopped at the bank. 30

Q. You don't understand me.

The Court: That would imply it, wouldn't it?

Mr. Apgar: That might imply it.

The Witness: That is what I mean in answering it that way. 40

James F. Morton—Cross

Q. At the meeting of July 25th, a record of which was not, as you say, made in black and white, so far as you know now, and after there was— A. Not on the 25th. On the 28th.

10 Q. And at the time the agreement and bond was signed, they knew of the note, did they not, in the bank? A. They had a perfect knowledge of the whole situation.

Q. And didn't they also at that time know that of that \$3000 you had use \$2100 of it in the promotion of the business of the concern, and there was \$900 left in the bank at the time? A. They certainly did.

20 Q. And when they signed the note it was with full knowledge of the financial condition of the company? A. It was.

Q. Can you tell what occurred at this meeting on July 25th, the minutes of which you did not keep? A. Notice had been sent out for the annual meeting and the members assembled in the office.

30 Q. Who was elected at that time, do you remember? A. It was a pretty lively time, and it was pretty hard to keep the run of all that, and I think that was the reason why Mr. West made the minutes.

Q. Mr. West made the minutes, eh? A. Yes, sir.

Q. You did not see them afterwards at all? A. No.

Q. Were you and Mr. Tunnicliffe and Mr. Rowe and Mr. West continued as trustees at that annual meeting, or did you drop out? A. Well, I think that was arranged on the 28th.

40 Q. Or the 29th? A. Or the 29th.

James F. Morton—Cross

Q. Then you were, as you understood, the re-elected trustees on the 25th? A. Yes. That was the idea, that we were only a board of directors, and this was to elect trustees, I believe. I don't know. I cannot recall now that I was elected one of the trustees.

Q. Whether you were or not; what was done at that meeting so far as you and Mr. Tunncliffe and Mr. Rowe and Mr. West are concerned. As for staying in, you were to stay in? A. Yes.

10

Q. After the signing of the agreement and bond by these men what did you and your colleagues do as to staying in? Did you stay in or go out? A. I did just what Mr. Noble had been wanting me to do right along. I handed over the keys.

Q. And Mr. Tunncliffe and Mr. West and Mr. Rowe stepped clear out? A. I don't believe I have been in the building since that day.

20

Q. And so for as you know, neither have the other three, have they? A. I don't know that they have.

Q. Do you know whether Mr. Woodhouse and Mr. Haunum and Mr. Knapp stayed there and took any part in the meeting after you folks went away, after the signing of the bond? I mean in that meeting. A. I cannot recall. They were in that meeting. A. I cannot recall. They were in entire possession. I could not say.

30

Q. You don't know what was done? A. No.

Q. And that was the last that you had any connection with the society? A. Yes.

Q. Or your colleagues? A. Yes.

By the Court: Q. Do you know whether these gentlemen were informed of the financial condition before this transfer was made? A. Judge, I believe they thoroughly understood the whole sit-

40

James F. Morton—Cross

uation, and if they did not, and they would have asked me I would certainly have told them. But I believe they were thoroughly cognizant of everything.

10 Q. Were there books of account kept of the association? A. Yes.

Q. Who kept them? A. The treasurer, I think.

Q. Were they on hand at the time the transfers were made? A. Yes.

Q. Do you know whether they were examined by the defendants? A. I do not know. I could not say.

20 Mr. Apgar: I might say to your Honor that upon going through this report—I think it will help rather than harm, and we have agreed it should go in as evidence.

Mr. Hartpence: I offered it as part of my case.

Q. At the time this transfer was made—

The Court: What report is this?

Mr. Apgar: That is the report of Mr. Conklin.

The Court: That was objected to.

Mr. Apgar. Yes.

30 The Court: The objection is withdrawn and it is offered?

Mr. Apgar: Yes, and it is admitted.

Q. At the time the transfer was made out, so far as your going out and their going in, was there or not a dispute in the presence of Mr. Woodhouse and Mr. Hannum and Mr. Knapp and yourself as to whether there was a balance of \$604.28?
A. The first I heard about \$700 was a little while ago.

40 The Court: Well, I think that was that there was a balance of nine hundred and

James F. Morton—Cross

odd dollars in the bank and there were debts of two hundred and some against them.

Q. It appears by the report that these men who were going out claim there were nine hundred and some dollars left in the treasury, and these gentlemen through Mr. Noble, learned there was \$197 to be taken off of that, and I ask that for the purpose of showing whether it was not discussed, this amount of money, in the presence of Mr. Knapp and Mr. Woodhouse, but was left in the bank for the society to use. A. My understanding of it was there was \$900 in the bank. 10

By the Court: Q. The question is whether that was discussed in their presence? A. Yes; they knew it. 20

Q. It was known to them at that time? A. Oh, yes.

By Mr. Hartpence: Q. You say Mr. Woodhouse and Mr. Knapp and Mr. Hannum knew all about that, do you, at the time they signed the bond? A. I think it was pretty well talked over, in the room when they were there at the meeting. We were there, I should judge, an hour, and the whole thing was gone over most thoroughly. If they did not understand it then, it was due to a lack of comprehension. 30

Q. You heard Mr. Tunnicliffe tell Mr. Woodhouse and Mr. Hannum and Mr. Knapp or speak about it there in that meeting, that this was a great money maker? A. No, sir.

Q. You did not hear that? A. No, sir. I never talked to Mr. Knapp or Mr. Woodhouse or Mr. Hannum one word about this association. Outside of the meeting, we were there, but I never 40

James F. Morton—Cross

met any of them previous to the taking over, and no one ever saw me, as it has been tried to be stated here.

10 Q. When did you first learn that there was a possibility of someone taking the society over? How long before this time when they signed the bond was it? A. Just a day or two.

Q. Was it after the meeting of July 25th or before? A. Oh, before.

Q. It was before that? A. Yes.

Q. You knew that Noble was out trying to get somebody to take it over? A. No, I did not. I did not know what he was doing.

20 Q. And at that meeting of July 25th there was a protest presented, wasn't there, by certain persons who claimed they were trustees, against the election of trustees? A. Well—

The Court: Answer the question.

The Witness: We didn't know who the trustees were. That was when it came out.

Q. There was a protest presented there, wasn't there? A. I don't understand.

30 By the Court: Q. At the meeting on the 25th of July, was there a protest made against the election of trustees? A. Oh, Mr. Satterthwaite was there and I think he opposed the meeting or the holding of the—

The Court: This seems to be recited in the agreement, Mr. Hartpence, that there was some misunderstanding.

Q. Mr. Satterthwaite represented the trustees named in the certificate of incorporation?

The Witness: Yes.

James F. Morton—Cross

Mr. Hartpence: Q. And he protested against the election of new trustees at that time?

Witness: I believe so.

Mr. Hartpence: And that is the real reason why no minute was kept of the meeting, isn't it?

Witness: No, sir; that was not the reason. 10

By Mr. Hartpence: Q. What was the reason?

A. The reason is just what I have told you.

The Court: Just a moment. You need not go all over that again.

Mr. Hartpence: That is all.

CROSS-EXAMINATION by Mr. Apgar:

Q. Did anyone there in your presence say to Woodhouse, Knapp or Hannum that this was a money maker? 20

Mr. Hartpence: That is objected to.

Mr. Apgar: You asked about it.

Mr. Hartpence: I think he ought to name a specific person.

The Court: Ask whether he ever heard it.

The Witness: I never heard the conversation relating to anything of that kind.

Mr. Apgar: All right sir. That answers the question.

Mr. Hartpence: I will ask Mr. Knapp to resume the stand. Your Honor remembers that I withdrew him this morning because the question had been raised about a statement he was about to make. 30

The Court: It is for you to say whether you want him or not.

Mr. Hartpence: I withdraw him at the time for the purpose of representing the question.

The Court: All right. 40

George H. Knapp—Direct

GEORGE H. KNAPP, re-called for the defendants:

Direct-examination by Mr. Hartpence:

10 Q. Mr. Knapp, at this meeting of July 29th, when you and Mr. Hannum and Mr. Woodhouse and Mr. Noble signed the bond and agreement, did you hear Mr. Rowe make any statement to Mr. Woodhouse? A. I did.

Q. With regard to the society, before you signed the note and the bond? A. I did.

Q. Now, what did you hear him say to Mr. Woodhouse?

20 Mr. Apgar: We renew our objection to this, if your Honor please. I will say that during the noon recess I tried to see if I could find anything bearing on that, and I believe your Honor's statement is correct, that so far as that statement is concerned, there is no adjudication of that matter in this state. The statute has provided against the statements with the deceased being made, and the suit is in a personal capacity, or by his personal representatives.

30

After argument.

Mr. Apgar: We will modify the objection to make it that as against the estate it cannot be admitted.

The Court: I will sustain the objections so far as the estate is concerned.

Mr. Hartpence: Your Honor will allow me an exception?

40

The Court: Yes.

George H. Knapp—Direct

By the Court: Q. The question is, what did Rowe say? A. We were differing about the—

By Mr. Hartpence: Q. The question is, what did Mr. Rowe say to Mr. Woodhouse? A. Mr. Rowe told Mr. Woodhouse in my presence that he would rather lose \$10,000 than to step out of that association. 10

Q. What did Mr. Woodhouse say to that? A. On the strength of that Mr. Woodhouse agreed to go ahead with it. I objected to it. I was going to throw the whole thing up on account of this difference that they had brought forth.

Q. Did Mr. Rowe make any other statement to Mr. Woodhouse at that time that you heard? A. I cannot recall, except that it was a great proposition, a great money maker. 20

Q. And did he say why he was withdrawing from it? A. On account of Noble.

By the Court: Q. Did you understand just what the financial condition of this society, was, you gentlemen, when you went into it? A. The first statement that was brought before us, your Honor, stated that they had about \$1300 in the treasury. That it came down to eleven and then nine, and at the final meeting there were bills of about two hundred presented, and then is when I objected to it, and Mr. Rowe— 30

Q. Is that all of the assets it was supposed to have? A. Yes, sir.

Q. And then there was this note in the bank as an obligation? A. Yes, sir.

Q. And that you knew about? A. We knew about that, yes, sir.

Q. Then this expression of view as to its being a money maker was based upon the theory of its 40

George H. Knapp—Direct

business? A. This man Noble held a contract given by the officers of the company allowing him a percentage of the profits of the company, signed by the officers of the company. I have had it and read it.

10 By Mr. Hartpence: Q. Now, Mr. Knapp, after this occasion of July 29, 1908, what did you do, you and Mr. Woodhouse and Mr. Hannum? A. We started to try to pull the thing together.

Q. Did you take possession of the books and literature of the society?

The Court: Have we any interest in that, Mr. Hartpence?

20 Mr. Hartpence: I want to show, your Honor, that they went on for a short time, and then, upon consulting counsel, upon a subsidiary matter they were advised that the society had no powers to do the work that they were going to do, and that they should consult the department of banking and insurance, and, as a result of that, a receiver was appointed.

The Court: That seems to be pretty well in the case already. Can that statement go in the record as a fact?

30 Mr. Apgar: I think so. I do not know of any objection to it, because I believe it is the fact. I would like to have the time they took possession and how long they continued the business.

The Court: The examination was made in November and the receiver appointed after that.

40 The Witness: About three months.
Mr. Apgar: You took possession about the

George H. Knapp—Direct

time the note and the bond and the agreement was signed?

The Witness: Yes.

Q. Just as soon as counsel called your attention to the fact that he was of the opinion the society did not have the power which you thought it had, did you consult the department of banking and insurance? A. At once. 10

Q. And upon being informed by that department it had not the powers, did you carry on any further business with that society? A. We did not.

