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Petition of Appeal.

Petition of Appeal.

Filed August 31, 1917.

New Jersey Court of Errors and Appeals

Between

FOUR CORNERS BUILDING AND
LOAN ASSOCIATION, a cor-
poration,

Complainant-Respondent,

and

FRANK SCHWARZWAELDER,
Defendant-Appellant.

On Appeal.

*Petition of
Appeal.*

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*To the Honorable, the Court of Errors and Ap-
peals in the last resort in all causes:*

The petition of Frank Schwarzwaelder, the ap-
pellant in the above stated cause, respectfully
shows that your petitioner finds himself ag-
grieved by a final decree made in the Court of
Chancery by his Honor Edwin Robert Walker,
Chancellor of the State of New Jersey, bearing
date the 6th day of August, 1917, wherein your
petitioner was defendant and the said Four Cor-
ners Building and Loan Association, a corpora-
tion, was complainant in this respect, to wit, that
the said decree orders and adjudges that your
petitioner, while acting as a director of com-
plainant corporation, was guilty of gross inatten-
tion and gross negligence in the performance of
his duties as said director, whereby the com-

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Petition of Appeal.

plainant suffered a financial loss of \$5,193.90, and ordering and decreeing that your petitioner pay to the complainant association the said sum of \$5,193.90, that being the amount of the loss sustained by the complainant by reason of the alleged negligence of your petitioner, and your
 10 petitioner humbly appeals from the said decree of the Chancellor, which decrees as aforesaid upon the ground that the same is erroneous, because the same adjudges and decrees that your petitioner was guilty of gross inattention and gross negligence in the performance of his duties as said director, whereby the complainant suffered a financial loss of \$5,193.90, and granting to the complainant the relief prayed for, and
 20 adjudging that your petitioner do pay to the complainant the sum of \$5,193.90 with costs of suit.

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

30
 THOMAS S. HENRY,
 FRANCIS CHILD,
Solicitors for and of Counsel
with Appellant.

Endorsed:

“Filed Aug. 31, 1917.

THOMAS F. MARTIN,
Clerk.”

Petition of Appeal.

STATE OF NEW JERSEY.

DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of petition of appeal in the case of Four Corners Building and Loan Association, a corporation, complainant-respondent, and Frank Schwarzwaelder, defendant-appellant, as the same is taken from and compared with the original filed August 31st, 1917, and now remaining on file in my office. 10

In testimony whereof, I have here-
 (L. s.) unto set my hand and affixed the Official Seal of said Court at Trenton, 20
 this Thirty-first day of August, A. D. 1917.

THOMAS F. MARTIN,
Secretary of State.

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Answer to Petition of Appeal.

Answer to Petition of Appeal.

Filed September 12, 1917.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	<p><i>Between</i></p> <p>FOUR CORNERS BUILDING AND LOAN ASSOCIATION, <i>Complainant-Respondent,</i></p> <p style="text-align: center;"><i>and</i></p> <p>FRANK SCHWARZWAELDER, <i>Defendant-Appellant.</i></p>	}	<p><i>On Appeal.</i></p> <p><i>Answer to Pe- tition of Ap- peal.</i></p>
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20 The answer of the above-named respondent to the petition of appeal of the above-named appellant.

30 This respondent, not admitting any or all of the matters which in said petition of appeal are contained, to be true, but in answer thereto, nevertheless, says and admits, that a decree was, on the 6th day of August, 1917, made and entered in the Court of Chancery, in the cause for that purpose mentioned in said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto, when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to equity and prays that the same may be affirmed, with costs to be adjudged to this respondent.

RAYMOND, MOUNTAIN,
VAN BLARCOM & MARSH,
Solicitors for and of Counsel
with Respondent.

Bill of Complaint.

Bill of Complaint.

Filed.

In Chancery of New Jersey.

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

Complainant, Four Corners Building and Loan Association, a corporation organized under and in accordance with the laws of the State of New Jersey, having its principal office in the City of Newark, County of Essex, and State of New Jersey, respectfully shows:

1. That in the month of July, 1908, Frank J. Schwarzwaelder was duly elected a director of the complainant association, to hold office for the ensuing year, and that he thereupon took upon himself the burden of acting as such director, and that he was duly elected annually thereafter as a director of said association, and continued to serve as such until September 21, 1914.

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2. That said Frank J. Schwarzwaelder having been appointed as one of the executors and trustees of the estate of August Loehnberg, deceased, under and by virtue of the last will and testament of said August Loehnberg, and having taken upon himself the burden of the administration of the said estate was acting as such executor and trustee during the said period from July, 1908, to September 21st, 1914, as aforesaid.

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3. Complainant further says that as such executor and trustee of the estate of August Loehnberg, deceased, Frank J. Schwarzwaelder

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Bill of Complaint.

had full knowledge of all the assets and securities belonging to the said estate and that among the assets of said estate was a certain bond and mortgage made and executed by one Mabel Daly and William H. Daly, her husband, to Lizzie H. Leithoff and Frank Schwarzwaelder, as surviving executors of the estate of August Loeh-
 10 berg, deceased, in the principal sum of \$3,500. and bearing date the 11th day of October, 1909, which said mortgage was recorded in Book S 24 of Mortgages for Essex County at page 206, on the 11th day of October, 1909, and which said mortgage covered property known as 60-62 Second street, South Orange, New Jersey, and is more particularly described as follows:

20 Situate, lying and being in the Village of South Orange, County of Essex and State of New Jersey:

(BEGINNING in the northerly corner of lands formerly of Julia A. Woodward at the southwesterly line of Second street, thence (1) with said Woodward's line southwesterly 100 feet more or less to the lands of Abijah F. Tillou; thence (2) with said Tillou's land northwesterly 50 feet; thence (3) parallel with the aforesaid
 30 Woodward's line northeasterly 100 feet more or less; thence (4) to the aforesaid line of Second street southeasterly 50 feet to the point or place of BEGINNING.

That the said mortgage remained in full force and effect as a lien upon the property above described, and in the possession of the said Frank J. Schwarzwaelder, as executor as aforesaid, as part of the assets of the said estate of August Loehberg, deceased, during the years
 40 1911 to 1915, inclusive.

Bill of Complaint.

4. That among the assets of the said estate of August Loehnberg, deceased, was a certain other bond and mortgage made and executed by William H. Daly, and Mabel, his wife, to Lizzie H. Leithoff and Frank Schwarzwaelder, as surviving executors of the estate of August Loehnberg, deceased, in the principal sum of \$4,000, bearing date the 3rd day of December, 1909, and which said mortgage was recorded in the Register's Office of Essex County in Book Y 24, page 212, on the 16th day of December, 1909. Which said mortgage covered property more particularly described as follows:

Situate, lying and being in the City of East Orange, County of Essex and State of New Jersey, known as lot No. 18 and part of lot No. 17 in Block 190 B as laid down on a map entitled Map of Ampere Section of the East Orange and Ampere Land Company, in East Orange, Bloomfield, and Newark, New Jersey, dated the 15th day of June, 1909, made by W. H. V. Riemer, C. E., Orange, N. J., and filed the 6th day of June, 1909, in the Office of the Register of the County of Essex:

BEGINNING in the northwesterly line of North 18th street at the intersection of the southwesterly line of Second avenue, running thence along said line of North 18th street $29^{\circ} 55''$ west $33 \frac{1}{3}$ feet; thence northwesterly and at right angles to North 18th street 100 feet; thence northeasterly and parallel with North 18th street $33 \frac{1}{3}$ feet; thence southeasterly along the said line of Second avenue at right angles to North 18th street 100 feet to the point or place of BEGINNING.

That the said mortgage remained in full force and effect as a lien upon the property above

Bill of Complaint.

described, and in the possession of the said Frank J. Schwarzwaelder as one of the assets of the said estate of August Loehnberg, deceased, during the years of 1909 to 1915, inclusive.

10 5. That on or about the 1st day of April, 1913, upon application of one Arthur M. Sims, the complainant association loaned to the said Arthur M. Sims the sum of \$5,000, and took as security therefor his certain bond and mortgage, which said mortgage covered the premises here-
inabove first described, and known as 60-62 Sec-
20 2nd street, South Orange, and bears date April 1st, 1913, and is recorded in Book I-31 of Mort-
gages for Essex County, at page 388. Said as-
sociation believed that said mortgage was then
and there a first lien upon said premises.

That the said mortgage was subject and sub-
sequent to the lien of the mortgage held by the
said Frank J. Schwarzwaelder, as executor, as
aforesaid, which fact was not known to the com-
plainant.

30 6. That said Frank J. Schwarzwaelder, well
knowing of the existence of the said mortgage,
so as aforesaid held by him as executor, and
well knowing that the complainant was pro-
hibited by the statutes of the State of New Jer-
sey from accepting as security for loans, any
mortgages other than first mortgages, either
fraudulently and willfully, or by reason of gross
negligence in the performance of his duties as
director of said association, recommended and
induced and permitted the complainant to make
said loan of \$5,000 to said Arthur M. Sims, and
to accept as security therefor a mortgage sub-
40 ject to the lien of the mortgage so as aforesaid

Bill of Complaint.

held by him, and subsequently permitted and induced the said complainant to retain said mortgage as part of the assets of said association.

7. That on or about December 9th, 1914, proceedings were instituted in the Court of Chancery, of New Jersey, to foreclosure the lien of a certain mortgage held by one Lillian Bercaw upon the said premises; which was a prior lien on the tract herein described. That the said complainant association was made a party defendant in said cause, by reason of its said mortgage; that in accordance with the final decree in said cause, dated the 26th day of April, 1915, and the execution thereunder, the Sheriff of the County of Essex sold said lands and premises on the 3rd day of August, 1915, for the sum of \$4,600 and there was no surplus fund arising from said sale available to satisfy the complainant's said mortgage or any part thereof.

8. That on or about the 10th day of September, 1910, upon application of one Albert B. Aschenbach and Maude Aschenbach, his wife, complainant association loaned to the said Albert B. Aschenbach the sum of \$4,000 and took as security therefor their certain bond and mortgage bearing date the 10th day of September, 1910, which said mortgage covered the premises as hereinabove secondly described, in the City of East Orange, New Jersey, which said mortgage was recorded in Book N 26 of Mortgages for Essex County, at page 162, and that the said mortgage was subject and subsequent to the mortgage held by the said Frank J. Schwarzwaelder, as executor, as aforesaid, on the said premises; and that said association believed that said mortgage was then and there a first lien upon said premises.

Bill of Complaint.

9. That the said Frank J. Schwarzwaelder well knowing the existence of the said mortgage so as aforesaid held by him as executor on said second above described premises, and well knowing that the complainant was prohibited by the statutes of the State of New Jersey from
10 accepting as security for loans any mortgages other than first mortgages, either fraudulently and willfully, or by reason of gross negligence in the performance of his duties as director of said association, recommended, induced and permitted complainant to make such loan of \$4,000 to Albert B. Aschenbach and wife, and to accept as security therefor a mortgage subject to the lien of the mortgage so as aforesaid held by him, and subsequently permitted and induced the said
20 complainant to retain said mortgage as part of the assets of said association.

10. That on or about December 5th, 1914, proceedings were instituted in the Court of Chancery of New Jersey, to foreclose the lien of the mortgage held by the said executors of the estate of August Loehnberg, deceased, and that the complainant association was made a party defendant to the said cause, by reason of its said mortgage. That in accordance with the final decree
30 in said cause dated the 8th day of March, 1916, and the execution thereunder, the Sheriff of the County of Essex sold the said lands and premises on the 25th day of April, 1916, for the sum of \$4,642, and that there was no surplus fund arising from said foreclosure sale available to satisfy the complainant's said mortgage or any part thereof.

11. That by reason of the fraudulent or willful, or grossly negligent acts of the said Frank
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Bill of Complaint.

J. Schwarzwaelder as director of the said complainant association, the complainant has sustained a loss of \$10,000 and says that there is due to it from said Frank J. Schwarzwaelder the sum of \$10,000.

That the complainant is without adequate remedy in the courts of law, and therefore prays that Frank J. Schwarzwaelder, who is the defendant to this suit, may answer this Bill of Complaint without oath, and every statement therein made, and that the said Frank J. Schwarzwaelder may be decreed to be a trustee of the complainant association, and that the defendant may be decreed to pay to the complainant the amount found to be due it with interest and costs by a short day to be appointed by this court.

That a writ of subpoena may issue commanding said defendant to answer this Bill of Complaint and abide by such decree as this court may make in the premises.

RAYMOND, MOUNTAIN,
VAN BLARCOM & MARSH,
*Solicitors for and Counsel
with Complainant.*

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Answer.

Answer.

Filed.

IN CHANCERY OF NEW JERSEY.

10 *Between*

FOUR CORNERS BUILDING AND
LOAN ASSOCIATION OF NEW-
ARK, N. J., a corporation of
the State of New Jersey,
Complainant,

and

FRANK SCHWARZWAELDER,
Defendant.

On Bill, &c.
Answer.

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The answer of the defendant, Frank Schwarzwaelder, to the bill of complaint of Four Corners Building and Loan Association of the City of Newark, N. J., a corporation of the State of New Jersey, complainant:

This defendant, Frank Schwarzwaelder, answering the bill of complaint, says:

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1. That the allegations of paragraph one are admitted, except that the defendant says that he was not a director of the complainant corporation in the month of September, 1914, and says that he ceased to be such a director in the month of July, 1914.

2. The allegations of paragraphs two, three, four and five are admitted.

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3. This defendant answering the allegations of paragraph six of the complainant's bill says that the original application for the loan to

Answer.

Arthur M. Sims referred to in paragraphs five and six of the complainant's bill of complaint was made to complainant some time in the month of September or October, 1912. That a committee of the directors of the complainant corporation was appointed whose duty it was to report as to the value of the premises set out in said application; that this defendant was a member of said committee and made a report recommending that a loan of \$5,000.00 be granted to one Louis Wagner, who lived in Brooklyn, New York. 10

That on October 25, 1912, at a meeting of the board of directors of the complainant, this defendant being the only member of the committee to report on said loan, the committee was continued.

That on February 28, 1913, at a meeting of the board of directors of the complainant association, the application of the said Louis Wagner was again considered and it was ordered that the officers grant such amount of said loan as should be unanimously recommended by said inspection committee. That the defendant was present at this meeting. 20

That on March 28, 1913, at a meeting of the board of directors of the complainant association, a loan of \$5,000.00 was granted to the said Louis Wagner; that this defendant was not present at said meeting and had no knowledge that said loan had been granted. 30

That on April 25, 1913, at a meeting of the directors of the complainant association, at which meeting defendant was not present, the loan theretofore granted to the said Louis Wagner was transferred to one A. Sims. 40

Answer.

10 That the defendant had no knowledge of the fact that the loan to A. Sims covered the property mentioned in the application for loan made by Louis Wagner and was not present at any meeting of the board of directors when any action was taken on said loan to A. Sims, and denies that he was guilty of fraud, gross negligence or negligence of any kind as a director of said complainant in permitting the complainant to make, accept or retain the loan made to Arthur M. Sims, and denies that he ever recommended or voted in favor of granting a loan to said Arthur M. Sims.

20 That defendant held as executor of the estate of August Loehnerberg, deceased, a certain mortgage made by William H. Daly and Mabel Daly, his wife, to this defendant and Lizzie H. Leithoff, as surviving executors of the estate of August Loehnerberg, deceased; that he as executor regularly received the interest on said Daly mortgage which this defendant in the year 1914 discovered covered the same premises as that covered by the mortgage made by A. Sims to the complainant association. That this interest was remitted to him regularly by Roland D. Crocker, an attorney-at-law, who was the attorney for the complainant corporation, and was also the attorney for this 30 defendant and Lizzie H. Leithoff, as executors of the last will and testament of August Loehnerberg, deceased; and the first knowledge that this defendant obtained that the loan made by the complainant to A. Sims covered the same property as was covered by the mortgage held by this defendant and Lizzie H. Leithoff, as executors of the estate of August Loehnerberg, deceased, on the property of William H. Daly was after 40

Answer.

the disappearance of Roland D. Crocker in the month of September, 1914.

4. Defendant admits the allegations of paragraph seven of complainant's bill.

5. Defendant admits the allegations of paragraph eight of complainant's bill.

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6. Defendant denies the allegations of paragraph nine of the complainant's bill and says that he did not know that the mortgage referred to in said paragraph was second in order of priority to the one held by the defendant and Lizzie H. Leithoff as executors of the estate of August Loehnberg, deceased, and denies that he fraudulently or wilfully, or by reason of gross negligence or any negligence in the performance of his duties as a director of the complainant association knowingly recommended, induced or permitted the complainant to make such loan and accept a second mortgage as security therefor, or that he subsequently knowingly permitted or induced complainant to retain said mortgage as a part of its assets.

20

Defendant says that he admits that he as one of the executors of the estate of August Loennberg, deceased, held a mortgage upon the same premises as covered by complainant's mortgage, and that the mortgage held by defendant was a first and prior lien on said premises, but says that as such executor he held a large number of mortgages; that the descriptions in the same showed no street numbers and that the written application for the loan referred to in paragraph nine of the complainant's bill referred to the property in question by street numbers only; that said application was made in the name of Albert B. Aschenbach and wife, and that the

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Answer.

mortgage held by this defendant and Lizzie H. Leithoff, as executors of the estate of August Loehner, deceased, stood in the name of William H. Daly and wife, and that the defendant regularly received the interest from one Roland D. Crocker, an attorney-at-law, who was the attorney for this defendant and Lizzie H. Leithoff as executors of the estate of August Loehner, deceased, and was also the attorney for the complainant association. That the defendant never had any notice that the said William H. Daly and wife had conveyed said premises to Albert B. Aschenbach, and that the defendant did not act as a member of the inspection committee of the complainant association in passing on said Aschenbach loan, and that if defendant voted in favor of complainant's granting of said loan to Albert B. Aschenbach, he so voted because of the favorable report presented by the inspection committee appointed to examine into the value of the security of said loan.

That defendant did not, as executor or individually, receive payment of any of the proceeds of the said mortgage.

7. Defendant admits the allegations of paragraph ten of the complainant's bill.

8. Defendant denies that he has been guilty of fraudulent, wilful or grossly negligent acts or any negligence as a director of said complainant association, and denies that through any act of his the complainant association has suffered any loss whatever, and denies that the sum of \$10,000.00 or any other sum is due from him to the complainant, and denies that he is or was a trustee of said complainant or that by reason of being such trustee, should be charged

Answer.

with the amounts of money claimed in paragraph eleven of the complainant's bill.

9. Defendant further answering says that the complainant should not be permitted to have or maintain its suit because he says that the same was not brought within the time limited by law for the bringing of such an action; namely, the period of two years from the commission of said alleged acts or fraud, negligence or gross negligence.

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Defendant prays that the complainant's bill be dismissed with costs.

THOMAS S. HENRY,
and
FRANCIS CHILD,
Solicitors for and of Counsel
with Defendant.

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Final Decree.

Final Decree.

Filed August 8, 1917.

IN CHANCERY OF NEW JERSEY.

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Between

FOUR CORNERS BUILDING AND
LOAN ASSOCIATION, a cor-
poration,

Complainant,

and

FRANK J. SCHWARZWAELDER,

Defendant.

On Bill, etc.

Final Decree.

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This cause coming on to be heard in the presence of Raymond, Mountain, Van Blarcom & Marsh, of counsel with the complainant, and Thomas S. Henry and Francis Child, of counsel with the defendant, and the pleadings, proofs and arguments of the respective counsel having been heard and considered, and the court having duly considered the same, and it appearing to the court that the defendant, Frank Schwarzwaelder, while acting as a director of the complainant as-

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sociation was guilty of gross inattention and gross negligence in the performance of his duties as said director, whereby said complainant sustained financial losses as follows: In the year 1910 complainant loaned on bond and mortgage on lands in the City of East Orange in this State, to one Albert B. Aschenbach and Maude Aschenbach, his wife, the sum of four thousand dollars (\$4,000) when premises were encumbered by a prior mortgage held by the defendant and one

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Lizzie H. Leithoff, surviving executors of the

Final Decree.

last will and testament of August Loehnberg, deceased; that said prior mortgage was foreclosed in this court, and the premises sold at Sheriff's sale, and purchased by this complainant for the sum of four thousand six hundred forty-two dollars (\$4,642). Said lands and premises were reasonably worth at the time of said sale, the sum of fifty-five hundred dollars (\$5,500.), and have continued so to be down to the time of the hearing of this cause, making the excess value of the said property over the amount paid therefor by this complainant, the sum of eight hundred fifty-four dollars (\$854.). In said foreclosure of said prior mortgage, it was decreed that there was due to this complainant on its mortgage the sum of three thousand three hundred seventy-six dollars and eighteen cents (\$3,376.18) on which should be credited said sum of eight hundred fifty-four dollars (\$854.), leaving a net loss to this complainant on said East Orange loan of two thousand five hundred twenty-two dollars and eighteen cents (\$2,522.18). In the year 1913, complainant loaned on bond and mortgage, on lands in South Orange, in this State, to one Arthur M. Sims, the sum of five thousand dollars (\$5,000.); that said premises at the time of said loan by said complainant were encumbered by two prior mortgages, the second of which was held by said defendant and said Lizzie H. Leithoff as executors, as aforesaid; that in the foreclosure of the first mortgage on said premises held by one Lillian Bercaw, said premises were sold at Sheriff's sale to said defendant and Lizzie H. Leithoff as executors, for the sum of forty-six hundred dollars (\$4,600.), and after paying the decree of said Lillian Bercaw with interest, costs and Sheriff's fees, amounting to

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Final Decree.

two thousand four hundred twenty-eight dollars and twenty-eight cents (\$2,428.28), the surplus moneys amounting to two thousand one hundred seventy-one dollars and seventy-two cents (\$2,171.72) were turned over to the said defendant, and the said Lizzie H. Leithoff, executors as aforesaid; that the said South Orange property at the time of said Sheriff's sale, and at the time of the hearing of this cause, was reasonably worth the sum of fifty-one hundred dollars (\$5,100.). That from the value of said premises should be deducted the amount of the decree of said Lillian Bercaw, with interest and Sheriff's fees as aforesaid, amounting to two thousand four hundred twenty-eight dollars and twenty-eight cents (\$2,428.28), leaving a loss sustained by complainant in this cause on this loan, with which said defendant should be charged, of two thousand six hundred seventy-one dollars and seventy-two cents (\$2,671.72). And that the said complainant is entitled to the relief prayed for in its said bill of complaint;

IT IS THEREUPON, on this sixth day of August, 1917, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Chancellor by virtue of the power and authority of this court, does hereby ORDER, ADJUDGE AND DECREE that the said defendant, Frank Schwarzwaelder, while acting as a director of the complainant, was guilty of gross inattention and gross negligence, in the performance of his duties as said director, by reason whereof said complainant suffered a financial loss of five thousand one hundred ninety-three dollars and ninety cents (\$5,193.90), as hereinbefore set forth.

Final Decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said defendant, Frank Schwarzwaelder, pay to the complainant the said sum of five thousand one hundred ninety-three dollars and ninety cents (\$5,193.90) together with lawful interest thereon from the date hereof, and the taxed costs of this suit within thirty days after service upon him of a certified copy of this decree and of the taxed bill of costs in this cause, and that in default thereof, an execution issue, and in addition thereto the complainant may take such other proceedings to enforce the collection thereof as may be permitted by law and the rules and practice of this court. 10

E. R. WALKER,
C.

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Respectfully advised,

MERRITT LANE,
V. C.

We hereby approve of the foregoing decree as to form.

THOMAS S. HENRY,
FRANCIS CHILD, 30
Solicitors of Defendant.

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*Conclusions of Vice-Chancellor.***Conclusions.**

IN CHANCERY OF NEW JERSEY.

Between

10 FOUR CORNERS BUILDING AND
 LOAN ASSOCIATION, of New-
 ark,

*Complainant,**and*

FRANK SCHWARZWAELDER,
 Defendant.

Conclusions.

20 Messrs. Raymond, Mountain, Van Blarcom &
 Marsh for complainant.

 Mr. Francis Child and Mr. Thomas S. Henry
 for defendant.

LANE, V. C.

30 This is a proceeding to compel defendant to
 reimburse complainant for losses alleged to have
 been sustained by complainant on account of two
 loans, one of \$5,000 on property in South Or-
 ange, and one of \$4,000 on property in East
 Orange.

40 The complainant is a building and loan asso-
 ciation, and the defendant was one of its di-
 rectors at the time the respective loans were
 made. The defendant was also at the same time
 one of the executors of the Loehnberg, which
 estate it subsequently transpired held mortgages
 prior to those of the building and loan associa-
 tion upon the properties in question, with the
 result that upon a foreclosure of a mortgage
 prior to that held by the Loehnberg estate on

Conclusions of Vice-Chancellor.

the South Orange property the equity of the building and loan association was wiped out, and upon the foreclosure of the mortgage held by the Loehnberg estate on the East Orange property the building and loan association in order to protect its rights was obliged to buy in the property, which it still holds. The charge is that the defendant as a director of the building and loan association has been guilty of such negligence as makes him responsible for the losses accruing to the building and loan association. In *French v. Armstrong*, 79 N. J. Eq. 283 Vice-Chancellor Stevens in dealing with the responsibilities of directors of building and loan associations, said: "In *Williams v. McKay* (40 N. J. Eq., 189) the case of a receiver of a savings bank against its managers, it was held by the Court of Errors that the receiver represents not only the corporation, but its depositors and creditors, and that the managers stand to such depositors and creditors in the character of trustees; that the trust was direct, and that as such that it was exempt from the operation of the statute of limitations. It appears to me that building and loan associations stand on very much the same footing as savings banks. They are *quasi* public institutions, dealt with as such by the legislature, and having very similar objects. They are both designed to conserve the scanty savings of wage earners and other people of small means. If the managers of savings banks are trustees of creditors and depositors, I see no reason why the directors of building and loan associations do not stand in precisely the same relation to their creditors and so-called stockholders." And the Court of Appeals in *Gerhard v. Welsh*, 80 Eq. 203, dealing with the responsibilities of directors

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Conclusions of Vice-Chancellor.

of a building and loan association was apparently of, although not directly so stating, the same opinion. Citing the opinion of the Chancellor on final hearing in *Williams v. McKay*, 46 Eq., 2526.

In *Williams v. McKay*, 40 N. J. Eq., 189, at page 195, the Court of Appeals said: "The
 10 duty belonging to such a situation is a plain one --to care for the moneys entrusted to them in the manner provided in the charter, and to exercise ordinary care and prudence in so doing. It is true that the defendants were unpaid servants, but the duty of bringing to their office ordinary skill and vigilance was none the less on that account, for to this extent there is no distinction known to the law between a volunteer and a
 20 salaried agent. These defendants held themselves out to the public as the managers of this bank, and by so doing they severally engaged to carry it on in the same way that men of common prudence and skill conduct a similar business for themselves. This is the measure of the responsibility of officers of this kind. And on final hearing the Chancellor, 40 Eq. at p. 56, said: "Trustees of the character of the defendants
 30 are not merely required to be honest, but they must also bring to the discharge of the duties that they undertake ordinary competency, together with reasonable vigilance and care. They cannot excuse imprudence or indifference by showing honesty of intention, coupled with gross ignorance and inexperience, or coupled with an absorption of their time and attention in their private affairs. The rule in this respect is admirably stated by Judge Earl of the Court of Appeals of New York in *Hun v. Cary*, 82 N. Y., 74, in this language: 'One who voluntarily takes
 40 the position of director and invites confidence in

Conclusions of Vice-Chancellor.

that relation, undertakes, like a mandatory, with those whom he represents or for whom he acts, that he possesses at least ordinary knowledge and skill, and that he will bring them to bear in the discharge of his duties. Such is the rule applicable to public officers, to professional men, and to mechanics, and such is the rule which must be applicable to every person who undertakes to act for another in a situation or employment requiring skill and knowledge gratuitously. These defendants ordinarily took the position of trustees of the bank. They invited depositors to confide to them their savings and to entrust the safe keeping and management of them to their skill and prudence. They undertook not only that they would discharge their duties with proper care, but that they would exercise the ordinary skill and judgment requisite for the discharge of their delicate trust.' " And see *Campbell, Receiver, v. Watson*, 62 Eq. 396, and *Barrett v. Bloomfield Savings Institution*, 64 Eq., 425.

In *Briggs v. Spaulding*, 141 U. S. 132, the Supreme Court of the United States in dealing with the liability of directors said with respect to what is negligence: "If very little care is due from him and he fails to bestow that little, it is called 'gross' negligence. If very great care is due, and he fails to come up to the mark required, it is called slight negligence. And if ordinary care is due, such as a prudent man would exercise in his own affairs, failure to bestow that amount of care is called ordinary negligence. In each case the negligence, whatever epithet we give it, is failure to bestow the care and skill which the situation demands; and hence it is more strictly accurate, perhaps, to call it simply

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Conclusions of Vice-Chancellor.

‘negligence.’ * * * In any view the degree of care to which these defendants were bound is that which ordinarily prudent and diligent men would exercise under similar circumstances, and in determining that the restrictions of the statute, and the usages of business should be taken into
 10 account. What may be negligence in one case may not be want of ordinary care in another, and the question of negligence is therefore ultimately a question of fact to be determined under all the circumstances.”

It seems to me that leaving out of consideration any wilful act the negligence for which a person can be held responsible consists either in the performance of an act which under all the circumstances he is bound not to perform, or
 20 the non-performance of an act which under all the circumstances he is bound to perform.

In *Citizens Building and Loan Association v. Coriell*, 34 N. J. Eq., at page 392, the Court said, referring to and approving an opinion by the Pennsylvania court: “It is there said that, while directors are personally responsible to the stockholders for any losses resulting from fraud, embezzlement or wilful misconduct, or breach of
 30 trust, for their own benefit, and not for the benefit of the stockholders, for gross inattention and negligence, by which such fraud or misconduct has been perpetrated, by agents, officers or co-directors, yet they are not liable for mistakes of judgment, even though they may be so gross as to appear absurd and ridiculous, provided they are honest and are fairly within the scope of the powers and discretion confided to the managing body.” Quere, whether the last re-
 40 mark of the Chancellor is quite consistent with

Conclusions of Vice-Chancellor.

the duty of a person becoming a director in an institution such as a building and loan association to bring to his office ordinary competency. In this case there is no charge or at least no proof of fraud, embezzlement or wilful misconduct, or breach of trust for the benefit of the defendant, nor is there any question of a mistake of judgment. The sole question is whether the defendant was guilty of gross inattention and negligence (which means simply the failure to give such attention and to perform such acts as the circumstances required) as to make possible the fraud and misconduct which was undoubtedly perpetrated by an officer of the complainant. 10

First. The facts are as follows with respect to the South Orange loan. Roland D. Crocker was the solicitor for the association. In 1909 he conveyed the property to Mabel Daly, who immediately made a mortgage to the executors of the estate of Loehnberg, of whom defendant was one. The property was then immediately reconveyed by the Dalys to Crocker, who held title until April 1st, 1913, when he conveyed it to Arthur M. Sims, who by instrument dated on the same day mortgaged it to the complainant. Crocker caused an application to be made to the complainant for a loan on the property as early as October, 1912, in the name of Louis Wagner, for \$7,000. The defendant was appointed one of the inspection committee. At a meeting of the directors held on the 25th of October, 1912, at which the defendant was present, a report of the defendant, the only one of the committee reporting, was presented, recommending a loan of \$5,000. The property is clearly described in the minutes. On the 28th of February, 1913, at a meeting of the directors at which the defendant 20 30 40

Conclusions of Vice-Chancellor.

