INDEX

TESTIMONY.

For Complainant.

For Defendant.

EXHIBITS.

SUBPOENA.

NEW JERSEY, to wit:

The State of New Jersey to Alliance Building & Loan Association

(L. S.) GREETING:

WHEREAS a bill of complaint has lately been exhibited against you in our Court of Chancery by Blanchard Securities, Inc., to be relieved touching the matters therein contained.

THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said Court at Trenton, on or before the expiration of twenty days from and after the 14th day of January, 1926, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

WITNESS, his Honor, Edwin Robert Walker, Chancellor of our said State, at Trenton, the 5th day of January, in the year of our Lord one thousand nine hundred and twenty-six.

THOMAS BARBER,
Clerk.

OSBORNE, CORNISH & SCHECK,
Sol'r.

BILL OF COMPLAINT.

Filed January 4, 1926.

In Chancery of New Jersey

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

Complainant, Blanchard Securities, Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey respectfully shows:

1. On January 3, 1924, complainant executed and delivered to the Alliance Building & Loan Association, a corporation of the State of New Jersey, a mortgage covering premises commonly known as 913-915-917 Clinton avenue, Irvington, Essex County, New Jersey, to secure the payment of a bond given by the complainant to the defendant on the day aforesaid, which mortgage having been first acknowledged, and the certificate of acknowledgment endorsed thereon, was recorded in the Essex County Register's Office in Book B 50 of Mortgages, page 401, etc.

2. The said mortgage contains the following provision:

> "And it is also agreed by and between the parties to these presents that the said party of the first part" (complainant) "shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire, in some safe and responsible insurance company or companies to an amount approved of by the said party of the second part," (said Alliance Building & Loan Association) "its successors or assigns, and assign the policy and certificate thereof to the said party of

the second part, and in default thereof it shall be lawful for the said party of the second part to effect such insurance and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation and secured by these presents, payable on demand with interest at the rate of 6% from the time of payment of such premium or premiums.''

3. It was agreed between complainant and the said Alliance Building & Loan Association that the amount of fire insurance to be carried on the said buildings should be twenty thousand dollars ($20,000).

4. On or about October 19, 1925, complainant delivered to the said Alliance Building & Loan Association, policy No. 8100407 issued by the Scottish Union and National Insurance Company of Edinburgh, a corporation authorized to transact fire insurance business in the State of New Jersey, the said policy is a standard fire insurance policy of the State of New Jersey, and by the said policy the said fire insurance company insured the buildings on the said premises against loss by fire to the amount of Twenty Thousand Dollars ($20,000) from October 22, 1925, to October 22, 1928. The said policy was assigned to the Alliance Building & Loan Associaton, and attached and made part thereof was a standard mortgagee clause providing that loss or damage, if any, under the said policy, should be payable to the said Alliance Building & Loan Association, as first mortgagee as interest may appear.

5. The said policy was good and sufficient in every respect and complied with all the requirements of the said Alliance Building & Loan

Association; and the said Alliance Building & Loan Association admitted that the said policy was good and sufficient in every respect and that it complied with all its requirements, but refused to accept it, claiming that it (the said association) had the right to place the said fire insurance in such company or companies and through such agent or agents as it might select.

6. Acting in accordance with such contention the said Alliance Building & Loan Association caused to be issued four fire insurance policies, each for Five Thousand Dollars ($5,000), in the following named companies:

Connecticut Fire Ins. Co. .....No. 04109
Springfield Fire & Marine Ins. Co. No. 341758
National Fire Ins. Co. .....No. 972572
Queens Ins. Co. of America .....No. 9837

which were written for one year.

7. The said four policies were never sent to complainant, but certificates of the issue of said policies were sent to complainant by one Thomas L. R. Crooks, who is secretary of the said Alliance Building & Loan Association, with a bill for Three Hundred and Sixty Dollars ($360) for one year's premium.

8. Complainant promptly returned the said four certificates of insurance to said Crooks with a notice to the effect that it had already taken out fire insurance in accordance with the agreement contained in the mortgage and that it had properly assigned the policy to the said Alliance Building & Loan Association.

9. The said Alliance Building & Loan Association returned to the complainant the Twenty Thousand Dollars ($5,000) each referred to in

paragraph four of this bill of complaint, refusing to accept it, and notified complainant that it intended to retain the four policies of Five Thousand Dollars ($5,000) each referred to in paragraph six of the bill of complaint, and that it (the said association) would look to complainant for payment of the premiums for said four policies, and that in the event of complainant's failure to pay the same, the association would pay the premiums and charge the amount thereof, together with lawful interest, against complainant's mortgage account with the said association.