Q. You stopped right there? A. We ceased right there.

Q. During the time that you had the affairs in hand, after the 29th of July, did you expend any money? A. There was some money expended. 20

Q. What were those moneys expended for? A. For furthering the business. There was an office in Philadelphia, there was an office in Trenton and there was this man Noble had a drawing account, and Meakin.

Q. Meakin also had a drawing account? A. Yes.

Q. And you had rent at both places? A. Yes.

Q. Did you or Mr. Hannum or Mr. Woodhouse receive any money whatever from the treasury of the Forester's Benevolent Society for services as officers and directors after the 29th of July, 1908, down to the present time? A. Not one cent. It cost us money. 30

Q. I show you this book which purports to be the minutes and by-laws of the society from July 30th, 1908 on and ask you whose handwriting that is in the book, if you know. A. It is mine. 40

George H. Knapp—Direct

Q. It is your handwriting at pages 1 and 4? A. Yes, sir.

Q. And whose handwriting is it at pages 41 to 43? A. That is also mine.

10 Q. And whose handwriting is it from 101 to 112, including the extra page which is marked 11 and 12? A. That's all my writing.

Q. You were the secretary, were you?

Mr. Hartpence: I ask that be marked for identification.

The Court: If you are going to offer it in evidence why don't you offer it?

Mr. Hartpence: I will offer it at this time.

Marked Exhibit D-7.

20 Q. After the 29th of July, 1908, what if anything, did Mr. Morton, Mr Tunncliffe, Mr. Rowe and Mr. West, or any one of them, do to make you officers or trustees of the Forester's Benevolent Society?

Mr. Apgar: I renew my objection as to Mr. Rowe, the estate, as to any transaction with Mr. Rowe.

The Court: I do not think that is a transaction with Rowe—. What did they do. I suppose they resigned.

30 Mr. Hartpence: That is what I am leading up to.

By the Court: Q. They got out? A. They did get out. I don't know of any resignation of anything of that sort.

By Mr. Hartpence: Q. Were any resignations presented to you and approved by those gentlemen? A. Not that I recall.

40 Q. Did you become officers in the society after-

George H. Knapp—Cross

wards? A. Just simply walked in and took hold of it.

Q. Did you hold the meetings as evidenced by the minutes? A. Yes.

Q. Who held those meetings? A. We, supposed officers of the company.

10

Q. Was Mr. Noble present? A. Yes, sir.

Q. Was there a time when you and Hannum and Woodhouse were made trustees and directors of the society? A. I don't recall.

Q. Was there any meeting—

The Court: What is the purpose of this, Mr. Hartpence?

Mr. Hartpence: If your Honor please—

The Court: Don't you see the whole point is these men dropped out and your men went in? They are making no complaint here that they did not get what they contracted for, so far as the elections are concerned, or the control of the company. They got control of it. I do not want to sit here and try wholly irrelevant questions. It takes the jurors' time and the Court's. The testimony is that you were in control and they have never been in the place since.

20

30

Mr. Hartpence: That is all. Cross-examine.

CROSS-EXAMINATION by Mr. Apgar:

Q. Was Mr. Linton Satterthwaite there, the attorney for you and the gentlemen who were associated with you when you went in? A. He was called in by Mr. Noble; not by us.

Q. And he was advising in regard to some of the matter? A. Mr. Noble, I believe.

40

George H. Knapp—Cross

Q. And Mr. Noble was connected with the association after the other gentlemen got out?

Mr. Hartpence: That is objected to as immaterial.

10 Q. Now, it was the fact, as appears by these minutes, from July 30th down to the last recorded minutes, October 19th, 1908, that you people conducted whatever business was done in this society? A. We tried to.

20 Q. When did you first learn that the building and loan end of the business could not be safely conducted? A. I could not say just when it was, but it seems to me that the Banking and Insurance Commissioner called me up on the 'phone and asked me if I would bring some of our literature to his office. He expressed the information that he had met Mr. Noble on several occasions, and had demanded some of the papers and booklets, leaflets, and Noble had evaded him at all times. So incidentally, I took some up there and let him examine them.

Q. I notice that on Thursday, July 30th, 1908, the day after the agreement and bond were signed, you have this entry: "Trustees nominated and elected the following officers" (reads).

30 A. Yes.

Q. I also notice on October 19th, 1908, this minute: (reads) "Up to that meeting, at least, you recognized Mr. Noble as your president?" A. We did.

Q. During that interval from July 30th, 1908, until October 19th, 1908, was Mr. Rowe, Mr. Tunnicliffe, Mr. West and Mr. Morton attempting in any way to exercise any authority on the board?

40 A. No, sir.

George H. Knapp—Re-Direct

Q. They had stepped out and left you folks in charge? A. I suppose so.

Q. You understood when you went in there on the 30th of July the capital that was put in was the capital that had been secured by the proceeds of this note? A. We understood they had floated a note in the First National Bank. 10

Q. At that time you knew, as a fact, when you signed this note, that the business was not a money maker? A. The reason we bought it was on the strength of it being a money maker.

Q. That it would be in the future if managed correctly? A. That was their hopes, that it was a money maker.

By the Court: Q. The question is, whether you were speaking of the past business or future business, and counsel asks you if you did not know that it was carried on on borrowed money? A. Yes. 20

Q. You knew that up to that time it had not been a money maker? A. Well, we found that out.

Q. You knew then it was not a money maker, in the sense of the past? A. Yes.

Q. And you were speaking as to the future, were you? A. Yes, sir. 30

RE-DIRECT-EXAMINATION by Mr. Hartpence:

Q. Notwithstanding your knowledge of those conditions you took over this society and assumed the obligations on the bond, did you not? A. We did.

Q. And upon the strength of what did you do that? A. Oh, the strength of the money that we were going to make out of it. 40

George H. Knapp—Re-Direct

Q. And on the strength of what—

The Court: Do not lead him, Mr. Hartpence. He has answered that twice, once to the Court and once to you.

10 Q. Upon what did you base the thought that it would be a money maker? A. Profits of the society.

Q. Where did you acquire any knowledge of those profits? A. Why, the very fact that Mr. Noble had a contract granting him so much per cent of the profits was evidence that there were profits supposed to be gotten from it.

Q. How long had you known Mr. Rowe before that time? A. Twenty years.

20 Q. How long had you known Mr. Tunncliffe? A. About the same.

Q. How long had you known Mr. West? A. Quite a number of years.

Q. Had you had business dealings with these people from time to time? A. Yes.

Q. During all that period? A. Oh, not business dealings. I was well acquainted with them.

Q. You mingled with them from time to time? A. Yes.

30 Q. They were men of standing? A. Supposedly, yes.

Q. What was the reason, then, why you, notwithstanding the facts connected with the financial condition of the company, obligated yourself on this bond? A. Why, thinking of making money.

Q. What made you think that? A. From what I had been led to believe.

40 Q. By whom? A. By Mr. Tunncliffe and also from the remark that Mr. Rowe made.

George H. Knapp—Re-Direct

Q. That was what you relied upon? A. That is what we depended upon.

By Mr. Apgar: Q. You say that you saw an agreement that had in it a certain percentage of profits should go to Mr. Noble? Are you clear that that was profits of a percentage of assessments and premiums. A. It mentioned profits just as distinctly as it could. 10

Q. Did you read the articles of incorporation of this company before you went into it? A. I cannot say that I did.

Q. Did you know that the association in which you were becoming a trustee, and in which you were assuming a liability, was incorporated under an act to incorporate associations not for pecuniary profit, and that it distinctly stated the title of the act and the law in the certificate of incorporation? A. With this building and loan— 20

Q. Answer the question.

Q. (Question repeated.) A. I must confess that I did not.

Q. Then, when you assumed any liability there you did it without reading the charter of the corporation in which you were becoming a member, did you not? A. I do not think I read it at all.

Q. You know what the two words, "pecuniary profit" mean, do you not? A. Yes, I think I do. 30

Q. Now, I come back to my other question— A. The Court: Mr. Apgar, is that important?

Mr. Apgar: I do not care to press it any further.

Q. Under October 5th, 1908, I find this: "Messrs. Hannum and Woodhouse reported that they visited the Philadelphia office and found Mr. 40

George H. Knapp—Re-Direct

Meakin intoxicated and unfit to conduct the society's business, and were grossly insulted by him and could not obtain a satisfactory report of the business of the said office, and had forthwith discharged Mr. Meakin, severing his connections with the society." In view of that minute, was the failure to make money after you took charge solely due to conditions here, or to the conditions of your employees, Mr. Noble and Mr. Meakin?
 10 A. Both.

Q. Then whatever you did not find out about your incorporation and the rights that you had there was only part of the cause that it was not a money maker, and a drunken man that had to be fired out, who did not attend to business, and
 20 a president who did not work in harmony, were other causes that it was not a money making business? A. That helped to bring it about.

By Mr. Hartpence: Q. Both Mr. Meakin and Mr. Noble had been connected with the society prior to the time you thought you were taking it over? A. Oh, yes. They were the originators of it.

Q. And the transactions you did after the 28th of July, 1908, you did thinking you were officers and trustees of the society? A. Absolutely. We
 30 thought we owned it.

Q. And if there were any profits, that they would come to you as owners? A. That is why we went into it.

By Mr. Apgar: Q. You say "profits" despite the fact you admit you don't know what your charter allowed you to do in the way of profits. A. I do, because that was impressed on my mind at
 40 the time, insurance and the other together.

William Woodhouse—Direct

The Court: Won't you two gentlemen come here a moment, please.
(Court and counsel confer.)

WILLIAM WOODHOUSE, sworn for the defendants: 10

Mr. Hartpence: I should like to also offer in evidence the records from the Court of Chancery in the case of David O. Watkins, Commissioner, against the Forester's Benefit Society.

The Court: What is the purpose of that?

Mr. Hartpence: I want to show the fact a receiver was appointed. 20

Mr. Apgar: We admit that.

Mr. Hartpence: And an injunction was issued.

Mr. Apgar: That is admitted.

Mr. Hartpence: And final decree was entered. I notice by the reply they deny there was a decree entered in the case.

The Court: When was that done?

Mr. Hartpence: The order for a receiver and injunction was November 12, 1908, and the injunction was actually served November 12, 1908. 30

The Court: That is admitted, Mr. Apgar?

Mr. Apgar: Oh, yes.

DIRECT-EXAMINATION by Mr. Hartpence:

Q. Mr. Woodhouse, you are one of the defendants in this action, are you not? A. I am. 40

William Woodhouse—Direct

Q. Where do you reside? A. Trenton.

Q. How long have you lived in Trenton? A. Thirty-four years.

Q. Did you know Mr. Frederick W. Rowe in his lifetime? A. Very well.

10 Q. How long did you know him? A. Oh, twenty-five years, I guess.

Q. Did you associate with him in business and socially? A. No. He used to do work for me. He was a jeweler and I took my work there, and that is how I got acquainted with him.

Q. Did you know Mr. George Tunncliffe? A. No; I did not know him, except for a few weeks prior to the signing of this agreement in question.

20 Q. You had known there was such a person in the community? A. No, I had not.

Q. Did you know Mr. James F. Morton? A. Only about the time the agreement was signed.

Q. And how about Mr. James West? A. I knew him slightly.

Q. How long had you known him? A. Oh, several years.

30 Q. In the year 1908 did you have any conversation with any of those gentlemen with reference to a society known as the "Forester's Benefit Society"? A. I did.

Q. With whom did you have those conversations? A. Mr. Rowe, and Mr. Tunncliffe.

Q. Were they prior to or after the signing of the agreement and bond, P-1 and P-2? A. With Mr. Rowe, just a few minutes one day prior to that day, and with Mr. Tunncliffe and Mr. Rowe upon the day prior to the signing of the agreement.