- was present, it was recommended that the officers be empowered to grant such amount of the loan as should be unanimously recommended by the committee, which included the defendant. The minutes of a meeting of the directors held on March 28, 1913, the defendant not being
- 10 present, state that all the members of committee recommended that a loan of \$5,000 be granted to Louis Wagner on the property in question. The next reference to the matter is in the minutes of a meeting held on April 25, 1913, at which the defendant was not present. The minutes state: "Referring to application for loan by Louis Wagner, Brooklyn, N. Y., to whom a loan of \$5,000 was granted on property 60-62 south side of Second street, South Orange,
- 20 Mr. Wagner having sold the property to Arthur Sims, and all of the committee, Mr. Frank Shulz and Mr. Thomas F. Peer and Mr. Frank Schwarzwaelder reporting in favor of loan of \$5,000 to Arthur Sims on property 60-62 south side Second street, South Orange, N. J., it was, on motion of Mr. Merlinger, seconded by Mr. Stone, ordered, that the committee recommendation be received and granted."
- 30 The minutes of a meeting of May 23, 1913, at which, according to the minutes, defendant was present, state: "On motion duly made and seconded, minutes of last meeting and special meeting were approved." And at the same meeting the treasurer's report was received, the first item of disbursement being the sum of \$4,813.50 for Arthur Sims mortgage. Again at a meeting of the directors July 2, 1913, at which the defendant, according to the minutes, was present, the minutes of May 23, 1913, were read and ap-
- 40 proved. It is insisted for the defendant that the

Conclusions of Vice-Chancellor.

fact that the minutes of May 23 and July 2, 1913, indicate that he was present does not prove that fact, because it was a custom of the secretary to, if there was a lack of quorum, call up various members of the Board and get their permission to note them as present. The defendant swears that he never knew of any loan to a man named Sims, and that therefore it must be that the secretary pursued the course heretofore adverted to with respect to these two meetings. If this be true then the defendant is unquestionably guilty of gross negligence in permitting such a practice to be pursued, and he must be held bound for such knowledge as he would have acquired if he were in fact present. In considering this phase of the case I have dealt with it as if he were in fact present at the two meetings in question, and I find as a fact that there is not sufficient evidence to indicate that the minutes are incorrect. Crocker caused to be filed a forged satisfaction of the mortgage held by the Loehnberg estate, and also caused to be filed a forged satisfaction of a first mortgage held by one Bercaw upon the property. The Bercaw mortgage was foreclosed and the property sold for less than a sufficient amount to pay anything on the subsequent encumbrances. The testimony is to the effect that the defendant examined the premises in question as executor of the Loehnberg estate upon various occasions; that he was familiar with the loan and that he received interest regularly from Crocker until he disappeared in September, 1914. It is inconceivable to me that, when he acted as an inspector upon the application of Louis Wagner, and examined, as he says, the property, he did not realize that an application was being made to the building

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Conclusions of Vice-Chancellor.

and loan association for a loan upon property upon which he already held a mortgage. He advised the loan. He made no inquiry as to how his mortgage was going to be taken care of. The officers were empowered to grant a loan at a meeting at which he was present, and he still
10 took no steps either to inquire as to how his loan was going to be taken care of or to advise the association that the estate which he represented held a mortgage. Although he was not present at the meeting held March 28, 1913, at which the minutes state a report was made by the committee of which he was a member, recommending that a loan of \$5,000 should be granted, or at the meeting of April 25, 1913, at which time the loan was transferred from Wagner to Sims,
20 yet he was present at the meeting of May 23, 1913, at which the minutes of the meeting of April 25, 1913, were approved, and he is therefore bound by knowledge of whatever appears in these minutes. The minutes of April 25, 1913, distinctly refer to the transfer from Wagner to Sims, and describe the property, and refer to the fact that all the members of the committee, including himself, have reported in favor of the loan. At the meeting of May 23, 1913, he made
30 no inquiry as to how the money due on the mortgage held by the estate that he represented would be paid, nor did he notify his fellow directors of the existence of such a mortgage. At the same meeting the treasurer reported that he had disbursed the sum of \$4,813.50 for the Arthur Sims mortgage. Apparently, if the defendant's story is to be believed, he sat quiet when this report was presented and made no inquiry whatever to ascertain the authority of the
40 treasurer for the disbursement of this large sum

Conclusions of Vice-Chancellor.

of money. He knew that he had recommended a loan of \$5,000 on property already encumbered by a mortgage under his control and from October to May made no inquiry as to what had become of the matter. The check was not paid until July 10, 1913, so that if he had protested on May 23, 1913, the payment of the check might have been stopped. On July 2, 1913, at a meeting at which the defendant was present, and before the payment of the check, the minutes of May 23, 1913, were approved, and the Sims mortgage, at least constructively called to his attention.

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It seems to me that all of the circumstances indicate that with respect to this loan the defendant is guilty of such negligence as renders him responsible for the loss which was occasioned to the association by reason of his failure to act.

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The duties of the directors of the association are defined in section 2, article 9 of the constitution. "Section 2. The board of directors shall meet regularly at four P. M. on the third Thursday of each and every month, at such place as they or a majority shall appoint for the purpose of receiving from the stockholders their monthly dues, interest and fines, and pay the same into the treasury; to loan out the funds and see to their safe investment, and to attend to the financial concerns of the association generally." Article 2, section 3, provides "No money shall be loaned on any property already encumbered."

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Under the authorities to which I have referred it is no excuse to say that the defendant was ignorant and incompetent or so engrossed in his own affairs as not to be able to give proper attention to the affairs of the building and loan

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Conclusions of Vice-Chancellor.

association. He was bound to apply to his duties as director of the building and loan association that degree of care which an ordinarily prudent man would exercise with respect to his own affairs.

10 The question is the amount of damages for which he may be held. If it appears that the first mortgage was foreclosed and that the property did not realize sufficient to pay the first mortgage, then, if in fact the defendant had brought to the attention of the building and loan association the existence of his mortgage, it is of course conceivable that his mortgage might have been paid off out of the proceeds of the loan, and the loan still made, and still would have resulted in the loss. It is, on the other hand, conceivable that if the existence of this second mortgage held by the Loehnberg estate had been disclosed, then an investigation would have been made which might have disclosed the existence of the prior mortgage and the rascality of Crocker and would have saved the association from any loss. Upon this point I desire to hear counsel.

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30 Second. With respect to the East Orange loan. There is nothing in the minutes of the board of directors authorizing the granting of the loan to Aschenbach on the property in East Orange. The files merely show an application signed by Aschenbach, without date, asking for a loan of \$4,000. It bears the name William B. ~~P~~Howell, Robert L. Hopkins, as the committee recommending it. It contains no description of the property except "Map of Ampere section of property of East Orange Ampere Loan Company." In December, 1909, William H. Daly

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Conclusions of Vice-Chancellor.

and wife had executed a mortgage to the Loeh-
 berg estate of which defendant was executor, for
 \$4,000. In September, 1910, Albert B. Aschen-
 bach and wife executed a mortgage to the com-
 plainant association for \$4,000 upon the same
 property. The only reference to this loan is
 contained in the minutes of a meeting of the
 board of directors held on September 22, 1910,
 at which the defendant was present, at which the
 treasurer reported a disbursement on September
 4 of \$3,919 on account of Aschenbach mortgage.
 The defendant made no inquiries with respect to
 this payment. If he had he would have immedi-
 ately discovered that the money had been ad-
 vanced upon property upon which the estate
 represented by him already held a mortgage. He
 would also have discovered that the loan had
 never been authorized and the disbursement
 therefor illegal. Unless reports of officers are
 to be received and approved *pro forma* and
 members of the board of directors excused from
 any investigation whatever, it seems to me that
 the act of the defendant was gross inattention
 and such negligence as make him responsible for
 the consequences of his inattention. I cannot
 conceive that he has performed his duty as a
 member of the board of directors, entrusted with
 the savings of poor investors whose duties are
 defined to be "To loan out the funds and see to
 their safe investment." Here again the ques-
 tion arises as to the measure of damages. The
 Loehberg mortgage was foreclosed, the property
 bought in by the association, which still holds it.
 I will hear counsel upon this point.

In defence of this director it is said that he
 properly relied upon counsel of the association,

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Crocker, who up to the time he absconded in September, 1914, bore an excellent reputation. The duty of counsel is to act as legal adviser to the board, to examine the title to every security, and report thereon to the directors, to prepare obligations and contracts, and to transact the legal business of the society.

The directors have no right to shift to counsel the duty imposed upon them to loan out the funds and see to their safe investment. There is no proof before me that counsel ever reported to defendant or to the board that the title to either of the premises in question was clear. If counsel of the association had reported it would immediately have occurred to the defendant that the report was false, because a mere comparison of the papers would have demonstrated that the two mortgages held by the Loehnberg estate had not been satisfied, and that the titles were not clear.

The statute of limitations is pleaded, but not seriously argued. The point seems to be disposed of by the following cases: *Daly v. Kierman*, 75 N. J. Law, 275; *Crane v. Ketcham*, 83 N. J. Law, 327; *Fryer v. Mount Holly*, 87 N. J. Law, 57; *Williams v. McKay*, 40 N. J. Eq., 195; *French v. Armstrong*, 79 N. J. Eq., 283. The fact that other directors may be also responsible for any loss which occurred by reason of the East Orange loan appears to present no objection to relief. *Stockton, Receiver, v. Anderson*, 40 N. J. Eq., 488. *Williams v. McKay*, 46 Eq. at page 39.

Within a week counsel on either side may present such additional argument upon the facts or law as they may be advised.

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If there is an apparent error in dates, amounts, &c., or with respect to any fact, I wish counsel would bring it to my attention, as these conclusions have been prepared without having before me a copy of the testimony. I do desire to hear from them particularly with respect to the queries which I have above indicated.

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Discussion.

IN CHANCERY OF NEW JERSEY.

May 21, 1917.

10 *Between*
 FOUR CORNERS BUILDING AND
 LOAN ASSOCIATION OF NEW-
 ARK, N. J., a corporation,
Complainant,
and
 FRANK SCHWARZWAELDER,
Defendant.

20 Transcript of shorthand notes of testimony taken in the above entitled cause on May 21, 1917, at Chancery Chambers, Newark, N. J., before Merritt Lane, Vice-Chancellor.

Appearances:

Mr. Andrew Van Blarcom (of Raymond, Mountain, Van Blarcom & Marsh) for the complainant.

Mr. Francis Child, Jr., and Mr. Thomas S. Henry for the defendant.

30 *Mr. Van Blarcom.* Stipulation between counsel regarding the title to the two properties. The first is in reference to the South Orange property. We will first produce our proof as to that. The property was conveyed to a man named Thomas Crocker in 1882, and by Thomas Crocker to Roland D. Crocker. This mortgage was assigned by Crocker to a woman named Kauffher and by the Kauffher executors to
 40 Lillian Bercaw; then Thomas Crocker and

Discussion.

wife conveyed to Roland D. Crocker, then Crocker conveyed to Mabel Daly in 1909; Mabel Daly and her husband executed a mortgage on the 11th of October, 1909, to Lizzie Leithoff and Frank Schwarzwaelder, executors of the estate of August Loehnerberg, and then Mabel Daly and William Daly conveyed to Roland D. Crocker the premises subject to existing mortgage, and then Crocker deeded the property in April, 1913, to Arthur M. Sims, and on April 1, 1913, Arthur M. Sims executed a mortgage to the Four Corners Building and Loan Association for \$5,000. 10

Then in regard to the East Orange property, that was conveyed by the East Orange-Ampere Company to William H. Daly, July 26, 1909, and Mr. and Mrs. Daly executed a mortgage to the Leithoff estate, or rather to Mrs. Leithoff and Frank Schwarzwaelder for \$4,000. That was done on December 3, 1909; then they made a mortgage to William B. Powell, the same parties, dated July 20, 1909. Then on July 10, 1910, Daly and her sold to Albert Aschenbach; on December 10, 1910, he and his wife executed a mortgage to the Four Corners Building and Loan for \$4,000. Powell dropped out and that left the Leithoff mortgage first, and that was foreclosed in a case in this court in reference to the Four Corners mortgage. In that suit Vice-Chancellor Stevens decided against the Four Corners and the property was sold and bought in by the Four Corners and the lien of the Loehnerberg estate was paid by the complainant in this case. 20 30 40

Discussion.

The Court. The Four Corners still hold them for the amount of the first mortgage and still hold it?

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Mr. Child. Both the Bercaw mortgage, which was first foreclosed, in South Orange, that was discharged by a discharge which we all admitted was a forgery; it shows on this record. Subsequent to that there was another instrument put upon record which purported to be a discharge of the Loehnerberg mortgage purporting to be signed by Schwarzwaelder and Mrs. Leithoff, and in the proceedings in the foreclosure of the first mortgage, the Bercaw mortgage, we set aside the discharge alleged to have been given by Schwarzwaelder and Mrs. Leithoff on the ground that it was a forgery, and the same situation appears in regard to the East Orange property. Crocker or some one presumed to be Crocker, executed a discharge of mortgage on the East Orange premises. It is recited in this stipulation that we subsequently instituted foreclosure proceedings in that case, praying in the same bill to set aside this discharge on the ground that it was a forgery, and the Court determined it was a forgery and should be set aside. I am telling you this so your Honor will not become confused with reference to these changes.

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The Court. Those discharges were made prior to the grant by the building and loan of this mortgage?

Mr. Child. Yes, sir.

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The Court. And in the foreclosure suit the Four Corners Building and Loan was a party?

Ferdinand Moeller, direct.

Mr. Child. The Four Corners Building and Loan Association was a party in both of these suits, yes. In one case we stipulated and in the other case there was a judicial finding that was a forgery.

The Court. Doesn't the case come down to a very narrow issue whether or not a building and loan association was bound to know and communicate that the association held a mortgage on the property? 10

Mr. Child. The only other issue from that it seems to me is this, the question whether it is gross negligence, and as I understand it gross negligence is the only ground upon which this man can be held.

FERDINAND MOELLER, sworn. 20

Direct examination by Mr. Van Blarcom.

Q You are the secretary of the Four Corners Building and Loan Association? A Yes.

Q How long have you been that? A Since the organization, I believe that was 1909, since they have been organized.

Q You are still secretary? A Yes.

Q And as secretary do you keep the minutes? A Yes. 30

Q Is this your first minute book? A Yes.

Q And just state between what dates that extends? A This extends from the organization in June, 1908, to August 29, 1913.

Q And how were those minutes kept, who kept them and has custody of that book? A I had charge of the book.

The Court. Is there any doubt about those minutes? 40

Ferdinand Moeller, direct.

Mr. Child. The only thing, it has been claimed on behalf of this defendant sometimes men were recorded as being present when they were not.

Q How were the minutes kept, describe that?

10 A I would take note of it, of the transactions that took place at the meeting, and redictated that to the stenographer and she would type-write them on a sheet of paper; I read them over, and after I would make any corrections she would be instructed to write them in the book, unless, as in a number of cases, I have written them in myself.

Q After they were written in what occurred then? A Then I would simply read them over and sign them.

20 Q Your signatures were appended to the minutes, Ferd. R. Moeller, your signature? A Yes, sir.

Q And do you know Mr. Schwarzwaelder, of course? A Yes.

Q He was a director of your association? A Yes.

Q When was he elected? A When we organized, I believe, I am pretty sure.

30 Q About when did he cease to be director? A In September, 1914, he was through, surrendering his stock, that he ceased to be a director.

Q And that was, you say, when? A September, 1914.

Q Now, your association had a mortgage, had it not, on No. 60 and 62 Second street, in South Orange? A Was supposed to, yes.

Q And turn to page 239 of the minute book, please? A I have it.

Ferdinand Moeller, direct.

Q That is the record of a minute of what meeting? A Meeting of October 25, 1912.

Q Who was present, was Mr. Schwarzwaelder there? A Yes.

Q And 239, what appeared on your minute book with reference to this South Orange property? A "Referring to application for loan by Louis Wagner of Brooklyn, New York, for a loan of \$7,000 on property 60-62 south side of Second street, South Orange, on which only one of the committee to report was Frank Schwarzwaelder, who recommended a loan of \$5,000, it was on motion of Mr. Schwarzwaelder, seconded by Dr. Richman, ordered that the committee, Frank M. Schultz, George M. King and Frank Schwarzwaelder be continued and that they make their report to the officers, who are to have power to grant loan if satisfactory report is made."

Q Turn to page 248 and state what the minute book shows that happened with relation to the same matter? A "Referring to application of Louis Wagner for loan of \$7,000 on property 60 and 62 Second street, it is ordered that the officers be empowered to grant such amount of the above loan as shall be unanimously recommended by all the following committee: Frank Schwarzwaelder, Frank M. Schultz, Theodore F. Keer."

Q What was the date of that meeting? A February 28, 1913.

Q And do the minutes show that Mr. Schwarzwaelder was present or not? A Yes.

Q Well, which was he? A He was present, yes.

Q He was there? A Oh, yes.

Ferdinand Moeller, direct.

Q Turn to page 252 and give us the date of the meeting and what occurred at that time?

A March 28, 1913.

Q Was Mr. Schwarzwaelder there? A No, sir.

10 Q What is the record there? A "On motion of Dr. Richman, seconded by Mr. Merklinger, report of committee was received and loan granted. All the committee, Frank M. Schultz, Theodore F. Keer and Frank Schwarzwaelder recommended that a loan of \$5,000 be granted to Louis Wagner on property 60 and 62 Second street, South Orange."

Q Now, page 255, turn to that; is that a new meeting or the same meeting? A April 25, 1913.

20 Q And was Mr. Schwarzwaelder present? A He was not.

Q What do the minutes show? A "Referring to application for loan of Louis Wagner, of Brooklyn, New York, to whom loan of \$5,000 was granted on property 62, south side of Second street, South Orange, Mr. Wagner, having sold the property to A. Simon, all of the committee, Frank Schwarzwaelder, Frank M. Schultz and Theodore F. Keer, reporting in favor of a loan of \$5,000 to A. Simon, property 62, south side of Second street, South Orange, N. J. *

*it was on motion of Mr. Merklinger, seconded by Mr. Stone, ordered that the committee recommendations be received and granted."

Q And was Mr. Schwarzwaelder present at these meetings? A Yes.

Q What was said at that meeting in the minutes here, if anything, about the approval of the minutes of the last meeting? A "Motion

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Ferdinand Moeller, direct.

Q Turn to page 252 and give us the date of the meeting and what occurred at that time?
A March 28, 1913.

Q Was Mr. Schwarzwaelder there? A No, sir.

10 Q What is the record there? A "On motion of Dr. Richman, seconded by Mr. Merklinger, report of committee was received and loan granted. All the committee, Frank M. Schultz, Theodore F. Keer and Frank Schwarzwaelder recommended that a loan of \$5,000 be granted to Louis Wagner on property 60 and 62 Second street, South Orange."

Q Now, page 255, turn to that; is that a new meeting or the same meeting? A April 25, 1913.

20 Q And was Mr. Schwarzwaelder present?
A He was not.

Q What do the minutes show? A "Referring to application for loan of Louis Wagner, of Brooklyn, New York, to whom loan of \$5,000 was granted on property 62, south side of Second street, South Orange, Mr. Wagner, having sold the property to A. Simon, all of the committee, Frank Schwarzwaelder, Frank M. Schultz and Theodore F. Keer, reporting in favor of a loan of \$5,000 to A. Simon, property 62, south side of Second street, South Orange, N. J.★"

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Q Now, turn to page 258. What is the date of that meeting? A May 23, 1913.

Q By the way, these are all directors' meetings, are they not? A Yes.

Q And was Mr. Schwarzwaelder present at these meetings? A Yes.

Q What was said at that meeting in the minutes here, if anything, about the approval of the minutes of the last meeting? A "Motion

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Ferdinand Moeller, direct.

duly made and seconded the minutes of last meeting were approved, a special meeting, were approved."

Q (*By the Court.*) What does that refer to, which last meeting and what special meeting?

A That was a special meeting of the directors on April 30th.

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Q (*By the Court.*) Is that the one you read?

A No, sir.

Q Had that special meeting anything to do with this property at all? A No, sir.

Q But the last meeting of directors, you read from that Mr. Moeller, and a transfer of the loan from Wagner to Simon, did you not? A Yes; that was a regular meeting.

Q (*By the Court.*) At that regular meeting the minutes of that were approved at this meeting? A Yes; and the special meeting also.

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Q Here is an application to the association dated October 10, 1912, which one of the committee signed; whose signature is that, please?

A Frank Schwarzwaelder's.

Q That is the application of Louis Wagner?

A Louis Wagner, property 60 and 62 Second street, South Orange.

Q (*By the Court.*) Dated when? A October 10, 1912.

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Offered in evidence and marked Exhibit C. 1.

Q Now, was the money advanced to Simon on the mortgage, that mortgage that was made to the association? A Yes.

Mr. Child. I object; I think the proper way to prove that is by the checks given; the records here should speak for themselves in this case.

40

Ferdinand Moeller, direct.

The Court. Any question about it?

Mr. Child. I don't know; I don't know whether Sims ever got a cent.

Q Is there a treasurer's report in your minutes at page 259?

10 *Mr. Child.* I object. I think that they should be compelled to show that they paid to Arthur Sims this money in order to charge this man this payment, because these resolutions are very peculiarly worded so far as the payment goes; it is left in the discretion of the directors as to how much should be paid and when it should be paid, and it is a serious matter to Mr. Schwarzwaelder, and I think they should show they actually paid this money as directed, should show to whom it is paid. I think it is very material in this case.

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The Court. In the other foreclosure suit didn't they prove their claim, Mr. Child?

Mr. Child. I am not sure whether they did or not. The main fact on the other foreclosures was on the question of forgery.

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The Court. I suppose, as a matter of fact, Crocker got all of this money.

Mr. Child. I presume he did, and that is what I want to show.

The Court. I only say that because of my experience in other cases.

Q Referring to my question, what does the minute book show at page 259 in regard to payments by the treasurer? A It shows on April 25 check to A. Sims for mortgage \$4,-
40 813.50.

Ferdinand Moeller, direct.

Q Was that a meeting at which Mr. Schwarzwaelder was present? A Yes; May 23.

Mr. Child. April 25, I thought you said?

A No; this is the check that was issued, this is the report, check was issued on April 25; that wouldn't go in, of course, until a later meeting, that report. 10

Q What was the loss to the association on that mortgage? A I have the figures there in the book. The exact loss that was marked off amounted to \$4,889.15.

Q That stock had some value? A Yes; that includes the surrender value of the stock and interest on the mortgage.

Mr. Van Blarcom. Regarding the consideration of the mortgage it seems to me the production of the bond and mortgage itself implies consideration and puts the proof upon them that there was no consideration. 20

The Court. If counsel on the other side desire the production of the checks, I will permit them to require it.

Mr. Child. I think in this case they should be produced.

Q Do you know where these checks are? A I believe Mr. Van Fleet. 30

Q The treasurer? A Yes.

Q Turn to page 239. What was the date of that meeting? A October 25, 1912.

Q And was Mr. Schwarzwaelder there? A Yes.

Q Is there a record of a motion there to investigate applicants? A Yes.

Q What do the minutes show about that? A "On motion of Mr. Moeller, seconded by Mr. 40

Ferdinand Moeller, direct.

Van Fleet, it was ordered that on all future applications for mortgage loans a report as to the standing of the applicant be obtained."

Q What is the date of that meeting? A April 25, 1912.

Q And do you remember anything about that particular meeting and about that particular minute or motion? A The motion was lost. I have it here.

Q Do you remember anything about it outside of what is there? A Yes; I remember that the point was brought up—

Mr. Child. I object to anything that this witness states that is not shown in his minutes. If these minutes are properly kept everything that transpired at that meeting should be on those minutes.

Q What was the discussion in regard to that as far as Mr. Schwarzwaelder was concerned, if you remember? A The point was brought up that a lot of people who are making applications we did not know and that they had difficulty in communicating with them with reference to tax bills and so forth and so on, and we ought to know who the people are; in addition to that we ought to have a report on the man's moral standing; we brought that up that that was just as important as his financial standing. Well, there were some objections raised to that, and Mr. Schwarzwaelder at the time made the statement that it was not necessary to bother with who the applicant was as long as you have the property, that you are loaning on the property and not on the man; and, further than that, up to the present time we had had no foreclosures and we had nothing to worry about.

Ferdinand Moeller, direct.

Q Was Mr. Crocker there? A Yes.

Q Do you remember what he said about it, if anything? A Mr. Crocker also took the stand, he made this one statement, he said we have never had a foreclosure as long as we have been in existence, we have got a fine record, and so on.

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Q (*By the Court.*) How long had you been in existence? A About four years, a little over four years; and that he saw no reason for the secretary bringing up a point like that, that he thought it was more of a personal matter than anything else.

Q Now, turning to the Aschenbach mortgage—

Q (*By the Court.*) Let me ask you before you go to that, was Mr. Crocker present at each one of these meetings that you have referred to?

20

A Yes; he was present at the meetings, page 239, and at page 248, the record of that meeting he was present; at page 252, March 28, he was present; at page 254, April 25, he was present; at page 258, May 23, he was present. He never missed a meeting.

Q (*By the Court.*) Had he been the attorney for the association from the beginning? A Yes.

30

Q Now, in reference to the Aschenbach mortgage, that was on a piece of property in East Orange, 315 North Eighteenth street, or South Eighteenth street, I believe, and turn to your minute book at page 134, what does the treasurer's report show—first, who was present, the date, and who was present, whether Schwarzwaelder and Crocker were present? A They were both present, yes, and it shows on September 4 payment of mortgage to Roland

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Ferdinand Moeller, direct.

D. Crocker, attorney, account Aschenbach mortgage, \$3,919.

Q Is there any minute in your book of the appointment of a committee to appraise this property? A I don't know.

10 Q Have you looked? A I have not.

Q You have not looked for that. You can look, look at noon time, will you, when you get a chance?

The Court. There isn't anything in the minute book.

20 *Mr. Van Blarcom.* There is nothing in it that I can find. Let it be stated that the minute book does not contain any reference to the employment of a committee to appraise the Aschenbach property or grant the loan.

Q And there is no reference at that point to the street number of this property, is there? A No, sir; it may be on the stub of your check book.

30 Q I show you check No. 63, Four Corners Building and Loan Association, and ask you if that is one of the checks of your association signed by you and Mr. Keer? A And Mr. Van Fleet, the three, Mr. Keer, Mr. Van Fleet and myself.

Q That is to the order of A. Sims? A A. Sims, yes.

Mr. Van Blarcom. I offer in evidence this check.

Q Now, in reference again to the East Orange property, turn to page 51, what was the date of that meeting? A April 22, 1909.

40 Q Was Mr. Schwarzwaelder there? A Yes.

Ferdinand Moeller, direct.

Q Now, at page 53, under date of that same meeting is there any reference to a loan to Daly on this property? A "On motion of Mr. King, seconded by Mr. Waackenhuth, it was ordered that we grant a loan of \$5,000 on property located on North Eighteenth street, East Orange, to William H. Daly, providing the party is willing to wait until the necessary funds are raised."

10

Q Now, at page 87, give the date and if Mr. Schwarzwaelder was there? A December 2, 1909, Mr. Schwarzwaelder was there.

Q At page 89 of that meeting is there any reference to this Daly application? A Yes; "Secretary reports having received the following letter from Roland D. Crocker, counsel, Newark, N. J., November 26, 1909. Secretary Four Corners Building and Loan Association, Newark, N. J. Sir: At one of your meetings held last summer two applications made by William H. Daly for loans on houses North Eighteenth street, East Orange, New Jersey, were granted for either \$5,000 each or \$4,500 each, the exact amount not being recalled by me at this time. The applicant desires with your permission to change these loans to the two tracts following: First, tract east side of North Twelfth street, 335 feet south of Fourth avenue, 50 by 100; and second tract east side of North Twelfth street, 460 feet, south side of Fourth avenue, 50 by 100. Will you kindly have resolutions passed giving committee power to act in this matter? The only part of the application to change is location of the property. Yours truly, Roland D. Crocker. The secretary further reports that with the authorization of the president he notified the committee that had originally passed upon the above applica-

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Ferdinand Moeller, direct.

tion to act in accordance with this letter and report at the meeting to be held today.”

Q The date of that meeting was what? A The date of that meeting was December 2, 1909.

10 *Mr. Van Blarcom.* I want to call the Court’s attention that on December 3, 1909, William H. Daly and Mabel, his wife, executed mortgage, \$4,000, from the Loehberg Estate, on Eighteenth street, East Orange, the same time the application for loan to the building and loan association was withdrawn by Crocker’s letter.

20 Q Is there anything else that you were going to say? A I hadn’t finished that part. “On motion of Mr. Schwarzwaelder, seconded by Mr. James J. McGuire, it was ordered that the report of the committee be received and copy of the same be spread on the minutes. Following is a copy of the committee’s report. Secretary of Four Corners B. & L. Ass’n. The undersigned committee appointed to report regarding the request of Mr. H. Daly to transfer loan granted him on property on No. Eighteenth street, in East Orange, between Fourth avenue and Springdale avenue, to two tracts on the east side of No. Twelfth street. in Newark, one tract being three hundred thirty-five feet south of Fourth avenue, and the other 460 feet south of Fourth avenue, and both 50x100 feet do report in favor of granting the application for such transfer. We find the value of the land in the proposed Twelfth street plots equivalent to the value of the land on the proposed Eighteenth street plots. Dated December 1, 1909. Respectfully, (Signed) Harry H. Poole, R. L. Hopkins,

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Ferdinand Moeller, direct.

B. Merklinger." "Referring to the above report the secretary stated that both of the last reports were signed by Harry H. Poole and Benedict Merklinger, and that the committee recommended at that time a loan of \$5,000 on each property and that the building constructed on each property was to cost \$5,700 each."

10

Q I show you check No. 156 of the Four Corners, dated September 14, 1910; is that signed by the officers of the association? A Yes.

Mr. Van Blarcom. This refers to the Aschenbach mortgage. I offer the check.

Mr. Child. I object to its admission.

Marked Exhibit C. 3.

Q What became of the East Orange property this second loan was given on? A That was bought in by the building and loan.

20

Q On the building and loan foreclosure, or somebody else? A I don't remember that.

The Court. Can't that be stipulated?

Mr. Child. I think it was our foreclosure, the Loehnberg Estate.

Q How much was paid off by the building and loan association? Does the association still hold that property? A Yes.

30

Q And what was due on the mortgage, the Aschenbach mortgage, at the time of that foreclosure? A (No answer.)

Q Referring again to the South Orange property, I show you an application of A. Sims, October 10, 1912; whose signatures are those to it? A Frank M. Schultz and Theodore F. Keer.

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Ferdinand Moeller, cross.

Q They were the other members of the committee with Mr. Schwarzwaelder? A Yes.

Mr. Van Blarcom. I will offer that in evidence.

Marked Exhibit C. 4.

10 *Cross examination by Mr. Child.*

Q Were you present at every meeting? A Every meeting of the association?

Q Yes. A No, sir; practically every one.

Q Wasn't it your habit if you were absent to sign your name as secretary and have someone else do the work? A No, sir.