10. Complainant alleges that the agreement contained in the mortgage relating to fire insurance is the agreement between it and the said Alliance Building & Loan Association. Complainant has fully performed the said agreement, and tenders itself ready and willing to continue to perform all the terms and conditions thereof on its part to be performed.

11. The said Alliance Building & Loan Association refuses to perform the said agreement.

Complainant is without adequate remedy in the courts of law, and therefore prays:

1. That Alliance Building & Loan Association, which is the defendant to this suit, may answer this bill of complaint and each statement therein made.

2. That it may be decreed that the provisions in the mortgage herein set forth constitute the agreement between complainant and defendant relating to fire insurance on the said premises.

3. That the defendant Alliance Building and Loan Association may be decreed specifically to

perform the said agreement, and to accept the said fire insurane policy furnished and tendered to it by the complainant.

4. That the said defendant may be enjoined from carrying any fire insurance on the said premises other than that furnished by complainant, and from charging complainant with the cost thereof.

5. That a writ of subpoena may issue, commanding said defendant to answer this bill of complaint, and to abide by such decree as this Court may make in the premises.

OSBORNE, CORNISH & SCHECK,
Solicitors for and of Counsel
with Complainant.

ANSWER AND COUNTER-CLAIM.

Filed February 24, 1926.

IN CHANCERY OF NEW JERSEY.

Between BLANCHARD SECURITIES, INC., *Complainant,* *and* THE ALLIANCE BUILDING AND LOAN ASSOCIATION OF NEWARK, *Defendant.*	*On Bill, &c.* *Answer and Counter-Claim.*

The defendant, The Alliance Building and Loan Association of Newark, a corporation of the State of New Jersey having its principal office in the City of Newark, County of Essex and State of New Jersey, says that:

1. It admits paragraphs one, two and three of the complaint.

2. Excepting as herein set forth it has no knowledge or information sufficient to form a belief as to the contents of paragraphs four and five, and with the further exception that the complainant did not comply with the by-laws of The Alliance Building and Loan Association of Newark nor with the terms of a certain application for a loan in said association made by the complainant when the complainant sought to place insurance in the amount of Twenty thousand ($20,000) dollars on the building mentioned in the complaint and upon which the complainant executed a mortgage to the defendant.

3. It admits the allegations contained in paragraphs six and seven.

4. Defendant admits that on or about October 19, 1925, the complainant returned the certificates for the policies mentioned in paragraph six to the defendant, but alleges and as stated in the counter-claim hereinafter set forth that the complainant was unwarranted in its refusal to accept the aforesaid certificates and to assent to the placing of the fire insurance by the defendant on the property then owned by the complainant.

5. Defendant admits that it declined to accept a certain fire insurance policy issued by the Scottish Union & National Insurance Company and mentioned in paragraph four of the complaint, but states that it refused to accept said policy and thereby permit complainant to place fire insurance on the property owned by the complainant for the reason that it was agreed by and between the complainant and the defendant that in consideration of the granting of a loan to the complainant that the said complainant authorized the defendant association to place the fire insurance on the property to be covered by the said mortgage in such companies as the association might select and for the further reasons set forth in the counter-claim hereinafter stated. The defendant admits that it advised the complainant that it would expect the said complainant to make payment of the premiums for the insurance placed by the defendant and that in the event of the complainant's failure to pay the same that the association would pay the premiums and charge the amount against complainant's mortgage account with said association, all of which was pursuant to the by-laws of the defendant association.

6. Defendant denies the allegations contained in paragraph ten and denies that the complainant has fully performed its agreement with the defendant and on the contrary says that it was expressly provided that the insurance to be placed on the property of the complainant should be placed thereon by the defendant as hereinbefore mentioned and as herein set out in detail in the following counter-claim.

7. The defendant repeats each and every allegation contained in the counter-claim hereinafter stated and makes the allegations a part of the within answer as if same had been recited at length.

COUNTER-CLAIM.

By way of counter-claim against the complainant the defendant, The Alliance Building and Loan Association of Newark, says that:

1. The Alliance Building and Loan Association of Newark is a corporation of the State of New Jersey, duly organized and existing under "An act concerning building and loan associations" and as such was at the times herein stated and still is duly authorized to exercise all the rights and privileges under said act and the acts of the legislature amendatory and supplementary thereto.