40 Q. Where did you meet that day of the signing

William Woodhouse—Direct

of the bond and agreement? A. The Elmore Building.

Q. Whereabouts in the Elmore Building? A. Next to Broad Street Bank.

Q. In what office? A. The office of the Forester's Benefit Society.

Q. Who else was there beside you and Mr. Han-
num and Mr. Knapp? A. All of the plaintiffs and
all of the defendants and Mr. Hutchinson also,
Senator Hutchinson also. 10

Q. What was the purpose of that meeting? A.
For the final consideration of the matter of tak-
ing over the society.

Q. When was that first broached to you, about
the taking over of the society? A. Perhaps a
month or five weeks previous.

Q. Who first brought it to your attention? A.
Mr. Knapp. 20

Q. Who did you see after that concerning it?
A. Mr. Noble, for the purpose of receiving some
instruction regarding details.

Q. Did you see Mr. Rowe or Mr. Tunncliffe
after that? A. Not with the exception of meet-
ing Mr. Rowe on the street once.

Q. Did you say anything to him about taking
over the society? A. Yes. 30

Q. What did you say? A. I asked if Mr. Noble
had a right to carry on consultation in regard to
the matter of turning over the society to us.

Q. What did he say about that? A. He said he
had.

Mr. Apgar: Who said that?

The Witness: Mr. Rowe.

Mr. Apgar: I want to object to that. I
thought he meant Mr. Tunncliffe. That
is a conversation with Mr. Rowe. 40

William Woodhouse—Direct

The Court: It is only admissible as against the other defendants.

Q. What did Mr. Rowe at that time say to you about taking over the society? A. He simply said Mr. Noble had the right to act as a co-part-

10 ner at that time, that is all.

Q. Did you talk it over with Mr. Noble after that at all? A. As to the details, yes.

Q. What was said about it? A. He spoke of it as being a combination of insurance and building and loan which would be very profitable to anybody who took charge of the society.

Q. Did you see Mr. Tunnicliffe after that concerning the bond and agreement? A. Upon the day upon which the bond was signed.

20 Q. Whereabouts did you see him? A. In the office of the society.

Q. Did he say anything to you about the society prior to the time of signing? A. Not excepting on that day.

Q. Prior to the actual signing of the bond and agreement did Mr. Tunnicliffe say anything to you? A. The day of signing it, prior to the signing of it.

30 Q. What did he say about it? A. He said, "This is a big thing for you fellows, if you can get along with Mr. Noble. It is a money maker. I would like if possible, to come into it again."

Q. What did he say about who was making money, or anything of that sort? A. He did not go into details, excepting to say it was a great money maker, and us fellows who went into it and took it over would make a lot of money out of it.

Q. Did you see Mr. Rowe after that? A. Yes.

40 Q. What did you say to him? A. Mr. Rowe went

William Woodhouse—Direct

into details a little more then. I knew Mr. Rowe better than the others and I asked how it would be a money maker—

Mr. Apgar: That is subject to our objection.

The Court: Yes.

Q. What did he say to that? A. He said one reason was that under this proposition there was no great amount of money to be put into the state as a deposit on the insurance side. That made the profit so much more beneficial to those who owned it. 10

Q. Did you say anything to either Mr. Rowe or Mr. Tunncliffe that day before you signed the bond and agreement about the right of the society to do that business? A. Oh, yes. I had heard previously that the society had been stopped at one time by the State because of some doubt as to the legality of its conducting business, and Mr. Rowe said he also stopped it himself once. 20

Q. Who told you that? A. Mr. Rowe said he also stopped it himself and transferred the money of the society to his own account in order to keep Mr. Noble from handling the books.

Q. On this day what did he say, if anything, to you about the legality or the right of the society to go on? A. I asked him what the outcome of the state insurance was, and he said that Senator Hutchinson, as their counsel, had gone to the State House and had a conversation with Mr. Johnston in which he had won out in his arguments, and that he came back and reported that the association was all right; that the proposition which they had to offer was entirely legal, and they could go ahead, and he said they proceeded further with the business of the company. 30 40

William Woodhouse—Direct

Q. Did he say anything to you about why he was withdrawing from the business? A. Well, he did say a few things, that he was a little bit tired of some of the troubles they had, first the State and then Mr. Noble.

10 Q. Did you afterwards sign the bond and the agreement? A. Yes. Mr. Rowe did say he thought there would be a profit of at least sixty thousand dollars a year for us if we could bring up, I think he said, the total to one hundred thousand dollars worth of business. And he also said he hoped it would be possible for him to again re-enter the society, if we fellows could make ourselves agreeable to him, and he to us.

20 Q. Did you thereafter sign the bond and agreement? A. Yes.

Q. With Mr. Hannum and Mr. Knapp also? A. I believe so.

Q. How did you come to sign the bond and agreement and take over the society? A. I guess I don't get that clearly.

30 Q. How did you come to do it? A. Well, as I say, we investigated through Mr. Knapp and through Mr. Noble, Mr. Tunnicliffe and Mr. Rowe, and being fairly well acquainted with them and knowing them as I did, very well, I would take their word for anything they said, and I utterly relied upon their word, and Mr. Rowe spoke of Senator Hutchinson, and his legal knowledge seemed to be satisfactory to me, and I thought that would be enough for me, and I was quite ready to go into it.

Q. And on the strength of that you signed the bond and agreement? A. So I signed the bond.

40 Q. What happened to the society after you went in?

William Woodhouse—Direct

The Court: Is it worth while to go into that again, Mr. Hartpence? There is no dispute on it. Twenty witnesses saying the same thing does not make it any more proper.

Mr. Hartpence: I did want to put on the record the good faith of these gentlemen. 10

The Court: I do not want testimony to be repeated over and over again if it is not necessary.

Q. Did you, Mr. Woodhouse, after you signed the bond and agreement, ever receive any compensation or money of any kind—

The Court: That has been proved also.

A. No.

20

The Court: Do not answer the question.

Mr. Hartpence: Will your Honor permit me to finish the question?

The Court: The witness answered it, I supposed you were through.

Mr. Hartpence: I want to show affirmatively this witness never did receive a cent of profit.

The Court: The last witness on the stand said not one of them ever got a cent out and they cannot deny that. It does not make it any more true. 30

Mr. Hartpence: Well, I pray an exception to your Honor's ruling.

The Court: Note an exception. I do not see why you just want to take up the time of the Court, this way, Mr. Hartpence, when it does not answer any purpose whatever. 40

William Woodhouse—Cross

Mr. Hartpence: Apparently my own theory of the case is at variance with the Court's theory.

10 The Court: Not at all. You are seeking to bring out something that has already been clearly established without any question in the case, and it does not do any good at all to have it repeated.

(After discussion.)

Q. Mr. Woodhouse, after this question of the taking over of the society was brought to your attention first, did you ever consult Linton Satterthwaite, the other counsel, with regard to the proposition and the taking over of it at all? A. Will you repeat that again?

20 Q. (Last question read.) A. No, not at all.

CROSS-EXAMINATION by Mr. Apgar:

Q. Mr. Woodhouse, on the 29th day of July, 1908, when you signed the agreement and signed the bond, was there any financial statement made as to what the assets and liabilities of the company were? A. Yes.

30 Q. How much money did you learn at that time was in the bank belonging to the company? A. Well, we learned half a dozen different things, Fifteen hundred was the first.

Q. What did you find just prior to your signing the bond, or when you supposed you had gotten the last reliable information, how much about was the balance? A. The last figure was about nine hundred dollars, it is my recollection.

40 Q. Do you know that nine hundred dollars had gotten in the bank? A. Only by what Mr. Rowe told me.

William Woodhouse—Cross

Q. What was told you? A. That they put a note in the bank of something like twenty-nine hundred or three thousand dollars, and this was the remainder.

Q. And that was the finances of the company out of three thousand dollars that had been raised upon that note? A. I don't know about that. 10

Q. Why did you sign the bond? A. They thought it was a money maker and we could afford it.

Q. Even if it was a money maker what was the purpose of your signing the bond? A. To release the other fellows from their obligation.

Q. From this other note that had been discounted to put this society on its feet? A. Yes.

Q. And of that three thousand dollars there were nine hundred dollars left? A. Yes, as I understood it. 20

Q. Therefore, when you signed that note after the preliminaries and so forth had gone on, you knew that all that company had was nine hundred dollars above whatever office furniture it might have, and the liability to pay that note, didn't you? A. Well, yes, presumably that was all.

Q. Then, at that time the company, if you wanted to take account of stock and make it pay, was insolvent? A. I don't know that. 30

Q. You knew they had owed three thousand dollars on a note, and had nine hundred dollars and some furniture, so it must be insolvent? A. That is one way of looking at it. There was supposed to be some income.

Q. That was all the visible assets? A. I understood not. I understood there were different assets coming from the business that was done.

Q. How much was that? A. I don't know. 40

William Woodhouse—Cross

Q. You did not pay attention to that? A. No.

Q. Then what you were concerned with was, just what there appeared upon its face. Now, Mr. Rowe, you said, stated that if you did a business of one hundred thousand dollars there was sixty thousand dollars profit in it? A. That was the suggestion he made.

Q. There was no hundred thousand dollars worth of business there? A. Not to my knowledge.

Q. You folks had to get that business? A. Yes.

Q. Didn't you understand Mr. Rowe to mean that if you went in and worked and got a hundred thousand dollars worth of business, there would be sixty thousand dollars profit? A. Yes.

Q. That must have been an opinion on his part, wasn't it? A. Well, that may have been the case.

Q. That was his opinion, wasn't it? A. It was not only his opinion. It was his opinion based upon the experience of the men connected with him.

Q. If you could get a hundred thousand dollars worth of business then there ought to be sixty thousand dollars worth of profit? A. That was the statement he made to me.

Q. And you thoroughly understood, did you not, that that had entire reference to what the future would bring you, provided you did that amount of business? A. My understanding was that was the possibility.

Q. Mr. Rowe did not say, "See; Mr. Woodhouse, we have done that amount of business, and made that amount of profit, did he? A. No, sir;

he said they were working on that percentage.

William Woodhouse—Cross

Adjourned until Tuesday, February 20th,
1917, at 10:15 o'clock in the forenoon.

Trenton, N. J., February 20, 1917. 10

Case resumed pursuant to adjournment.

Appearances as before noted.

WILLIAM WOODHOUSE, resumes the stand:

Mr. Hartpence: Defenadnts apply for
leave to amend the notice of special mat-
ter annexed to the plea to the amended dec-
laration, by receiting a recoupment of dam-
ages by reason of the alleged fraud and
failure of consideration to the extent of the
damage sustained by the defendants by
reason thereof. 20

Cross-examination continued by Mr. Apgar:

Q. Mr. Woodhouse, did you ever see the articles
of incorporation of the Forester's Benefit So-
ciety? A. I think so, I am not certain about it. 30

Q. Look at Exhibit P-8 and see whether upon
reviewing it, it refreshes your memory so that you
can be positive whether you did or not? A. I
don't remember seeing that.

Q. Do you remember a conversation with any-
one, either of these four plaintiffs, or any of your
colleagues, as to under what law this Forester's
Benefit Society was acting?

Mr. Hartpence: That is objected to un-
less the time is specified. 40

William Woodhouse—Cross

Mr. Apgar: Well at any time prior to the signing of the bond.

A. No, sir.

10 Q. You had no knowledge yourself then from anything you had seen or read prior to signing the bond as to what powers under the law of the state of New Jersey this Forester's Benefit Society had? A. No.

Q. What did you do, Mr. Woodhouse, go in this thing like a man buying a pig in a poke? A. You don't buy a pig in a poke when you take a man's word for it.