Q Did you ever do that? A Never. I have been absent from a meeting here and there and whoever took the minutes there would be a memorandum there who the secretary was at that meeting.

20

Q Now, at different times you would have difficulty, would you not, in getting a quorum? A We have had, yes.

Q And at those times you have sometimes had people present who were not actually there, haven't you? A We have called up people and asked them whether we could count them present, whether we could start the meeting until they got there; we have done that with Dr. Richman and others who would often have late office hours on account of their practice.

30

Q And how would you vote those gentlemen then, when they were not there, by telephone? A They would come in later on. We would ask the privilege of starting the meeting; we did have our meetings there at one time at nine o'clock in the morning, and Dr. Richman especially would have people in the office and we

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Ferdinand Moeller, cross.

would call him up and he would stop in on his way up.

Q Your practice in regard to these meetings that you took the notes yourself, you took the notes and then dictated them to your stenographer, is that correct? A In a majority of cases, in a good many cases, I wrote them right in the book myself, not at the meeting, but would take the notes and then write them in the book.

10

Q Did you ever mark Mr. Schwarzwaelder present when he was not present? A Absolutely never.

Q Now, the first that this Sims application came up was at what meeting, was that October 25, was that the first meeting, 1912, page 239, I think? A I believe that is the first time that ever was presented at a meeting.

20

Q If I recall it says something in that minute about the matter having been considered before that time? A No; shall I read it?

Q Yes. A "Referring to application of Louis Wagner, Brooklyn, N. Y., for loan of \$7,000, property 60-62 south side of Second street, South Orange, on which only one of the committee to report was Frank Schwarzwaelder, who recommended a loan of \$5,000, it was on motion of Mr. Schwarzwaelder, seconded by Dr. Richman, ordered that the committee, Frank M. Schultz, George F. King and Frank Schwarzwaelder, be continued and that they make their report to the officers who are to have power to grant loan if a satisfactory report is made." That means the only report that has been received was that of Mr. Schwarzwaelder.

30

Q That committee had been appointed at a previous meeting, hadn't it? A No, not necessarily previous meeting, because committees

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Ferdinand Moeller, cross.

would be appointed by the president to appraise the properties and then report.

Q That is, between meetings, he would appoint the committee between meetings? A Between meetings, yes.

10 Q Do you recall who it was that received the notice that Louis Wagner ceased to have any interest in this matter? A I don't quite understand what you mean by that.

Q Louis Wagner made an application for loan, it was partly granted at one of your meetings, I think at the next meeting, or at a meeting March 28th that was changed to A. Sims? A April 25.

20 Q April 25 to A. Sims. Now, by whose authority and by whom did you come to make that change? A Why, from the minutes of the directors who were present passed on it, that is all I can say.

Q They authorized you to, but who notified you that A. Sims would have the property and not Louis Wagner, to whom the loan was granted? A I should say the attorney probably notified the directors at that time; of course, I wouldn't remember all those details.

30 Q You were there, weren't you? A This was back in 1913; I wouldn't remember.

Q Was it the practice of the board of directors to shift a loan that had been granted to one man without any writing from the man to whom it had been granted? A If no money had been turned over the man wouldn't be in the deal yet, would he?

40 Q I wasn't asking you that. I asked you if you granted a loan to Louis Wagner without consulting Louis Wagner or anybody else you would turn around and give it to A. Sims; was

Ferdinand Moeller, cross.

it the practice of the association to do that?

A I wouldn't say it was a practice of any kind, no, sir.

Q What record have you that Louis Wagner had transferred this property or sold it and no longer wanted the loan? A We have no record other than our attorney's record who tells us that he sold the property.

10

Q Do you recall whether Crocker told you he sold the property? A I don't recall that, no, sir.

Mr. Van Blarcom. Do you want the minute book on that? I think you testified something about that transfer at page 255.

Mr. Child. I recall what he testified to there; it was with reference to the authority to pay the money to Sims.

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Mr. Van Blarcom. It was more than that.

A There must have been a committee on that because it reads here: "Referring to application for loan by Louis Wagner, Brooklyn, N. Y., to whom a loan of \$5,000 was granted on property 62, south side of Second street, South Orange, N. J., Mr. Wagner having sold property to A. Sims and all of the committee, Mr. Frank Schultz, Mr. F. Keer, Frank Schwarzwaelder, report in favor of loan of \$5,000 to A. Sims on property 62, south side of Second street, South Orange, N. J., it was on motion of Mr. Merklinger, seconded by Mr. Stone, ordered that the committee recommendations be received and granted."

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Q Have you any application from A. Sims?

A There is one here.

Q Have you got one from Louis Wagner?

A Yes.

40

Ferdinand Moeller, cross.

Q Mr. Schwarzwaelder's name does not appear on the A. Sims recommendation, does it?

A No.

Q How does that come? A It appears on the Louis Wagner recommendation covering the same property.

10 Q But it does not appear on any application of A. Sims? A Not that I know of.

Q This is the only one that you have, this Exhibit C. 4? A All the papers were handed over to the attorneys when this mortgage matter was brought up, so I wouldn't remember every paper that would be on hand, everything we had.

Q The meeting at which the A. Sims application was considered Mr. Schwarzwaelder was not present, was he? A He was not.

20 Q Now, who was the secretary at the special meeting of May 23? A I was.

Q You were present at that meeting? A Yes.

Q (*By Mr. Van Blarcom.*) Was that a special meeting? A That was a special meeting, that was considered a special loan on Frelinghuysen avenue.

30 Q (*By Mr. Van Blarcom.*) May 23? A April 30.

Q I thought the special meeting was on May 23? A No; special meeting was April 30; the meeting on the Sims mortgage was April 25; the regular meeting was on May 23.

Q Now, there was some meeting at which there was an authorization or ratification of the action of the board or committee with reference to the Sims loan; what was the date of that meeting, was that May 23, 1913? A That is
40 the one I read a minute ago?

Ferdinand Moeller, cross.

Q Yes. A April 23—April 25.

Q Schwarzwaelder was not present then, was he? A No; that is the minute I read.

Mr. Van Blarcom. You say April 25; what is it that happened on April 25?

A At which meeting the Sims mortgage was ratified, the action of the committee. 10

Q Schwarzwaelder was not present then, was he? A He was not present at that meeting.

Q (*By Mr. Van Blarcom.*) Mr. Child asked you about the approval of the minutes of that meeting? A No, he didn't ask me about approval of the minutes of that meeting.

The Court. The minutes are here.

Q Wasn't it a fact that the check was paid out to Crocker or Sims, whoever it was, before any meeting was held at which Schwarzwaelder was present, that is, that voted to ratify that loan, on ratifying of loan on property 60-62 Second street, South Orange. 20

The Court. The dates of the checks will show.

Q What transpired at the meeting on May 23? There was a special meeting and some action was taken with reference to ratifying some other meeting, the doings of some other meeting, wasn't there? A There was a regular monthly meeting April 25, special meeting April 30 and regular monthly meeting May 23. 30

Q What do the minutes show with reference to the meeting of May 23? A "On motion, duly made and seconded, the minutes of the last meeting and special meeting were approved."

Q And Schwarzwaelder was not present at the meetings referred to in that minute, was 40

Ferdinand Moeller, cross.

he? A No, but he was present at this meeting.

Q Yes, and the check was paid out before the meeting of May 23, isn't that right? A You have the checks there.

Q Why was the check held until July, 1913?

A That I can't answer now.

10 Q Do you know whether the association held it or not? A That I can't tell you.

Q Did you post date checks, that is, did you sign checks than on any other day than when they are dated? A Well, that I don't know; I wouldn't sign it ahead of a date, but a check may be issued, if a bookkeeper issues a check on April 20 and I may sign it on the next day or the following day after that.

Q (*By the Court.*) May antedate it, but not post-date it? A No, sir.

20 Q Now, with reference to the Aschenbach loan, didn't you say on your direct examination that there were no records in your minutes of that loan? A I answered it in order to look over the minutes later on.

Q And you afterwards found records in reference to that loan? A No, I haven't looked for them. Oh, yes, we did, we found some stubs, that is right, the attorney brought that out, Mr. 30 Van Blarcom has the numbers of those pages if you want those read.

Mr. Van Blarcom. What I referred to, Mr. Moeller, was page 51 and page 87.

Q You had not had an opportunity of looking at your book at the time you made your statement; there were no records of the Aschenbach—

40 *Mr. Van Blarcom.* He didn't refer to record of the Aschenbach loan; that was ap-

Ferdinand Moeller, cross.

plication made by Daly, and granted, and then withdrawn, so it left no application for this particular property open at all.

The Court. That is what I understand.

Mr. Child. That is what I did not.

Q Who were the committee on the Daly loan? Did Aschenbach ever make an application for a loan, have you got any record? A I haven't seen any record of Aschenbach. 10

Q Does it show that a loan was made to Daly that was afterwards transferred to a man named Aschenbach? A No, it didn't show that.

Q Why was it that there was no record kept of any loan made to Aschenbach? A I don't say there is no record; I have not looked through to see that there is a record.

Q (*By Mr. Van Blarcom.*) Assuming that there is none? A Assuming that there is none, I don't know. 20

Q You were secretary at that time? A I was always secretary.

Q Was the Daly application withdrawn? You testified to an application from Daly on property on Eighteenth street, was that withdrawn? A If you remember, the minutes as you read them show that was transferred to property on North Twelfth street. 30

Q What was ever done with that after it was transferred, was a loan granted to Daly? A On North Twelfth street?

Q Yes. A I believe so; I believe there were loans on North Twelfth street, I am not sure of that.

Q (*By the Court.*) What is the Aschenbach loan, what is that, Eighteenth street? A Eighteenth street. 40

Ferdinand Moeller, cross.

Q What record is there to show what happened to the application of Daly on Twelfth street in that book? A The record shows that a loan was granted—on Twelfth street you are asking for?

10 Q Yes. A That I haven't looked for; I don't know what we had to do; will have to look through the minutes.

The Court. You are going far afield. I don't think it has anything to do with this case. There is no record now how Aschenbach got his money.

Mr. Child. Then I won't go into it.

20 Q When was it that the first application was made on the Twelfth street property, or Eighteenth street property, what was the date of that? A At a meeting of April 22, 1909.

Q And the money was finally paid over when, as you claimed, to Aschenbach? A September 14, 1910; this motion reads to cover a mortgage that it might lie over, provided the parties are willing to wait until the necessary funds are raised.

30 *The Court.* That is all in; don't go over it again.

Q Up to the time of Crocker's disappearance your association considered Crocker a reputable man, didn't you? A Yes, I think we did.

Q You trusted him implicitly, didn't you? A I believe a majority of them did, yes.

40 Q What were the rules of your association with reference to the payment of money, to whom were checks made out? Was there any by-law governing as to who the payee of the check

Ferdinand Moeller, re-direct—re-cross.

should be? A I don't remember that offhand. At the present time we make all checks payable to the bearer, to the applicant.

Q Well, before that time? A When we first organized the checks were made out to the attorney for the party, I believe, or Roland D. Crocker, attorney, and then later on, as these checks will show, one made payable to the applicant and the other to Roland D. Crocker, attorney, for the Aschenbach mortgage. 10

Re-direct examination by Mr. Van Blarcom.

Q Did you find this application signed by Aschenbach? A Did I find it?

Q Did you produce that? A That I don't remember.

Q Well, whose signatures were there on the building and loan there? A William B. Powell and Robert L. Hopkins. 20

Q Were they directors? A They were directors.

Mr. Van Blarcom. I offer that in evidence.

Marked Exhibit C. 5.

Re-cross examination by Mr. Child.

Q By whom were the securities of this association kept? A They were in the custody of the treasurer and they were kept in a safe of the Four Corners Building and Loan Association. 30

Q Where was that safe? A That safe was in my office.

Q Who was the treasurer at that time? A At the Aschenbach time was Robert B. Stoutenburgh; no at that time the mortgages were kept in his safe. 40

Theodore F. Keer, direct.

Q Wasn't it the rule that all mortgages should be kept by the secretary? A No, the by-laws, I think, provide that the mortgages shall be kept by the treasurer.

10 Q As a matter of fact, weren't they kept over in Crocker's office? A They absolutely were not, not after they had once been in our possession, not unless there was some legal matter to be attended to.

Q (*By Mr. Van Blarcom.*) I forgot to ask the witness about the by-laws. Are these by-laws of the association contained in that book? A Yes.

Mr. Van Blarcom. I offer in evidence the provision in reference to directors, which is article nine.

20 Marked Exhibit C. 6.

I offer in evidence at the present time stipulation between the parties as to the title.

Marked Exhibit C. 7.

THEODORE F. KEER, sworn.

Direct examination by Mr. Van Blarcom.

30 Q What is your business? A Manager of the Prudential Life Insurance Company.

Q And you are president of the Four Corners Building and Loan Association? A Yes.

Q And have been for how long? A Ever since its inception.

Q You know Mr. Schwarzwaelder, of course? A Yes.

40 Q And do you remember a meeting in which the manner of the investigation of applicants came up? A Yes.

Theodore F. Keer, direct.

Q And do you remember whether or not Mr. Schwarzwaelder was present at that meeting?

A I should say he was present, positively.

Q What did he say with reference to that situation? A Do you want me to state the doings of that meeting as near as I can remember?

Q Just in reference to that particular matter of the investigation of the applicants? A Why, Mr. Schwarzwaelder objected to the applicants being investigated; he stated that the loan itself should be the security to the association and it made no difference whether the applicant had a *sou markee* or not, and he objected seriously. 10

Q Was Mr. Crocker there, do you remember?

A Yes, he was there.

Q What did he say about it? A As near as I can remember he said nothing, left it to the rest of the members to argue it out. 20

Q Finally, the motion was finally lost? A The motion was finally lost.

Q Do you remember anything in particular or anything about the loan to Aschenbach on Eighteenth street? A That is in South Orange, no, in Eighteenth street I don't remember at all.

Q Do you remember anything in particular in reference to the South Orange loan, Second street? A Yes, I was appointed on the committee; I finally made an investigation of the property myself, naturally looked the property over and approved of the loan, I believe. 30

Q Did you have any conversation with Schwarzwaelder about it? A None whatever.

Q About that particular loan? A No, it was Mr. Schultz and I that went up together and looked the property over. 40

Theodore F. Keer, cross.

Q Did you know that he was on the committee? A Oh, yes.

Q Was anything said to him about the matter at all? A Not between us at the time, no, other than at the meeting, we knew that Mr. Schwarzwaelder was a member of the committee
10 and looked for his report, which is a very common thing to do on building and loan committee buildings to go either individually or in twos, if you can't get the whole committee to go at once.

Q (*By the Court.*) There is no duty on that committee to investigate title or anything of that kind? A None whatever.

Cross examination by Mr. Child.

Q Who was it that investigated your titles
20 for you? A Mr. Crocker, as far as I know.

Q Do you recall whether it was Crocker's habit to present searches at any of the meetings or bring any papers in reference to the loans to the meetings? A I do not.

Mr. Van Blarcom. I want to read into the record the examination in the Orphans' Court of this county in the matter of the Estate of August Loehberg, in which he testifies that he was familiar with this South
30 Orange property, that he had been there and examined it when the loan was made. I offer that for the purpose of showing that he had knowledge of the situation of this property.

The Court. He admitted in that he knew the estate held mortgages on that property at the time the loan was made by the building and loan?

40 *Mr. Van Blarcom.* Yes.

Theodore F. Keer, further direct.

Further direct examination by Mr. Van Blarcom.

Q At page 43 "you have testified as to the transactions concerning the Mabel Daly mortgage; do you remember when that loan was made, can you tell by reference to your books? A When the loan was made to Mabel Daly October 26, 1909. Q You knew that property, didn't you? A Yes, sir. Q In what connection had you had opportunity, or occasion, rather, to examine it before making this loan? A I don't recall that I had any. I may have had. I don't remember. Q Didn't you appraise that property for the purpose of securing—or passing upon a building and loan application of Mabel Daly for a loan on that property? A I think I did. Q Yes, and that loan was made upon it? A Not that I know of. Q Did you ever investigate and find out? A Did I investigate? No, sir. Q After you appraised the property, to whom did you hand your report? A To the building and loan association. Q And you did nothing further after that? A No, sir. Q Did you examine the property in connection with this loan of the Loehberg funds? A Did I examine the property, yes, sir. Q That was the second time you examined it? A Yes, sir; it was the second. Not only once, but two or three times, I guess. Q The first time, when you examined it for the building and loan association, how long was that before the second time? A I don't remember the date. Q Several years? A It may have been, at that. Q How did the application for that loan come to you? A Which? Q The Mabel Daly loan? A From the estate. Q Whose? A From Mr.

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Theodore F. Keer, further direct.

Crocker. Q And did you examine at that time and find out whether the building and loan had a mortgage upon that property? A Did I examine it? No, sir. Q It is a fact, isn't it, Mr. Schwarzwaelder, the executors never called in a mortgage because of depreciation of the property? A No, sir. It is not. We did call in mortgages for depreciation." Now, at page 58, about the middle of the page, "You went there because you have testified that it was your practice to go to the property? A No, I deny that. I say absolutely here that I went to see every property and I can prove it." Now, in the case pending in this court in Leithoff vs. Daly, in which this mortgage which is now known as the Aschenbach loan in this case, was under investigation, the defendant testified at page 14, under cross examination, about the middle of the page: "Q You did not examine the securities then? A Yes, sir; not just at that date, but either prior or after we examined them, every year, yes, and checked them off. Q Where were they kept? A In Mr. Crocker's office. Q Whereabouts in his office? A He had them in a large safe. Q In the year 1914, before Crocker left Newark, did you check up your securities? A Yes. Q Where was the Daly mortgage? A The Daly mortgage was there. Q It was there? A Yes, sir. Q And you saw it? A Yes, sir. Q Did you and Crocker go over the mortgages and the account together? A Pretty much of the time, yes, sir; at one time, that is two years prior to that year, I had Mrs. Leithoff and one of the Loehnbergs, the three of us went there with Mr. Crocker and checked it off. Q When did you last make the last checking of the securities? A In the spring

Theodore F. Keer, further direct.

of 1914. Q What month, do you remember? A I don't recall exactly, because as I say, some times we checked them off at the same time with the papers, and some times a few days after the papers were drawn up. Q You say you met Mr. Daly once? A I think so, he was introduced to me at Mr. Crocker's office some time. Q Are you sure about that? A I am quite positive about it, yes, sir. Q You are not certain? A Well, I can almost be certain. Q Do you remember what was said? A No, I don't think there was anything said, more than that he was in the office there while I was waiting, and as he was coming out he introduced him as Mr. Daly. Q That is all that was said? A That is all that was said, yes, sir. Q Did you ever visit this property, did you ever go to this particular property? A Oh, yes, sir; yes. Q How many times? A Twice, I think, once when we made the loan, and afterwards when Mr. Crocker had left. Q You made the loan in nineteen hundred and what? A Nineteen hundred and nine, I think it was. Q And Crocker left you think in August or September, 1914? A Yes. Q Who attended to seeing whether or not the building was kept up and painted, etc.? A Well, I invariably took a run around those properties. Q You didn't pay any attention to this? A Well, this was a new building, it was in course of construction when we took the mortgage. Q Who looked out to see if the taxes were paid? A Mr. Crocker. Q And other municipal liens, he attended to seeing that they were paid? A Yes, sir. Q He collected the interest? A Attended to the fire insurance, too? A Yes, sir." That comes down to about the middle of page 16. And the same in the record of the Chan-

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Frank Schwarzwaelder, direct.

cery suit, Leithoff vs. Daly, page three, about the middle of the page: "Q Now, when an application for a mortgage came in, what would you do? A I would investigate the property, go there and look it over and see whether there was sufficient equity to the property, and see
 10 where the property was located. Q Did you go to East Orange, or wherever it was, and look at this property? A Yes, sir. Q Subsequent to that time what did you do, did you loan any money on it? A Yes, sir; four thousand dollars." That comes to near the end of page three; that referred to the Mabel Daly loan.

That is all, we rest.

FRANK SCHWARZWAELDER, sworn.

20 *Direct examination by Mr. Child.*

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

Q And what is your business? A President of the Sterling Leather Works.

Q Were you one of the directors of the Four Corners? A Yes, sir.

Q For how long a period? A Three or four years, I think four or five.

30 Q Do you recall when you ceased to be a director? A Yes, in August, July or August, 1913, I was notified by the secretary that I was in arrears of dues of July or August, 1912, and I wanted to know, asked the secretary why it took him a year to notify me, being a director, that I was in arrears, and he said he had some discrepancies with his clerk, he kept the books, and had some discrepancies there, so I questioned it, and he wanted me to produce my checks, and
 40 as I paid part in check and sometimes in cash

Frank Schwarzwaelder, direct.

that particular payment I had no check for, and we had some words, so finally on December, 1913, I sent him a check for \$10.25 and put a note in resigning as director of the association. I remained as a stockholder so that I wouldn't lose my withdrawal value, until June, at the annual meeting in June and waited until the meeting was over and statement was out and I put in application to withdraw entirely from the association, and it took me from June to September to get my money after threatening to sue them if they wouldn't pay me; once they said the president was away, and when the secretary was there the treasurer wasn't there, and when the treasurer was there the president wasn't there. I think I sent up there about twice a week for eight weeks.

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Q Now, do you recall anything in connection with the application of a man named Louis Wagner for loan on property on Second street, South Orange? A I remember the application, yes, application was mailed to me by the secretary.

20

Q Did you look at the property? A I looked at the property, yes.

Q And you recommended the loan? A There was three on the committee all together and I was the only one that reported on the loan.

30

Q After that did you ever hear what happened to that loan? A Absolutely nothing.

Q So far as you know no loan was ever made to Louis Wagner? A Not to my knowledge, no, sir.

Q Did you ever know a man named Sims? A No, sir, never heard of him.

Q (*By the Court.*) Did you know at the time you went up to look at the property offered by

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Frank Schwarzwaelder, direct.

Wagner that you had a mortgage on it as executor of the Loehnberg estate? A I did not. The Loehnberg estate, we had about thirty or forty mortgages scattered around, six or seven in South Orange, I was also appraising property for another estate and also appraised property for the Hearthstone Building and Loan Association; it was impossible for me to remember; at the time there I did not recall that we had a mortgage on that property at that time.

10 Q In the mortgages of the Loehnberg estate are the street numbers referred to? A Only the street numbers.

Q In the Loehnberg estate in your mortgages in the mortgage itself how are the properties described? A On my books?

20 Q No, not on your books, on the mortgage, by metes and bounds? A Yes, by survey.

Q (*By the Court.*) When was the Loehnberg mortgage made? A I have my books there.

Mr. Van Blarcom. October, 1909.

The Court. When was the building and loan mortgage made on the same property?

Mr. Van Blarcom. April, 1913.

30 Q Did you ever examine a piece of property on Twelfth street for the Four Corners Building and Loan Association? A No, sir.

Q Did you ever hear or know of an application on any property under the name of Aschenbach? A No, sir.

The Court. That was not Twelfth street.

Q Eighteenth street? A No, sir.

Q Was any mortgage ever made by Loehnberg estate to you as an executor to Aschenbach?

40 A No, sir.

Frank Schwarzwaelder, cross.

Q (*By the Court.*) Was any mortgage made by you as executor on the property on Eighteenth street? A What property?

Q Have you any property on Eighteenth street, or did you have? A I don't recall that unless I can refer to my books.

Q Did you have any property on Eighteenth street in the name of Mabel Daly? A We had Mabel Daly loan, I think it was on Twelfth or Eighteenth street. You have got me confused. 10

Q Where are your books? A Right on the desk.

Q The question is if you had a mortgage on the Daly property on Eighteenth street? A North Eighteenth street and Second avenue, East Orange, William H. Daly.

Q Have you any other Daly mortgage? A On 60 and 62 Second street, South Orange. 20

Q That was the property, first property? A First property, yes.

Q Did you ever receive any moneys or bonus or valuable consideration from any of these mortgagors, or did you profit by any of these transactions? A Absolutely nothing.

The Court. Isn't the burden on the other side to prove that? I will assume he did not. 30

Cross examination by Mr. Van Blarcom.

Q How long had you had the mortgage on the South Orange property, that is, 60 and 62 Second street?

The Court. Matter of calculation, isn't it, Mr. Van Blarcom?

A The South Orange property was in October, 1909, and the East Orange property was in December, 1909. 40

Frank Schwarzwaelder, cross.

Q Just stick to the South Orange property first. What is that book you are referring to?

A Why, it is a book that I kept for the estate of all the moneys received and expended and all the records of mortgages.

Q And the entries are in your handwriting?

10 A All my handwriting, yes.

Q You have kept that book, that is your original book? A Yes.

Q What is your entry in reference to the South Orange property, how do you refer to it there? A October 26—

Q No; how do you describe this property on which you had a mortgage in South Orange? Show me that entry? A Here is the record, that is, here are the mortgages of William H. 20 Daly, North Eighteenth street and Second avenue.

Q We are talking about South Orange. A Mabel Daly, 60 and 62 Second street, South Orange, \$3,500, interest due April 27 and October 27.

Q And that entry of Mabel Daly, is that in your handwriting? A Yes.

Q So that you knew the street number of that loan at the time it was made? A Yes.

30 Q How often did you go up there and see this property? A Not until I went up for the building and loan association.

Q You went up for them? A Didn't you recognize the fact that you had a loan on that then? A Not at all, because I say I appraised the property—fifty or sixty properties in one year, some times private and then again for the building and loan.

40 Q As executor of this estate didn't you investigate your properties? A Yes, but Mr.

Frank Schwarzwaelder, cross.

Crocker collecting the interest and placing the insurance, I wasn't familiar with the numbers.

Q Didn't you go out and look at these properties and see whether they were being painted and kept in repair? A If they run long enough, yes.

Q And that started in 1909? A Yes. 10

Q And the loan of the building and loan was in April, 1913, between those two dates hadn't you been and inspected the property? A No, I don't think I did.

Q Nearly four years you hadn't thought of it? A I don't think I had; I knew it was a good loan; I inspected the property for Mrs. Kauffher, and I think that was paid off.

Q You knew when you went for the building and loan that you were investigating a property at 60 and 62 Second street, of course? A Yes. 20

Q And didn't you remember then that for years you had been receiving interest for a mortgage on that property? A No, Mr. Crocker, he never put the street number down, he just put the name down and date he received it.

Q How about you when you entered it in your books, though? A I wouldn't refer to that book, I only referred to this, I never referred to that again; I only used that for record; there is nothing in this book here or nothing in the receipts. 30

Q When you had two people named Daly what did you do to find out which one the check was to be credited? A The interest, different dates and different amounts.

Q And you say you never referred to your little book which gave the street numbers? A No, sir, only when the mortgages were paid off or new mortgages entered. 40

Frank Schwarzwaelder, cross.

Q And now you say that you have never been, you never were up to South Orange from the time you received this mortgage until you went up to the building and loan association?

A I don't recall being there, no, sir.

Q You went over your bonds and mortgages, though, each year? A Yes.

Q And didn't you testify in the Chancery case which was in this court between you and Mrs. Leithoff, executors, and William H. Daly, didn't you testify, rather, were you asked this question, "Who attended to seeing whether or not the building was kept up and painted," &c., and you answered, "Well, I invariably took a run around these properties." A That is what I did.

Q What did you mean by that? A Such properties, sometimes we would make loans on property that was not in as good condition as it should be, and the stipulation was that those properties had to be either painted or repaired if the loan should stand, and I would go look at those properties to see whether they kept them repaired so our securities would be good.

Q Do you mean to say for nearly four years you would not inspect a building you had a loan on? A If the loan was exceptionally good, no.

Q What was so exceptionally good about it? A I thought there was more equity in it than we had on it.

Q What was the equity in it? A I appraised it for \$5,000; I would have appraised it for \$6,000, but I put it down to \$5,000 to be on the safe side. Originally I thought the property was worth about \$6,500.

Q What did you loan on it for the estate? A \$3,500.

Frank Schwarzwaelder, cross.

Q What was so good about that, it wasn't even fifty per cent.? A The property was double property; the rental receipts of it was good.

Q And what did you think it was worth? A About \$6,500.

Q Then you appraised it for the building and loan at \$7,000, didn't you? A No, they applied for a loan of \$7,000 and I recommended a loan of \$5,000. 10

Q Look at your application. A Well, I see there, but I thought it was about \$6,500.

Q Did you raise it about \$500 for the building and loan? A I am just giving it offhand; I don't know as I did then, it was a good loan for \$6,500; I don't seem to have raised it; I gave less than the amount asked for. 20

Q What do you remember about what the building and loan did about the application of Mr. Wagner? A I remember nothing at all; there was three appointed on that committee and I was the only one that reported, and majority of the committee not reporting, why, the thing was laid over.

Q Then you remember it being taken up by you on your motion? A No, sir, I do not; I don't ever remember making that motion; it is very funny for me to make report and offer motion on my own report. 30

Q Well, no, your motion was that the committee be continued and that they make the report to the officers, do you remember that? A I don't even remember making that; it is very funny that I should make it, being one of the committee; it was up to the association to do that; it was the duty of the other two on the committee to report at the same time as I did. 40

Frank Schwarzwaelder, cross.

Q As long as they did not do it don't you remember making a motion that the committee be continued? A No, sir.

Q To do their duty? A No, sir, I don't.

Q Did you follow up and see what became of this application? A No, sir.

10 Q Why not? A I wasn't interested in it at all; if the rest of the committee didn't report it, why, there couldn't be any loan made to the party unless there was a majority of the committee reporting.

Q Didn't you ever follow this up to see what became of it? A No, sir.

Q Why not? A I have other things on my mind; I am in business all day long; if I had to keep all these things in mind I think I would have to give up business or the building and loan, one or the other.

20 Q You would have to give up one of them in order to give the other attention? A My entire attention, yes.

Q And you say you don't remember the name of Sims? A Absolutely never heard of it.

Q What about this motion to investigate the applicants for mortgages for loans? A I don't recall just what that was; it might have been some special thing that come up there; the nearest I can remember was there was a loan offered by somebody there and somebody said that the man's character was not good, and I might have offhanded of my own opinion said, "As long as we get sufficient equity I don't see where the association would lose anything as long as a clear title and value of the property is there," I can't infer anything else.

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Frank Schwarzwaelder, cross.

Q In other words you did not think that the applicant's moral standing, financial or moral standing, had anything to do with it? A Well, it depends how bad the moral standing was, I certainly would; but for a small technicality, no, sir.

The Court. How far would a person loaning money go into morals? Moral and financial I can appreciate, but you are going pretty far to go into a man's moral standing. 10

Q Why didn't you think that the financial standing of the applicant should be investigated? A I don't recall the circumstances. If you can tell me who it pertained to, who the parties were we were debating upon, I might go to work and explain myself, but I don't recall it at all. 20

Q Mr. Smith said that you objected at this meeting in October, 1912, to the investigation of all applicants? A They may have worded it that way, but the debate at that time, I don't ever recall debate of anything on it; that might have been the wording of the secretary, but it was not my wording; he is liable to enter most anything. 30

Q Referring to the Aschenbach loan, don't you remember anything about the money being paid out on that? A No, sir.

Q Do you remember the name being mentioned? A No, sir.

Q Didn't you pay any attention to the loaning of money by the association? A I certainly did.

Q How did this thing get through without your noticing it? A I don't recall it; the cus- 40

Frank Schwarzwaelder, cross.