2. Heretofore and on December 24, 1923, the complainant, in writing, a copy of which is hereto annexed, made application to the defendant for a loan of Thirty thousand ($30,000) dollars, which loan was to be secured on the property set forth in said application and commonly known as No. 913-915 and 917 Clinton avenue, Irvington, New Jersey. It was provided in said written

application that the same was made subject to the constitution and by-laws of the defendant association. It was also provided in said application that in consideration of the granting of said loan to the complainant, it, the complainant, agreed to pay all necessary search fees and fees for drawing the necessary papers to consummate said loan and the complainant did also authorize in said application, the defendant association to place the fire insurance on the said property in such company as the defendant might select. The said application for the aforesaid loan was duly acted upon by the directors of the association pursuant to the constitution and by-laws of said association and the said application was duly accepted and the complainant was notified by the defendant of its acceptance of the complainant's application.

3. The defendant association after accepting the aforesaid application referred said application to its counsel for the purpose of having the title to the property to be pledged by the complainant examined and the necessary legal papers and documents prepared and executed so that the mortgage transaction could be consummated.

4. The officers and directors of the defendant association at all times intended that the by-laws of the said association would be observed in the preparation of the necessary papers to effect said loan and that the terms and conditions set forth in the written application would be carried out.

5. The said application expressly provided that the said loan would be subject to the constitution and by-laws of the defendant association and in section 9 of the constitution and by-

laws of said association it was provided as follows:

> "This Association shall have power to insure all buildings upon which loans are made, and also to renew the same for such amounts, under such rules and regulations as the Board of Directors shall determine. The Association shall have power to pay any premiums that remain unpaid, and collect the amount in the same manner and with like fines as interest and dues."

At the times herein mentioned William L. Blanchard was the president of the complainant corporation and at the time of the complainant's application he was a member of the defendant association and was well acquainted with the constitution and by-laws of said association.

6. The bond to be executed by the complainant corporation and the mortgage to be executed as security for the payment of the obligation set forth in said bond was prepared at the office of counsel for the defendant association and by a member of the Bar of this State who was then and there in the employ of the said counsel, and in the preparation of the said mortgage a printed form of mortgage then commonly adopted was used by the draftsman in the preparation of said mortgage and in said printed form was contained the language specifically quoted in paragraph two of the complaint and which provision did not contain the terms set forth in the application for the loan made by the complainant, nor did it contain the terms specifically set forth in Section 9 of the constitution and by-laws of the defendant association.

7. The appearance in the mortgage of the clause quoted in paragraph two of the complaint

arose through the mutual mistake of the said draftsman and the said William L. Blanchard who then and there acted on behalf of the complainant corporation and the insertion of said clause was contrary to the then intention of both the complainant and the defendant. The defendant charges that if it is contended by the complainant that the aforesaid clause was not inserted through a mutual mistake of both the complainant and the defendant then the said president of the complainant corporation then and there knew that said clause appeared in said mortgage in direct opposition to the intention of the parties and that his conduct in failing to ascertain whether it was the intention of the parties to vary and modify the original agreement or whether the clause so inserted was done—through mistake, and the action of the complainant in availing itself of said provision although the complainant knew it was not in conformity with the intention and agreement of the parties amounts to inequitable and unjust conduct on the part of the complainant. The defendant further alleges that at no time was it ever consulted with respect to any variation or change from the terms of the written application for a loan made by the complainant and further alleges that it paid the full sum of Thirty thousand ($30,000) dollars to the complainant acting under the assumption that all of the terms of the written application had been complied with.

8. This defendant alleges that the mortgage as executed did not carry out the intention of the parties and the terms set forth in the application, but on the contrary provided that the insurance on said property was to be placed by the complainant and not by it as had previously

been agreed upon and which agreement had never been modified by any joint action of the complainant and the defendant. The said mortgage as finally executed was at no time passed on by the Board of Directors of the defendant association but on the contrary the said Board of Directors assumed that the said mortgage contained a proper clause with respect to the placing of said fire insurance.