Q. When the law is upon the statute book, and a certificate which gives you your powers—A. That may be so, too.

20 Q. You did not for one moment suppose that if these four gentlemen should tell you there were certain powers this society had, and if the law forbade the exercise of those powers, that the men's word could take precedence over the law, did you? A. I did not suppose anything about it.

Q. In other words, what was said as to the powers that they had under this charter, you took their word without looking into the law that gives the authority to the corporation, didn't you? A.
30 Yes, sir.

Q. Then you took their opinion upon a law matter without going to a lawyer to verify it. Is that right? A. No; I did take their opinion. I got what they said was Mr. Hutchinson's opinion.

Q. You did not think it worth while to go, I understand, before you were going into a business which one of them said that if you did a hundred
40 thousand dollars worth of business you would get

William Woodhouse—Cross

sixty thousand dollars worth of stock, you did not think it necessary to find out from your own lawyer, or make inquiry whether under the certificate you could do those things or not? A. I think I told you yesterday that those men's word was good enough for me, but I mistook it.

10

By the Court: Q. Did they say Mr. Hutchinson advised them that you had those powers? A. Yes. We had no lawyer but Mr. Hutchinson, and I took his word.

By Mr. Apgar: Q. Who said that? A. Mr. Rowe, and Mr. Noble.

Q. Mr. Noble was not one of the parties to whom you gave the bond? A. He was one of the original parties.

Q. That is true, but he was not one of the parties who is claiming now anything back from you at all, is he? A. No, but when he told me what Mr. Hutchinson said he was with the other party.

20

Q. It was the question that you inquired about, as to the law of authority this company had under the law—that was one of the inducing elements in this case, was it? A. Why, of course.

Q. You continued in that for over four months, or about four months, did you not? A. I don't recall.

30

Q. Did you not have an attorney when you became interested as one of the directors or trustees, to advise you? A. Yes.

Q. Who? A. Mr. Hartpence was called in for a matter I had in view, I do not know just what; some small mattter.

Q. Did you submit to him any question as to the authority or power that the society had? A. We talked it over, I think.

40

William Woodhouse—Cross

Q. How long after you became one of the trustees or directors was it that you talked that matter over with him? A. Oh, I cannot tell you exactly.

10 Q. Was it a week or a month? A. Possibly a month or two months. I can't tell you.

By the Court: Q. When was it you found out you did not have those powers that they said Mr. Hutchinson had advised them that they had? A. I think we took it up later in one of the discussions in the office.

Q. When was that? A. That was some time after, two or three or four or five weeks; I could not say exactly.

20 Q. Then you had Mr. Satterthwaite advising you after that didn't you? A. No, sir.

Q. Didn't you say so yesterday? A. Yes. I was asked if I had advised with Mr. Satterthwaite at any time.

By Mr. Apgar: Q. I understood you to say yesterday that some other gentleman was consulted. Was that Mr. Satterthwaite?

30 Mr. Apgar: Mr. Satterthwaite did advise prior to the signing of this bond with Mr. Noble or somebody. He was in the case in some way.

By the Court: Q. Did you get the result of his advice to Mr. Noble? A. I don't remember anything about it at all. As far as I am concerned I know nothing of Mr. Satterthwaite.

The Court: Well, it was the last witness who spoke about Mr. Noble conferring with Mr. Satterthwaite.

40 By Mr. Apgar: Q. It was a fact, was it not, as you reported to the board in October, that

William Woodhouse—Cross

upon investigation of Mr. Meakin in the Philadelphia office, you found he was drunk and not attending to business, and so forth? A. We had some little difficulty with Mr. Meakin, yes.

Q. And you discharged him? A. Yes.

Q. And Mr. Noble did not get along very well? 10
A. Not very well.

Q. So that insofar as the payment of sick or death benefits were concerned, the management of Meakin and Noble was not so as to make any profit anyway, was it? A. We just put them out of the business. We discharged him because we didn't want him to hurt the business.

By Mr. Hartpence: Mr. Woodhouse, was it not at the time that you say you consulted me on some other matter that I went over the powers of this 20
corporation with you and then advised you that you should confer with the department of Banking and Insurance? A. I cannot place it, except—I am satisfied that soon after that we went immediately to the State House and saw Mr. Johnston. Just how many weeks it was I do not know. That is as near as I can place it.

Mr. Hartpence: The only other witness I have to offer is Mr. Hannum, whose testimony will be of the some nature as that 30
of Mr. Woodhouse and Mr. Knapp, and Mr. Hannum is not here, and of course I cannot offer him as a witness. He resides in the State of Massachusetts now, and was unable to come on the notice sent him. If the other side has no objection I will be glad to read the testimony given by Mr. Hannum in the Chancery proceedings, if 40

Argument

your Honor thinks it will not be simply cumulative.

The Court: Well, I do not know. You will have to determine that.

10 Mr. Apgar: This case went off the last term because Mr. Hannum was not here.

Mr. Hannum is—

The Court: You do not consent?

Mr. Apgar: No; I do not. And I want to take exception to counsel saying, when the witness is not here, that he would testify so and so. I think that is very improper before the jury.

20 Mr. Hartpence: I think it is essential to state to the Court the nature of the evidence because the Court had already intimated that perhaps that line of testimony had proceeded far enough when I put the other witness on.

The Court: Counsel must determine how far he wants to go with his proof. The Court's strictures yesterday were simply addressed to statements of fact which under no circumstances would be subject to contradiction, and were clearly established in the case.

30

Do you rest?

Mr. Hartpence: Unless there is some documentary proof that was marked for identification.

The Court: You want to offer in evidence those that have already been identified?

Mr. Hartpence: Yes.

40 Mr. Apgar: It is a question whether we

Argument

want to offer any rebuttal, because at this juncture I want to move that the defense be overruled, now that the defence has rested, and that the Court direct a verdict should be rendered by the jury in favor of the plaintiffs.

I make this upon two grounds, first as to the weight of law, and I would make the motion on the grounds that there is no evidence here at all that can be held against this estate of anything at all that Mr. Rowe said in his lifetime. That must all be eliminated and without the testimony that has been given by the different gentlemen in connection with the statements alleged to have been made by Mr. Rowe, there is nothing at all showing any representations that can be called fraudulent or otherwise so far as they are concerned.

I make the motion on the second ground as against all of them for the reason that it appears from what Mr. Knapp has said on the question of what it might be in the future it was a mere expression of opinion. Both Mr. Knapp and Mr. Woodhouse say it was a question of what the future might bring forth, and both of them testified they knew at the time the concern was bankrupt and they were promoting the concern. The concern had spent \$2100 of the \$3000 and they had \$900 in the bank and a few outstanding policies. If there were any outstanding policies I have no doubt they could have been brought here and we could determine as to their value. So far as its

Argument

being a money maker was concerned it was a question of the future, a question of earning power.

(After argument.)

10 Mr. Hartpence: If your Honor please, in conjunction with what I might have to say in response to Mr. Apgar's motion, I desire to also make a motion for direction of a verdict in favor of the defendants, and in view of the fact—

The Court: On what grounds?

20 Mr. Hartpence: In view of the fact that involves cross motions for a directed verdict as I understand the rule of vs. Kilgus (?), recently decided by the Supreme Court, it requires a request be made for the submission of the case to the jury in case the motion is denied, I may desire to have that right reserved, to have the case submitted to the jury in case your Honor denies the motion.

30 Mr. Apgar: My motion is now to overrule the defense. If it is I do not want to offer any testimony. If the motion to overrule the defense is not granted, then I want to offer a little testimony in rebuttal.

Mr. Hartpence: Then if the other side has not rested I will not make a motion to direct at this time. It seems to me, however, a motion to overrule defence ought to be made at the close of the case.

40 Mr. Apgar: I am subject to the orders of the Court if I am not right in the practice.

Argument

The Court: I suppose it takes the same position a motion to nonsuit would take. It is a demurrer to the evidence offered by the defence, as a motion to nonsuit is a demurrer to the case of the plaintiff.

I will hear you on the question of over- 10
ruling the defence.

(After argument.)

The Court: I am going to dispose of this question on the exact motions that are presented to the Court.

FIRST: The defence is made that the defendants were fraudulently induced to enter into this contract and thereby were damaged.

SECOND: That there was a failure of 20
consideration in that the Company would not carry on the business which the defendants believe, and which they claim to have established was induced by expressions of some of the plaintiffs that they had powers that did not exist.

In my judgment the evidence does not substantiate either one of those propositions. Therefore the defence will be over- 30
ruled.

Mr. Hartpence: Now, if your Honor please, I move for a direction of verdict in favor of the defendants on the ground that no breach of the bond has been shown; and on the further ground that no liability can now result to these plaintiffs under the note of which they were makers, and to secure them against loss, on which this bond was given, and on the further ground 40

Argument

10 mentioned in response to the motion to strike out the defence, that the consideration, the transfer of a corporation not having the powers to go on in the way in which this corporation was being operated, was an illegal consideration, and that the parties should be left in the position in which the Court finds them.

The note which this bond was given to secure has been offered in evidence and bears date, I think, July 6, 1908 and was a joint note made by Morton, Tunnicliffe, West, Nobele and Rowe. There is no evidence in the case that these parties ever became liable on the note or had to pay it.

20 The Court: The condition of the bond is if the note is not paid then the bondsmen shall become liable.

Mr. Hartpence: Yes.

The Court: The note is not paid.

Mr. Hartpence: They cannot enforce payment now. The note is dated July 6, 1908.

The Court: Why, the interest has been paid upon it, it now appears.

30 Mr. Hartpence: Not on this note. Later on, in 1910, a new note was given by the bank, on which Noble does not appear. That left Noble out and released his liability, and if they were joint makers, that itself releases one and released the others, and there is no proof on the part of the plaintiffs that they may be called upon to respond on those notes in any way that

40 would work a breach of that bond. I do

Charge

not think we can assume, in the absence of proof, what might result from it.

Mr. Apgar: I can give the continuity of it, if your Honor wants it.

Mr. Hartpence: It is not in evidence.

The Court: Is it?

10

Mr. Apgar: Oh, yes.

The Court: What is the history?

(After discussion.)

The Court: Well, gentlemen, do you want to argue the case?

Mr. Hartpence: I ask the case be submitted to the jury.

The Court: I am going to submit it to the jury. I do not suppose you want to argue it.

20

Mr. Apgar: I do not.

Mr. Hartpence: Then I do not, either, if your Honor please. I am willing to submit it.

Before you submit to the jury, I would like to have an objection noted to your Honor's ruling overruling the defence, and in declining to direct a verdict or grant the nonsuit asked for after overruling the defence.

30

The Court: Yes.

Charge

The Court:(LLOYD, J.) Gentlemen of the Jury, the Court has overruled the two defences that have been introduced in this case, and in doing so, it has distinctly made it clear to counsel that it is dealing with those questions and those only; and 40

Charge

it is now overruling the motion of the defendants for a directed verdict in favor of the defendants upon the grounds stated in that motion, and distinctly states that it does not deal with any other questions that may exist in the case as to the legal status of the plaintiff's claim.

10 The bond in question was given by the defendants to the plaintiff, and it seems to have been given for the faithful payment of a certain note which has been given to a bank by this society and also by the plaintiffs. The note has not been paid by anyone. It appears by the evidence that interest has been charged on it from the time of its being given, and various renewals, that is other notes, given, which I do not understand, however, have paid off the note, but are simply
20 given as collateral or for evidential aspects regarding the original note.

It is for you to say what amount of damage the plaintiffs have sustained on this bond. If you find they have sustained damage and are entitled to recover, then you assess such damages as may be shown to you in the evidence by reason of the breach of the bond.