10 tom in building and loan associations is when a committee of three is sent out and report and comes back and all three of them are reporting favorably on that property, and nobody knowing anything about that property the board of directors back up the committee who make the report on this loan and then the matter is referred to counsel and the counsel sees whether the titles and the equities are correct.

Q In other words, the committee acts as board of directors? A Only in so far if the entire committee reports favorably the loan naturally the equities according to report looks good, naturally the board of directors would back up the committee.

20 Q That is the way you acted then as a director? A Yes.

The Court. That is the way every building and loan acts, Mr. Van Blarcom.

Mr. Van Blarcom. It all depends upon what the loan is?

The Court. If the report is favorable and report shows apparent equity and good equity the board of directors always grant the loan; that is the custom.

30 Q Were you at the meeting where the minutes were approved granting the mortgage to Mr. Sims? A Not to my knowledge; it is pretty hard to tell from that book whether I was present at any meeting, because he had me present at a number of meetings; I called his attention to it where I was not present.

Q Were they ever changed? A I don't know whether they were changed or not; he said he must have got it wrong on the books.

Frank Schwarzwaelder, cross.

Q (*By the Court.*) Did you know that Mabel Daly was a dummy for Crocker? A No, not until after our estate got involved and she acknowledged it on the stand; I never met Miss Daly until after Mr. Crocker's disappearance.

Q Did you pay any attention to the treasurer's report? A I don't think the treasurer ever was there to make a report; the secretary usually read off his report. 10

Q (*By the Court.*) The report of the treasurer, whether it was read by him, did you pay any attention to that? A I suppose I did.

Q Here is a meeting of May 23 where the treasurer's report showed payment of A. Sims' mortgage? A I don't know what that referred to.

Q Did you try to find out? A Not necessarily. 20

Q Why not? A I don't think a director in any building and loan association when the money is passed and counsel is supposed to go to work and not pay the money until there is clear title for directors to know that these amounts are correct or not.

Q No, but if a matter came up that you hadn't heard of and the treasurer was paying out about \$5,000 wouldn't you inquire about it at all? A The treasurer's report you get the entire payments of the entire matter; I don't know how we could go to work and follow it up and ask any questions about it, knowing that the committee had reported it favorably and committee passed on it it must be correct or they wouldn't have paid it. 30

Q You wouldn't make any investigation? A No, sir. 40

Frank Schwarzwaelder, cross.

Q You wouldn't inquire what it was for?

A Not necessarily, no, sir.

Q When you check over your mortgages each year how was that done? A Why, Mr. Crocker would bring the mortgages out of the safe and we rendered a report to the surrogate's office every year and I would take the report, or vice versa, and take the mortgages and name and amount and check it off the list.

Q Name and amount, anything else? A That is about all that I remember of, just take these mortgages and check them off; you see the amount and names agreed of the mortgages that we had on our report.

Q And when you went there and made your yearly inspection did you know whether the mortgages were in Newark or Irvington or East Orange, or where? A Well, no more than the dates tallied with my book I have here.

Q Your little book? A My big book.

Q You say the big book has no reference at all to location? A It has names and amounts.

Q But not location? A Not location, no, sir.

Q Didn't you pay any attention to the location? A Not as long as the name and amounts agreed with my book, we didn't refer to the locations whatever.

Q How about your fire insurance? A Mr. Crocker attended to that entirely.

Q Altogether? A Altogether, yes.

Q Didn't you ever inspect those fire insurance policies? A Not that I know of.

Q Mrs. Leithoff didn't pay any attention to this estate, did she? A I did most of the work.

Q You were the active mind? A Active, yes.

Frank Schwarzwaelder, cross.

Q (*By the Court.*) Still acting? A Yes.

Q Did anybody, to your knowledge, make an inspection of this South Orange property for the estate from 1909 to 1913? A I don't remember, unless some of the Loehnberg boys might have gone there; they used to run around part of the time, they never reported to me; they were there, but they occasionally would go around and look at the properties.

10

Q Were you familiar with the mortgages held by the Four Corners? A No, sir.

Q Why not? A I am president of the Hearthstone, and I am not familiar with the mortgages unless you bring them out.

The Court. Are you going to argue with me that a director of a building and loan association is bound to be familiar with a mortgage held by that association? It is impossible. I have represented five or six building and loan associations in my time, holding thousands of mortgages; to be familiar with those mortgages would be an impossibility.

20

Q How many mortgages were there in this association? A I don't remember, I don't recall.

30

Q About how many? A I haven't the slightest idea; the reports would only come in the sum total.

Q About how many mortgages were there? A I can't tell you, sir.

Q Twenty? Q I don't know if there was ten or twenty or thirty.

Q Not so very many? A In the Four Corners in my time, yes, quite a good many, more than that, all right.

40

Frank Schwarzwaelder, re-direct.

Q Can't you give any estimate? A Not accurately, it was never reported.

Q Ever ask for a report? A No more than sum total, and report is support to be printed every year and books supposed to be audited by the auditor every year.

10 Q Were you regular in your attendance? A Yes, up to the time I had trouble, half of the time the association was run by the secretary.

Q You were there quite regularly? A Up to the time I had my trouble.

Re-direct examination by Mr. Child.

Q You and the association had implicit confidence in Mr. Crocker, didn't you? A We certainly did; he never would have handled the estate's money if I hadn't; he was counsel for our estate and also counsel for the Ronan estate.

20 Q The first that you discovered of any dishonesty was after he left, wasn't it? A Yes. It was Mr. Crocker that got me to go into the Four Corners Building and Loan; he was in there before I was.

Q (*By the Court.*) Who brought the Mabel Daly loan to your attention? A Mr. Crocker.

30 Q (*By the Court.*) How did he justify that loan at about the same time he brought a loan to Mabel Daly in the Ronan estate? A That was during Mr. Ronan's life; Mr. Daly was a contractor and Crocker was supposed to be a partner of Mr. Daly as builder of houses; they were building a number of houses up through the East Orange section.

TESTIMONY CLOSED.

Exhibit C. 1.

EXHIBITS.

EXHIBIT C. 1.

FOUR CORNERS BUILDING AND LOAN ASSOCIATION.

Newark, N. J., Oct. 10, 1912.

10

The undersigned desires to procure a loan of \$7,000 on the Bond of himself secured by Mortgage on the following property:

.....
Location No. 60-62 on south side of Second street, South Orange, N. J.

Dimensions of Ground, 50x100.

Dimensions of Building, 44x60.

Building Materials, frame.

Purposes of Use, double dwelling.

20

Paved, macadam.

Sewered, yes.

Value of Ground, \$2,500.

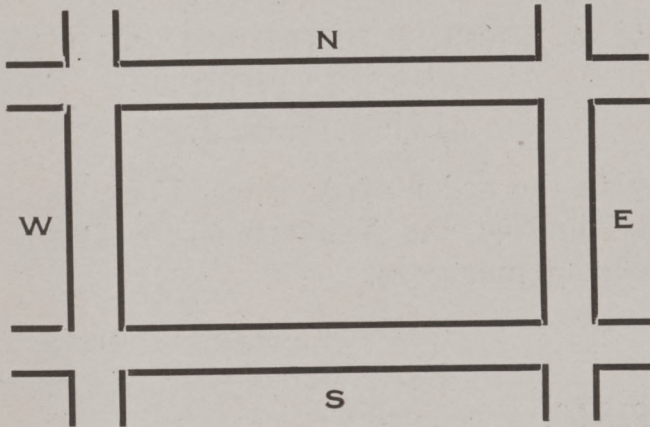
Value of Building, \$8,000.

Annual Rent, \$.....

If property is now encumbered state amount and by whom held:

.....
.....

30



40

Exhibit C. 2.

And in consideration of said loan, I agree to pay all necessary search fees and for drawing of papers, and also authorize the Association to place the Fire Insurance on the said property in such company as they may select.

10

Signature, LOUIS WAGNER,
Address, Brooklyn, N. Y.

We have examined the property within described, and value it as follows: Land, \$1,500.00; Buildings \$5,500.00, and recommend that a loan of \$5,000.00 be granted.

Committee Appointed — Frank M. Schultz,
George F. King, Frank Schwazwaelder.

F. Schwarzwaelder,
Committee.

20

An appraisal fee of Three Dollars (\$3.00) must accompany this application.
No. 63

EXHIBIT C. 2.

Newark, N. J., April 25, 1913.

30

Treasurer of the
FOUR CORNERS BUILDING AND LOAN
ASSOCIATION,
of Newark, N. J.

Pay to the order of A. Sims, Four Thousand Eight Hundred and Thirteen 50-100 Dollars, in payment of mortgage.

Theo. F. Keer, President,
Ferd R. Moeller, Secretary.

40

\$4,813.50.

Exhibit C. 3.

Endorsed: A Sims,
 Roland D. Crocker.
 (perforated)
 Paid 7:10:13.

Accepted and payable at the
 Newark Trust Co.,
 Newark, N. J. 10
 E. N. VanVleet, Treasurer.

EXHIBIT C. 3.

No. 156

Newark, N. J., Sept. 14, 1910.

Treasurer of the
 FOUR CORNERS BUILDING AND LOAN
 ASSOCIATION 20
 of Newark, N. J.

Pay to the order of Roland D. Crocker, Atty.,
 Three thousand nine hundred nineteen & 00-100
 Dollars, in payment of on ac. Aschenbach mtge.

Theo. F. Keer, President,
 Ferd R. Moeller, Secretary.

\$3,919 00-100

Endorsed: R. D. Crocker, Atty. 30
 Roland D. Crocker.
 (perforated)
 Paid 9:17:10

Accepted and payable at the Newark Trust
 Co., Newark, N. J.

Robt. B. Stoutenburgh, Treasurer.

Exhibit C. 4.

EXHIBIT C. 4.

FOUR CORNERS BUILDING AND LOAN ASSOCIATION.

Newark, N. J., Oct. 10, 1912.

The undersigned desires to procure a loan of \$7,000 on the Bond of himself secured by Mortgage on the following property:

Location No. 60-62 on south side of Second St., S. Orange, N. J.

.....
Dimensions of Ground, 50x100.

Building Materials, frame.

Paved, macadam.

Value of Ground, \$2,500.

Value of Building, \$8,000.

20 Dimensions of Building, 44x60.

Purposes of Use, double dwelling.

Sewered, yes.

Annual Rent, \$.....

If property is now encumbered state amount and by whom held:

.....
.....

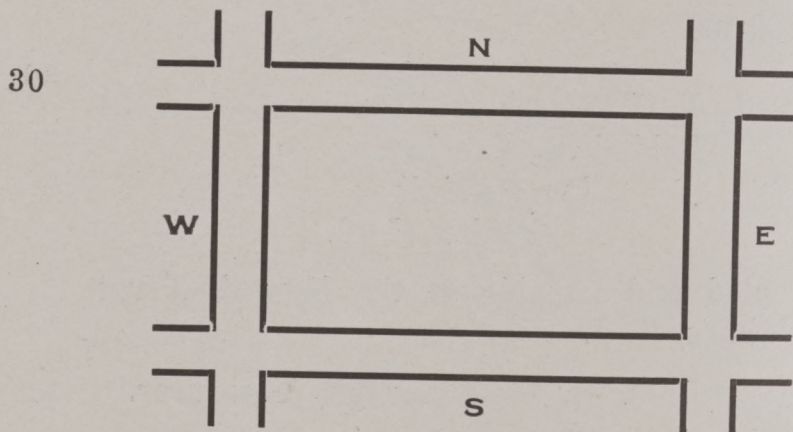


Exhibit C. 5.

And in consideration of said loan, I agree to pay all necessary search fees and for drawing of papers, and also authorize the Association to place the Fire Insurance on the said property in such company as they may select.

Signature, A. Sims. 10
Address,

We have examined the property within described, and value it as follows: Land, \$1,500. Buildings, \$5,500, and recommend that a loan of \$5,000 be granted.

Committee Appointed—Frank M. Schulz,
Theo. Keer, Frank Schwarzwaelder.

Frank M. Schulz,
Theo. ~~F.~~ Keer,
Committee, 20

An appraisal fee of Three Dollars (\$3.00) must accompany this application.

EXHIBIT C. 5.

FOUR CORNERS BUILDING AND LOAN
ASSOCIATION.

Newark, N. J.,, 190.. 30

The undersigned desires to procure a loan of \$4,000 on the Bond of himself secured by Mortgage on the following property:

Location No. .. on west side of North Eighteenth Street, East Orange, N. J., being known as lot 18 and part of lot 17, on "Map of Ampere Section of property of the East Orange & Ampere Land Co., Blk." 190 B.

Dimensions of Ground, 33 1-3x100.

Building Materials, frame. 40

Exhibit C. 5.

Paved, No.

Value of Ground, \$1,650.

Value of Building, \$5,400.

Dimensions of Building, 22x40.

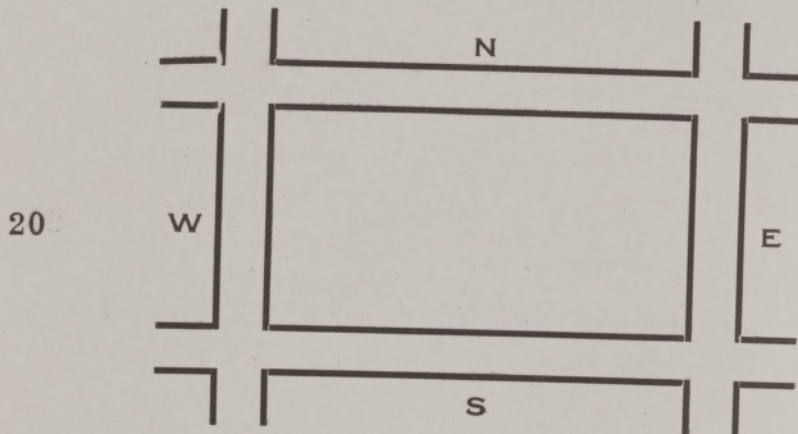
Purposes of Use, dwelling.

Sewered, Yes.

10 Annual Rent, \$.....

If property is now encumbered state amount and by whom held:

.....
.....



And in consideration of said loan, I agree to pay all necessary search fees and for drawing of papers, and also authorize the Association to place the Fire Insurance on the said property in such company as they may select.

30

Signature, Albert B. Aschenbach,
Address, 800 Broad St.

We have examined the property within described, and value it as follows: Land, \$1650; buildings, \$4,850, and recommend that a loan of \$4,000 be granted.

Exhibit C. 6.

Committee Appointed—William B. Powell, R.
L. Hopkins, Albert Allsopp.

Wm. B. Powell,
R. L. Hopkins,
Committee.

An appraisal fee of Three Dollars (\$3.00) 10
must accompany this application.

EXHIBIT C. 6.

ARTICLE VII.

Section 1. The Secretary shall be appointed
by the Board of Directors. It shall be his duty
to keep accurate minutes of the proceedings of
the Association and the Board of Directors, and
to record the same in books to be kept for that 20
purpose. He shall keep accurate account with
all the shareholders, and attest all orders drawn
on the Treasurer for the payment of money
when so ordered by the Board of Directors. He
shall notify the shareholders of the annual meet-
ings by public notice conspicuously placed and
advertisement in a newspaper published in the
neighborhood (at the expense of the Associa-
tion). He shall be prepared at all times to in- 30
form shareholders of the state of the financial
concerns of the Association; and at the yearly
meetings furnish a detailed statement of the
finances; and it shall be his duty to see that all
policies of insurance are regularly and promptly
renewed. At the expiration of his term of of-
fice he shall deliver all books, papers and prop-
erty belonging to the Association in his posses-
sion to his successor in office.

Exhibit C. 6.

ARTICLE VIII.

Solicitor.

The Board of Directors shall appoint a Solicitor for the Association, who shall examine all title deeds and make the necessary searches
 10 for ascertaining the title of all property offered to this Association as mortgage security, and give his opinion thereon. He shall prepare all bonds, mortgages, agreements and all other writings to be taken or given by this Association in the course of its business. He shall also trans-
 20 act all other law business of this Association whenever required, for which he shall receive a fair compensation. His charge for fees and disbursements in making searches, recording and proving papers, for preparing all mortgages and other written instruments, and for examining papers, titles and other matters, shall be borne by the party applying for the loan. In all disputes as to the amount of his charges, the same shall be determined by the directors.

The Solicitor shall give a bond for the honest and faithful performance of his duties, and the amount of said bond shall be designated by the Board of Directors.

30

ARTICLE IX.

Sec. 2. The Board of Directors shall meet regularly at 4 o'clock P. M., on the third Tuesday of each and every month, at such place as they, or a majority of them shall appoint for the purpose of receiving from the stockholders their monthly dues, interest and fines, and pay the same into the Treasury; to loan out the funds and see to their safe investment, and to attend
 40 to the financial concerns of the Association generally. But if there be no quorum, then any

Exhibit C. 6.

three or more of the Directors in attendance shall be authorized to receive the aforesaid monthly installments, interest and fines, and offer the money for loan as specified in Article XI, Sec. 1. The Board of Directors shall also meet at least once a month for the purpose of transacting such other business of the Association as may be necessary. 10

Sec. 3. It shall be the duty of the Board of Directors to judge of the sufficiency of all mortgages and other securities offered to the Association, and they may purchase, at foreclosure, any property mortgaged to the Association, for the benefit of the Association, and attend to the financial concerns of the Association generally.

ARTICLE XI.

20

Sec. 3. Whenever a shareholder shall be declared to be entitled to a loan or loans, and before receiving the same, he or she shall secure the payment thereof to the Association by a bond and mortgage for the full amount of the sum loaned, and for the payment of such fines as may be imposed for the failure of paying installments and interest when due, and by the deposit of the policy of fire insurance; and for every loan of two hundred dollars made to a shareholder at least one share of stock of the series in which he or she shall borrow, or of an older series, shall be assigned as collateral security to said bond and mortgage. In case of failure to give satisfactory security for each loan within one month, the month's interest shall be charged to the borrower and the loan revert to the Association. No money shall be loaned on any property already encumbered. Each shareholder shall be entitled to borrow to the full 30 40

Exhibit C. 7.

amount of his or her shares actually held by him or her at that time, and in case there should not be a sufficient amount in the hands of the Treasury, he or she will be entitled to the balance of their loans at the same rate from the first money that comes into the Treasury.

- 10 Sec. 7. No security for a loan or loans shall be deemed sufficient, unless approved by at least two-thirds of the Directors present at a meeting of the Board.

EXHIBIT C. 7.

IN CHANCERY OF NEW JERSEY.

20 FOUR CORNERS BUILDING &
 LOAN ASSOCIATION,

Complainant,

—and—

FRANK M. SCHWARZWAELDER,
Defendant.

Stipulation.

- 30 It is hereby stipulated and agreed by and between Raymond, Mountain, Van Blarcom & Marsh, solicitors of the complainant, and Francis Child, solicitor of the defendant, that the Abstract of Title annexed hereto contains a true record and of all the instruments effecting the premises described therein, of record in the Register's Office of Essex County, insofar as the same are material to the above entitled clause and that this stipulation and abstract may be offered in evidence at the hearing for
- 40

Exhibit C. 7.

shown by the production of the original instruments, or certified copies thereof.

And that recital set forth in the Sheriff's Deeds appearing in the abstract are correct statements of facts, and may be used as proof thereof.

RAYMOND, MOUNTAIN, VAN BLARCOM &
MARSH,

10

Solicitors of Complainant.

THOMAS S. HENRY,
Solicitor of Defendant.

FRANCIS CHILD,
Solicitor of Defendant.

ABSTRACT

OF

20

TITLE

OF

To Premises Situated in the City of East Orange, County of Essex, State of New Jersey, Being Known as Lot 18 and Part of Lot 17, in Block No. 190 B., as Laid Down on a Map Entitled "Map of Ampere Section of the East Orange and Ampere Land Company in East Orange, Bloomfield and Newark, New Jersey, Dated June 15, 1909, Made by William H. C. Reimer, C. E., Orange, New Jersey, Filed June 11, 1909, in the Office of the Register, in the County of Essex More Particularly Described as Follows:

30

BEGINNING in the northwesterly line of North 18th street, at the intersection of the southwesterly line of Second avenue; running thence along said line of North 18th street south 29 degrees 55 minutes west 33 1-3 feet; thence northwesterly at right angles to North 18th

40

Exhibit C. 7.

street 100 feet; thence northeasterly parallel with North 18th street 33 1-3 feet; thence southeasterly along the said line of Second avenue and at right angles to North 18th street; thence 100 feet to the place of BEGINNING.

DEED.

- 10 East Orange & Am- | Book U 45-1.
 pere Land Company, | Dated July 26, 1909.
 a corporation, | Ack'd July 30, 1909.
 to | Rec'd July 31, 1909.
 William H. Daly. | Cons. \$1., etc.

Conveys in fee premises described on the title page of this Abstract.

Warranty Deed.

Habendum in fee.

- 20 MORTGAGE.

William H. Daly, and | Book Y 24-212.
 Mabel, his wife, | Dated Dec. 3, 1909.
 to | Ack'd Dec. 10, 1909.
 Lizzie S. Leithoff, and | Rec'd Dec. 16, 1909.
 Frank Schwarzwaelder, surviving execu- | Cons. \$4,000. 1 year 5%
 tors of August
 Loehnberg, deceased, |

- 30 Conveys same premises as described on the title page of this Abstract.

MORTGAGE.

William H. Daly, and | Book M 25-224.
 Mabel, his wife, | Dated July 26, 1909.
 to | Ack'd July 26, 1909.
 William B. Powell. | Rec'd Nov. 30, 1910.
 Cons. \$1233.33, 2 years
 6%.

- 40 Conveys same premises described on the title page of this Abstract.

Exhibit C. 7.

DEED.

William H. Daly, and Mabel, his wife, to Albert B. Aschenbach.	Book U 37-393. Dated Sept. 10, 1910. Ack'd Sept. 10, 1910. Rec'd Sept. 19, 1910. Cons. \$1 and other good and valuable consider- ations.	10
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Conveys in fee same premises described on
the title page of this Abstract.

Warranty Deed.

Habendum in fee.

MORTGAGE.

Albert B. Aschenbach, and Maud, his wife, to Four Corners Build- ing & Loan Associa- tion, Newark, N. J.	Book H 26-162. Dated Sept. 10, 1910. Ack'd Sept. 10, 1910. Rec'd Sept. 20, 1910. Cons. \$4,000. 6%.	20
---	---	----

Conveys same premises described on the title
page of this Abstract.

DISCHARGE OF MORTGAGE.

Lizzie H. Leithoff and Frank Schwarzwael- der, surviving execu- tors of the last will and testament of August Loehnborg, deceased, to William H. Daly.	Book H 262. Dated May 10, 1911. Ack'd May 10, 1911. Rec'd March 6, 1913.	30
--	---	----

Discharges mortgage Y 44-212.

Exhibit C. 7.

In foreclosure proceedings brought by the executors of the estate of August Loehnberg, the said executors claimed that the above discharge was a forgery and the Court of Chancery determined in said foreclosure proceedings that the discharge was forged.

10

DEED.

Ralph P. Schmidt,
Sheriff,
to
Four Corners Building & Loan Association.

Book N 57-133.
Dated May 6, 1916.
Ack'd May 15, 1916.
Rec'd May 22, 1916.
Cons. \$4642.

20 Recites a writ of fi. fa. issued out of the Court of Chancery of New Jersey, on March 13, 1916, in a certain cause thereon depending, wherein Lizzie H. Leithoff and Frank Schwarzwaelder surviving executors of the last will and testament of August Loehnberg, deceased, are complainants, and William H. Daly and Mabel Daly, Albert B. Aschenbach, Maud P. Aschenbach, Four Corners B. & L. Association, Rasmund Schneider, H. M. Morehouse, Jr., Company, William B. Howell and Cecil H. McMahon, trustees in bankruptcy of Roland D. Crock-
30 er are defendants, in which writ of fi. fa. the following lands and premises were ordered sold, being premises in the City of East Orange, described on the title page of this Abstract. Premises were directed to be sold to pay and satisfy in the first place, unto the complainant Lizzie H. Leithoff and Frank Schwarzwaelder, executors of the Estate of August Loehnberg, deceased, or to their solicitors, the sum of \$4347.22,

40

Exhibit C. 7.

with interest from February 23, 1916, until the same be paid and satisfied, and in the second place, in case there be more than sufficient to answer such payment, to Lizzie H. Leithoff and Frank Schwarzwaelder, the executors of the Estate of August Loehner, deceased, then out of such surplus shall be paid the Four Corners Building & Loan Association, or its solicitors the sum of \$3,360, with interest as aforesaid, together with the costs of the solicitors of the defendant, Four Corners B. & L. Association, the costs of the complainant having been duly taxed at \$148.48, and of the said defendant Four Corners B. & L. Association, \$15.18 recites, and duly advertising and sale on April 25, 1916, to the highest bidder.

10

Habendum in fee.

20

Covenants against grantors acts.

ABSTRACT OF TITLE OF

To premises known as No. 60 Second street, South Orange, New Jersey, described as follows:

BEGINNING in the northerly corner of lands formerly of Julia A. Woodward, and in the southwesterly line of Second street; thence (1) with said Woodward line southwest 100 feet more or less to lands of Abijah F. Tillou; thence (2) with said Tillou land northwest 50 feet; thence (3) parallel with the aforesaid, with the said Woodward land northeast 100 feet more or less; thence (4) with the aforesaid line of Second street southeast 50 feet to the place of BEGINNING.

30

40

Exhibit C. 7.

ASSIGNMENT OF MORTGAGE.

Roland D. Crocker,	Book 63-269.	
to	Dated May 20, 1901.	
Henryette Kaufherr.	Ack'd June 6, 1901.	
	Rec'd June 8, 1901.	
	Cons. \$3,000.00.	10
Assigns Mortgage W 15-585.		

ASSIGNMENT OF MORTGAGE.

Morris D. Kaufherr,	Book 181-589.	
Julius F. Kaufherr,	Dated Dec. 6, 1911.	
Abraham Bucksb-	Ack'd Jan. 4, 1912.	
aum, executors of	Rec'd Jan. 9, 1912.	
Henryette Kaufherr,	Cons. \$2056.11.	
deceased,		
and		20
Lillian Bercaw.		

Assigns Mortgage U 15-585. Covenants that are still due on said Mortgage the sum of \$2,000 with interest at 5 per cent. from December 6, 1911.

DEED.

Thomas Crocker, and	Book L 37-164.	
Adelia J., his wife,	Dated July 19, 1901.	30
to	Ack'd August 6, 1901.	
Roland D. Crocker.	Rec'd April 11, 1904.	
	Cons. \$1.	

Conveys in fee premises in the Village of South Orange, being the same as described on the title page of this Abstract. Conveyed subject to the lien and encumbrance of Mortgage U 15-585 to secure the payment of \$2,000.

Warranty Deed.

Habendum in fee.

40

Exhibit C. 7.

DEED.

10	Roland D. Crocker, un- married, to Mabel Daly.	Book Z 45-379. Dated Oct. 1, 1909. Ack'd Oct. 11, 1909. Rec'd Oct. 19, 1909. Cons. \$1, etc.
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Conveys in fee premises in the Village of South Orange, described on the title page of this Abstract.

Warranty Deed.
Habendum in fee.

MORTGAGE.

20	Mabel Daly and Will- iam H., her husband, to Lizzie Leithoff, and Frank Schwarzwaelder, surviving execu- tors of August Loehnborg, deceased.	Book S 24-206. Dated Oct. 11, 1909. Ack'd Oct. 11, 1909. Rec'd Oct. 21, 1909. Secures \$3500, one year at 5%.
----	---	--

Covers premises in the Village of South Orange, being same premises as described in the title page of this Abstract.

30

DEED.

30	Mabel Daly and Will- iam, her husband, to Roland D. Crocker.	Book G 46-126. Dated Oct. 11, 1909. Ack'd Nov. 19, 1909. Rec'd Nov. 20, 1909. Cons. \$1, etc.
----	---	---

Conveys in fee premises in the Village of South Orange, being the same premises described in the title page of this Abstract.

40

Exhibit C. 7.

Recites, subject to existing mortgage encumbrance.

Warranty Deed.

Habendum in fee.

DEED.

101

R. D. Crocker, to Arthur M. Simms.	Book R 52-302. Dated April 1, 1913. Ack'd April 1, 1913. Rec'd May 3, 1913. Cons. \$1, etc.
--	---

Conveys in fee premises in the Village of South Orange, being same premises as described on the title page of this Abstract.

MORTGAGE.

202

Arthur M. Simms, to Four Corners Building & Loan Association of Newark, N. J.	Book I 31-388. Dated April 1, 1913. Ack'd July 9, 1913. Rec'd July 10, 1913. Secures \$5,000 at 6%.
---	---

Conveys premises in the Village of South Orange, being the same premises described in the title page of this Abstract.

Recites being the same premises described in Deed R 52-302. This Mortgage being given to secure part of the purchase money therefore.

30

DISCHARGE OF MORTGAGE.

Lillian Bercaw, to Thomas Crocker.	Book H 336. Dated May 1, 1913. Ack'd May 1, 1913. Rec'd May 3, 1913.
--	---

Discharges mortgage U 15, 585.

40

Exhibit C. 7.

In foreclosure proceedings instituted by Lillian Bercaw, it was claimed by her that the above discharge was a forgery. By stipulation of counsel in the said cause, such was admitted to be the fact.

10

DISCHARGE OF MORTGAGE.

Lizzie H. Leithoff, and
 Frank Schwarzwaelder, surviving executors of August Loehnberg, deceased,
 to
 Mabel Daly and William H. Daly, her husband.

Book H 336.
 Dated, May 2, 1913.
 Ack'd May 2, 1913.
 Rec'd May 3, 1913.

20

Discharges mortgage S 24-206.

At the foreclosure proceedings brought by Lillian Bercaw, the executors of the estate of August Loehnberg claimed the above discharge fraudulent. By stipulation between counsel in the said cause, it was admitted that the said discharge was forgery.

DEED.

30

Ralph B. Schmidt,
 Sheriff,
 to
 Lizzie H. Leithoff, and
 Frank Schwarzwaelder, trustees of the estate of August Loehnberg.

Book R 56-60.
 Dated Sept. 7, 1915.
 Ack'd Sept. 20, 1915.
 Rec'd Oct. 13, 1915.
 Cons. \$4600.00.

40

Recites that by virtue of a writ of fi. fa. issued out of the Court of Chancery of New Jer-

Exhibit C. 7.

sey, May 26, 1915, cause thereon depending, wherein Lillian Bercaw is complainant, and Arthur M. Simms and Mrs. Arthur M. Simms, his wife, Cecil H. McMahon, receiver of Roland D. Crocker, William H. Morrison and Andrew P. Wilson, Lizzie H. Leithoff and Frank Schwarzwaelder, surviving executors of August Loehnerberg, deceased, and the Four Corners Building & Loan Association, of Newark, New Jersey, are defendants, in which writ of fi. fa. the following mortgaged premises were ordered sold, being premises in the Village of South Orange, described on the title page of this Abstract, to pay and satisfy in the first place and to the complainant Lillian Bercaw, the sum of \$2092.76, the principal and interest secured by a second mortgage given by Thomas Crocker and Adelia J. his wife, to Roland D. Crocker, dated May 20 1901, and duly assigned by making assignments to the complainant together with interest thereon, from May 10, 1915, until paid and satisfied, and the complainant's costs, which have been taxed \$219.91. After duly advertising, was sold to the highest bidder for the sum of \$4600.00.