9. Pursuant to an agreement between the complainant and the defendant it was stipulated that insurance in the amount of Twenty thousand ($20,000) dollars should be placed on the building of the complainant company and defendant further alleges that when the policies of insurance then in effect on said property expired in October, 1925, it procured policies of insurance in renewal of the polices which were then about to expire. The defendant further shows that it procured renewal policies about a month in advance of the date when said policies would expire and if the complainant procured additional insurance policies it did so with a knowledge of the fact that the defendant had previously procured policies of insurance and if loss was thereby sustained by the complainant it occurred due to its failure to observe the terms of the application and the by-laws as hereinbefore set forth. The policies of insurance procured by the defendant were standard policies and were in proper form and were good and sufficient in every respect.

10. Defendant further shows and alleges that the complainant has at times contended that the terms set forth in the constitution and by-laws of the association and those set forth in the afore-

said application became merged in the mortgage which was executed by the complainant company and because of this contention and because in the courts of law it may be found that the aforesaid section of the constitution and by-laws and the aforesaid application for a loan merged in the mortgage aforesaid it is feared by the defendant that if it pressed its claim against the complainant at law to recover the premiums paid by it on the insurance, that it might be confronted with such a legal situation which would bar its right to recover—said premiums, whereas in truth and in good faith it was at all times intended by and between said complainant and the defendant that the right to place said insurance would be with the defendant association.

Defendant is without adequate remedy in the courts of law and therefore prays:

1. That Blanchard Securities, Inc., may answer the within counter-claim and each statement herein made.

2. That it may be decreed that the provisions in the aforesaid application and in the constitution and by-laws constitute the agreement between complainant and defendant relating to fire insurance on the said premises.

3. That it may be decreed that the mortgage mentioned in the bill of complaint be reformed to the end that the provision set forth in said mortgage and quoted in paragraph two of the complaint be stricken out and that in its place and stead a provision be inserted to the end that the defendant association shall have authorization to place the fire insurance on said property

in such company as it may select and to carry into effect such purpose that a provision as follows (or such other appropriate language as may carry out the intention of the parties) be inserted.

"And it is also agreed by and between the parties mentioned in the within mortgage, their successors and assigns, that the party of the second part, The Alliance Building and Loan Association of Newark, is hereby authorized to place fire insurance on the premises herein described, in such company as it may select and in such amounts as shall be approved by the parties hereto but not in an amount less than Twenty thousand ($20,000) dollars, and the party of the first part, for itself, its successors and assigns, does hereby agree to pay the premiums for effecting the said insurance promptly and as said premiums become due, and in the event that the party of the first part, its successors and assigns, shall fail to pay the said premiums when the same shall become due, that the party of the second part may pay the same and collect the amount thereof in the same manner and with like fines as interest and dues."

WOLBER & GILHOOLY,
Solicitors for Defendant.

A FEE OF THREE DOLLARS WILL BE CHARGED FOR EACH INSPECTION. THE ALLIANCE BUILDING AND LOAN ASSOCIATION, 45 Clinton Street.

Newark, N. J., Dec. 24, 1923.

The undersigned desires to procure a loan of $30,000 on the following property, subject to the Constitution and By-laws of above Association:

Location 913-915 and 917 Clinton Ave. Irvington, N. J.

Dimensions of ground 78x145.

Value of ground $11,700.

Are there buildings on ground? If so, state: 1st, size 75x145.

2nd building Material Brick, 3rd Purpose of Use Service and garage.

4th, Value $65,000 and 5th Present Insurance $15,000, 6th, Annual Rent $6,500.

If buildings are to be erected, state: 1st, size.

2d, Building material, 3rd Purpose of Use.

4th, How far Advance, 5th Value $

6th, Insurance to be Placed $ 7th Annual Rent to be charged

Is owner to occupy or rent? Rent

Is property under Foreclosure? No

Is the property free and clear? Yes

Is the Street curbed? Yes. Flagged? Yes. Paved? Yes. Sewered? Yes. Supplied with water? Yes. With gas? Yes. Plan: and specifications to be in the Committee's hands by Is any portion of this Loan to be used for improving this property? No.

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 Blanchard Securities, Inc.

Address 45 Poinier St., Newark, N. J.

We have examined the property within described and value it as follows:

Land $11,700. Buildings $40,000. Total $51,700 and recommend that a loan of $30,000 be granted, and that insurance of not less than $30,000 be carried on same.

Committee appointed:

Wm. E. Selby	Wm. E. Selby
Wm. Hatt	William Hatt
Munson G. Doremus	Munson G. Doremus

Committee

Dated

It is on this 20th day of February, 1926, consented that the within answer and counter-claim be filed as of time.