Have you got a statement there, Mr. Apgar?

30 Mr. Apgar: The note, your Honor, was given on the 6th day of July, 1908, for \$2900. We have paid interest on that from that time to the present and the protest altogether makes with interest and the amount of the note, \$4402.21, up to to-day.

The Court: Gentlemen, you may retire.

40 The jury then retired.

Exhibit P-1

Mr. Hartpence: I would like to have an objection noted to the portion of your Honor's charge where you refer to the notes given. I do not remember the language, but the part where you refer to it as being evidential, or something like that.

10

The Court: All right. Note an exception.

Exhibit P-1

THIS AGREEMENT, Made this twenty-ninth day of July, nineteen hundred and eight, Between Frederick W. Rowe, a director and Treasurer of the Foresters Benefit Society of Trenton, New Jersey, George Tunnicliffe, a Director of said Society, James Frederick Morton, a Director and acting Secretary of said Society, and James W. West, Director and Assistant Secretary of said Society and George F. Meakin, a Director of said Society, party of the first part and George Noble, a Trustee and President of said Society, William J. Purdue, a Trustee of said Society and George H. Knapp and Harry A. Hannum, and William Woodhouse, Jr., party of the second part, witnesseth that

20

30

WHEREAS the Trustees of said Society have by resolution, assumed the right to terminate the official term in said Society of the party of the first part, and

WHEREAS there is some question as to the legal right of said Trustees so to terminate the official term of said party of the first part, and

WHEREAS the said party of the first part are

40

Exhibit P-1

liable as parties to a promissory note given by said Society and discounted by the First National Bank of Trenton, to the amount of Twenty-nine hundred Dollars, and

10 WHEREAS it is desired by the parties hereto that the matters of difference between the said Trustees and the said party of the first part shall be amicably settled without any legal controversy to the detriment of said Society.

20 NOW THEREFORE, This agreement further witnesseth that the party of the first part jointly and severally covenant to and with the said party of the second part that they, the party of the first part, will accept as valid the action of the said Trustees of said Society ending the official term of said party of the first part in said Society and further covenant and agree not to interfere with, or take any action that would hinder or obstruct the Trustees or other officers of said Society in the conduct of the affairs and management of the business of said Society, upon condition that the party of the second part procure and deliver to the party of the first part, a bond, indemnifying the said party of the first part, individually and collectively against all loss or damage for or
30 on account of said promissory note or any renewal or renewals, or part renewal or part renewals (which shall extend the maturity thereof up to, but not beyond July 6th, 1909) thereof (the obligors on said bond to be satisfactory to the party of the first part, to be expressed by acceptance of same and delivery of this agreement), and upon the further condition that the party of the second part cause such action to be taken immediately by the said Trustees of said Society as
40

Exhibit P-1

will turn over to the party of the first part, to retain as their property, free from any claim on the part of the said Foresters Benefit Society of Trenton, New Jersey, of the charter of the McKinley Mutual Beneficial Society of Pennsylvania and Delaware, which has been purchased through the action of said party of the first part as Directors of said Foresters Benefit Society of Trenton, New Jersey. 10

And the party of the first part hereto further covenant that on the performance and carrying out by the party of the second part of the various undertakings in this agreement that they will make no further claim against the said Foresters Benefit Society of Trenton, New Jersey, for services or otherwise. 20

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

FREDERICK W. ROWE.	(L. S.)	
GEORGE TUNNICLIFFE.	(L. S.)	
JAMES F. MORTON.	(L. S.)	
JAMES W. WEST.	(L. S.)	
GEORGE NOBLE.	(L. S.)	
WILLIAM J. PURDUE.	(L. S.)	30
GEORGE H. KNAPP.	(L. S.)	
HARRY A. HANNUM.	(L. S.)	
WM. WOODHOUSE, JR.	(L. S.)	

Signed, sealed and delivered
in the presence of
B. B. Hutchinson.

Exhibit P-2

KNOW ALL MEN BY THESE PRESENTS, That we, George Noble, Harry A. Hannum, George H. Knapp and William Woodhouse, Jr., all of the city of Trenton, county of Mercer, and state of New Jersey, are held and firmly bound unto Frederick W. Rowe, George Tunnicliffe, James Frederick Morton and James W. West, of said city of Trenton, in the sum of Five Thousand, Eight hundred Dollars, lawful money of the United States of America, to be paid to the said Frederick W. Rowe, George Tunnicliffe, James Frederick Morton and James W. West or to their certain attorney, executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with out seals and dated the twenty-ninth day of July, A. D. nineteen hundred and eight.

THE CONDITION OF THIS OBLIGATION is such that whereas the said Frederick W. Rowe, George Tunnicliffe, James Frederick Morton and James W. West are endorsers upon a promissory note made by the Foresters Benefit Society of Trenton, New Jersey, and discounted by the First National Bank of Trenton, New Jersey, for the benefit of said Society for the amount of Two Thousand, Nine Hundred Dollars.

NOW, THEREFORE, if the Foresters Benefit Society shall well and truly pay or cause to be paid, the said promissory note at its maturity, or at the maturity of any renewal or renewals, or part renewal or renewals thereof up to, but not beyond July sixth, nineteen hundred and nine, and

Exhibit P-2

if the above bounden George Noble, Harry A. Hannum, George H. Knapp and William Woodhouse, Jr. their heirs, executors or administrators or any of them, shall from time to time, and at all times hereafter, save, defend and keep harmless and indemnify the said Frederick W. Rowe, 10
 George Tunnicliffe, James Frederick Morton and James W. West, their and each of their heirs, executors, administrators and assigns, and their and each of their goods and chattels, lands and tenements, of and from the said promissory note, and any and all renewals or part renewals thereof as aforesaid, and of and from all actions, costs and damages, for or by reason thereof, and shall pay or cause to be paid unto them or to their certain attorney, executors, administrators or as- 20
 signs, such sum or sums as they, or any of them, may be obliged to pay on account of said promissory note or any renewal or renewals thereof, without any fraud or other delay, then this obligation shall be void, otherwise shall remain in full force and virtue.

GEORGE NOBLE.	(L. S.)	
HARRY A. HANNUM.	(L. S.)	
GEORGE H. KNAPP.	(L. S.)	
WILLIAM WOODHOUSE, JR.	(L. S.)	30

Signed, sealed and delivered
 in the presence of
 B. B. Hutchinson.

Exhibit P-3

Renewal \$3,000.

Trenton, N. J., July 6, 1908.

10 Three months after date we promise to pay to the order of Foresters Beneficial Society of Trenton, N. J. \$2900/00 twenty nine hundred X Dollars at the First National Bank of Trenton, N. J., for value received.

No. 3649 Due 10/6

F. W. ROWE.
J. F. MORTON.
GEORGE TUNNICLIFFE.
J. W. WEST.
GEORGE NOBLE.

20

(Endorsed:)

F. W. Rowe
J. F. Morton.
Foresters Benefit Society of Trenton, N. J.
F. W. Rowe, Pres.

30

Exhibit P-4

Trenton, N. J. Oct. 6, 1908.

40 Three months after date, I promise to pay to the order of Foresters' Benefit Society \$2900 00/100 Twenty-nine Hundred X/100 Dollars at

Exhibit P-5

the First National Bank of Trenton, N. J., for value received.

No. 5556 Due 1/6

F. W. ROWE.	
J. F. MORTON.	
GEORGE TUNNICLIFFE.	10
J. W. WEST.	
GEORGE NOBLE.	

(Endorsed:)

Foresters' Benefit Society.

Harry A. Hannum,

Treas.

Exhibit P-5

20

UNITED STATES OF AMERICA

\$2900 00/

Trenton, N. J. Oct. 6, 1908.

Three months after date I promise to pay to the order of Foresters Benefit Society Twenty-nine HundredX Dollars at the First National Bank of Trenton, N. J. For Value Received.

F. W. ROWE.	
J. F. MORTON.	30
GEORGE NOBLE.	
GEORGE TUNNICLIFFE.	
J. W. WEST.	

(Endorsed:)

Foresters' Benefit Society

Harry A. Hannum, Treas.

Be it known, that on the day of the date hereof, I, W. A. Furman, Notary Public within the State 40

Exhibit P-5

of New Jersey, by lawful authority, duly commissioned and sworn, residing in the City of Trenton, in said State, at the request of the First National Bank of Trenton, New Jersey, exhibited the original note (of which the above is a true copy) unto

10 Bookkeepers of The First National Bank of Trenton, N. J. at the Banking House thereof, and demanding payment, received for answer "Not sufficient funds" for F. W. Rowe, and "no funds" for other parties (makers).

Whereupon, I, the said Notary, at the request aforesaid, have and do hereby publicly and solemnly protest against the maker of the said note, and all others whom it doth or may concern, for all exchange, re-exchange, and all costs, damages

20 and interest suffered and to be suffered for want of payment thereof.

Thus done and protested, at Trenton aforesaid, the sixth day of January, 1909.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial (Seal) Seal the day and year above written.

WM. A. FURMAN,
Notary Public.

(*Endorsement:*)

30

Trenton, N. J., Jan. 6, 1909.

Please take notice, that a note made by F. W. Rowe, *et al.*, and yourself for 2900 dollars. . . . cents, in favor of Foresters Benefit Society, Dated Oct. 6, 1908; Payable at The First National Bank of Trenton, N. J. endorsed by you, was this day protested for non-payment and the holder looks to you for payment thereof.

Your humble servant

W. A. FURMAN,
Notary Public.

40

Exhibit P-5

I, W. A. Furman, the Notary Public within named, do hereby certify that on the evening of the 6th day of January, 1909, I sealed and deposited in the Trenton Postoffice, with the postage prepaid, notices of the within protest of which the above is a true copy, directed as follows:

(F. W. Rowe,)	10
(J. F. Morton,)	
one to (George Tunnicliffe)	
(J. W. West,)	
(George Noble)	

all

Trenton, N. J.

“ “ Foresters Benefit Society

Frank Transue, Receiver, Trenton, N. J.

The words “endorsed by you”—erased in the notices sent to all, except Foresters’ Benefit Society’s. 20

IN TESTIMONY WHEREOF, I have hereto set my hand and Notarial Seal the day and year last above written.

WM. A. FURMAN,
Notary Public.

(Seal)

Vol.

Folio

30

PROTEST

F. W. Rowe, *et al.*

Note

\$2900

Not'l Fee

1.50

Postage,

.12

1.62

40

Exhibit P-6

Foresters Benefit Society

1/6

500-1-1-09

Trenton, N. J. June 6/09.

- 10 Please take notice that a note made by F. W. Rowe, *et al.* and yourself for 2900 Dollars..... Cents in favor of Foresters Benefit Society, dated Oct. 6, 1908, Payable at The First National Bank, Trenton, N. J. (payment having been demanded and refused), was this day protested for non-payment, and the holder looks to you for payment thereof.

WM. A. FURMAN,
Notary Public,

- 20 For First National Bank,
Trenton, N. J.

To F. W. Rowe:

For your own protection, mail enclosed notices at once.

Exhibit P-6

Trenton, N. J., April 7, 1909.

- 30 Three months after date I promise to pay to the order of First Nat. Bank \$2900 x/100 Dollars Two thousand and nine hundred x/100 Dollars at the First National Bank of Trenton, N. J. for value received.

No. 2102 Due 7/7

F. W. ROWE.
J. F. MORTON.
GEORGE TUNNICLIFFE.
J. W. WEST.

40

Exhibit D-6

Minutes of a meeting held in the Broad Street Bank B'ld'g. this 17th day of March, 1908 for the purpose of forming a board of Directors.