Habendum in fee.

Covenants against grantors acts.

Note: Surplus money paid to Lizzie H. Leithoff and Frank Schwarzwaelder, surviving executors, as second mortgagee.

01

02

03

04

Affidavit of Jesse R. Salmon.

July 25, 1917.

*Between*FOUR CORNERS BUILDING AND
LOAN ASSOCIATION,*Complainant,**and*

FRANK SCHWARZWAELDER,

Defendant.

10

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

I, Jesse R. Salmon, a Master in Chancery of the State of New Jersey, do solemnly swear that I will fairly and impartially take the testimony of such witnesses as appear before me pursuant to oral notice given in the above entitled cause; and that I will carefully, faithfully and impartially take the depositions of the witnesses appearing before me and will make a true and correct transcript thereof.

20

Sworn and subscribed before me
this day of July, 1917.

30

40

Edward N. Van Vliet, direct.

IN CHANCERY OF NEW JERSEY.

Between

FOUR CORNERS BUILDING AND
LOAN ASSOCIATION,

10

and

FRANK SCHWARZWAELDER,
Defendant.

Transcript of shorthand notes of testimony taken in the above entitled cause on July 25, 1917, before Jesse R. Salmon, Master in Chancery of New Jersey, at Chancery Chambers, Prudential Building, Newark, New Jersey.

20

Appearances:

Mr. Andrew Van Blarcom for the complainant.

Mr. Francis Child, Jr., and Mr. Thomas S. Henry for the defendant.

EDWARD N. VAN VLIET, a witness being duly sworn on behalf of the complainant, testified as follows:

30

Direct examination by Mr. Van Blarcom.

Q You are the treasurer of the Four Corners Building and Loan Association? A I am.

Q And I show you a paper dated July 10, 1913, signed by Roland D. Crocker, and ask you if that is the search which the Association had on the property in South Orange? A It is.

40

Q And is that the only one they have got, I mean that is the only search they have got in reference to that property? A I believe it is. I don't recall ever seeing another one.

Ferd. R. Moeller, direct.

Mr. Van Blarcom. I will offer that in evidence.

(Marked Exhibit C. 1. J. R. S.)

Q I also show you abstract of title, paper entitled "Abstract of title of Albert B. Aschenbach, premises in the city of Orange," and ask you if this is the search which the building and loan has on the East Orange property? A It is.

10

Mr. Van Blarcom. I offer this in evidence also.

(Marked Exhibit C. 2. J. R. S.)

Cross examination by Mr. Child.

Q Were you treasurer at the date of these searches? A What is the date of the searches?

20

Q 1913. A I was.

Q July 10th? A Yes.

Q As treasurer did you have the custody of the papers? A I did.

Q Every loan? A Yes.

FERD. R. MOELLER, a witness produced on behalf of the complainant, testified as follows:

Direct examination by Mr. Van Blarcom.

30

Q I show you a minute book which you identified at the former hearing and ask you if there is any reference in the minute book that you know of to these abstracts of title which have been produced here? A No.

Q Nothing? A No.

Cross examination by Mr. Child.

(No cross examination.)

40

Solomon Jeydel, direct.

SOLOMON JEYDEL, a witness produced on behalf of the complainant, on his oath testified as follows:

Direct examination by Mr. Van Blarcom.

Q You are in the real estate business? A
10 Yes.

Q How long have you been in that business?
A Fifteen years.

Q Are you familiar with the value of property, real estate, on Second street, South Orange? A I am.

Q And are you familiar with the value of real estate in East Orange on 18th street? A Yes, sir.

Q Did you appraise these particular properties? A I appraised them in July of 1915 for
20 the Four Corners Building and Loan.

Q For the complainant? A Yes.

Q July of what year? A 1915.

Q What do you value the South Orange property at,—what was the value in August, 1915?
A Of the South Orange property, I appraised it at that time at \$5,100.

Q Has there been any change in the value since that time? A No; it has been improved,
30 painted, &c., made rentable.

Q But no change outside of that? A No, sir.

Q Now, what was the value of the East Orange property? A \$5,000.

Q On what date? A That same date, July, 1915.

Q And has there been any change in that? A No; I still have charge of it; get up there once a month.

Q And you say the value of that is \$5,000
40 now? A Yes, \$5,000 now.

Solomon Jeydel, cross.

Cross examination by Mr. Child.

Q There are two lots in the East Orange property, aren't there? A I believe it is lot and a half.

Q What are those lots worth per lot? A About a thousand dollars a lot. 10

Q A thousand dollars a lot? A Yes; assessed for a thousand for both, stucco house.

Q A lot and a half there? A Yes, lot and a half, stucco house, two and a half story.

Q Well, now, what do you value the house at? A \$3,500.

Q Isn't it worth more than that? A No, sir; very poor construction.

Q Do you know what it rents for? How much does it rent for? A \$37.50; it is assessed for \$3,500. 20

Q What did you value the lots up in South Orange at? A In South Orange?

Q Yes. A I valued those lots at \$1,500 or \$1,600; I have forgotten which. There are two houses attached.

Q Your valuation of the South Orange then is \$5,100? A Yes.

Q Your valuation of the East Orange is \$5,000? A Yes. 30

It is stipulated that the South Orange property was sold at sheriff's sale for \$4,600.

A decree on the Bercaw mortgage, with interest, costs and sheriff's fees amounted to \$2,428.28, leaving a surplus which was turned over to the Loehnberg estate of \$2,171.72. That the complainant in this case purchased the property in East Orange at sheriff's sale for the sum of \$4,642. 40

Arthur Connelly, direct.

ARTHUR CONNELLY, a witness produced on behalf of the defendant, testified as follows:

Direct examination by Mr. Child.

Q What is your business? A Architect.

10 Q Are you also a builder? A Yes, I have been building.

Q Dealer in real estate? A I have done a little, but not a great deal of real estate.

Q Have you served as appraiser and are you familiar with property valuations? A Yes; I have been for years with building and loans.

Q Did you examine the premises on 18th street, East Orange? A Yes, I did.

20 Q The subject matter of this suit? One of the properties mentioned in this suit? A It is 135, I think it is on the corner of some street, I think it is Second avenue and 18th street.

Q Are you familiar with real estate values in that vicinity? A Well, yes, I know pretty near, pretty close to it, I think.

Q Well, what value do you place on the land? A I calculated the corner lot 25 feet would be worth \$1,200, and interior lot \$800 make about \$2,000 for fifty feet; I don't know whether there was two lots there or not.

30 Q Do you take into consideration the lot where the garage is? A There is a garage on the rear of this.

Q This property is only a 35-foot lot and does not cover that garage. What would you say a 35-foot lot was worth there, \$1,200 for the corner? A \$1,200, and the interior at the rate of \$800 for 25-foot lot.

Q At the rate of \$800 for 25 feet? A Yes.

Q Then you figure at the rate of \$800 on 25-foot lot? A Yes.

40 Q That is \$32 a foot? A Yes, sir.

Arthur Connelly, cross.

Q Now, what valuation do you place on the house, Mr. Connelly? A Well, I place the valuation on that house of \$5,000.

Q You figure the house worth \$5,000? A I figure this way, that house has got steam heat all through it, I calculated that was worth \$500, two floors there, and \$4,500 for the house; it has all improvements in there. 10

Q Two-family house? A Two-family house.

Q What sort of condition is it in? A It is in fairly good condition, with the exception it is stucco on the outside and some little of it has deteriorated towards the ground, that is all, slight deterioration there.

Q What valuation do you put on the whole premises? A I calculated on \$6,500 for the two lots. It appears there is not that amount onto it, only 35 feet. 20

Q \$6,500 for the two lots; that would make \$6,000? A \$6,000.

Cross examination by Mr. Van Blarcom.

Q Did you figure in the rent when you fixed your value? A No, sir.

Q Taking into consideration the rent for \$37.50 a month, does that effect your judgment on the situation? A No, sir; rents all depend on renting conditions. 30

Q At times you might get more? A A flat like that ought to be worth \$22 to \$25.

Q Renting conditions are very good in East Orange? A They are now; you can rent pretty nearly everything now; they were not a year ago.

Q It is only one-family house? A I understood it was two-family house, from the party into it. 40

Solomon Jeydel, direct.

Q No; it is one-family house. A That is what the party told me, two and a half story house.

Q Did you go in it? A Why, I was in the kitchen there, in talking with the lady, I wasn't going to go through the house.

10 Q You did not go through the house? A No.

Q How did you get the idea it was two-family house? A The lady told me about tenant upstairs.

Q If it was only one-family house would it make any difference to you in your opinion? A That house could not be built short of \$4,500; it was 22 foot front and 40 foot deep.

20 Q Would you give \$6,000? A I would if I wanted a house, that is, with a lot and a half, yes; it is on a fine thoroughfare, on a boulevard there, well located.

SOLOMON JEYDEL, re-called.

Direct examination by Mr. Van Blarcom.

Q You have been to this house many times, I suppose? A Collect rent every month.

30 Q Is it one-family or two-family? A One-family.

Q Two families in it? A Temporarily the woman's daughter and husband is living there.

Q It is one-family? A One-family, absolutely, one bath.

Q Do you know the size of that lot? A The lot, I believe, is 35x100; it is assessed at \$1,000 by the City of East Orange, for taxing purposes \$1,000, or \$1,100, and the house is assessed for \$2,500, and it is for sale for \$5,000.

40 Q Have you got it in your hands for sale? A Yes.

Exhibit C. 1.

Q At what price? A \$5,000.

Mr. Child. I object.

TESTIMONY CLOSED.

Stipulated by counsel that the signatures of witnesses be waived.

10

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

I hereby certify that the foregoing depositions were taken before me in the City of Newark and State of New Jersey, on July 25, 1917, in the presence of counsel as before stated.

I further certify that the testimony was taken stenographically by me, and I certify that the foregoing testimony is a true and correct transcript of the testimony of the witnesses and the proceedings before me.

20

JESSE R. SALMON,
Master in Chancery of New Jersey.

EXHIBIT C. 1.

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

I hereby certify that I have for Four Corners Building and Loan Association searched the title to the premises described in mortgage of Arthur M. Sims to Four Corners Building and Loan Association, Newark, New Jersey, recorded in Book I-31 of Mortgages for Essex County, on pages 388, etc., and find that the said mortgage is a first and valid lien on the premises therein described.

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Dated July 10, 1913.

ROLAND D. CROCKER,
Attorney at Law.

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Exhibit C. 2.

EXHIBIT C. 2.

10	Amos Baldwin and Ma- ria, his wife, to Malchar Rache (Roche)	Deed—Warranty Book E-8 182. Dated Nov. 1, 1852. Ack'd Nov. 1, 1852. Rec'd Nov. 1, 1852.
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Conveys lands in Township of Orange, described as follows:

20 Beginning at the s'w'ly cor. of William I. Pell, late of Stephen Cooper, dec'd. on the E. side of a driftway; from thence running along sd. Pell's line S 58 deg. 30' E 13 chs.; thence along the same N 31 deg. E 4.83 chs.; thence S 56 deg. 50' E 1.57 chs.; thence S 31 deg. W 1.98 chs. th. S 41 deg. 30' E 3.40 chs. to or near the big boiling spring; thence S 31 deg. 45' W. 8.03 chs. thence further on the same course 76 lks.; thence N 63 deg. 25' W 9.63 chs. thence S 23 deg. 30' W 4.07 chs.; thence N along the same N 30 deg. 20' E 12.30 chs. to the beginning.

Con. 18.46 acres be the same more or less.

Bounded on the E by ld. late of Joshua Baldwin decd. on the S by ld. of Estate of John Baldwin dec'd and ld. late of Matthias Plum.

30	Melcher Roche and Mary, his wife, to John Merkel	Deed—Warranty. Book I-9 532. Dated May 21, 1855. Ack'd May 21, 1855. Rec'd May 26, 1855. Cons. \$1700.
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Conveys lands in Township of Orange, described as follows:

40 Beginning at a pt. 3.86 chs. S from the s'w'ly cor. of ld. of William J. Pell, late of Stephen Cooper, dec'd, thence running S 61 deg. 35' E

Exhibit C. 2.

14.68 chs. thence *S 64 deg. 40' W 5.31 chs.* thence S 75 deg. 25' E about 30 lks. to or near the Boiling Spring; thence S 31 deg. 35' W 7.50 chs; thence on the same course 76 lks.; thence N 63 deg. 25' W 9.68 chs.; thence S 23 deg. 30' W 4.07 chs.; thence N 62 deg. 35' W 6.52 chs. to a drift road; thence along the same N 30 deg. 20' E 8.44 chs. to the pl of beginning. Con. 11.73 acres or thereabouts. 10

Being part of the same prem. in E-8 182, &c.

Note: Course in italics should be N 64 deg. 40' E.

John Merkel and Elizabeth, his wife, to Daniel Evertz	Deed—Warranty. Book R-12 255. Dated Sept. 25, 1865. Ack'd Sept. 25, 1865. Rec'd Sept. 27, 1865. Cons. \$3125.	20
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Conveys two tracts, the first of which is described as follows:

Beginning at a pt. 386 chs. from the s'w'ly cor of ld. of William S. Pell, late of Stephen Cooper, dec'd, thence running S 61 deg. 35' E 14.68 chs. thence S 64 deg. 40' W 5.31 chs. thence S 75 deg. 25' E about 3 lks. to or near the Boiling Spring; thence S 31 deg. 35' W. 7.55 chs. thence on the same course 76 lks. thence N 63 lks. 25' W 9.63 chs. thence S 23 deg. 30' W 4.07 chs. thence N 62 deg. 35' W 8.42 chs. to a driftway; thence along the same N 30 deg. 30' E 8.44 chs. to the pl. of beginning. Con. 11.75 acres or thereabouts. 30

Being same as I-9 532, &c.

In the Matter of the Estate of Daniel Ecertz.	Administration C 363 Dated March 3, 1866.	40
Alvine Evertz, Administrator.		

Exhibit C. 2.

Jacob Spire, bachelor,
to
Alvina Evertz, widow,
Ernest Evertz, Alexander Koeller and Amma, his wf., Frederick Schmachtenburg and Rosa, his wf., Charles Evertz and Emma, his wf., heirs of Daniel Evertz, dec'd.

Deed—Quit-claim.
Book N-20 288
Dated Dec. 9, 1876.
Ack'd Dec. 9, 1876.
Rec'd Jan. 12, 1880.
Cons. \$3000.

10

Conveys 2 tracts, the 1st of which is described as 1st tract in Deed R-12 255, above.

Being lds. described as 1st tract in deed T-18 523, &c.

Charles Evertz and Emma, his wf., Alexander Koeller and Emma, his wf., Frederick Schmachtenburg and Rosalie, his wf., Ernest C. Evertz, and Mary, his wf., Jacob Kocher and Amelia, his wf., Daniel Evertz and Hat-tie, his wf., William Layden and Wilhelmina, his wf., Edward Evertz and Sarah, his wf., heirs at law of Daniel Evertz, dec'd.

Deed—Warranty.
Book S-24 33.
Dated Feb. 25, 1889.
Ack'd Feb. 27, 1889.
Rec'd March 6, 1889.
Cons. \$11,000.

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to
The Orange Water
Company, a New Jersey corporation.

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Exhibit C. 2.

Conveys 2 tracts, the 1st of which is described as 1st tract in Deed R-12 255, above.

10	Last Will and Testament of David J. Baldwin.	Book L 331. Dated Sept. 13, 1892. Codicil dated May 16, 1853. Probated Jan. 12, 1857.
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FIRST: Orders debts and funeral expenses paid.

SECOND: Gives and bequeaths unto wife, Charlotte, household goods, chattels, horses, cattle and farming utensils.

THIRD: Gives and devises unto wife, Charlotte, during her natural life, and no longer, homestead premises occupied by testator, situated in sd. City of Newark, lying between Orange St. and the Morris and Essex Railroad. The bequest in 2d clause of this will and the devise in this clause to be in lieu of any dower which wife may be entitled to in real estate.

FOURTH: Gives and bequeaths unto executors hereinafter named, and to the survivor of them \$1000, in trust, nevertheless and to and for the following uses and purposes, to-wit, that they, my said exrs. or the survivor of them, shall invest the sd. sum of \$1000 on bond or bonds with mortgage or mortgages securing the payment of sd. bond or bonds upon good and sufficient security of real estate and during the natural life of my sd. wf. Charlotte, pay over the interest thereof to my sd. wf. Charlotte, during her natural life in annual payments or otherwise, as she shall desire it."

FIFTH: Orders exrs. to furnish firewood for wf. so long as she keeps house, or if she de-

Exhibit C. 2.

sires it, directs exrs. to pay her its equivalent in money at their direction.

SIXTH: All the rest, and residue and remainder of my estate both real and personal whatsoever and wheresoever the sd. homestead prem. and the sd. sum of \$100, at the decease of my sd. wf. I give, devise and bequeath unto my children, William, Mary Ann, Elizabeth and John and to Silas H. Kitchell, share and share alike, the part of my estate by this clause of my will given to the sd. Silas H. Kitchell, is given to him, IN TRUST nevertheless and to and for the following uses and purposes, to-wit that he invest the same at his discretion in the best manner and for the best possible advantage and allow the same to accumulate until the youngest of the children of my deceased daughter, Sarah, formerly wf. of sd. Silas H. Kitchell, shall arrive at the age of twenty-one years, when I order and direct him to divide the same among them or their heirs, share and share alike. Should any of my sd. children decease before my death having a child or children, then I give, devise and bequeath the share of such deceased child or children to the child or children of such deceased child or children, share and share alike; if living no children, then I give, devise and bequeath the share of such deceased child or children to my other children or their heirs, as the case may be, and to the sd. Silas H. Kitchell, the part going to the said Silas H. Kitchell to be in trust as aforesaid—should any difficulty occur among my children in the division of my real estate given to them by this clause of my will, then I order and direct my sd. exrs. or the survivor of them to make sd. division pursuant to the directions of

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Exhibit C. 2.

the fifth section, of the act entitled "An Act for the more easy partition of lds. held by coparseners, joint tenants and tenants in common," so far as the sd. section relates to the mode allotting parts or shares of real estate among coparseners, joint tenants and tenants in common.

10

SEVENTH: Should the sd. Silas H. Kitchell decease at any time before the youngest of the children of my sd. deceased daughter, Sarah, arrive at the age of 21 years, then I give, devise and bequeath that part of my estate so devised and bequeathed to sd. Silas H. Kitchell, as afsd. unto John Whitehead of the sd. City of Newark, In Trust, Nevertheless, and to and for the same uses and purposes as the same is given to the sd. Silas H. Kitchell, as afsd.

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LASTLY: I nominate, constitute and appoint the sd. Silas H. Kitchell and William B. Sayre, exrs. of this my last will and testament, hereby revoking all former will by me made.

IN WITNESS WHEREOF, &c.

CODICIL.

I, DAVID J. BALDWIN, of the City of Newark, in the County of Essex and State of New Jersey, the testator in the annexed will which is dated the 13th day of Sept. in the year of our Lord 1852, and witnessed by Garret Haulenbeek, Caleb S. Ward and Isaac R. Vanness, do make, publish and declare this codicil to my last will and testament afsd.

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WHEREAS in the 3d clause of my sd. will I have devised to my beloved wf., Charlotte, during her natural life, my homestead prem. now

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Exhibit C. 2.

occupied by me, situated in sd. City of Newark between Orange St. and the Morris and Essex Railroad.

AND WHEREAS I am desirous that my sd. wf., shall hold and enjoy the sd. homestead prem. during her life, free and clear of all taxes, assessments and impositions whatsoever;

10

Now, Therefore, I hereby charge all such taxes, assessments and impositions as may at any time during her life be levied, assessed or lawfully imposed on the sd. homestead prem. on the several portions of my real estate which in the sixth clause of my sd. last will and testament hereto annexed are devised to my children and to Silas H. Kitchel, the same to be charged on the sd. several portions share and share alike.

20

AND I further order and direct the devise as of sd. several portions of my real estate so as afsd. charged severally to make and execute unto my sd. wf. a bond in the penal sum of \$200 conditioned for the prompt payment of the taxes, assessments and impositions so as afsd. levied, assessed or imposed on the sd. homestead prem. during her lifetime of my sd. wf. which shall be charged upon the several portions of my real estate within devised as afsd.

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AND I order and direct that if any or either of sd. devisees neglect or refuse to comply with the provisions of this codicil and to make and execute such bond as aforesaid, that then and in that case the sd. devisee in the sd. sixth clause of my sd. will made to the sd. devisee or devisees so neglecting or refusing shall in no case take effect until the sd. provisions shall be complied with and sd. bonds made and executed as afsd.

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Exhibit C. 2.

AND it is my will and desire that this codicil be made a part of my last will and testament hereto annexed as afsd. to all intents and purposes.

In Witness whereof, &c.

10	William Baldwin and Julia, his wf., John Baldwin, Israel C. Eagles and Mary Ann, his wf., James E. Bathgate and Elizabeth C., his wife, children and devisees of David J. Baldwin, to	Deed Cov. vs. Grantor. Book F-10 444. Dated May 25, 1857. Ack'd May 27, 1857. Rec'd May 30, 1857. Cons. \$1 & other Cons.
20	Silas H. Kitchell.	

Conveys 4 tracts in City of Newark and East Orange, the 3d of which is described as follows:

Lies on the n'ly side of the rd running w'ly from Roseville Ave., passing the house of Henry Roe, sd rd. has recently been named Newhold St. on a map of property belonging to James E. Bathgate and is marked on his mp of lots laid out by Dunn & Thompson, surveyors, Beginning on the n'ly side of sd rd or St as above stated at the s'w'ly cor. of the lot apportioned to Mary Ann Eagles and is dist w'ly 6.46 chs. from the s'w'ly cor. of Henry Roe's lt and from thence running along the line of sd. Mary Ann Eagles lot N 25 deg. 25 deg 20' E 9.02 chs. to the line of Malchor Rache; whence 6 deg. 30' W 3.56 chs. Thence S 26 deg 6' W 8.33 chs. to the afsd rd or St and thence along the same S 50 deg E 3.78 chs. to the pl of beginning. Con.

40 3.13 acres.

Exhibit C. 2.

The above prem. were surveyed by Dunn & Thompson, surveyors, and maps of the same drawn dividing sd prem. which sd maps are in the hands of Silas H. Kitchell, Esq.

TO HAVE AND TO HOLD, . . . IN TRUST to and for use and benefit of Jane Elizabeth Kitchell, Sarah Louise Kitchell and Charles Henry Kitchell, children of Sarah, the deceased wf of sd Silas H. Kitchell, as is ordered and directed by the last will and testament of the sd David J. Baldwin, dec'd, their heirs and assigns forever. 10

Silas H. Kitchell

to

Jane Elizabeth Kitchell, Sarah Louise Tillinghast, wf. of Henry C. Tillinghast, and Charles H. Kitchell.

Reed Cov. vs. Grantor.

Book R-11 285.

Dated April 18, 1862.

Ack'd April 21, 1862.

Rec'd May 10, 1862. 20

Cons. \$1.

Conveys 4 tracts in City of Newark, the 3d of which is described as 3d tract in deed F-10 444, above

Recites will of David J. Baldwin.

Jane Elizabeth Kitchell, Charles H. Kitchell and Phebe S. his wf., Henry C. Tillinghast and Sarah L. his wf.

to

Joseph Booth.

Deed—Warranty.

Book G-13 235. 30

Dated Dec. 19, 1866.

Ack'd Dec. 22, 1866.

Rec'd Dec. 29, 1866.

Cons. \$800.

Conveys lands in Township of East Orange, described as follows:

Beginning on the n'ly side of Newbold St. at the s'w'ly cor. of the lot apportioned to 40

Exhibit C. 2.

10 Mary Ann Eagles wf of Israel C. Eagles and from thence running along the line of sd Mary Ann Eagles lot N 25 deg. 20' E 9.02 chs. to the line of Malcior Roche; thence along his line N 60 deg. 30' W 3.56 chs; thence S 26 deg 5' W 8.33 chs to the afsd St.; thence along the n'ly line of sd Newbold St. 8.50 deg E 3.78 chs to the pl of beginning. Con. 3.13 acres.

Being the same property described as tract No. 3 in a deed given by William Baldwin and others, dated May 25, 1857, to Silas H. Kitchell and rec'd in F-10 444, &c. (See also R-11 285, &c.

20	Last Will and Testa- ment of Joseph Booth.	Book S 150. Dated June 6, 1872. Dated April 7, 1873. Probated Apr. 21, 1873.
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IN THE NAME OF GOD, AMEN.

30 I, Joseph Booth, of the Township of East Orange, in the Co. of Essex and State of New Jersey, being of sound mind, memory and understanding and mindful of the uncertainty of life . . . disposing of all my worldly goods and estate, do hereby make, publish and declare this my last will and testament.

FIRST: It is my desire to have my body buried in the family lot at Mt. Pleasant, near the resting place of my father and mother, and that upon the death of my beloved wf her remains may be laid in the same grave unless she should give directions to the contrary.

40 SECOND: I order and direct that all my just debts and funeral expenses, the expenses of administration and any sum not exceeding \$1000 as my exrs. may order for the improvement and

Exhibit C. 2.

adorning of the burying lot before mentioned be paid out of my estate.

THIRD: I give and bequeath to my beloved wf, Elizabeth, all my wearing apparel and also all my household furniture of every kind and description used about my dwelling house, except the old eight day clock which was bequeathed to me by my father and which I now bequeath to my brother, James, conditioned that he bequeath it the sd clock to the next male heir in order, that it be retained in the family, meaning of course, the next surviving brother. 10.

FOURTH: I give and bequeath to my exrs hereinafter named and to the survivors or survivor of them the sum of \$12,000 upon the express trust hereinafter mentioned and expressed, that is to say, IN TRUST, that they and the survivors and the survivor of them shall safely and securely invest the same in bond and mortgage upon real estate, situate within the limits of the County of Essex in the State of New Jersey, the assessed value of which shall not be less than double the sum invested on the same and the interest and income thence arising after deducting all taxes and other legal charges, if any, to pay in equal half yearly payments to my sd wf Elizabeth, each and every half year during the term of her natural life and upon her death the principal money and all interest that may remain unpaid on the same, shall be equally divided between my four brothers James, George, William and Edward, or if any of them are deceased, then the child or children of such, shall be entitled to the brothers share. And I hereby declare that the provisions made by me in this my will in behalf of my sd wf are 20. 30. 40.

Exhibit C. 2.

intended to relieve her of any anxiety in regard to income and in full satisfaction of her dower in my estate.

10 FIFTH: If my wf Elizabeth, chooses to continue to live in my present dwelling house, she shall have the right to do so, and if she prefers some other dwelling, then the proceeds of the rent arising from my dwelling house or such amount of sd rent as is necessary shall be set off as to pay the rent of such dwelling house as she may select and the remainder of sd rent after paying taxes, insurance and necessary repairs shall be given to her.

20 SIXTH: I give and bequeath to my niece, Martha, daughter of my brother John, deceased, and now the wf of James Nichols, the sum of \$500 to be paid to her within one year after my decease and should my sd niece die before receiving the sd legacy the same shall go and form part of the residue of my estate and shall be disposed of as hereafter is provided respecting the distribution of such residue.

30 SEVENTH: I give and bequeath to my nephew, Joseph, son of my said brother John, deceased, the sum of \$500 the same to be paid to him on his arriving at the age of 21 years and I order and direct my exrs. and the survivors or survivor of them shall, within 1 yr. after my decease deposit the sd sum of \$500 and that it remain on deposit until he is 21 yrs of age when the sd sum together with all accumulation of int. therein shall be paid to him for his own use, sd deposit to be made in one of the banks for savings in the City of Newark, and should he die before the age of 21 yrs, sd sum and
40 all accumulation thereon at the time of his

Exhibit C. 2.

death shall go and form part of the residue of my estate and be disposed of as hereinafter provided respecting the distribution of such residue.

EIGHTH: I give and bequeath to my sister, Elizabeth, wf of Daniel Walsh, the sum of \$2000 to be paid to her in one year after my decease; if my sd sister should die before me or before receiving her sd legacy the same shall be paid to her child or children, share and share alike, in equal proportions. 10

NINTH: I give and bequeath to my sister Rachel widow of William Hopwood dec'd the sum of \$1500. the same to be paid to her within 1 yr. after my decease; if my sd sister should die before me or before receiving her sd legacy, the same to be paid to her child or children in equal proportions share and share alike. 20

TENTH: And I also order that if any of the parties to whom the above legacies are left are indebted to my estate at my death, such indebtedness shall be deducted from the share accruing to him or her and such sums shall become part of the residue of my estate and be disposed of as hereinafter provided respecting the distribution of such residue. 30

ELEVENTH: All the rest and residue of my estate, both real and personal, of whatever kind and however held and wheresoever the same may be, which I now have, shall hereafter accrue and shall die seized of and in my possession I give and devise and bequeath to my brothers, James Booth, George Booth, of the Town of East Orange, William Booth, of the City of San Francisco, and Edward Booth, of the City 40

Exhibit C. 2.

of New Orleans, the same to be equally divided between them, share and share alike, to them, their heirs and exrs forever. And if either of my sd brothers die before me, the share of such deceased brother of sd residue shall go to his surviving child or children in equal share, and if there should be no child of sd deceased brother alive at the time of my death, then his share shall be equally divided between the surviving brothers.

10 TWELFTH: I nominate and appoint my brothers, James, George, William and Edward my exrs. and the survivors or survivor of them to see this my last will obeyed and carried out according to law.

20 THIRTEENTH: This last will and testament of seven pages and thirteen sections contained all that I now wish done and in witness of the same I have this sixth day of June, 1872, set my hand and seal and do hereby publish and declare this to be my last will and testament.

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Note: George Booth and James Booth, two of the executors named in the will, qualified.

30	James Booth and Sa-	Deed—Bargain & Sale.
	bina H., his wife,	Book Q-18 549.
	George Booth and	Dated March 17, 1876.
	Nancy, his wife, Will-	Ack'd March 22, 1876,
	iam Booth and Ann	and April 6, 1876.
	C., his wife,	Rec'd April 24, 1876.
	to	Cons. \$1. & other cons.
	Edward Booth.	

Conveys lands described as in Deed G-13 235 above.

Exhibit C. 2.

Being same prem. conveyed by Jane Elizabeth Kitchell and others to Joseph Booth by deed dated Dec. 19, 1866, rec'd in G-13 235, &c.

Edward Booth and Helena, his wife, to Mary Ella Young, wife of David Young.	Deed—Warranty. Book Y-21 115. Dated May 21, 1883. Ack'd May 26, 1883. Ack'd May 26, 1883. Rec'd June 4, 1883. Cons. \$575.	10
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Conveys lands described in Deed G-13 235 above.