OSBORNE, CORNISH & SHECK,
Solicitors for Complainant.

Replication.

REPLICATION TO ANSWER AND ANSWER TO COUNTER-CLAIM.

Filed April 1, 1926.

IN CHANCERY OF NEW JERSEY.

Docket 59—Page 607.

Between BLANCHARD SECURITIES, INC., *Complainant,* *and* THE ALLIANCE BUILDING AND LOAN ASSOCIATION OF NEWARK, *Defendant.*	*On Bill, etc.* *Replication to Answer and Answer to Counter-claim.*

REPLICATION TO THE ANSWER.

The complainant, replying to the answer of the defendant, says:

1. Complainant joins issue on the answer of the defendant.

ANSWER TO THE COUNTER-CLAIM.

As to the counter-claim contained in the said answer, complainant says:

1. Complainant admits paragraph 1.

2. He admits making the application referred to in paragraph 2, but has not sufficient information to form a belief as to what the said application contained.

Replication.

3. Complainant has not sufficient information to form a belief as to the allegations in paragraphs 3 and 4.

4. Complainant has not sufficient information to form a belief as to the allegations of paragraph 5, with the exception of the statement in the said paragraph that William L. Blanchard was president of the complainant corporation.

5. Complainant has not sufficient information to form a belief as to the allegations of paragraph 6.

6. Complainant denied paragraph 7.

7. Complainant denied paragraph 8, excepting as to the statement that the mortgage as executed, provided that the insurance was to be placed by the complainant, which allegation complainant admits.

8. Complainant admits so much of paragraph 9 as alleges that by agreement between complainant and defendant it was stipulated that insurance in the sum of twenty thousand dollars ($20,000) should be placed on the building. Complainant has no information regarding the date when defendant procured policies, nor whether the said policies were standard, as alleged in paragraph 9. Complainant denies the remaining allegations in paragraph 9.

9. Complainant admits that it contends that any and all agreements made between it and the defendant prior to the execution of the mortgage became merged in the mortgagee; complainant denies the remaining allegations of paragraph 10.

Solicitors and Counsel for Complainant.

Stipulation of Facts.

We hereby consent to filing replication and answer as of proper time.

WOLBER & GILHOOLY,
Sol'rs for Def.

STIPULATION OF FACTS.

Filed June 22, 1926.

IN CHANCERY OF NEW JERSEY.

Docket 59—Page 607.

Between	
BLANCHARD SECURITIES, INC., *Complainant,*	*On Bill, etc.*
and	*Stipulation of Facts.*
ALLIANCE BUILDING & LOAN ASSOCIATION, *Defendant.*	

The parties in the above-entitled cause agree upon the following statement of facts in the cause; to wit:

On or about December 24, 1923, complainant applied to defendant for a loan of $30,000 to be secured by a mortgage covering the property at 913, 915, 917 Clinton avenue, Irvington, N. J., and made and executed a printed form of application furnished by defendant which provided, among other things, that complainant authorized defendant

> "to place the fire insurance on the said property in such company as they may select."

The application also says:

> "The undersigned desires to procure a loan of $30,000 on the following property, subject to the constitution and by-laws of above association."

Section 9 of the constitution and by-laws reads as follows:

> "This Association shall have power to insure all buildings upon which loans are made, and also to renew the same for such amounts, under such rules and regulations as the Board of Directors shall determine. The Association shall have power to pay any premiums that remain unpaid, and collect the amount in the same manner and with like fines as interest and dues."

On January 3, 1924, complainant executed and delivered to defendant a mortgage, which contains the following provision:

> "And it is also agreed by and between the parties to these presents that the said party of the first part" (complainant) "shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire, in some safe and responsible insurance company or companies to an amount approved of by the said party of the second part," (said Alliance Building & Loan Association) "its successors or assigns, and assign the policy and certificate thereof to the said party of the second part, and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation and secured by these presents, payable on demand with interest at the rate of 6% per annum from the time of payment of such premium or premiums."

Stipulation of Facts.

This mortgage was prepared by the attorneys of the defendant on a standard printed form such as had been theretofore commonly used by the Association and the insurance clause in the mortgage aforesaid was not specifically passed upon by the Board of Directors of defendant.

IN CHANCERY OF NEW JERSEY.

June 22, 1925.