The gentlemen present were: Mr. Noble, Pres.; Mr. F. W. Rowe; Mr. George Tunnicliffe, and Mr. Geo. F. V. Meakin. 10

Mr. Rowe and Mr. Tunnicliffe both acceded to the request to act as Directors.

It was proposed by Mr. Noble, seconded by Mr. Tunnicliffe, and carried unanimously that Mr. Rowe act as Treasurer.

Proposed by Mr. Noble seconded by Mr. Rowe that Mr. Meakin take the position of Organizer and act as Secretary *Pro Tem*. Carried unanimously. 20

The meeting was then adjourned.

Minutes of a Meeting held in the Society's Office.

The directors of the Foresters Benefit Society held a meeting this 2nd day of April 1908 in their newly selected offices in the Elmore Bldg. 141 E. State St. The members of the Board of Directors were present, *viz.*: Mr. George Noble, president; Mr. Geo. Tunnicliffe, & Mr. F. W. Rowe. Mr. Geo. F. V. Meakin was asked to preside temporarily over the meeting, which he did. It was then proposed by Mr. Noble & seconded by Mr. Rowe that Mr. J. F. Morton become a member of the Board of Directors. The motion was carried & the gentleman accepted. The motion was then made by Mr. Noble that Mr. Morton be made Secretary 30 40

Exhibit D-6

pro tem; the motion was seconded by Mr. Rowe & carried & Accepted by Mr. Morton. The meeting was then adjourned.

10 At a meeting of the Board of Directors held April 4th/08 in the office of the Society & called specially to consider the providing of funds for the further financing of the Society, Mr. Rowe proposed to issue a note for (\$3,000.00) three thousand dollars redeemable in three months & to be indorsed by himself, Mr. Geo. Tunncliffe & Mr. J. F. Morton, the note to be presented to the First National Bank of Trenton, with a request to have it cashed. The motion was seconded by Mr. Noble & Carried by the Board.

20 The meeting adjourned.

A special meeting of the board was called by Mr. Tunncliffe with the object of obtaining the sanction of the Board to have Mr. James W. West take equal interest with him in the Society & add his name to the joint note. The motion was made by Mr. Tunncliffe & seconded by Mr. Rowe & carried this 7th day of April 08. Mr. West added his name to the note. Meeting ajurned.

30 At a meeting of the Board of Directors this 20th day of April 1908 All members being present *viz.* Mr. Geo. Tunncliffe, Mr. Geo. Noble, Mr. F. W. Rowe & Mr. J. F. Morton. It was proposed by Mr. Tunncliffe that the By-Laws of the Society referring to the Trustee be changed, upon investigation it was found that the Trustees are elected for one year & that they were elected July 25th 1907, therefore no change could be made un-

40

Exhibit D-6

til the expiration of their term & in consequence the motion was withdrawn by Mr. Tunnicliffe.

Mr. Noble was feeling unwell & retired from the meeting.

A motion was made by Mr. Tunnicliffe that Mr. J. W. West & Mr. Geo. F. V. Meakin be invited to become members of the Board of Directors, the motion was seconded by F. W. Rowe & carried. A cordial invitation was extended to these gentlemen to come upon the Board & accepted by them.

The meeting was then adjourned.

A meeting of the Board of Directors was called this 24th day of April 1908 to consider the action of the State Commissioners of Banking & Insurance calling on the Foresters Benefit Society for all its literature & the commissioners having previously shown a disposition to retard the progress of the Society the Board of Directors deemed it advisable to take counsell of some reputable attorney as to the legal status of the Society. Mr. Tunnicliffe made a motion that Senetor Barton B. Hutchinson be consulted, the motion was seconded by Mr. J. W. West & affirmed by the Board. The members of the Board decided to call on Senetor Hutchinson at once in a body as it was found that he was the in his office & at liberty to meet them. After having reviewed the plans & objects of the Society, the Attorney advised abstaining from all further business or progress in the affairs of the Society until they were proven to be in accordance with the Laws of the State or in conflict & to what extent with a view to modification. This the members of the Board unanimously voted to do & then retired to their own offices.

Exhibit D-6

Mr. Tunncliffe moved that the Board of Directors set Thursday evening of each week for the regular meetings of the Board of Directors & that the meeting take place promptly at 8 o'clock. The motion was seconded by Mr. Geo. Noble & carried.

10 A motion was made by Mr. Tunncliffe & seconded by Mr. F. W. Rowe & carried That German circular of the 4 per cent house purchas form be printed to the number of (5000) five thousand.

Mr. G. F. V. Meakin proposed that no check or draft be made on the bank for any amount over fifty (\$50.00) dollars by the Treasurer of the Foresters Benefit Society & that when any greater amount shall be required for disbursement it shall become a metter for consideration of the
20 Board of Directors & must receive the sanction of a majority of the Directors. The motion was seconded by Mr. F. W. Rowe & carried.

Thursday, April 30th being the evening assigned for a regular meeting of the Board of Directors & and the first after the resolution was made to meet every Thursday, It seems reasonable & proper to place on record in these minuts the cause for non observence of the resolution. As it
30 was resolved to suspend the business of the Foresters Benefit Society until its legal status was established, There was no business of any importance to transact & therefore no meeting was called.

Thursday evening May 7th. There was a full attendance at the Board meeting. Senetor Barton B. Hutchinson attorney for the Society having
40 informed the Society that the plan of Benefits,

Exhibit D-6

as applied to members, were all in accordance with the Benevolent Laws of the State & that the Society should resume its business at once, This created a feeling of great satisfaction at the meeting, the members of the Board congratulating each other on the result A motion was made by Mr. Geo. F. V. Meakin & seconded by Mr. J. W. West to resume the business of the Foresters Benefit Society which was unanimously carried. 10

A motion was made by Mr. Meakin to pay to Walter McKenzie six dollars for attending to the official business of the Societies office in Phila., Pa. during Mr. Meakin's absence. Also to pay Mr. Chas. F. Lee ten dollars on account of future business for the Philadelphia district the motion was seconded by Mr. Noble & carried by the Board & the Board adjourned. 20

Thursday evening May 14th. No meeting of the Board.

Thursday evening May 21st, No meeting of the Board.

Thursday evening May 28th There were present this evening at the Board meeting Mr. Geo. Noble, Mr. F. W. Rowe, Mr. Geo. Tunnicliffe Mr. Jas. W. West & J. F. Morton. There was no special business to be considered & so a general exchange of views, as to the best methods of extending the business of the Society were dealt in until the hour of adjournment 10.30. 30

Thursday June 4th 08 No meeting of the Board of Directors. 40

Exhibit D-6

Thursday June 11th 1908. The Board of Directors met at 8.30 p. m. all the members being present. Mr. Geo. Noble requested that Mr. Geo. F. V. Meakin should present his business to the Board for the first consideration.

- 10 Whereupon Mr. Meakin laid before the Board a proposition to purchas the McKinly Mutual Beneficial Society chartered under the Laws of Pennsylvania & Delaware Having a membership of over one hundred & a deput of sixty dollars per month. By request of the Board Mr. W. H. Nield General Manager of the McKinley M. B. So. was introduced & kindly demonstrated the liberal opportunities for business provided in the charters of the Society & strongly advised the Foresters
- 20 Benefit Society to purchas take over and immerge them into the Society. Mr. Nield said that there was a note for two hundred and forty dollars against the McKinley Mutual Beneficial Society held by a bank in Chester Pa. the interest on which is paid up to July 25 & that if the F. B. So. desired, he could by the Society endorsing the note arrange with the bank to continue to hold the note until the collections were sufficient to pay off the note from the funds of the McK. M. B. So. in
- 30 case we decided to purchas. Upo assuming the responsibility for payment of note upon these conditions & the payment of one hundred & sixty dollars in cash together with a policy for two thousand with 20 monthly premiums paid he would undertake to have turned over the F. B. So. all the business, charters, furniture & printed matter of the McK. M. B. So. & garrantee it free of all indebtedness. The proposition was defered for a
- 40 few days by the Board & the agreement of Mr.

Exhibit D-6

Nield, for further consideration. Mr. Meakin proposed a vote of thanks, to Mr. Nield which was seconded by Mr. Noble & carried unanimously.

Mr. Meakin proposed that we rent a part of the Philadelphia Office to Raphael Molinarai, a builder & contractor for six dollars per month. The motion was seconded by Mr. Roe & carried. 10

It was proposed by Mr. Noble that the Board of Directors be reduced to three members & that an Advisory Board be formed of the three remaining members of the Board of Directors. The motion was voted down by a vote of five to one.

The question was raised by Mr. Noble as to his right to copyright the literature used by the F. B. So. in his own name in place of that of the Society. It was unanimously agreed to that the matter be referred to B. B. Hutchinson the legal adviser of the Society. 20

The meeting then adjourned.

June 18th 1908 Thursday.

There was no meeting of the Board of Directors this evening.

June 25th Thursday evening, the members of the Board met promptly at 8 p. m. Mr. B. B. Hutchinson came in & discuss matters pertaining to the By-Laws of the Society & to own literature. This took up so much of the time that it became too late to take up the regular business of the Society & so the meeting was adjourned. 30

Thursday July 2nd All members of the Board met except the President, Mr. Noble, Mr. Tunnicliffe made a motion that Mr. F. W. Rowe be made 40

Exhibit D-6

temporary Chairman, the motion was seconded by Mr. West & carried. Mr. Rowe took the chair for the evening.

10 Mr. Geo. F. V. Meakin moved that a Vice President be selected Mr. Jas West seconded the motion. The question was deferred for legal consideration.

Mr. Meakin made a motion that the Sick Benefits or the McKinley Mutual Beneficial Society purchased by the Foresters Benefit Society be immediately operated on in Pennsylvania & Delaware States. The motion was seconded by Mr. West & carried.

20 A motion was made by Mr. Tunnicliffe & seconded by Mr. Meakin that as the funds of the Society were low Mr. Geo. Noble President, & Mr. Geo. F. V. Meakin Organizer, should be paid by commission for their work in place of a salary. In making the motion Mr. Tunnicliffe said that he was following the offer of Mr. Noble to work on this plan, for the Society if Mr. Meakin was willing to do likewise.

The motion was carried & the meeting adjourned.

89

New Jersey Court of Errors and Appeals

EMILY C. ROWE, Executrix etc.,
of FREDERICK W. ROWE, de-
ceased, et al,

Pltffs.-Respdt.

vs.

HARRY A. HANNUM, et al,
(Impld. with GEORGE NOBLE),
Defts.-Appellants.

On Appeal
from Mercer 10
Circuit Court.

BRIEF OF DEFENDANTS-APPELLANTS.

This case was tried before Judge Frank T. Lloyd and a jury in Mercer Circuit Court, and a verdict was rendered in favor of plaintiffs and against defendants. An appeal was then taken direct to the Court of Errors and Appeals. The grounds of appeal are set forth at p. 2 of the State of the Case. The chief ground urged as error was the action of the trial court in overruling the defense submitted by defendants. This submitted the case to the jury on the plaintiffs' case. If there was any evidence in defendants' case which should have gone to the jury, then the Court's action in this respect was erroneous. It is respectfully submitted that there was evidence in the case to show that plaintiffs were guilty of fraudulent misrepresentations to the defendants, or from which the jury could reasonably so infer, and that defendants were entitled to go to the jury on that evidence. There was also evidence in the case to show that the consideration of the obligation of defendants failed, in whole or in part, and

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30
40

that this should have gone to the jury. There was also evidence to show that the consideration was illegal, and this should have gone to the jury as to whether or not the parties should not have been left where they were, the position of the defendants being best. Upon this ground, therefore, the judgment under review should be reversed.