Being the same prem. conveyed to sd Edward Booth by James Booth and others by deed dated March 17, 1876, rec'd in Q-18 549, &c. and partly obtained by devise from his brother, Joseph Booth. 20

Mary Ella Young and David Young, her husband, to Elizabeth E. Boppe.	Deed Book K-24 4. Dated Oct. 19, 1886. Ack'd Oct. 19, 1886. Rec'd Oct. 22, 1888. Cons. \$4500.	
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Conveys 3 tracts in City of Newark and Township of East Orange, the 3d of which is described as follows: 30

Beginning in the w'ly line of Lambertson Pl. at a pt. therein dist 288.72 ft. n'ly from the n'w'ly cor. of sd Lambertson Pl. and Newbold St. from thence running n'ly along Lambertson Pl. 279.27 ft. to the n'ly line of land belonging to the sd Mary Ella Young; thence w'ly along the line of the same 67.77 ft. to the n'w'ly cor. of lds of sd Mary Ella Young; thence w'ly along the w'ly line of the same 285.67 ft. and 40

Exhibit C. 2.

thence running e'ly on a line at right angles to Lambertson Pl. 91.26 ft. to the pl. of beginning.

Being part of prem. conveyed to sd Mary Ella Young by deed dated May 21, 1883, rec'd in Y-21 115, &c.

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Elizabeth E. Boppe,
widow,
to
John Dorer.

Deed—Warranty. Book Y-32 541. Dated Feb. 7, 1900. Ack'd Feb. 7, 1900. Rec'd Feb. 7, 1900. Cons. \$2450.
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Conveys 2 tracts the 2d of which is described as follows:

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Beginning in the w'ly line of Lambertson Pl. at a pt. therein dist 288.72 ft. n'ly from the r.'w'ly cor. of sd Lambertson Pl. and Newbold St.; from thence running n'ly along Lambertson Pl. 229.27 ft. to the n'ly line of ld belonging to the sd Elizabeth E. Boope and the line of ld conveyed to one Charles Keene; thence w'ly along that line 88.30 ft. to the n'w'ly cor. of ld of the sd Elizabeth E. Boppe; thence s'ly along the w'ly line of the same 299.27 ft.; and
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thence running e'ly on a line at right angles to Lambertson Pl. 91.26 ft. to the pl of beginning.

Being part of prem. conveyed to sd Elizabeth E. Boppe by Mary Ella Young and husband by deed dated Oct. 19, 1888, and rec'd in K-24 4, &c.

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The sd party of the 1st part hereby releases and quit-claims to sd party of the 2d part all her right, title, interest and estate in and to all of the ld fronting the above described prem. and lying and being in sd Lambertson Pl. as

Exhibit C. 2.

projected on the afsd map to the center line thereof.

It being expressly understood and agreed that no warranty or other covenant whatsoever shall in any wise be construed to affect this quit-claim as against sd party of the 1st part or her legal representatives.

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John Dorer and Eva E., his wife, to Orange Water Com- pany.	Deed—Warranty. Book A-45 170. Dated Feb. 8, 1900. Ack'd Feb. 12, 1900. Rec'd March 24, 1909. Cons. \$2450.
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Conveys 2 tracts, the 2d of which is described as in Deed Y-32 541 above.

Contains same premises as to land in Lamberston Pl. as in deed Y-32 541 above.

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Being same prem. conveyed by Elizabeth E. Boppe, widow, to John Dorer, by deed dated Feb. 7, 1900.

The Orange Water Company, a corpora- tion, to John C. Tredwell.	Deed—Warranty. Book E-45 28. Dated April 5, 1909. Prv'd April 5, 1909. Rec'd April 5, 1909. Cons. \$1 & other cons.
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Conveys 2 tracts in cities of East Orange and Newark and Township of Bloomfield, the 1st of which is described as follows:

Beginning at the intersec. of the e'ly line of the right of way of the Bloomfield Branch of the M. & E. R. R. with the s'e'ly line of Grove St.; running thence along Grove St. N 54 deg. 31' E 195.45 ft.; thence still along Grove St. N 48 deg. 39' E 512.16 ft.; thence still along

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Exhibit C. 2.

Grove St. N 48 deg. 2' E 340.77 ft.; to line of
 ld late of John Dodd; thence along sd Dodd's
 line S 68 deg. 10' E 776.33 ft. to a corner;
 thence still along sd Dodd's line S 47 deg. 55'
 W 27 ft.; thence S 45 deg. 37' E 552.60 ft. to a
 corner; thence S 39 deg. 51' W 171.95 ft. to a
 corner; thence S 43 deg. 20' E. 627.77 ft. to a
 line running midway between N 12th St. and
 N 13th St. as laid out through the City of
 Newark; thence S 29 deg. 55' W 1121.16 ft.,
 being parallel with N 13th St. to a cor.; thence
 N 67 deg. W 147 ft. to a corner; thence S 36
 deg. 42' W 504.67 ft.; thence S 27 deg. 29' W
 60 ft. to line of ld of John Dorer; thence along
 sd Dorer's line N 58 deg. 21' W 407.35 ft. to
 a line drawn par. with the e'ly line of Lambers-
 ton Pl. and dist. Ely 96.80 ft. therefrom; thence
 S 28 deg. 3' W being par. with Lambertson Pl.;
 to a pt where a line drawn s'e'ly at right angles
 to Lambertson Pl. from a pt n'e'ly 450 ft. from
 the intersec. of sd line of Lambertson Pl. with
 the n'ly line of Springdale Ave. would inter-
 esct the same; thence N 61 deg. 57' W 96.80 ft.
 to the sd line of Lambertson Pl. to a pt dist
 n'e'ly 450 ft. from sd intersec. of sd line of
 Lambertson Pl. with the n'ly line of Springdale
 Ave.; thence along Lambertson Pl. N 26 deg 3'
 E 130 ft. more or less to a cor.; thence n'w'ly
 crossing the end of Lambertson Pl. 50 ft. more
 or less, to the w'ly line of the same; thence
 along the w'ly line of Lamberston Pl. S 28
 deg. 3' W 282 ft. more or less to a pt in sd line
 288.72 ft. from the intersec. of the same with
 the n'ly line of Springdale Ave.; thence n'w'ly
 at right angles to Lambertson Pl. 91.26 ft. to
 the end of Rowe St.; thence in part crossing
 the end of Rowe St. N. 28 deg. 35' E 18.32 ft.;

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Exhibit C. 2.

thence N 55 deg. 38' W 536 ft. more or less to the said line of sd railroad; thence along sd railroad N 2 deg. 4' W 1719.64 ft. to the pl of beginning.

It is understood and agreed that the plan for development of the prem. hereby conveyed should be for factory purposes and such development of dwelling houses as have been or are being built in adjacent sections of the City of Newark and East Orange up to this section.

John C. Tredwell, un-
married,

to

The Orange Water
Company, a corpora-
tion.

Mortgage.

Book S-23 126.

Dated April 5, 1909.

Ack'd April 5, 1909.

Rec'd April 5, 1909.

To secure \$135,000 in 8
yrs. with int. at 5%.

Conveys 2 tracts, the 1st of which is described as 1st tract in Deed E-45 28 above.

Being the same prem. described as 1st tract in Deed E-45, etc. Purchase money mortgage.

It is hereby expressly stipulated and agreed by and between the parties hereto that the sd party of the 2nd part, its successors or assigns, will release any part of the prem. above described from the lien and operation of this mtge. above described from the lien and operation of this mtg. upon payment by the sd party of the 1st part, his heirs or assigns, of the sum of \$250. for each portion or lot of sd prem. so released to be calculated on the basis of a 25x 100 ft. lot all expenses incurred in releasing sd lots to be borne by the sd party of the 1st part, his heirs or assigns and no commissions to be allowed for obtaining sd release.

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Exhibit C. 2.

It is also hereby expressly stipulated and agreed that all portions of the prem. hereby mortgaged which may hereafter be set aside, used or dedicated for public streets, shall be released by the said party of the 2nd part from the lien and operation of this mtg. without charge at or before the time of the acceptance of sd streets by the local authorities or municipalities.

10

Orange Water Company, a corporation, to East Orange and Ampere Land Company, a corporation.	Release of Mortgage. Book 38 284. Dated Jan. 20, 1910. Proved Jan. 20, 1910. Rec'd Jan. 22, 1910. Cons. \$750.
---	---

20

Releases from line of mortgage S-23 126 lands described as follows:

Lots numbered 17, 18 and 19 in Block 170 A.

All of the above being laid down on map entitled "Map of Ampere Section of property of the East Orange and Ampere Land Company, in East Orange, Bloomfield and Newark, dated Oct. 11, 1909, made by William H. V. Reimer, C. E.

30

John C. Tredwell, unmarried, to East Orange and Ampere Land Company, a corp.	Deed—Warranty. Book E-45 35. Dated April 5, 1909. Ack'd April 5, 1909. Rec'd April 5, 1909. Cons. \$1 & other cons.
--	--

Conveys 4 tracts in cities of East Orange and Newark and Township of Bloomfield, the 4th of which is described as 1st tract in Deed E-45 28 above.

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Exhibit C. 2.

Being same prem. described as 1st tract in Deed E-45 28, &c.

Subject to 2 myges for \$135,000, given by John C. Tredwell to Orange Water Co.

DEED.

East Orange and Am-
pere Land Company,
a corporation,
to
William H. Daly,

Dated July 26, 1909.
Ack'd July 30, 1909.
Rec'd July 31, 1909.
Cons. \$1.00 &c.
Book U-45 1-3.

10

Premises in the City of East Orange, in the County of Essex and State of New Jersey, known as Lot Number Eighteen (18) and part of Lot Number Seventeen (17) in block one hundred and ninety-B (190-B) as laid down on a map entitled, "Map of Ampere Section of property of the EAST ORANGE AND AMPERE LAND COMPANY," in East Orange, Bloomfield and Newark, New Jersey, dated June 16th, 1909, made by William H. V. Reimer, C. E., Orange, N. J., and filed June 16th, 1909, in the office of the Register of the County of Essex more particularly described as follows:

20

Beginning in the northwesterly line of North Eighteenth Street at the intersection of the southwesterly line of Second Avenue; running thence along said line of North Eighteenth Street S 29 deg. 55' W thirty-three and one-third ($33\frac{1}{3}$) feet; thence northwesterly and at right angles to North Eighteenth Street one hundred (100) feet; thence northeasterly and parallel with North Eighteenth Street thirty-three and one-third ($33\frac{1}{3}$) feet; thence southeasterly along the said line of Second Avenue and at right angles to North Eighteenth Street

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Exhibit C. 2.

one hundred (100) feet to the place of beginning.

Subject to restrictions.

DEED.

10	William H. Daly and Mabel, his wife, to Albert B. Aschenbach.	Dated Sept. 10, 1910. Ack'd Sept. 10, 1910. Rec'd Sept. 19, 1910. Cons. \$1.00. Book U-47 393.
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Conveys, with covenants of warranty, the same premises described in the deed last above. Subject to the same restrictions.

MORTGAGE.

20	Albert B. Aschenbach and Maude, his wife, to Four Corners Building and Loan Association of Newark, N. J., a corporation.	Dated Sept. 10, 1910. Ack'd Sept. 10, 1910. Rec'd Sept. 20, 1910. Cons. \$4000. Book N-26 163.
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Covers the same premises as described in Deed N-45, page 1, above set out, being the premises in question.

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

I hereby certify that I have inspected the indices to the record of deeds, mortgages, lis pendens and mechanics liens for said Essex County in the names and for the periods following:

40	Malcher Rache (Roche) from Oct. 31, 1852, to June 11, 1855. John Merkel from May 30, 1855, to Oct. 12, 1865.
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Exhibit C. 2.

Daniel Evertz from Sept. 24, 1865, to March 22, 1889.

Jacob Spire from June 26, 1876, to Jan. 27, 1880.

Emma Evertz

Charles Evertz

10

Rosa Evertz

Ida Evertz

Ernest Evertz

Emelia Evertz

Edward Evertz

Edward Evertz

Daniel Evertz

Matilda Evertz

Wilhelmina Evertz

From Sept. 24, 1865, to
March 22, 1889.

Bertha Evertz

20

Elvina Evertz

Emma Koeller

Alexander Koeller

Rosa Schmachdentberg

Frederick Schmach-
dentberg

Jacob Kocher

Amelia Kocher

Wilhelmina Layden

William Layden

30

Silas H. Kitchell, trustee, from May 24, 1857,
to May 25, 1862.

Jane Elizabeth Kit-
chell

Sarah Louise Kitchell

From Apr. 17, 1862, to
Jan. 13, 1867.

Charles H. Kitchell

Sarah Louise Tilling-
hast

Henry C. Tillinghast

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Exhibit C. 2.

Joseph Booth from Dec. 18, 1866, to May 9, 1876.

James Booth	from Apr. 6, 1873, to May 9, 1876.
George Booth	
William Booth	

10 Edward Booth from Apr. 6, 1873, to June 19, 1883.

Mary Ella Young	from May 20, 1883, to Nov. 6, 1888.
David Young	

Elizabeth E. Boppe from Oct. 18, 1888, to Feb. 8, 1900.

John Dorer from Feb. 6, 1900, to March 25, 1909.

20 Orange Water Company from Feb. 24, 1889, to April 6, 1909.

John C. Tredwell from April 4, 1909, to April 6, 1909.

East Orange and Ampere Land Company from April 4, 1909, to date.

William H. Daly from July 25, 1909, to Sept. 20, 1910.

Albert B. Aschenbach from Sept. 9, 1910, to this date.

30 And also I have searched the indices to the records of judgments, attachments, sheriffs' bonds and miscellaneous liens in the office of the Clerk of said County in the names and for the periods following:

Elizabeth E. Boppe from Jan. 3, 1890, to Feb. 8, 1900.

John Dorer from Jan. 3, 1890, to March 25, 1909.

40 Orange Water Company from Jan. 3, 1890, to April 6, 1909.

Exhibit C. 2.

John C. Tredwell from Jan. 3, 1890, to April 6, 1909.

East Orange and Ampere Land Company from Jan. 3, 1890, to date.

William H. Daly from Sept. 9, 1890, to Sept. 20, 1910.

Albert B. Aschenbach for twenty years last past. 10

And I find nothing of record affecting the title to the premises mortgaged by the said Albert B. Aschenbach and wife to the said Four Corners Building and Loan Association of Newark, N. J., by mortgage above stated, except as above set forth.

And I further certify that the said mortgage is a first and valid lien on the premises therein described. 20

Dated September 20th, 1910.

ROLAND D. CROCKER,
Attorney at Law.

NEW JERSEY SUPREME COURT. 30

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, hereby certify that I have searched the records of said court, and do not find made up of record or docketed therein any judgment, attachment decree from Chancery or other lien against John Dorer from January 18, 1890, to March 25, 1909.

“Orange Water Company” from Jan. 18, 1890, to April 6, 1909. 40

Exhibit C. 2.

John (C.) Tredwell from Jan. 18, 1890, to April 6, 1909.

“East Orange and Ampere Land Company”
for twenty years last past.

10 IN TESTIMONY WHEREOF, I have
[L. s.] hereto set my hand and seal of said
Court, this nineteenth day of Janu-
ary, nineteen hundred and ten, 9 A. M.

WM. RIKER, JR., Clerk.

Countersigned Woodruff. Fees \$5.60.
A true copy from original.

R. D. C.

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

I hereby certify that I have inspected original Certificate of Search in the New Jersey Supreme Court in the names and for the periods following:

William H. Daly from Sept. 9, 1890, to Sept. 20, 1910.

Albert B. Aschenbach for twenty years last past.

30 And from the same it appears that there are no judgments, attachments, decrees from Chancery or other liens of record in said court against either of said persons for the said periods.

Dated September 20th, 1910.

ROLAND D. CROCKER,
Attorney at Law.

Exhibit C. 2.

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

I hereby certify that I have seen original Certificate of Search made by the tax receiver of the City of East Orange and that from the same it appears that there are no taxes, assessments, water liens or sales of record against the premises described in mortgage made by Albert B. Aschenbach and wife to Four Corners Building and Loan Association of Newark, N. J., of record in Book N-26 of Mortgages for Essex County on pages 162, etc. 10

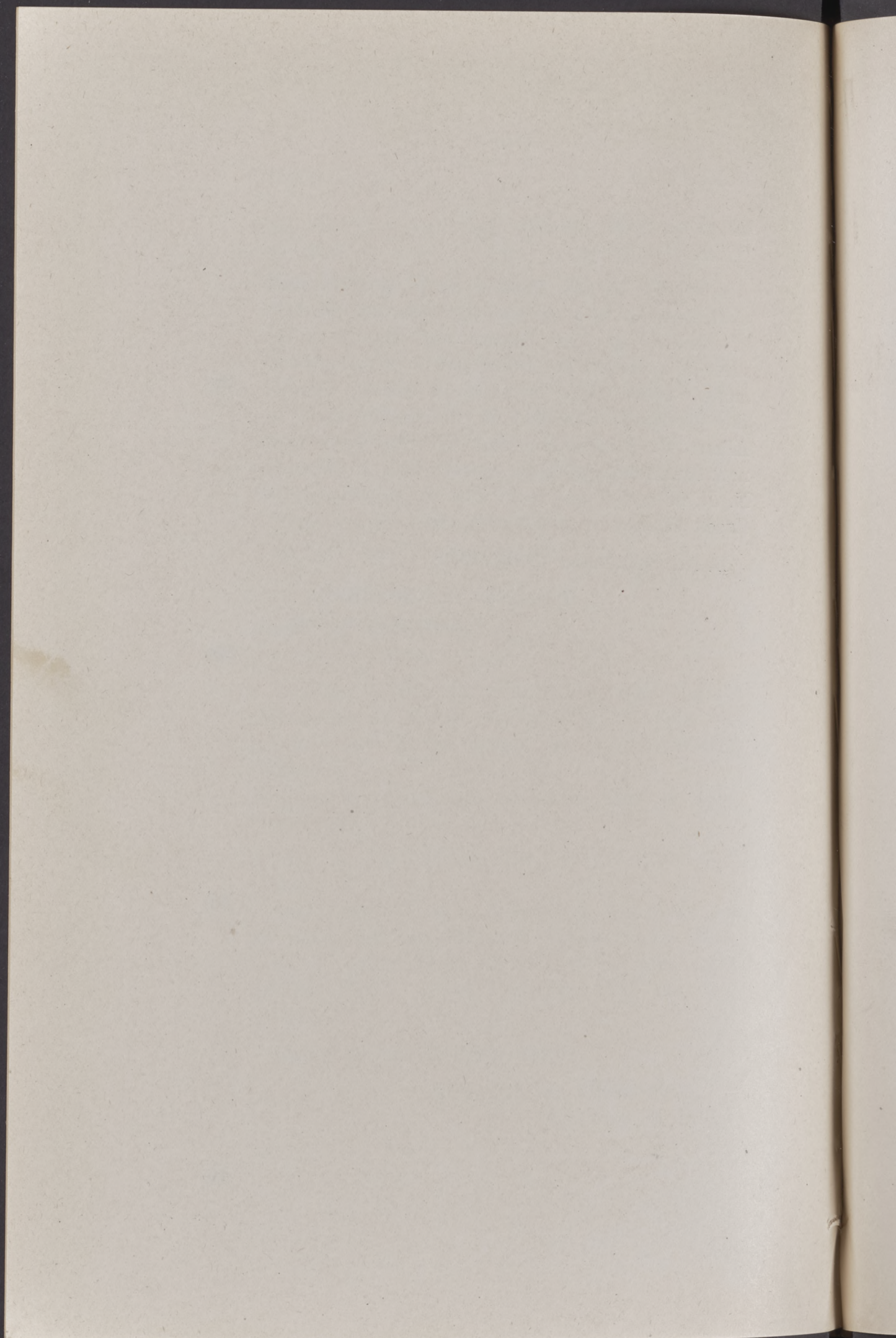
Dated September 20th, 1910.

ROLAND D. CROCKER,
Attorney at Law.

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New Jersey Court of Errors and Appeals

FOUR CORNERS B. & L. ASSOCIATION,

Complainant-Respondent,

vs.

FRANK SCHWARZWAELDER,

Defendant-Appellant.

On Appeal.

Brief for Complainant-Respondent.

Abstract.

The complainant, Four Corners Building and Loan Association filed a bill in the Court of Chancery alleging that it had sustained certain losses by reason of the gross negligence and inattention of the defendant, in the performance of his duties as a director of the complainant association. The losses were sustained on two mortgage loans made by the Four Corners Building and Loan Association, one of which was a loan on property known as 60-62 Second street, South Orange, and referred to in the bill and opinion as the Sims or South Orange loan, and the other is on property located on North 18th street, and known as the East Orange, or Aschenbach loan.

The defendant admits that he was a director of the association, but denies his negligence.

Before taking up in detail the circumstances upon which the complainant's claim is based, we wish to point out the legal responsibility resting upon directors in transactions of the character in the case at bar.

Point I.

A bill in equity will lie against a director or directors for negligence.

Officers and agents of any corporation, including directors, are liable in equity for negligence or misfeasance in office. This applies to directors of a building and loan association as well as any other corporation. Action may be brought against all of such directors or any one of them, and in the name of the company.

“Where there has been a waste or misapplication of funds of a corporation by the officers or agents of the corporation, a suit in equity may be brought in the name of the company to compel them to account for such waste or misapplication or breach of trust.”

Citizens Assn. of the City of Newark v. Daniel M. Lyon, 29 N. J. Eq. 111.

“In cases of this kind, where the liability arises from the wrongful act of the parties, each is liable for all the consequences, and there is no contribution between them, and each case is distinct, depending upon the evidence against each party. It is therefore not necessary to make all persons parties who may have, more or less, joined in the act complained of, nor would anyone derive any advantage from their being all made defendants, because as the decree would be general against all found to be guilty of the charges, it might be executed against any of them.” *Robert F. Stockton, Rec'r. of New Jersey Mutual Life Ins. Co. v. John J. Anderson*, 40 N. J. Eq., p. 488.

Point II.

Directors of a building and loan association are liable for negligence, but not for mistakes in judgment.

The earliest case in the State of New Jersey in which the liability of a director of a building and loan association is considered, is the case of *Citizens B. & L. Association v. Coriell*, 34 N. J. Eq., page 392. The Court there says:

“In the absence of fraud and where they (directors) have neither derived nor expected to derive any profit, benefit or advantage from their management, which was not common to the other stockholders; when they have acted fairly and have not been guilty of gross neglect or gross inattention, they should not be held liable. The rule applicable to mandatories is sufficiently stringent for such cases, and is a reasonable one. They should be held liable only in case of fraud, gross negligence or misuser.” Referring to an opinion of a Pennsylvania court, the Court says: “That was a case similar to this and involving a question of liability. It is there said that while directors are personally responsible to stockholders for any losses resulting from fraud, embezzlement or wilful misconduct, or breach of trust, for their own benefit, and not for the benefit of the stockholders, *for gross inattention and negligence, by which such fraud or misconduct has been perpetrated*, by agents, officers or co-directors, yet they are not liable for mistakes of judgment, even though they may have been so gross as to appear absurd and ridiculous, provided they are honest and are fairly within the scope

of the powers and discretion confided to the managing body.”

The difference between a mistake of judgment and negligence is indicated by the result of the decision in that case, the directors being held not liable for mistakes as to the value of the securities purchased, but liable for taking loans without security, in violation of the by-laws. It is not shown that the directors charged, had any direct connection with the loans for which they were charged. They are simply chargeable because the loans were made illegally.

“The board cannot be excused for lending the money to him in contravention of the by-laws. They cannot be excused for lending the money of the association to a stockholder on personal bond and stock, where the stock was of less value than the amount loaned. There was no warrant, as there is no justification, for their action. They would, under the circumstances, have been excused in lending a sum equal to the amount he has paid in on the stock which he pledged for its payment and interest thereon, according to the by-laws, but they have no excuse for lending beyond that on such securities.”
Citizens Building and Loan Ass'n. v. Coriell, supra.

In the case of *French v. Armstrong*, 79 N. J. Eq. 283, Vice-Chancellor Stevens, dealing with the responsibility of directors of building and loan associations, said:

“In *Williams v. McKay*, the case of a receiver of a savings bank against its managers, it was held by the Court of Errors that the receiver represents not only the corporation, but its depositors and creditors,

and that the managers stand to such depositors and creditors in the character of trustees; that the trust was direct and that as such it was exempt from the operation of the statute of limitations. It appears to me that building and loan associations stand on very much the same footing as savings banks. They are *quasi* public institutions, dealt with as such by the legislature, and having very similar objects. They are both designed to conserve the scanty savings of wage earners and other people of small means. If the managers of savings banks are trustees of creditors and depositors, I see no reason why the directors of building and loan associations do not stand in precisely the same relation to their creditors and so-called stockholders."

The Court of Errors and Appeals, in the case of *Gerhard v. Welsh*, 80 N. J. Eq. 203, dealing with the responsibility of directors of a building and loan association is also apparently of, although not directly so stating, the same opinion, as it cites in its opinion, the opinion of the Chancellor in the case of *Williams v. McKay*, 46 N. J. Eq., p. 36, which was a savings bank case.

The courts of this State have thus determined that the directors of a building and loan association are in an analagous position to the directors or managers of a savings bank, and that the same tests serve to establish their duties and responsibilities.

An examination of the cases holding directors of savings institutions responsible for negligence, and defining in what such negligence consists, have a direct bearing, therefore, on the liability of a director of a building and loan association.

We therefore quote from the opinion of the courts in cases of this kind:

“The duty belonging to such a situation is a plain one—to care for the moneys intrusted to them in the manner provided in the charter, and to exercise ordinary care and prudence in so doing. It is true that the defendants were unpaid servants, but the duty of bringing to their office ordinary skill and vigilance was none the less on that account, for to this extent there is no distinction known to the law between a volunteer and a salaried agent. These defendants held themselves out to the public as the managers of this bank, and by so doing they severally engaged to carry it on in the same way that men of common prudence and skill conduct a similar business for themselves. This is the measure of the responsibility of officers of this kind.” *Williams v. McKay*, 40 N. J. Eq. 195.

“In short, the duty was to lend the bank’s money, not only in the manner indicated and required by the charter, but also prudently; the prudence required being measured by the character and objects of the institution.” *Williams v. McKay*, 46 N. J. L. Eq., p. 36.

“A simple inspection of the check book at any time by any of the managers, would have revealed checks signed in blank and numerous unfilled stubs, and, I think, would have led any reasonably careful man to an inquiry which would have disclosed the dangerous and intolerable condition of the bank’s affairs. * * * Not only did this committee entirely neglect to examine the bank books, but its examination of the securities was a mere perfunctory performance of that duty. It was, habitually, a mere comparison

of a bundle of papers with a list of the securities supposed to be owned by the bank. Both the bundle and list were produced by the secretary. The examination consisted of checking the papers on the list as they were called off. No inquiry appears to have been made as to the character or value of the security. It was not noticed that there were bonds and mortgages among the papers that had been purchased by the bank, but had been taken in the names of individuals who had not assigned them to the bank, and mortgages to which the bank had no title, and even fictitious mortgages put among the papers to account for missing moneys. The slightest excuse by the president seems to have satisfactorily accounted for the non-production of valuable negotiable securities, the names of which appeared upon the list." *Williams v. McKay, supra*, pp. 38-39.

"The conclusion, then, is irresistible, that the managers either purposely or negligently refrained from interference with the practices pursued, or were not ordinarily vigilant. In either case they must be held responsible for the losses." *Williams v. McKay, supra*, p. 53.

"Trustees of the character of the defendants are not merely required to be honest, but they must also bring to the discharge of the duties that they undertake ordinary competency, together with reasonable vigilance and care. They cannot excuse imprudence or indifference by showing honesty of intention coupled with gross ignorance and inexperience, or coupled with an absorption of their time and attention in their private affairs. The rule in this respect is admirably stated by Judge Earl of the Court of Appeals of

New York in *Hun. v. Cary*, 82 N. Y. 74, in this language: 'One who voluntarily takes the position of director and invites confidence in that relation, undertakes, like a mandatory, with those whom he represents or for whom he acts, that he possesses at least ordinary knowledge and skill, and that he will bring them to bear in the discharge of his duties. Such is the rule applicable to public officers, to professional men, and to mechanics, and such is the rule which must be applicable to every person who undertakes to act for another in a situation or employment requiring skill and knowledge gratuitously. These defendants ordinarily took the position of trustees of the bank. They invited depositors to confide to them their savings and to entrust the safe-keeping and management of them to their skill and prudence. They undertook not only that they would discharge their duties with proper care, but that they would exercise the ordinary skill and judgment requisite for the discharge of their delicate trust.' "

"The mere statement of the sums of money invested in commercial paper satisfactorily shows that the practice of making such investments was one of the principal occupations of the bank. For a manager to assert a want of knowledge of such practice, is to admit an unpardonable neglect to exercise the care and vigilance that the law requires of him, for it is plain that the slightest examination into the dealings of the institution would have disclosed it." *Williams v. McKay*, *supra*, pp. 56-57.

See also:

Campbell Rec'r. v. Watson, 62 N. J. Eq. 396.

Wilkinson v. Dodd, 40 N. J. Eq. 123.

Barrett v. Bloomfield Savings Inst., 64 N. J. Eq. 425.

We also quote the following from an opinion dealing with the general liability of directors of a corporation for negligence, which shows that they have a responsibility not only for what they know, but also for what they are bound to know, and cannot excuse themselves by claiming ignorance.

“That the subject of this litigation is within the jurisdiction of this court will admit of no question. * * * The ground of the claim is that the directors utterly neglected to discharge any of the duties of their office. For such a wrong there is a redress in equity. For any wilful breach of their trust or misapplication of the corporate funds, or for any gross neglect of, or inattention to, their official duties, directors are liable in this court. * * * As a general rule the directors of a corporation are only required, in the management of its affairs, to keep within the limit of its powers, and to exercise good faith and honesty. They only undertake, by virtue of their assumption of the duties incumbent upon them, to perform those duties according to the best of their judgment and with reasonable diligence, and a mere error of judgment will not subject them to personal liability for its consequences. And unless there has been some violation of the charter or the constituting instruments of the company, or unless there is shown to be a want of good

faith, or a wilful abuse of discretion, or negligence, there will be no personal liability. They are personally only bound in the management of the affairs of the corporation to use reasonable diligence and prudence, such as men usually exercise in the management of their own affairs of a similar nature. But they are personally liable if they suffer the corporate funds or property to be wasted by gross negligence and inattention to the duties of their trust."

Ackerman v. Halsey, 37 N. J. Eq., at p. 361.

"I do not think that he had any actual knowledge of what was transpiring, but as a director he was bound to know the condition of the books." *Bird v. MacGowan*, 43 Atl., p. 281.

In *Briggs v. Spaulding*, 141 U. S. 132, the Supreme Court of the United States, dealing with the liability of directors, said with respect to what is negligence:

"If very little care is due from him and he fails to bestow that little, it is called 'gross' negligence. If very great care is due, and he fails to come up to the mark required, it is called slight negligence. And if ordinary care is due, such as a prudent man would exercise in his own affairs, failure to bestow that amount of care is called ordinary negligence. In each case the negligence, whatever epithet we give it, is failure to bestow the care and skill which the situation demands; and hence it is more strictly accurate, perhaps, to call it simply 'negligence.' * * * In any view the degree of care to which these defendants were bound is that which ordinarily prudent and dili-

gent men would exercise under similar circumstances, and in determining that the restrictions of the statute, and the usages of business should be taken into account. What may be negligence in one case may not be want of ordinary care in another, and the question of negligence is therefore ultimately a question of fact to be determined under all the circumstances."

It would appear, therefore, as stated in the opinion of the Vice-Chancellor who heard the case, that the negligence for which a director can be held responsible consists in the performance of an act which under all the circumstances he should not perform, or the non-performance of an act which under all the circumstances he should perform. The questions to be determined are: Did the defendant, Schwarzwaelder, give such attention to the business of this association and perform such acts as the circumstances of his duties as director required? And, second, did his failure to do so, if any there be, make possible the fraud and misconduct which was perpetrated upon the complainant by Roland D. Crocker, the solicitor of the complainant?