Between

BLANCHARD SECURITIES, INC.,
Complainant,

and

THE ALLIANCE BUILDING AND LOAN ASSOCIATION,
Defendant.

Transcript of shorthand notes of testimony taken in the above-printed cause before his Honor Alonzo Church, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Messrs. Osborne, Cornish & Scheck (by Mr. Osborne) for complainant; Messrs. Wolber & Gilhooly (by Mr. Gilhooly) for the defendant.

WILLIAM L. BLANCHARD, sworn for the complainant.

Direct examination by Mr. Osborne.

Q Where do you live? A 400 Wyoming avenue, South Orange.

Q Are you an officer of the Blanchard Securities, Inc.? A I am president.

Q Did, on or about December 4, 1923, the Blanchard Securities, Inc., apply to the Alliance Building & Loan Association for a mortgage loan? A Yes.

Q And offered the property, 913-915 Clinton avenue, Irvington, as security? A Yes.

Q Did you sign an application? A Yes.

Q And was there any insurance on that property? A Yes.

Mr. Osborne: Wait a minute. Pardon me. All right. Strike it out.

Q Was the mortgage subsequently issued on the property? A Yes, sir.

Q I have here a certified copy of the mortgage? A You have the original.

Mr. Gilhooly: I have the original certified copy.

Mr. Osborne: I thought possibly we could just offer this instead of the original.

The Court: No objection. It will be received.

(Paper marked Exhibit C. 1.)

Q At the time this mortgage was made on the property was it insured? A Yes.

Q For how much? A Fifteen thousand dollars, I think; I have the insurance book here.

Q And in what company? A Scottish Union National.

Q Do you know when that insurance expired? A I could tell from the book.

Q Well, I show you a book. Is that the book in which you kept a record, or that the company keeps its records of insurances? A Yes.

Q If you will look at that and refresh your recollection, you may tell us when that insurance expires. A 10-22-24. That is October 22, 1924.

Q Now, at that time there was $15,000 on it? A Yes. And then there was $5,000 extra written January 30, 1924, making a sum total of $20,000 due to the maturity date.

Q Will you state what was done at the expiration of that policy with regard to its renewal? A It was placed in the Scottish Union National.

Q By you? A Yes.

Q And in what amount? A Twenty thousand dollars.

Q I show you an insurance policy and ask you if this is the policy which—(interrupted). A No, sir; this is the year after.

Q Oh, I beg your pardon. Prior to renewing it in the Scottish Union, on the expiration of the insurance that was on it when you placed the mortgage, what happened? A Why—

Q There were four companies on it, weren't there? A No; not the first year.

Q Not the first year? A No, sir.

Q Now, I will show you the book again to refresh your recollection, insurance book of the company, and call your attention to page 7 where you—(interrupted). A That was the original insurance, fifteen thousand, increased to twenty at the dates of the mortgage.

Q Now, turning over to page 19— A Then I renewed that to this.

Q Is that it or is this it? A This is what eventually went on it, but I renewed it myself with this policy in the Scottish Union National, No. 7834272.

Q For how much? A For $20,000, which was to expire October 22, 1925.

Q What happened to that? A The Building and Loan refused to accept it and mailed it back to us, together with four certificates of insurance in sums of $5,000 each in four different companies.

Q For what period of time? A One year.

Q And at what premium? A 2.10 premium where the old rate was 77 1-3 the new rate was 2.10.

The Court: Seventy-seven cents?

Witness: Seventy-seven and one-third cents. We had to renew them and they wrote it.

The Court: I see, for two dollars and ten cents.

Q The rate went up? A The rate went up.

Q Now, how long did that insurance remain on? A For one year.

Q And then what happened? A Why, all during that year we took, our company, the agent of the Scottish Union, Mr. Wildeck, I believe the name is, the man who goes out on those things, and they worked with the rate and they got it, the rate, down much lower and yet they had no insurance on the building, but they gave us—from their correspondence they gave us a year's services on that building free.

Mr. Gilhooly: I object. I do not think that is material.

Q They were your regular agents, weren't they, writing your insurance generally? A All the insurance in that book is written through the Scottish Union National.

Q And that was the insurance company that you placed your insurance with through this agency? A Yes, sir.

Q And he gave you this service as part of—(interrupted). A No; he was the agent of the company; he was not the broker.

Q But this agent of the company co-operated with you? A To get the rate lowered.

Q Ascertaining how to reduce the rate? A Yes.