It is also submitted that upon the case as it stood, with the defense stricken out, no breach of
 10 the condition of the bond was shown. The note is still unpaid. The original note was dated October 6, 1908, and was protested for non-payment January 6th, 1909. No suit has ever been brought on that note, nor has payment been enforced against any of the makers thereof. On April 7, 1909, a new note was given by four of the makers of the original note and accepted by the First National Bank, one of the makers, George Noble, of the original note, not appearing thereon. It
 20 does not affirmatively appear from the evidence just how this situation establishes a liability of the obligees in the bond to pay the note or a renewal thereof referred to in the bond. It would seem, therefore, that the present suit had been prematurely brought, and that a non-suit or directed verdict for defendants should have been granted when requested by the defendants.

It was also error to exclude the testimony offered to show statements made by Frederick W. Rowe, deceased, in so far as his estate is concerned.
 30 These statements were admissible to bind the other plaintiffs on the issue of fraudulent misrepresentations, and to say that they could not bind Rowe's estate was but to say that a verdict was bound to be given in favor of his estate on the bond, and that was as effectual against defendants as though judgment were given in favor of all. The rule excluding such statements is technical, at least, and should not be invoked to shield fraud
 40 or the semblance thereof. If the transactions of

these plaintiffs were open and above board, they would not want to exclude anything that was said by way of inducement to the defendants.

Deceit, misrepresentation, fraud, illegality of consideration, failure of consideration, are all matters upon which the defendants had the right to go to the jury, not only as to the plaintiffs Tunncliffe, West and Morton, but also as to the estate of Rowe.

10

Fraud.

Plaintiffs knew that the Society which they purported to sell to defendants could not be operated with profit to the defendants; they also knew that the Society had no power under its charter to conduct the business in which it was engaged, except, perhaps, the purely fraternal feature. This is shown by the testimony of Johnston, Hutchinson, Morton, Tunncliffe, West and defendants, and also by the minutes of the Society.

20

Deceit.

Plaintiffs, knowing that they had a "gold-brick", and desiring to rid themselves of it, and also to relieve themselves of the monetary liability on its obligations, deceived the defendants, both actively, by misrepresenting its powers and earning capacity, and the representation that it was a great money maker for them, and passively, by suppressing the real situation.

30

Misrepresentation.

Not only were the plaintiffs aware of the spurious nature of the enterprise, knowledge of which they suppressed from the defendants, but they actively misrepresented the character and possibilities of the business as a money maker for the

40

defendants. They knew it was not. They said that Noble was authorized to act for them, and they are bound by his acts with defendants. They said that they had had trouble with Noble, and that if it were not for him they would not give it up. This was the great reason they impressed upon defendants for their desire to withdraw. Yet Mr. Satterthwait, in behalf of certain members of the Society, had protested at their annual meeting against the course they were pursuing, and
 10 Senator Hutchinson, representing plaintiffs directly, had told them that they would have to readjust their whole working plan. And Mr. Johnston, Deputy Commissioner of Banking and Insurance, had also told them the same thing. They glossed this over by saying to defendants that they had had some trouble with the State authorities, but that Senator Hutchinson had straightened it all out. And there is evidence to indicate that
 20 after it was all over, they gloated over their act. Plaintiffs lulled the defendants into a condition of false security, and then stung them. They cannot avoid the consequences of their acts by now saying that defendants should have taken care of themselves. Defendants may have been "Babes in the Woods", but plaintiffs cannot launch the fraud and then say to defendants, "You ought to have known better", in excuse or avoidance of their position. Even if defendants investigated
 30 the situation (which they say they did not do) it would make no difference if they actually relied on plaintiff's representations (and they say that they did so reply.) Plaintiffs cannot profit by their own wrong simply because defendants saw fit to take precautions, for notwithstanding any investigation that they may have made, they were still taking plaintiff's statements at their face value and relying upon them.

P. & S. O. Co. v. Rubber Co., 10 Ch. Ap.
 (Eng.) 515;

Keen v. James, 39 N. J. Eq. 537;
Brown v. Montgomery, 20 N. Y. 287.
Smith v. Richards, 13 Peters, 26.

Illegal Consideration.

If any consideration moved from plaintiffs to defendants it was illegal. The whole movement was contrary to law. The charter was illegal, the Society had no power to operate under the charter; it did not comply with the Trust Company Act, nor with the Building & Loan Association Act, nor the Insurance Laws. Mr. Johnston told them that, both before and after the respective parties became connected with the Society. The appointment of the Receiver clinched the illegality of the scheme. It was a fraud upon the laws of the State. All that the defendants got aside from a small balance in the bank account, was an illegal enterprise. This is the consideration upon which plaintiffs seek to base their right to go against the defendants upon the bond. 10 20

Fraudulent Consideration.

This is considered under the preceding caption.

No Consideration.

But there was no consideration. Plaintiffs never vested in defendants anything of value to them. On the other hand, if defendants were vested with anything, it was a liability or obligation,—a trust which they became responsible to operate for the benefit of other persons, viz.: the policy holders. 30

Pari Delicto.

In any event, defendants sought in good faith to carry on the enterprise for a time, believing 40

themselves (through the added deceit of Noble, plaintiffs' agent) to have been legally inducted into office and control, until advised otherwise by counsel and the State authorities. But even if this Court should feel that they were culpable, still it cannot be denied that plaintiffs were equally so, and the parties should be left where they are found, with the balance in favor of the defendants' good faith,—child-like though it was.

10

No Damage Shown.

The testimony does not show that the plaintiffs have been required to pay the note referred to, and they are only entitled to indemnity against actual loss. It does not appear that the condition of the bond has been broken.

20 **It is respectfully submitted, therefore, that the judgment under review should be reversed, set aside and for nothing holden.**