Point III.

The defendant, Frank Schwarzwaelder, is guilty of negligence.

It is conceded by the defendant that he was a director of the complainant, and it is further admitted that he was the active executor of the August Loehberg estate.

In both of the claims of the complainant, the losses arose by reason of the fact that the complainant association loaned money on mortgage

security on properties on which the estate of August Loehnberg held a prior mortgage. The Statutes of New Jersey relating to building and loan associations, and the by-laws of the association, and reasonable business judgment prohibit such investments. How far did the defendant participate in the transaction which brought about this situation?

The secretary of the complainant, Moeller, testified that he had kept the minutes of the association, from the time of its organization and read from the minute book such actions of the board as appeared therein.

(a) *South Orange Loan.*

The first reference to this loan appears in the minutes of a meeting of the directors held October 25th, 1912, at which meeting the defendant, Frank Schwarzwaelder, was present. The following is the entry in the minute book, for that meeting. (Case, p. 41, l. 8.)

“Referring to application of Louis Wagner, Brooklyn, New York, for loan of \$7,000 on property 60-62 So. side of Second street, So. Orange, on which only one of the committee who report was Frank Schwarzwaelder, who recommended a loan of \$5,000, it was, on motion of Mr. Schwarzwaelder, seconded by Dr. Richman ordered that the committee, Frank M. Schulz, George F. King and Frank Schwarzwaelder be continued and that they make their report to the officers who are to have power to grant loan after a satisfactory report is made.”

The next reference to the loan appears in the minutes of the meeting of the Board of Directors held February 28, 1913, at which the defend-

ant was present, and which read as follows (Case, p. 41, l. 25.)

“Referring to application Louis Wagner for loan of \$7,000 on property, 60-62 So. Second street, South Orange, it is ordered that the officers be empowered to grant such amount of above loan as shall be unanimously recommended by all of the following committee: Frank Schwarzwaelder, Frank M. Schulz and Theo. F. Keer.”

On the 28th of March, 1913, another meeting was held by the Board of Directors, at which the committee who had in consideration the Wagner loan reported, and the following appears in the minutes concerning the same. (Case, p. 42, l. 9.)

“All the committee, Frank M. Schulz, T. F. Keer and Frank Schwarzwaelder recommended that a loan of \$5,000 be granted to Louis Wagner on property 60-62 South Second street, South Orange.

“On motion duly made and seconded it was ordered that report of committee be received and loan granted.”

The next entry concerning the same appears in the minutes of the meeting of April 25th, 1913, at which the defendant was not present, and which reads as follows (case, p. 42, l. 22):

“Referring to application for loan by Louis Wagner, Brooklyn, N. Y., to whom a loan of \$5,000 was granted on property 60-62 south side of Second street, South Orange, Mr. Wagner having sold the property to Arthur Sims and all of the committee, Mr. Frank Schulz and Mr. Thos. F. Keer and Mr. Frank Schwarzwaelder reporting in favor of loan of \$5,000 to Arthur Sims on property 60-62 south side of Second street, South Orange, N. J., it was, on motion of

Mr. Merklinger, seconded by Mr. Stone, ordered that the committee recommendation be received and granted."

The minutes of the meeting of April 25th, 1913, and of a special meeting held April 30th, 1913, were read and approved at a meeting held on May 23, 1913, at which the defendant was present. (Case p. 42, l. 38.)

The special meeting referred to took place on April 30th, 1913, and does not concern this case. The approval of the minutes of April 25th, 1913, at a meeting when the defendant was present, gave the defendant information that Arthur Sims was now the owner of 60 Second street, and that all of the committee, including Mr. Schwarzwaelder, having reported in favor of a loan of \$5,000 on property known as 62 south side of Second street, the loan had been granted. The defendant thereupon concurred therein without question.

Further than that, upon the same date, and at the same meeting the treasurer's report was presented, showing a disbursement of \$4,813.50, to pay for the Arthur M. Sims mortgage. (Case, p. 44, l. 36.) See defendant's testimony (p. 79). The check itself was offered in evidence and marked Exhibit C. 2 (p. 84). It is payable to the order of Arthur Sims, bears date April 25th, 1913, but was not paid by the depository of complainant until July 10, 1913. On July 2, 1913, the Board of Directors held a meeting, at which defendant was present, and the minutes of the last meeting, namely that of May 23rd, 1913, were read and approved. (The meeting for June not having been held for failure of a quorum to attend.) So that again the matter was called to the defendant's attention, and the check had not yet been paid.

It further appears that the defendant, Frank Schwarzwaelder, was a member of the examining committee of the complainant, to inspect the property for the complainant, and that he signed a recommendation for the loan, on October 10th, 1912. (See Exhibit C. 1, p. 83.)

The record of the title of 60-62 Second Street shows that on October 11th, 1909, Mabel Daly and husband executed a mortgage for the sum of \$3,500 to the Estate of August Loehnberg (p. 100), of which Frank Schwarzwaelder was an executor, which mortgage was recorded on October 31st, 1909. The mortgage from Arthur M. Sims of complainant (p. 101) covering same premises, was dated April 5th, 1913, and recorded July 10th, 1913, so that the mortgage held by Four Corners Building and Loan Association was a subsequent and second mortgage to that held by Mr. Schwarzwaelder as an executor of the Loehnberg estate. Mr. Schwarzwaelder claims that he had no knowledge of this condition, and therefore should not be charged, or responsible therefor. The testimony does not bear out this claim. Mr. Schwarzwaelder himself produced a book kept by him in which an entry was made of the mortgage held by the estate, and described it by the numbers 60-62 Second Street, South Orange (p. 72, l. 21), being the same number as appears in the application of the association. He had been collecting interest for three years and six months, from the time the mortgage was made until the mortgage was executed to the Four Corners Building and Loan Association, on the same property. When the loan to the estate was granted he inspected the property and he again inspected the premises for the purpose of reporting to the complainant (p. 74, l. 1).

At another examination of the defendant which was held in the Orphans Court of Essex County in April of the year 1915, when he was examined as to the services performed by him as executor, he testified as follows (case, p. 65):

Q You have testified as to the transaction surrounding the Mabel Daly mortgage, do you remember when that loan was made; can you tell me by reference to your books?

A When the loan was made to Mabel Daly? October 26, 1909.

Q You knew that property, didn't you?

A Yes, sir.

Q In what connection had you had opportunity, or occasion rather, to examine it before making this loan?

A I don't recall that I had any. I may have had. I don't remember.

Q Didn't you appraise that property, for the purpose of securing—or passing upon a building and loan application of Mabel Daly for a loan on that property?

A I think I did.

Q Yes, and that loan was made upon it?

A Not that I know of.

Q Did you ever investigate and find out?

A Did I investigate? No, sir.

Q After you appraised the property to whom did you hand your report?

A To the building and loan association.

Q You did nothing further after that?

A No, sir.

Q Did you examine the property in connection with this loan of the Loehnberg funds?

A Did I examine the property? Yes, sir.

Q That was the second time you examined it?

A Yes, sir, it was the second. Not only once but two or three times, I guess.

Q The first time, when you examined it for the building and loan association, how long was that before the second time?

A I don't remember the date.

Q Several years?

A It may have been at that.

Q How did the application for that loan come to you?

A Which?

Q The Mabel Daly loan?

A From the estate?

Q Whose?

A From Mr. Crocker.

Q And did you examine at that time and find out whether the building and loan had a mortgage upon that property?

A Did I examine it? No, sir.

Q It is a fact, isn't it, Mr. Schwarzwaelder, the executors never called in a mortgage because of depreciation of the property?

A No, sir, it is not. We did call in mortgages for depreciation.

It appears in this examination that defendant examined the property first for the Building and Loan Association, and subsequently for the estate. Either this is a mistake or else he made a previous examination for a loan for another association, because complainant's loan was made three years after the loan of the estate. It also appears in this testimony that he examined the property not only once, but two or three times, and it further appears that he invariably looked over the properties in which the estate held mortgages, in order to ascertain whether or not they had sufficient equities, whether the prop-

erty was kept in proper repair, and in general performed the ordinary duties of an executor in attending to mortgages belonging to the estate which he had the care of.

Therefore, when the application of Wagner and Sims came to the complainant and was referred to the defendant for his inspection, the estate of which he was executor had held a mortgage on the property for three years, and defendant had acted as an executor normally would, in seeing that the properties on which the estate had mortgages were kept up.

(b) *East Orange Loan.*

In December, 1909, William H. Daly and wife executed a mortgage to the defendant, Frank Schwarzwaelder, and Lizzie H. Leithoff, as executors of the Estate of August Loehnberg, deceased, in the sum of \$4,000 (p. 94, l. 20).

In September, 1910, Albert B. Aschenbach and wife executed a mortgage to the complainant for \$4,000 upon the same property, and while the mortgage of the Loehnberg estate was still a lien against the property (p. 95, l. 20).

Nothing appears in the minutes of the Board of Directors of the complainant association authorizing the granting of the loan to Albert B. Aschenbach on the East Orange property. The files show an application (Ex. 5, p. 87) for such loan signed by Aschenbach, and containing a brief description of the property which was approved by two of the directors as an examining committee. The only reference to the loan which appears in the minutes at all is at a meeting of the Board of Directors held on September 22nd, 1910, at which the defendant was present, and the treasurer reported a disbursement on September 4th, 1910, of \$3,919 on account of

the Aschenbach mortgage (p. 47, l. 30, to p. 48, l. 20). A previous application by one Daly for a loan on this property was withdrawn (pp. 49 and 50).

The defendant made no inquiry with respect to the payment and his defense is that he had no knowledge that the loan was made upon property upon which the estate represented by him had a mortgage. It was his duty to see to the safe investment of the funds of the association, and he frankly admits in his testimony that when this payment was made he made no investigation.

A The treasurer's report you get the entire payments of the entire matter—I don't know how we could go to work and follow it up and ask any questions about it, knowing that the committee had reported it favorably, and committee passed on it, it must be correct or they would not have paid it.

Q You would not make any investigation?

A No.

Q You would not inquire what it was for?

A Not necessarily, no sir.

(Case, p. 79, l. 10, and following.)

If the defendant had made any investigation he would have immediately discovered that the money had been advanced upon property upon which the estate represented by him held a mortgage. He would have discovered that the loan had never been authorized, and the disbursement illegal. And we can hardly do better, with respect to this loan, than to quote from the conclusions of the Vice-Chancellor who heard the case:

“Unless reports of officers are to be received and approved *pro forma* and members of a board of directors excused from

any investigation whatever, it seems to me that the act of the defendant was gross inattention and such negligence as make him responsible for the consequences of his inattention. I can not conceive that he has performed his duty as a member of the board of directors, entrusted with the savings of poor investors, whose duties are defined to be 'to loan out the funds and see to their safe investment.' "

(c) *Explanation by Defendant.*

The defendant in endeavoring to excuse himself from responsibility for the losses, alleges, with respect to the South Orange loan that although he approved the loan to one Wagner, on the property, he did not know that the loan which was subsequently made to Sims was on the same property. This is clearly disproved by the fact that he was present when the minutes of a meeting were read, which set forth the transaction. In addition, he made no inquiry to find out whether the loan he had already approved on the property itself went through, and if it did, why his mortgage, which was a prior lien on the property, had not been taken care of.

He further endeavors to exculpate himself by saying that he had too much else to do.

Q Didn't you ever follow this up to see what became of it?

A No, sir.

Q Why not?

A I have other things on my mind. I am in business all day long. If I had to keep all these things in my mind, I think I would have to give up business or the building and loan, one or the other (p. 76, ll. 10 to 30).

And, as we have before indicated, he admits that he made no inquiry concerning reports of officers of the association which were read in the meetings of the Board.

Another allegation that he makes is that the minutes of the Board of Directors were incorrect, and that he did not attend all the meetings at which he appears on the minutes as having attended, alleging a practice of the association to have members recorded as present who were not there. With regard to this excuse the court below very properly says:

“If this be true, then the defendant is unquestionably guilty of gross negligence in permitting such a practice to be pursued, and he must be held bound for such knowledge as he would have acquired if he were in fact present.”

All the excuses are equally specious and not worthy of any consideration.

This defendant permitted the association of which he was a director to make loans on properties upon which he, as executor of the Loehnerberg estate already held mortgages, and by the slightest attention to his business, he could have discovered and prevented such loans, and the consequent loss to the association, and he must therefore be charged with the losses sustained.

Point IV.

Damages.

It is unnecessary for us to comment on the computation of damages with respect to the two losses sustained, as they are not raised by the appellant. The method of their ascertainment appears very fully in the final decree in the case. The defendant being held liable for a loss to the

complainant on the East Orange loan of \$2,522.19 and on the South Orange loan of \$2,617.72, or in all \$5,193.90. We believe the facts amply sustained the conclusion of the court in ascertaining this amount of money to be due.

Point V.

Statute of Limitations does not apply.

The appellant, in his answer, raised the question that the complainant association was barred by statute from bringing this action at the present time.

This contention is not seriously pressed on the appeal, and it is unquestioned that the courts of New Jersey have already determined that the statutes of limitations do not apply to an action brought against a director for violation of his duties as such director. See *Daily v. Kiernan*, 75 N. J. L. 275; *Crane v. Ketcham*, 83 N. J. L. 327; *Fryer v. Mt. Holly*, 87 N. J. L. 57; *Williams v. McKay*, *supra*.

In conclusion, the attention of the Court is directed to the opinion of Vice-Chancellor Lane, which contains a complete discussion of the facts and in detail sets forth the grounds upon which the defendant is found guilty of gross neglect.

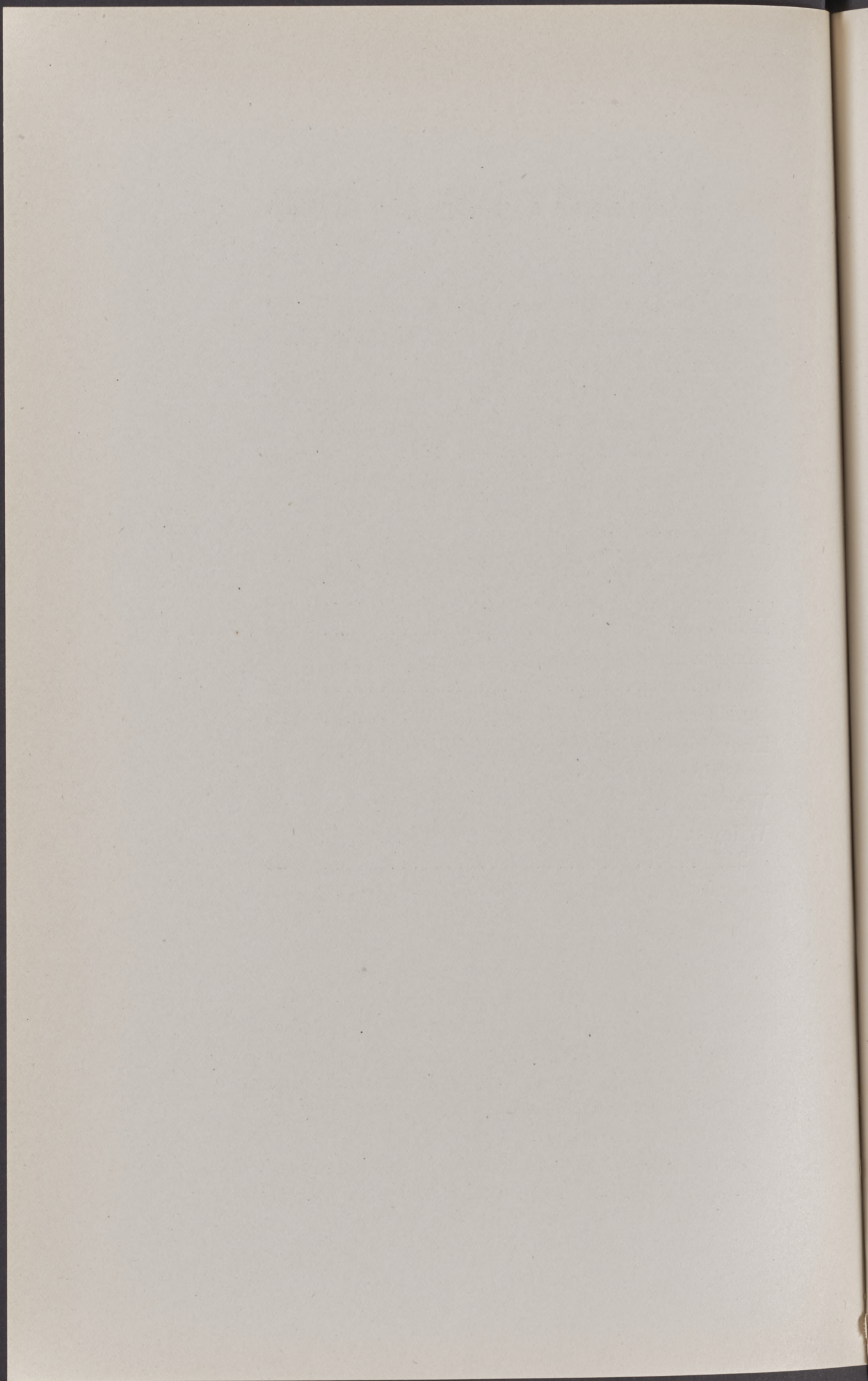
It is impossible to avoid the logical conclusions of the learned Vice-Chancellor. It is respectfully submitted that the decree of the Court of Chancery should be confirmed.

Submitted November term, 1917.

RAYMOND, MOUNTAIN, VAN BLARCOM
& MARSH,
Of Counsel with Respondent.

List of Authorities.

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New Jersey Court of Errors and Appeals

Between

FOUR CORNERS BUILDING AND
LOAN ASSOCIATION, a corporation,

Complainant-Respondent,

and

FRANK SCHWARZWAELDER,

Defendant-Appellant.

On Bill, etc.

*Appeal from
Court of
Chancery.*

Brief for Frank Schwarzwaelder.

This is an appeal from the final decree of the Court of Chancery, whereby it was adjudged that the defendant was guilty of gross inattention and gross negligence in the performance of his duties as a director of complainant, and by reason whereof complainant sustained a financial loss.

Statement of Facts.

The bill herein was filed for damages alleged to have been sustained through the gross negligence of defendant in the performance of his duties as a director of complainant association.

The complainant made two loans: one on or about April 25, 1913, of \$5,000 to Arthur M. Sims, upon property in South Orange, New Jersey; and the other, on or about September 10, 1910, of \$4,000 to Albert B. Aschenbach and Maude Aschenbach, his wife, upon property in East Orange, New Jersey.

At the time of the aforesaid loans, defendant was a director of complainant (case, p. 68, ll.

27-29) and was also and still is one of the trustees of the estate of August Loehnberg, deceased (case, p. 81, l. 1). One Roland D. Crocker, a member of the bar of this State, was the duly appointed solicitor of complainant (case, p. 47, ll. 28-30) and was also the counsel and legal adviser of the trustees of the Loehnberg estate. (Case, p. 82, ll. 19-20.)

The Loehnberg estate held a mortgage made by one Mabel Daly and William H. Daly, her husband, dated October 11, 1909 (case, p. 100, ll. 17-30) upon the property in South Orange, which was subsequently mortgaged by the said Arthur M. Sims to complainant (case, p. 101, ll. 20-32); and also held a mortgage made by the said Mabel Daly and William H. Daly, her husband, upon the property in East Orange, which was subsequently mortgaged to the complainant by Albert B. Aschenbach and wife (case, p. 136, ll. 19-27). The interest due to the estate upon these mortgages was collected by Crocker, and up to the time of his absconding was regularly paid by him to the trustees. (Case, p. 73, ll. 1-2.)

In a foreclosure suit instituted by Lillian Bercaw of another mortgage upon the South Orange property, it was admitted by complainant, who was a party defendant in said suit, that the discharge of the Daly mortgage purporting to have been executed by the executors of the Loehnberg estate was a forgery, and it was decreed in that suit that said Daly mortgage was a prior lien to that of complainant.

In the Loehnberg estate's foreclosure suit of the mortgage upon the East Orange property, it was decreed that the discharge of the Daly mortgage purporting to have been executed by the executors of the Loehnberg estate on that

property was a forgery, and that said mortgage was prior to that held by complainant, which was a party to that suit.

Both properties were sold by the Sheriff in accordance with the respective decrees, and the South Orange property was purchased by the Loehnberg estate, and the East Orange property by complainant.

Complainant's loss on both the South Orange and the East Orange properties resulted from the fact that the Sims and Aschenbach mortgages were not first liens.

Grounds of Appeal.

We respectfully submit that the final decree of the Court of Chancery is erroneous and should be set aside for the following reasons:

1. Defendant was thereby adjudged guilty of gross inattention and gross negligence in the performance of his duties as a director of complainant. (Case, p. 20, ll. 33-37.)

2. Complainant's financial loss of \$5,193.90 was thereby adjudged to have been suffered by reason of defendant's gross inattention and gross negligence in the performance of his duties as a director of complainant. (Case, p. 20, ll. 37-40).

3. Defendant was thereby ordered to pay to complainant the sum of \$5,193.90 with lawful interest thereon from the date of said decree, and the taxed costs of suit. (Case, p. 21, ll. 1-12.)

4. There is not sufficient evidence to adjudge the defendant guilty of gross inattention or gross negligence in the performance of his duties as a director of complainant.

5. There is not sufficient evidence to adjudge the defendant guilty of any inattention or any negligence in the performance of his duties as a director of complainant.

6. If the defendant is guilty of any inattention whatever, or any negligence whatever in the performance of his duties as a director of complainant, neither such inattention nor such negligence was the proximate cause of complainant's financial loss.

7. There is no evidence that complainant's financial loss was caused or suffered by reason of any inattention or negligence or fraud on the part of the defendant.

8. The damages suffered by complainant and chargeable by said decree to the defendant, are not shown to be the natural and proximate effects of his delinquency.

9. The evidence shows that the rascality of Crocker and not any inattention or negligence on the part of defendant, was the proximate cause of complainant's financial loss.

10. Complainant's bill of complaint should have been dismissed with costs.

Argument.

SOUTH ORANGE LOAN.

On October 10, 1912, one Louis Wagner applied to complainant for a loan of \$7,000 upon the South Orange property (case, p. 83, Ex. C. 1). The defendant and two other directors were on the inspection committee at that time (case, p. 84, ll. 16-17). The defendant inspected the property and at the meeting of complainant's directors on October 25, 1912, recom-

mended that a loan of \$5,000 be granted upon the bond of Louis Wagner secured by a mortgage on the South Orange property (case, p. 41, ll. 14-15). The inspection report was signed by the defendant alone (case, p. 69, l. 31; p. 84, ll. 19-20; p. 53, ll. 35-37). No money was ever loaned upon this application.

Six months later at a directors' meeting held April 25, 1913, when the defendant was absent, a loan of \$5,000 upon this same property was granted to one Arthur Sims (case, p. 42, ll. 22-31; p. 55, ll. 23-36). The defendant had no knowledge of the loan (case, p. 77, ll. 30-38), and had never even heard of Sims. (Case, p. 69, ll. 37-38; p. 76, ll. 26-29.)

PART I.

Complainant failed to prove that defendant had any knowledge that the Wagner application for a loan was to be secured by a mortgage upon property already mortgaged to the Loehnberg estate.

When defendant made his inspection upon the Wagner application, he had no knowledge that the property was encumbered by a mortgage held by the Loehnberg estate. The testimony (case, p. 69, ll. 39-40; p. 70, ll. 1-13) is as follows:

“Q (*By the Court.*) Did you know at the time you went up to look at the property offered by Wagner that you had a mortgage on it as executor of the Loehnberg estate? A I did not. The Loehnberg estate, we had about thirty or forty mortgages scattered around, six or seven in South Orange; I was also appraising property for another estate, and also appraised

property for the Hearthstone Building and Loan Association; it was impossible for me to remember; at the time there I did not recall that we had a mortgage on that property at that time.”

The Wagner application was dated October 10, 1912. (Case, p. 83, l. 9, Ex. C. 1.)

The mortgage held by the Loehnberg estate was made by people named Daly on October 11, 1909 (case, p. 100, ll. 18-30, Ex. C. 7), three years before the Wagner application was even filed. The defendant was inspecting about fifty or sixty properties a year (case, p. 72, ll. 35-36) and we submit that it is impossible for a man holding numerous mortgages, and constantly appraising properties, to remember each property covered by one of his mortgages. As the Court at the hearing (case, p. 81, ll. 18-27) said:

“Are you going to argue with me that a director of a building and loan association is bound to be familiar with a mortgage held by that association? It is impossible. I have represented five or six building and loan associations in my time, holding thousands of mortgages; to be familiar with those mortgages would be an impossibility.”

No Warning in Street Numbers on Wagner Application.

The defendant testified that he was not familiar with the street numbers of the mortgages held by the Loehnberg estate (case, p. 73, l. 2). The mortgage interest was collected through and the insurance placed by Crocker (case, p. 73, l. 1), the estate's legal adviser (case, p. 82, ll. 19-20), who in remitting to the executors would refer only to the name and date of

collection, but not to the street numbers covered (case, p. 73, ll. 24-26). The books of the estate in which the interest credits were entered, referred only to the names of the mortgagors and the dates of the mortgage; not the street numbers (case, p. 73, ll. 31-32). The mortgages themselves were described by survey (case, p. 70, ll. 20-21), and not by street numbers.

No Warning in the Name Wagner.

The mortgage held by the Loehnberg estate was in the name of Daly, not Wagner. There was nothing in the name, Wagner, to put the defendant on his guard.

We submit that the complainant failed to prove either by admissions or otherwise any knowledge on the part of defendant that the property inspected by him upon the Wagner application was already encumbered by a mortgage to the Loehnberg estate, and which knowledge the defendant denied (case, p. 69, ll. 39-40; p. 70, ll. 1-2). The complainant merely insists that he ought to have remembered one particular piece of property in South Orange, where the Loehnberg estate held 6 or 7 mortgages (case, p. 70, ll. 4-5), he not having seen the same for over three years—and there is no testimony to the contrary—he a man inspecting about fifty or sixty properties a year (case, p. 72, ll. 35-36). We submit that to charge the defendant with knowledge under such circumstances would be unreasonable.

PART II.

Complainant failed to prove that defendant had any knowledge that the Sims' application for a loan was to be secured by a mortgage upon property already mortgaged to the Loehnberg estate.

It developed that without the knowledge of defendant (case, p. 69, ll. 37-38; p. 76, ll. 26-28) a new application for a loan upon this same property, dated October 10, 1912 (case, p. 86, l. 8, Ex. C. 4), the date of the Wagner application (case, p. 83, l. 10, Ex. C. 1), was made by one Sims (case, p. 87, l. 9, Ex. C. 4). A new inspection committee was apparently appointed to investigate this application; one of whom was the defendant though he was never informed of his appointment and never even heard of the Sims application (case, p. 69, ll. 37-38; p. 76, ll. 26-28). The complainant did not prove that defendant was informed of his appointment, and in fact Mr. Theodore Keer, its president (case, p. 62, ll. 32-35), who appointed the inspection committees (case, p. 53, l. 40; p. 54, ll. 1-2), testified on direct examination, that he had never had any conversation with the defendant about the Sims loan (case, p. 63, ll. 36-37).

Mr. Keer and Mr. Schultz, the other members of the new committee, inspected the property (case, p. 63, ll. 38-40) and signed the inspection report recommending a loan of \$5,000 upon the bond of Sims, secured by a mortgage upon the South Orange property (case, p. 86, ll. 1-11; p. 87, ll. 18-21, Ex. C. 4). Subsequently the complainant granted the loan (case, p. 42, ll. 22-31; p. 55, ll. 23-36) which the defendant never heard of (case, p. 69, ll. 37-38; p. 76, ll. 26-28) and of course never recommended.

COMPLAINANT'S MINUTES.

The complainant endeavored to charge the defendant with knowledge of the Sims loan by reading into the record minutes of various meetings of the association. The first minutes referred to related to the meeting of October 25, 1912, at which it was stated the defendant was present (case, p. 41, ll. 3-4). They are as follows:

“Referring to application for loan by Louis Wagner of Brooklyn, New York, for a loan of \$7,000 on property 60-62 south side of Second street, South Orange, on which only one of the committee to report was Frank Schwarzwaelder, who recommended a loan of \$5,000, it was on motion of Mr. Schwarzwaelder, seconded by Dr. Richman, ordered that the committee, Frank M. Schultz, George M. King and Frank Schwarzwaelder, be continued and that they make their report to the officers, who are to have power to grant loan if satisfactory report is made.” (Case, p. 41, ll. 10-22.)

In other words, the report signed by the defendant alone was not satisfactory. Complainant could not grant a loan unless a majority of the inspection committee reported favorably thereon (case, p. 76, ll. 11-14). The other members of the committee never signed the report recommending the Wagner loan (case, p. 75, l. 25; p. 84, ll. 18-20, Ex. C. 1), and no money was ever paid out by complainant thereon (case, p. 69, ll. 34-36). The defendant testified that he never heard of that loan again. (Case, p. 69, ll. 32-33.)

A New Inspection Committee is Appointed.

The next reference to its minutes was to those of the meeting of February 28, 1913, at which the defendant was alleged to have been present (case, p. 41, ll. 36-39). They are as follows:

“Referring to application of Louis Wagner for loan of \$7,000 on property 60 and 62 Second street, it is ordered that the officers be empowered to grant such amount of the above loan as shall be unani- mously recommended by all the following committee: Frank Schwarzwaelder, Frank M. Schultz, Theodore F. Keer.” (Case, p. 41, ll. 25-32.)

There is certainly nothing in these minutes to charge the defendant with knowledge that a loan had been recommended to Wagner by either of the other inspectors, on this new committee. Nor do they seem to indicate that the applica- tion filed by Sims was then pending, though the Sims application is dated October 10, 1912 (case, p. 86, l. 8, Ex. C. 4).

If the foregoing minutes correctly stated the *modus operandi*, Schwarzwaelder as a matter of law knew the loan could not be granted with- out the unanimous recommendation of the com- mittee. That was never granted. Schwarz- waelder alone recommended a loan to Wagner (case, p. 84, ll. 18-19; p. 69, ll. 30-31) while the other two gentlemen only recommended a loan to Sims (case, p. 87, ll. 18-20, Ex. C. 4).

Complainant's Minutes Are Inaccurate.

The next reference to complainant's minutes related to the meeting of March 28, 1913, at which defendant was alleged to have been ab- sent (case, p. 42, ll. 7-8). They are as follows:

“On motion of Dr. Richman, seconded by Mr. Merklinger, report of committee was received and loan granted. All the committee, Frank M. Schultz, Theodore F. Keer and Frank Schwarzwaelder recommended that a loan of \$5,000 be granted to Louis Wagner on property 60 and 62 Second street, South Orange.” (Case, p. 42, ll. 9-16.)