Q By doing certain things to minimize the fire risk, as I understand it? A Right.

Q Now, at the expiration of these policies, which was October 22, 1925, what happened? A Then I wrote the policy—had the policy written for three years when the rate was down, that you have in your hands, and gave it to the Alliance Building and Loan.

Q I show you a policy and ask you if that is the policy you had written and furnished to the building and loan? A Yes.

Q And it was for three years? A For three years, and we paid to the Scottish Union $900.

Q And at what rate was this? A The rate is right on the first page, rate, four dollars and a half for three years.

Q Is the rate less for three years than for one? A Two and a half times the premium.

Q And then what happened? You furnished this; did they accept it? A No; they sent it back and sent four other policies.

Q Who wrote those four other policies? A Why, I have some correspondence there where I gave the name of the company and the number of the policy I was returning to them, registered letter I sent to Mr. Crooks.

Q You returned those policies, then, to Mr. Crooks? A Yes.

Q I show you a copy of a letter dated October 22, 1925—

Mr. Osborne: Pardon me. Have you the original, Mr. Gilhooly, of that letter from Mr. Crooks?

Mr. Gilhooly: October 22.

Mr. Osborne: We have agreed to make up this file from such originals as we each have. In the meantime I will use this.

Mr. Gilhooly: I don't seem to have it.

Mr. Osborne: No objection to the carbon?

Mr. Gilhooly: No.

Q I show you a carbon of a letter directed to Mr. Crooks of the Washington Trust Company, and return receipt being attached thereto, and ask you if that is the letter that you referred to which accompanied the policies, when you returned them? A Yes.

Q And are those policies mentioned in this letter? A Yes.

Q Use it to refresh your recollection. Will you state what policies they were they furnished you and you returned? A Connecticut Fire Insurance Company, No. 04109, Springfield Fire & Marine Insurance Company, 347158; National Fire Insurance Company, 972572; Queen Insurance Company of America, 9837.

Q Did that letter state the reasons which you gave at the time for returning the policy? A Yes. And one prior to that, that I wrote prior to that, the Alliance Building and Loan.

Mr. Osborne: I would like to offer this policy which Mr. Blanchard testified was furnished.

(Paper marked Exhibit C. 2.)

Q I show you another carbon dated March 10, 1924, and ask you if that is a copy of the letter you sent to the building and loan association? A Yes, sir.

Q And does it treat with the same subject, giving your reasons? A Yes.

Q For returning the mortgage? A Yes.

Q And these two letters state your reasons for returning these mortgages? A (No answer.)

Mr. Osborne: Now, would your Honor desire to have them read at this time or merely offered?

The Court: You can offer them.

Mr. Osborne: Well, I offer these letters in evidence.

The Court: If you want to read them you may.

(Exhibits C. 3 and C. 4 read.)

Q Now, who is Mr. Crooks? A Mr. Crooks is the secretary of the Alliance Building and Loan.

Q He is a banker here in town also? A Yes; president of the Washington Trust.

Q And was any money paid to him for premiums? A For the year previous before—for the four policies issued the year previous.

Q The policies that they insisted putting on at that time? A Yes, sir.

Q Is that it? A Well, that is one of them. That is for five thousand, I guess, and this is for twenty thousand for the full year. This is the five thousand that made up the—interrupted).

Q Yes. Is Mr. Crooks an insurance agent? A Why, I presume so. His stationery says so.

Q I distinguish between broker and agent. A Why, I don't think he is.

Q You don't know? A I know he is not an agent. He is a broker.

Q Did you furnish the building and loan with a certificate for the mortgagee as well as the original policy certificate of the mortgagee? A No, sir; I kept that for myself.

Q That you kept for yourself? A For our own files, the certificate.

Cross examination by Mr. Gilhooly.

Q Mr. Blanchard, the rate was decreased on the policies which expired in October, 1925, was it not, from 2:10 to 1.70-1.80? A Yes; they were decreased during that year.

Q And the policies you were speaking of then were policies which Mr. Crooks placed on the property? A Yes, sir.

Q On behalf of the association? A Yes.

Q And it was on his insistence as secretary of the building and loan association that you accepted the policies which he put on and cancelled the one which you had; isn't that true? A Yes.

Q And the first objection you made to Mr. Crooks placing the insurance was when he attempted to place the renewal policies in October, 1925? A When he gave me no services and I went out and got my regular broker to go in and get the rate reduced, worked with the Rating Bureau.