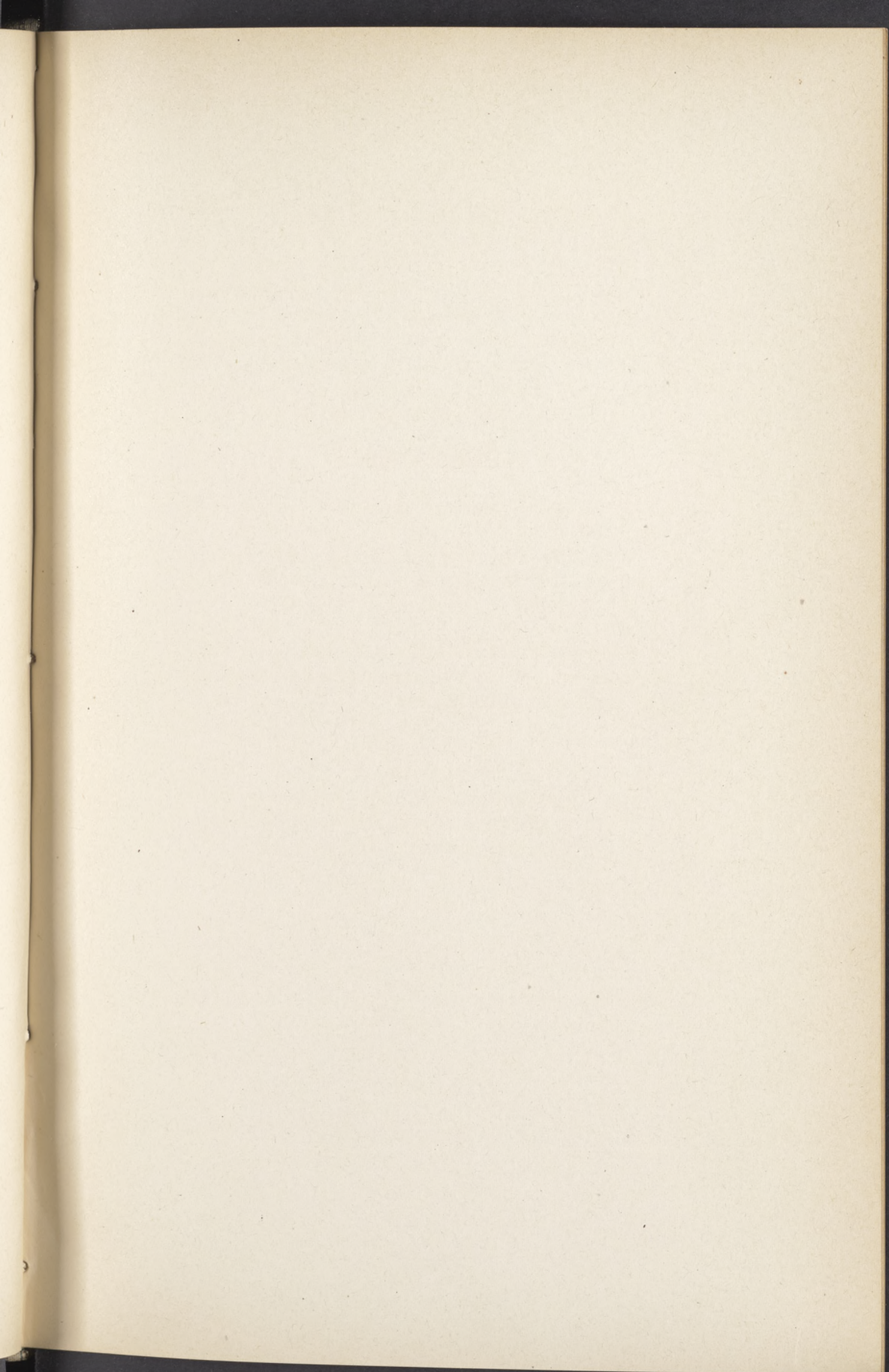
FRANK S. KATZENBACH, JR.,

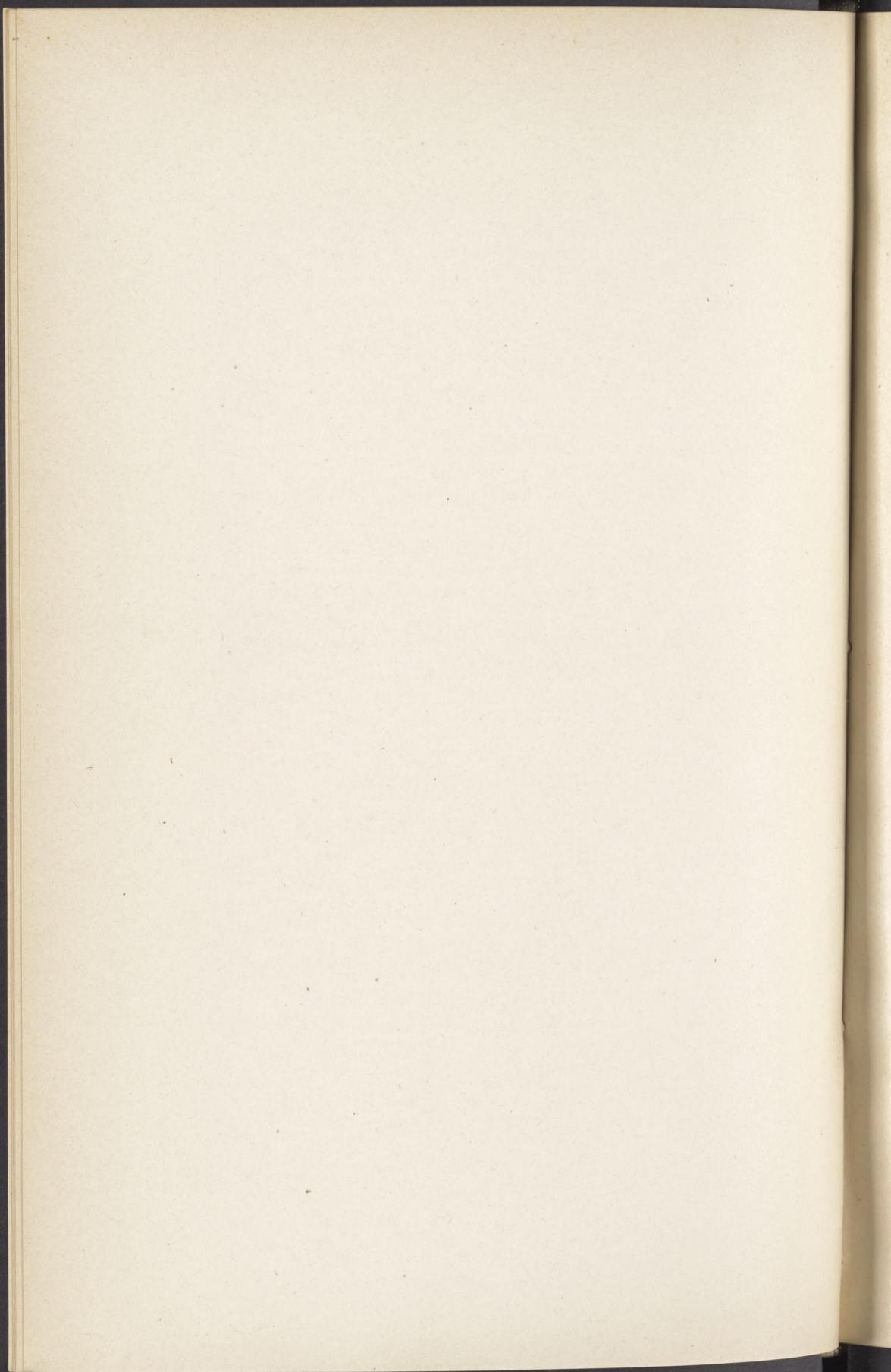
JOHN A. HARTPENCE,

*Of counsel with defendants-appellants
Harry A. Hannum, George H. Knapp
and William Woodhouse, Jr.*

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NEW JERSEY

Court of Errors and Appeals

EMILY C. ROWE, EXECUTRIX, &C., OF FREDERICK W. ROWE, DECEASED, ET AL., <i>Plaintiffs-Respondents,</i>	} On Appeal from Mercer Circuit Court.
<i>vs.</i>	
HARRY A. HANNUM ET AL. (IM- PLEADED WITH GEORGE NOBLE), <i>Defendants-Appellants.</i>	

Brief of Plaintiffs-Respondents.

The questions raised by defendants-appellants' brief are alleged error of the trial court as follows:

1. In overruling the defense, because it is alleged that the case should have gone to the jury upon the following grounds:

(a) That there was evidence to show that plaintiffs were guilty of fraudulent misrepresentations;

(b) That the consideration of defendants in suit failed, in whole or in part;

(c) That the consideration was illegal;

(d) That, "with the defense stricken out," no breach of the condition of the bond was shown, the note being

still unpaid by plaintiffs, although their liability for it had not ceased.

2. In refusing a nonsuit or directed verdict to defendants, upon the ground that plaintiffs' action had been prematurely brought, there having been no breach of the bond in suit.

3. In excluding testimony offered by defendants to show statements made by Frederick W. Rowe (he being, at the time of trial, deceased) upon the ground that the statements were admissible to bind the other plaintiffs, West, Tunnicliffe and Morton, if not the estate of Rowe.

I.

Fraud, deceit and misrepresentation may be treated under one head.

There was no fraud, deceit or misrepresentation on the part of the plaintiffs or anyone authorized by them.

The agreement (*Exhibit P 1*, Case, p. 127), after reciting the internal differences of the society, provides (See Case, p. 128, lines 17 to 40, and p. 129, lines 1 to 13).

Noble was the negotiator for the second parties to that agreement, and was one of such second parties. He was president of the society, and had full knowledge of its affairs and its legal and financial condition, and the plaintiffs had fallen out with him, and said they could not get along with him.

Under these circumstances Noble in nowise represented the plaintiffs, but only himself, and, therefore, could not bind them by any statements he might make.

The bond followed the agreement so far as the note was concerned.

As to any representations made directly by any of the plaintiffs, it will be observed that Harding, defendants' witness, absolutely failed on direct examination (Case, p. 69); Morton, a plaintiff, called by defend-

ants, denied (Case, pp. 80 to 82) any direct representations and also all knowledge of Noble's negotiations. Also, see colloquy between the Court and Mr. Hartpence (Case, p. 83, lines 30 to 37). Morton (Case, pp. 84 and 85) says he did not know who were coming in; that he considered the association a good one, and did not want to sell it, *and had nothing to do with the selling*; also (Case, p. 91, lines 10 to 22) he states there was a balance of \$900 in the bank, and that defendants knew it.

Conklin, bank examiner, testifies (Case, p. 67) that at the time he investigated the balance in bank was \$4.71, and furniture and fixtures \$193, making a total of assets of \$197.71, and liabilities amounting to \$3,338.82 in November, 1908, but there is no denial that the \$900 was in bank at the time the transfer was made. This must have been dissipated subsequently.

The evidence for defendants upon this branch of the case rests upon the testimony of Knapp, Johnson and Woodhouse.

Johnson (Case, p. 45, et seq.), of course, does not know of any actual fraud or of any misrepresentations, direct or indirect, and if his testimony is of any value to defendants it must be on the question of deceit and tacit fraud. He only testifies as to interviews with Noble and Hutchinson as to the legal status of the association, and says (Case, pp. 48 and 52) that Noble sent him a copy of the amended by-laws; that (Case, p. 52) he advised Hutchinson and Noble that the society was exercising powers it did not possess, particularly the building and loan features which was not eliminated in the amended by-laws (Case, p. 53). The Court very properly said at this point that all this was not competent. (This will appear hereafter in the discussion of the question of consideration.)

Knapp says (Case, pp. 35 and 36) that Tunnicliffe told him they (meaning Tunnicliffe, Morton, Rowe and himself) were getting out "on account of friction

with this man Noble; that they could not get along with him." Here, again, the Court very properly interposed to say (Case, p. 39) that defendants "will have to show there was authority to deal for the plaintiffs and that the representations were in their behalf before it (the statements of fraud and deceit) is admissible," thus putting the burden of proof upon defendants, where it belongs. Knapp (Case, p. 35) says Tunncliffe told him "it (the society) was one of the best things we had ever seen, and one of the biggest money makers he had ever known," and (Case, p. 36) "that if we could get rid of Noble he would like to get back in it again." The whole burden of Tunncliffe's talk was that Noble was the disturber; that if he were gotten rid of the society would be a great money maker. Defendants had fair warning about Noble and went in with their eyes open.

As to Woodhouse's testimony, it relates to conversations with Rowe and Tunncliffe, two of the plaintiffs, and with Knapp, a co-defendant.

(The admissibility of the Rowe conversations will be dealt with later.)

If admissible, all that Rowe said (Case, p. 107) was that "Noble had a right to carry on consultation in regard to the matter of turning over the society," which was true, of course, as any other officer would have had the same right, but which would not imply that he had also the right to make false representations. Woodhouse also says (same page) that this matter was broached to him "a month or five weeks previous" to the final meeting for transfer. He had ample time to investigate at the Banking and Insurance Department in that time. Tunncliffe, whom Woodhouse had known a few weeks prior to the signing of this agreement in question" (Case, p. 106), did not say anything to him about the society until the day of signing (Case, p. 108), and then said, "This is a big thing for you fellows, *if you can get along with Mr. Noble*. It

is a money maker. I would like, if possible, to come into it again." This is entirely consistent with the idea that Noble was the obstacle to successful management, and that he (Noble) thought he could get some others in who would reorganize the society to meet the demands of the Banking and Insurance Department, or otherwise, as he should see fit, and who would be more tractable than the plaintiffs. There is nothing in the case to show that Hutchinson ever gave an opinion of the society and its authority to Woodhouse. (See Case, p. 110, line 34.) The sum and substance of Tunnicliffe's conversations was that the concern would be a great money maker *if Noble was out*, and, impliedly, if the society was put on the right basis. It is quite probable that Noble, being *persona non grata*, either concealed the legal status or misrepresented it, but this cannot bind the plaintiffs in the absence of authority from them. Noble was acting for himself and is the only person responsible. The defendants took a business chance without careful examination. That the money making referred to related to the future is evident from the fact that no money had been made up to the time of transfer, and defendants knew it.

II.

1. The consideration did not fail, in whole or in part. A careful examination of the agreement (*Exhibit P 1*, Case, pp. 128-129) shows that its essentials were (a) to validate the ending of the official terms of the plaintiffs, which, according to the preambles, were in dispute, and (b) to prevent the plaintiffs from obstructing other officers of the society in its management. This was the sole consideration of the bond (*Exhibit P 2*, Case, p. 130), which was predicated upon the agreement and provided for in it. The two must be read together.

There is no evidence that the plaintiffs violated the agreement. In fact, the testimony of Morton (Case, p. 89, lines 15-25) shows that plaintiffs expressly performed the agreement.

III.

2. The consideration was not illegal.

The only consideration was that in the agreement, and that was simply the settlement of a dispute as to the validity of the terms of offices, and the retirement of those whose terms were alleged to have expired. There was no resignation, and the new officers simply took their places, and the association and its members lost nothing except in personnel. Even if the plaintiffs had resigned there would have been nothing illegal in it, for it has never been disputed, so far as we can discover, that an officer of any corporation has the "unqualified" right to resign (10 Cyc. 741).

So far as the status of the association is concerned as to illegality, no adjudication had been made, no decision rendered, and no evidence existed of illegality except the mere opinion of Mr. Johnston. Up to that point any other opinion would have been as authoritative, and no more so.

IV.

3. There was a consideration.

Plaintiffs retired from office and left defendants in control with a balance in hand of \$900 and office furniture, etc., which they fully understood, and a going concern against which there had been no official action as yet and no ban except the casual opinion of a public official. Of course, there was a trust to be exercised on behalf of the policyholders.

There is always a trust implied and imposed in holding office, but no more so in this than in any similar case.

V.

4. The doctrine of *pari delicto* does not apply.

It was the duty of defendants to use every means in their power to ascertain the legal status of the society by inquiry of the Secretary of State, the Banking and Insurance Department, through counsel, and otherwise, as the records were public, and should not have waited until action was taken by the authorities. That is what plaintiffs did, and they were proceeding to remedy the defects, if any there were, in the organization.

5. There was a breach of the bond.

The very moment the defendants failed to respond to the demand of plaintiffs that they pay the note defendants defaulted. The liability of plaintiffs continued, and they were in danger of suit at any time. A part of the condition of the bond was that defendants should pay the note "at its maturity, or at the maturity of any renewal or renewals, or part renewal or renewals, up to but not beyond July sixth, nineteen hundred and nine."

It is so obvious that there was a breach that it seems useless to discuss it.

See 22 *Cyc.* 90, and particularly page 92, note 69.

VI.

Exclusion of testimony.

Defendants sought to introduce evidence of statements made by Frederick W. Rowe, originally one of the plaintiffs (now deceased), in his lifetime. The bond in this case is joint and several as to the obligors but joint as to the obligees. (*Exhibit P 2*, Case, p. 130.) Therefore, the statements of a deceased obligee

(Rowe) would, if admissible, bind his estate and all the others as well, because there is no divisibility and all the joint obligees speak as one person, and one of them speaks as all four of them together.

The surviving obligees could not testify concerning transactions with or statements by decedent that would bind his estate, hence no one can give such evidence to bind the survivors. This principle is inter-related not only between the plaintiffs, but between the plaintiffs and any one or more of the defendants.

It will be observed from the printed case that it was impossible to furnish cases upon this precise question.

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