We submit that these minutes are not true. Complainant's own exhibits show that only Schwarzwaelder recommended the Wagner loan (case, p. 84, ll. 18-19, Ex. C. 1), while Mr. Keer and Mr. Schultz recommended only the Sims loan (case, p. 87, ll. 18-20, Ex. C. 4), which latter the defendant never recommended. Were it otherwise, another certificate should and would have been introduced showing the recommendation of Mr. Keer and Mr. Schultz of a loan to Wagner, but they never recommended such. Mr. Keer testified that he and Mr. Schultz inspected the property (case, p. 63, ll. 39-40) and that he believed he approved of the South Orange loan, namely, the Sims loan. (Case, p. 87, l. 19, Ex. C. 4.)

Neither he nor any other witness testified that the loan on the bond of Wagner was clandestinely approved or recommended by himself or Mr. Schultz. They recommended the loan to Sims (case, p. 87, ll. 18-20, Ex. C. 4). Without the recommendation of a majority of the inspection committee, a loan could never be granted (case, p. 76, ll. 11-14), and so far as the Wagner application is concerned, could not be granted without the unanimous recommendation of the following committee: “Frank Schwarzwaelder, Frank M. Schultz, Theodore F. Keer.” (Case, p. 41, ll. 30-33).

The next reference by complainant to its minute book was regarding the meeting of April 25, 1913, when it was alleged the defendant was not present (case, p. 42, ll. 20-21). The following was read from the minutes of that meeting:

“Referring to application for loan by Louis Wagner, Brooklyn, N. Y., to whom a loan of \$5,000 was granted on property 62 south side of Second street, South Orange, N. J., Mr. Wagner having sold the property to A. Sims and all of the committee, Mr. Frank Schultz and Mr. F. Keer, Frank Schwarzwaelder, report in favor of loan of \$5,000 to A. Sims on property 62 south side of Second street, South Orange, N. J., it was on motion of Mr. Merklinger, seconded by Mr. Stone, ordered, that the committee recommendations be received and granted.” (Case, p. 42, ll. 22-31; p. 55, ll. 23-36).

For the first time Sims' name now is mentioned in complainant's minutes, which to say the least, if any reliance whatever is to be placed upon them, is most extraordinary. The Sims' application is dated October 10, 1912, (case, p. 86, l. 8, Ex. C. 4); the same date as the Wagner application (case, p. 83, l. 10, Ex. C. 1). It was the only application recommended and signed by Mr. Keer and Mr. Schultz, and was falsely mentioned in the minutes of the meeting of March 28th, 1913, from which defendant was absent (case, p. 42, ll. 7-8), as a recommendation of a loan to Wagner. These gentlemen never recommended a loan to Wagner.

The above minutes of the meeting of April 25, 1913, are absolutely false so far as saying

that the defendant Schwarzwaelder recommended this loan to Sims. He did not. He testified that he had never even heard of Sims (case, p. 69, ll. 37-38; p. 76, ll. 26-28). Further than that, his testimony is corroborated by the recommendation endorsed upon the Sims application, which was offered in evidence by complainant (case, p. 87, ll. 12-20, Ex. C. 4). It is as follows:

“We have examined the property within described, and value it as follows: Land, \$1,500. Buildings, \$5,500, and recommend that a loan of \$5,000 be granted.

Committee appointed—Frank M. Schultz,
Theodore Keer, Frank Schwarzwaelder.

(Signed) FRANK M. SCHULTZ,
THEO. F. KEER,

Committee.”

The inaccuracy of these minutes is again illustrated by the abstract of title to the premises, stipulated by counsel of the parties to this suit to be correct (case, pp. 97-103, Ex. C. 7). According to the abstract, Louis Wagner not only did not convey to Sims, as stated in the minutes, but never even owned the premises at all. At the time both the Sims and Wagner applications were made, Crocker was the record owner, and he, not Wagner, subsequently conveyed to Sims. (Case, p. 101, ll. 10-20, Ex. C. 7.)

The Sims loan has not yet been brought to the attention of the defendant, who was absent from the only meeting at which Sims' name appears to have been mentioned. (Case, p. 42, ll. 21-22.)

We now come to the next and last reference by complainant to its minutes, those of the meeting of May 23, 1913, where defendant was alleged to have been present (case, p. 42, ll. 36-

37), and by which complainant attempts to charge defendant with knowledge that the Sims loan had been granted. They are as follows:

“Motion duly made and seconded the minutes of last meeting were approved, a special meeting, were approved.” (Case, p. 42, l. 40; p. 43, ll. 1-3).

There is no evidence that the minutes of the “last meeting” were read. Either they were not read or the defendant was absent from this meeting, for he never remembered hearing of Sims (case, p. 69, ll. 37-38; p. 76, ll. 26-28). In cross examination (case, p. 78, ll. 30-40), the defendant’s testimony was as follows:

“Q Were you at the meeting where the minutes were approved granting the mortgage to Mr. Sims? A Not to my knowledge; it is pretty hard to tell from that book whether I was present at any meeting, because he had me present at a number of meetings; I called his attention to it when I was not present.

Q Were they ever changed? A I don’t know whether they were changed or not; he said he must have got it wrong on the books.”

This testimony was not denied by complainant. In fact the complainant’s secretary, Mr. Ferdinand Moeller, testified on cross examination, that at different times they would have difficulty in getting a quorum (case, p. 52, ll. 23-25), and in reply to the question: “And at those times you have sometimes had people present who were not actually there, haven’t you?” circuitously said:

“We have called up people and asked them whether we could count them present, whether we could start the meeting until

they got there; we have done that with Dr. Richman and others who would often have late office hours on account of their practice." (Case, p. 52, ll. 28-33).

Can minutes kept in that loose manner, unauthenticated by corroborative testimony, be relied upon? Especially as to those present at the meetings? Further than that, the secretary did not always keep the minutes (case, p. 52, ll. 17-22) and when he did, his usual custom was to make some notes, and sometime subsequent to the meeting to dictate the minutes to a stenographer (case, p. 40, ll. 9-20). Can such secondary evidence in any way be relied upon to charge the defendant with gross negligence? By that alone does the complainant seek to charge defendant with knowledge of the granting of the Sims loan. On that evidence alone did the court below charge the defendant with such gross negligence as to make him liable for complainant's loss, directly caused by Crocker's rascality; for without establishing fraud or gross negligence, or misuser on the part of the defendant, he cannot be held responsible for complainant's loss. *Citizens' Building Association v. Coriell*, 34 N. J. Eq. 383, 392, and authorities therein cited; and see *Briggs v. Spaulding*, 141 U. S. 132.

Defendant Is Not Chargeable with Knowledge of Prior Mortgage held by the Loehnberg Estate.

Assuming that defendant was present at the meeting of May 23, 1913, which he thinks he was not (case, p. 78, ll. 30-32); assuming that the minutes of the previous meeting of April 25, 1913, were then actually read, which they

probably were not; assuming that defendant had actual knowledge of the granting of the Sims loan, which he denied ever hearing of (case, p. 69, ll. 37-38, p. 76, ll. 26-28); assuming that he was informed that the loan to Sims was upon the property mentioned in the Wagner application, how could he be chargeable with knowledge that the property mortgaged by Sims was already encumbered by a mortgage to the Loehnberg estate, when he was ignorant of the fact that the property on the Wagner application was so mortgaged? How could the name of Sims possibly warn him, when the mortgage to the Loehnberg estate was made by people named Daly?

Nor Is He Chargeable as a Matter of Law with Knowledge of the Prior Mortgage.

If he were actually informed of the granting of the loan, as complainant contends, his silence would conclusively show one of two things; either that he was himself guilty of fraud, of which there is no evidence and no finding, or that, as he testified, he did not remember that the Loehnberg estate held a prior mortgage upon the premises. And there was no evidence that he did so remember. On the other hand he denied having any recollection that the Loehnberg estate held a prior mortgage upon the South Orange property. (Case, p. 69, ll. 38-40, p. 70, ll. 1-2.)

In *Asbury Park Building and Loan Ass'n v. Shepherd, et al.*, 50 Atl. Rep. 65, Vice Chancellor Stevens, at page 66, said:

“The proof is that about a year prior thereto Mr. Winsor, who was secretary of the association, had had, in his character

of president of the Asbury Park and Ocean Grove Bank, an interview with Charles L. Shepherd, in which the existence of the mortgage was made known to him. The proof is further that the loan was approved by the board of directors of which Mr. Winsor was one; for the minutes show that he voted at the directors' meeting in favor of the loan. Mr. Winsor's only connection with the loan was this vote, and his attestation of the president's order for payment. **But it is not shown that the interview had with Charles L. Shepherd in the preceding year was present to Winsor's mind either when he voted or when he attested the order.** * * * There is no doubt whatever that, where the information, acquired in the course of a previous transaction to which the corporation is a stranger, is not present to the director's mind, it does not affect the company. Hence it must be held in this case that the association is not affected with notice."

We submit that as a corollary to the above statement of law it must be shown that the defendant actually remembered that the Loehberg estate held a prior lien upon the premises.

In *Hallmark's Case*, 9 Ch. Div. 332, Sir George Jessell said:

"It is contended that Hallmark, being a director, must be taken to have known the contents of all the books and documents of the company, and so to have known that his name was on the register of shares for fifty shares. **But he swears that in fact he did not know that any shares had been allotted to him. Is knowledge to be imputed to him under any rule of law?** As a matter of fact, no one can suppose that a director of

a company knows everything which is entered in the books, and **I see no reason why knowledge should be imputed to him which he does not possess in fact.**"

Unless as a matter of law he can be chargeable with remembering every property he has ever inspected, and remembering every mortgage he has ever held—and he has inspected numerous properties, and held many mortgages—we submit that he cannot be held chargeable with remembering any particular property or mortgage. There could be no such determination without a set standard of mentality.

PART III.

It was not any negligence of the defendant, but the rascality of Crocker, the complainant's solicitor, that caused the loss to complainant.

The complainant (case, p. 60, ll. 31-36), as well as the defendant (case, p. 82, ll. 16-20), had implicit faith in Roland D. Crocker, the complainant's duly appointed solicitor (case, p. 47, ll. 28-30), and the authorities cited in the conclusions of the court below, all recognize that directors cannot be held responsible for a mistake in judgment.

Duty of Solicitor to Investigate Title.

It is the duty of the solicitor and not of the directors, or inspection committee, to search the title to property offered as security for loans. If the same is reported by the solicitor to be defective, then the directors should decline to

grant the loan. As Chancellor Runyon in *Conklin v. Peoples Building and Loan Association*, 41 N. J. E. 20, at page 23, said:

“But, obviously, the board of directors must be permitted to decline to lend the money of the association upon property when they are advised by their counsel that the title thereto is bad or defective. They are to be commended for acting upon the advice of their counsel.”

The testimony of Mr. Keer (case, p. 64, ll. 15-20) was as follows:

“Q. (*By the Court.*) There is no duty on that committee to investigate title or anything of that kind? A. None whatever. *Cross examination* by Mr. Child.

“Q. Who was it that investigated your titles for you? A. Mr. Crocker, as far as I know.”

Further than the testimony of Mr. Keer, complainant's president (case, p. 62, ll. 32-35), Article VIII. of Complainant's Constitution, set forth in Exhibit C. 6 (case, p. 90, ll. 1-30) provides as follows:

“The Board of Directors shall appoint a Solicitor for the Association, who shall examine all title deeds and make the necessary searches for ascertaining the title of all property offered to this Association, as mortgage security, and give his opinion thereon. He shall prepare all bonds, mortgages, agreements and all other writings to be taken or given by this Association in the course of its business. He shall also transact all other law business of this Association whenever required, for which he shall receive a fair compensation. His charge for fees and disbursements in mak-

ing searches, recording and proving papers, for preparing all mortgages and other written instruments, and for examining papers, titles and other matters, shall be borne by the party applying for the loan. In all disputes as to the amount of his charges, the same shall be determined by the directors.

“The Solicitor shall give a bond for the honest and faithful performance of his duties, and the amount of said bond shall be designated by the Board of Directors.”

This was offered in evidence by complainant which must be bound by it.

Defendant's Right to Rely upon the Integrity of Complainant's Solicitor.

Even if the defendant when inspecting the property upon the Wagner application had known that the Loehnberg estate held a mortgage thereon, and he denies such knowledge (case, p. 69, ll. 39-40; p. 70, ll. 1-2), would he not be justified in believing that the estate mortgage would be paid off before a loan would be granted by the complainant or the money paid over? No loan was ever made upon the Wagner application, and he never heard of the Sims loan (case, p. 69, ll. 37-38; p. 76, ll. 26-28). Like the other directors, had he not the right at that time to rely upon Crocker, the complainant's duly appointed solicitor (case, p. 47, ll. 28-30) to properly search the title and honestly advise the complainant thereon before any loan could or would be made by the association? Had he any reason to believe that Crocker was dishonest, a man whose reputation had never been questioned (case, p. 60, ll. 31-35), and in whom the complainant (case, p. 60, ll. 35-36)

as well as himself (case, p. 82, ll. 16-21), had implicit confidence?

As was said by Mr. Chief Justice Fuller in *Briggs v. Spaulding*, 141 U. S. 132; 11 Sup. Ct. Reporter 924 at page 934 of the latter report:

“Certainly it cannot be laid down as a rule that there is an invariable presumption of rascality as to one’s agents in business transactions, and that the degree of watchfulness must be proportioned to that presumption. ‘I know of no law,’ said Vice-Chancellor McCoun, in *Scott v. Depeyster*, 1 Edw. Ch. 513, ‘which requires the president or directors of any moneyed institution to adopt a system of espionage in relation to their secretary or cashier or any subordinate agent, or to set a watch upon all their actions. While engaged in the performance of the general duties of their station, they must be supposed to act honestly until the contrary appears; and the law does not require their employers to entertain jealousies and suspicious without some apparent reason.’”

The law is clear on the point that directors of a building and loan association have the right to rely upon their solicitor to pass upon the title to premises offered as security for loans.

Thornton and Blackledge on Building and Loan Associations, in speaking of the liability of directors for losses to the association, at page 111 of Section 110, says:

“They may properly rely upon the advice of their attorney on the legality of the mortgage, and if he were derelict in his duty in that matter and they were ignorant of it, they are not chargeable with losses resulting from his dereliction.”

In *Citizens' Building Association v. Coriell*, 34 N. J. Eq., 383, Chancellor Runyon, referring to the directors of the building and loan association, at page 394, said:

“They properly relied on the knowledge and attention of the solicitor for the legality of the mortgages. If he was derelict in his duty in that matter, and they were ignorant of it, they are not chargeable. * * * It is enough to say that, if the property is insufficient security” (there being a prior mortgage) “and the necessity for this loan arose from neglect, it was the neglect, not of the directors, but of the solicitor.”

Crocker's Rascality.

Crocker forged a discharge of the Daly mortgage held by the Loehnberg estate (case, p. 38, ll. 16-20) and continued paying the interest thereon to the executors (case, p. 73, l. 1). Having so done, he falsely advised complainant as to the title of the property which up to April 1st, 1913, when he conveyed to Sims, was in his own name (case, p. 100, ll. 30-40; p. 101, ll. 1-19, Ex. C. 7), and falsely certified that the Sims mortgage was a just and valid lien thereon. Complainant offered his certificate in evidence case, p. 113, ll. 24-40). It is as follows:

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

I hereby certify that I have for Four Corners Building and Loan Association searched the title to the premises described in mortgage of Arthur M. Sims to Four Corners Building and Loan Association, Newark, New Jersey, recorded in Book I-31 of Mortgages for Essex County, on pages 388, etc., and find that the said mortgage

is a first and valid lien on the premises therein described.

Dated, July 10, 1913.

ROLAND D. CROCKER,
Attorney-at-Law."

Complainant's Reliance on Crocker's False Certificate.

It was not any negligence on the part of defendant, but the rascality of Crocker that caused complainant's loss. That false certificate was the direct cause, not the defendant's negligence, if any there was, which cannot even be considered a remote cause.

PART IV.

Damages chargeable to a wrongdoer must be shown to be the natural and proximate effects of his delinquency.

There is no evidence whatever that any feaseance or nonfeaseance on the part of defendant was the direct or proximate cause of complainant's loss. On the other hand there is evidence that complainant's loss was the direct result of Crocker's fraud.

Mr. Keer, the president of complainant (case, p. 62, ll. 32-35), testified that there was no duty whatever on the part of the inspection committee to investigate title. (Case, p. 64, ll. 15-17.)

He testified that so far as he knew Mr. Crocker investigated the titles for complainant. (Case, p. 64, ll. 19-20.)

As a matter of law, directors of building and loan associations have the right to rely upon counsel as to the validity of titles offered as security or the legality of mortgages accepted.

Citizens' Building Association v. Coriell,
34 N. J. E. 383, 394.

Article VIII of complainant's constitution offered in evidence and quoted at page 19, *supra*, provides that the solicitor shall examine the title to all properties offered as securities for loans and give his opinion thereon. Crocker gave his opinion on the title of the property mortgaged to Sims. It was offered in evidence (case, p. 113; ll. 24-40, Ex. C. 1), and is as follows:

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

I hereby certify that I have for Four Corners Building and Loan Association searched the title to the premises described in mortgage of Arthur M. Sims to Four Corners Building and Loan Association, Newark, New Jersey, recorded in Book I-31 of Mortgages for Essex County, on pages 388, etc., and find that the said mortgage is a first and valid lien on the premises therein described.

Dated, July 10, 1913.

ROLAND D. CROCKER,
Attorney at Law."

Without this opinion the complainant would not have passed the loan. Under its constitution, by which its members are bound, and upon which they have the right to rely, investigation of titles offered as security for loans was the solicitor's duty. An entirely different situation would have arisen if Crocker had reported the title bad and Schwarzwaelder had then induced the association to make the loan, but such is not the fact. Crocker forged a discharge of the Daly mortgage and then certified to complainant that the Sims mortgage was a first and valid lien. It was Crocker's fraud and dereliction of duty that caused complainant's loss.

In *Wiley v. West Jersey R. R. Co.*, 44 N. J. L. 247, which was an action against the railroad for a fire alleged to have been communicated from an engine of the defendant, the negligence of a third party for failing to extinguish the fire was interposed as a defense. Dixon, *J.*, delivering the opinion of the Supreme Court, at page 251, said:

“The rule of law requires that the damages chargeable to a wrong-doer must be shown to be the natural and proximate effects of his delinquency. The term ‘natural’ imports that they are such as might reasonably have been foreseen, such as occur in an ordinary state of things; the term ‘proximate’ indicates that there must be no other culpable and efficient agency intervening between the defendant’s dereliction and the loss. *Cuff v. Newark & New York R. R. Co.*, 6 Vroom 17; *D. L. & W. R. R. Co. v. Salmon*, 10 Vroom 299. Now, the spread of the fire was a natural result of its kindling, and the failure to extinguish it was not, in any just sense, an efficient cause of its spreading; it was merely the absence of prevention. Although that failure might be culpable, yet it neither added to the original force nor gave it new direction, and hence, in tracing back the line of causation, it would not be noticed as a potent agency. The nearest culpable cause was the escape of the spark from the engine. Hence on this point the defendant has not been injured.”

In *Styles v. Long Co.*, 70 N. J. L. 301, Mr. Justice Swayze, delivering the opinion of this Honorable Court, at page 303, says:

“It is, I think, safe to say that there is no right of action where the duty of an-

other person to exercise care intervenes between the neglect of the defendant and the injury of the plaintiff. * * *

“In a case where the duty to the plaintiff rests, in the first instance, upon some one not the defendant, and the plaintiff is injured by a failure to perform that duty, the proximate cause of the injury is the failure of the one who is under a duty immediately to the plaintiff.”

Even if the defendant, at the time of inspecting the property for a loan to Wagner, had thought the Loehnberg estate held a mortgage thereon, he knew that the title must first be passed upon by the solicitor of the association. That was the solicitor's duty in the first instance, and to exercise care in so doing.

In *Davis v. Williams* (Ind.), 31 N. E. Rep. 204, Reinhard, J., at page 205, says:

“It is not every tortious act that makes the perpetrator liable in damages if injury occurs, even if such injury is, in some sense, produced or influenced by it. If in any such case some other power of force, beyond the control of the original actor, may be justly said to constitute the more direct cause, and the result following the primary cause was extraordinary, unusual, or unnatural, and the consequences for which damages are claimed were not such as might have been reasonably anticipated, the first cause will be considered too remote to be taken in law as the proximate or efficient one.”

In *Warwick v. Hutchinson*, 45 N. J. L. 61, Mr. Justice Depue, in delivering the opinion of the Supreme Court, at page 65, said:

“It is a fundamental principle of law, applicable alike to breaches of contract of this

description and to torts, that in order to found a right of action there must be a wrongful act done and a loss resulting from that wrongful act; the wrongful act must be the act of the defendant, and the injury suffered by the plaintiff must be the natural and not merely a remote consequence of the defendant's act. The wrong done and the injury sustained must bear to each other the relation of cause and effect; and the damages, whether they arise from withholding a legal right or the breach of a legal duty, to be recoverable, must be the natural and proximate consequence of the act complained of." (Citing authorities.)

In *Cuff, Administratrix v. Newark and New York R. R. Co., et al.*, 35 N. J. L. 18, Mr. Justice Depue, speaking for the Supreme Court, at page 30, said:

"The general rule is, that the damage to be recovered must be the natural and proximate consequence of the act complained of. 2 Greenl. Ev. Sec. 256. 'It is not enough if it be the natural consequence; it must be both *natural* and *proximate*.' Per Byles, *J.*, in *Richardson v. Dunn*, 8 C. B. N. S. 665. To maintain an action for special damages, they must be the legal and natural consequences arising from the tort, and not from the wrongful act of a third party remotely induced thereby. *Crain v. Petree*, 6 Hill 522. It is true that where the injury results from the negligence of several persons, differing only in degree, each will be held responsible for the entire damages resulting therefrom; but where the injury immediately results from the act of one of the parties, the other, though blamable, cannot be held liable for it, unless his conduct is so con-

nected with the act of the former, that it may be said to have been the cause of it. Cases may be stated where the wrongful conduct of one person affords the opportunity or occasion for the illegal act of another; or for an injury from other causes. In such cases the injury is too remote to sustain an action for the recovery of damages."

In *Guinn, Administrator, v. Delaware and Atlantic Telephone Co.*, 72 N. J. L. 278, Mr. Justice Swayze, delivering the opinion of this Honorable Court, says:

"The general rule is that a person is liable for those results of his negligence which are reasonably to be anticipated."

In other words, if A deposited a heap of coal in his yard near the wooden boundary fence of C, and B, a stranger comes into the yard and intentionally sets fire to the coal, the fire spreads, sets fire to the fence and thence spreads and sets fire to the house of C.

Can it be said the act of leaving the coal near the fence was the proximate cause of the loss to C?

In *Rhad v. Duquesne Light Co.* (Pa.), 100 Atl. Rep. 262, where A left an automobile on an incline with the brakes set and they were released by B, a stranger, and C, a traveler, was run over by the automobile, A was held not liable for the injury to C because his act although negligent, was not the proximate cause of the injury to C.

In *Briggs v. Spaulding, et al.*, 141 U. S. 132; 11 Sup. Ct. Reporter 924, the receiver of a national bank had filed a bill in equity against certain of its directors, for damages alleged to have been sustained by reason of their not having diligently performed the duties involved

upon them by the National Banking Act. The Court *held*, that the defendants were not liable for losses through mismanagement on the ground of negligence in that they did not [as required by the Act] within ninety days after they became directors, compel the board to make a thorough investigation of the books and conditions of the bank, and that, even though a considerable part of the loss might have been prevented thereby.

Mr. Chief Justice Fuller, delivering the opinion of the Court at page 930 of 11 Sup. Ct. Reporter, said:

“Treated as a cause of action in favor of the corporation, a liability of this kind should not lightly be imposed in the absence of any element of positive misfeasance, and solely upon the ground of passive negligence; and **it must be made to appear that the losses for which defendants are required to respond were the natural and necessary consequence of omission on their part.**”

In the case now before the Court, even if it could be held that Schwarzwaelder was negligent at the time of his inspection of the South Orange property, in not remembering the fact that the Daly mortgage was a lien on the premises and was negligent in not reporting that fact to complainant, can it be said that defendant's non-feasance in that regard was the proximate cause of complainant's loss; when Crocker, whose legal duty it was to pass upon the validity of the title to the premises, first forged a discharge of the Daly mortgage and then wilfully, maliciously and falsely reported that the title was clear?

We respectfully submit that if the defendant can be found to have been negligent in any re-

spect his negligence in no way caused complainant's loss. Complainant's president admits (case, p. 64; ll. 19-20) it is, and its constitution declares that it shall be the duty of its solicitor to investigate the titles of premises offered as security for loans. Directors of building and loan associations have the right to rely upon the advice of counsel in respect thereto. *Citizens' Building Association v. Coriell*, 34 N. J. Eq. 383, 394. To pass upon the title is the solicitor's duty in the first instance, and we submit that the solicitor's dereliction in that respect was the natural and proximate cause of complainant's loss.

EAST ORANGE LOAN.

Exhibit C. 5 (case, p. 87, ll. 27-40; p. 88, ll. 1-40; p. 89, ll. 1-11), was an undated application apparently signed by one Albert B. Aschenbach for a loan upon a property described therein as follows:

“Location No. on west side of North Eighteenth street, East Orange, N. J., being known as lot 18 and part of lot 17, on ‘Map of Ampere Section of property of the East Orange and Ampere Land Co., Blk. 190 B.’ ”

The following is endorsed on this application:

“We have examined the property within described, and value it as follows: Land, \$1,650; building, \$4,850, and recommend that a loan of \$4,000 be granted.

Committee appointed: William B. Powell,
R. L. Hopkins, Albert Allsopp.

(Signed)

WM. B. POWELL,
R. L. HOPKINS,

Committee.”

The Loehnberg estate held a mortgage made on or about Dec. 3, 1909, by William H. Daly and Mabel, his wife, upon the property in East Orange (case, p. 94, ll. 20-31), on which complainant subsequently made a loan presumably upon the above application. There is no mention of this application in complainant's minutes (case, p. 59, ll. 11-13), whatever, until the meeting of April 22, 1909 (case, p. 60, ll. 17-21), where it was alleged that the defendant was present (case, p. 48, l. 40). The testimony regarding the granting of the Aschenbach loan is as follows:

“Q Now, in reference to the Aschenbach mortgage, that was on a piece of property in East Orange, 315 North Eighteenth street, or South Eighteenth street, I believe, and turn to your minute book at page 134, what does the treasurer's report show—first, who was present, the date, and who was present, whether Schwarzwaelder and Crocker were present? A They were both present, yes, and it shows on September 4 payment of mortgage to Roland D. Crocker, attorney, account, Aschenbach mortgage, \$3,919.”
(Case, p. 47, ll. 31-40; p. 48, ll. 1-2.)

Schwarzwaelder was alleged to have been present at the meeting when that treasurer's report was read and the *casus belli* so far as this loan is concerned, is because he did not at the time the treasurer's report was made, inquire about that loan to Aschenbach. It must not be forgotten that the mortgage held by the estate was made in the name of Daly and not Aschenbach.

It is not contended that the defendant was on the inspection committee, nor that he had any other information about the application for, or granting of, the loan than that mentioned in the

treasurer's report. The court below in its conclusion says:

“Second. With respect to the East Orange loan, there is nothing in the minutes of the board of directors authorizing the granting of the loan to Aschenbach on the property in East Orange. The files merely show an application signed by Aschenbach, without date, asking for a loan of \$4,000. It bears the name William B. Powell, Robert L. Hopkins, as the committee recommending it. It contains no description of the property except ‘Map of Ampere section of property of East Orange Ampere Loan Company.’ In December, 1909, William H. Daly and wife had executed a mortgage to the Loehnberg estate of which defendant was executor, for \$4,000. In September, 1910, Albert B. Aschenbach and wife executed a mortgage to the complainant association for \$4,000 upon the same property. The only reference to this loan is contained in the minutes of a meeting of the board of directors held on September 22, 1910, at which the defendant was present, at which the treasurer reported a disbursement on September 4 of \$3,919 on account of Aschenbach mortgage. The defendant made no inquiries with respect to this payment. If he had he would have immediately discovered that the money had been advanced upon property upon which the estate represented by him already held a mortgage. He would also have discovered that the loan had never been authorized and the disbursement therefor illegal. Unless reports of officers are to be received and approved *pro forma* and members of the board of directors excused from any investigation

whatever, it seems to me that the act of the defendant was gross inattention and such negligence as make him responsible for the consequences of his inattention." (Case, p. 32, ll. 29-40; p. 33, ll. 1-28.)

If Schwarzwaelder had investigated the loan, he would have found that Crocker, the solicitor, certified that the title was clear (case, p. 139, ll. 12-23, Ex. C. 2). If he then had not believed Crocker, whose integrity and honesty up to that time had never been questioned (case, p. 60, ll. 31-36), he might have engaged some other counsel on his own behalf to search the records. If he had done so, the search by his new private counsel would have revealed no mortgage held by the Loehnberg estate, because Crocker had forged a discharge thereof. If the defendant were not satisfied with that investigation he might take all of the thirty odd mortgages of the Loehnberg estate in which the descriptions were by surveys (case, p. 70, ll. 20-21), all the mortgages of the Hearthstone Building and Loan Association, all the mortgages of any other estates or individuals in which he was interested and go up to the Essex County Register's Office and compare the description of each of these mortgages with that of the mortgage of Aschenbach to complainant; then he would have found that it was upon the same property covered by the Daly mortgage to the Loehnberg estate. Then he would have learned that a forged discharge of the Daly mortgage had been placed on record; then he would have suspected that Crocker or some one was dishonest.

And for not taking these steps he is charged with gross negligence and held responsible for complainant's loss. As a director of a building and loan association whose constitution provided

that its solicitor should search the title to all properties offered as securities for loans, and further provided that the solicitor should be bonded for the faithful performance of his duties, was it incumbent upon the defendant to make investigation of that extent on every loan made by the complainant? For otherwise, he could not have discovered the rascality. And that, when the law is clear that directors of building and loan associations have the right to rely upon the advice of counsel as to the validity of title accepted as security for loans? *Citizens' Building Association v. Coriell, supra.*

On the other hand, assume that Schwarzwaelder had questioned that payment, and had found that there was no authorization for it in complainant's minutes, which we have already shown were very inaccurate, was the loss to complainant caused by the failure of its secretary to properly keep its minutes, or was the loss caused because Crocker certified falsely? It should be kept in mind that when the inspection report is favorable, it is always customary for the directors to grant the loan. In fact the court at the hearing on this point said:

"If the report is favorable and report shows apparent equity and good equity the board of directors always grant the loan; that is the custom." (Case, p. 78; ll. 26-29.)

In this loan, the same as in the South Orange loan, the loss was directly caused by Crocker's rascality. If Crocker had not made his false report, the loan would never have been paid—no matter how careless the secretary was in the keeping of the association's minutes.

And in this loan as well as the South Orange loan, the direct cause of the loss was Crocker. His rascality was the proximate cause of the

loss, while the negligence, if any was shown, of Schwarzwaelder and the other directors, was not even the remote cause, it having nothing whatever to do with it.

Complainant's remedy is against the sureties upon the bond of its solicitor, required by Article VIII of its constitution, page 19, *supra*.

We respectfully submit that the final decree of the Court of Chancery should be reversed and set aside in respect to the South Orange and East Orange loans, and that the complainant's bill should be dismissed with costs to the defendant-appellant.

Respectfully submitted,

THOMAS S. HENRY,

and

FRANCIS CHILD,

*Solicitors for and of Counsel
with Defendant-Appellant.*