Q And was the rate reduced? A Yes.

Q Didn't policies that were expiring in October, 1925—(interrupted). A During the life of the policies.

Q That was because it was for three years, was it not, instead of for one? A No, for one year.

Q Didn't you, as a matter of fact, tell Mr. Crooks to place the policies for one year instead

of three? A Yes—I never told Mr. Crooks to place them at all. I forbid him always placing them.

Q Did Mr. Crooks communicate with you prior to the expiration of the policies in 1925? A No, sir.

Q Never communicated with you at all? A No, sir; not until after I had placed this policy in the hands of the Alliance Building and Loan.

Q You are sure of that? A Positive.

Mr. Gilhooly: I called for a letter dated October 24th. Have you been able to find that?

Mr. Osborne: I don't think so.

Mr. Gilhooly: Never mind. I will proceed.

Q I understand you to say you signed an application for the loan, Mr. Blanchard? A Yes.

Q And prior to making this application for the loan were you a member of the Alliance Building and Loan Association? A Yes.

Q And you had been for how long? A Oh, so that I had two certificates that their paid-up value was worth $10,000, which I left with them in lieu of $30,000 insurance which they insisted upon.

Q Well, you were present when the mortgage was executed, were you not? A Yes, sir.

Q And you signed as president? A Yes.

Q Did you read the mortgage at that time? A Yes, sir.

Q Did you call anybody's attention to the fact that the mortgage is different from the application that you signed? A No, sir. I didn't have the application with me at the time.

William L. Blanchard, cross.

Q You were satisfied with the form of the application when you made the loan, were you not? A Why, I don't see why I shouldn't be.

Q Were you or not? Well, weren't you? A I think so.

Q And you read the contents of the application carefully as you usually read business matters? A I presume I did not read the clause in regard to insurance. If I did, I didn't remember it, but I was willing to abide by it.

Q But you signed an application wherein you said that you authorized the association to place the fire insurance in such companies as they might select? A I signed that on the application, yes.

Mr. Gilhooly: That is all.

Mr. Osborne: I would like to have the application marked.

(To witness:) Mr. Blanchard, this is the application which you were asked about, but were not shown. Is that the application which you signed?

Witness: Yes; that is my handwriting, Blanchard Securities, Incorporated.

Mr. Osborne: I would like to have that marked in evidence.

The Court: No objection; it will be received.

(Paper marked Exhibit C. 5.)

Mr. Osborne: The application contains, after the signature, certain matter which was subsequently put on by the building and loan committee.

Mr. Gilhooly: As to its recommendation.

Mr. Osborne: Yes. That lower part was not on at that time. I should like to have that marked C. 5.

WALTER WILDECK, sworn for the complainant.

Direct examination by Mr. Osborne.

Q What is your business? A General insurance.

Q Well, are you a broker or agent or what? A Agent.

Q For what company? A Why, for five companies.

Q Well, are you an agent for the Scottish Union? A Scottish Union National, yes, sir.

Q Do you know Mr. Blanchard? A I do.

Q Of the Blanchard Securities? A I do.

Q Did you do any work for him in that connection with regard to reducing the rate on property on Clinton avenue?

Mr. Gilhooly: If your Honor please, I object to this line of testimony on the ground that it is entirely immaterial how these rates were arrived at.

The Court: I do not see that it has much to do with it. I will receive it for what it is worth. I do not think it is worth much.

Q Go on. (Question read as follows: "Did you do any work for him in that connection with regard to reducing the rate on property on Clinton avenue?") A I did; yes.

Walter Wildeck, cross.

Q Just state what it was and what it resulted in, briefly. A I made three or four trips up there to see Mr. Lindemann, one of the Lindemanns, and suggested that he place "No smoking" signs, a proper supply of extinguisher and sand pails, which would result in a reduction of ten cents for each item, making thirty cents in all.

Q There were three things? A That is true.

Q And were they done? A They were done.

Q Was the rate reduced? A It was.

Q And you took it up with the company? A We applied for a re-rating to the schedule office, who, in turn, reduced the rate.

Q And is that the correct service that an agent performs for a client such as Mr. Blanchard? A Well, we make a practice to do that.

Q Is that an inducement for people to insure in your company? A It is, yes.

Mr. Osborne: That is all.

Cross examination by Mr. Gilhooly.

Q If a complaint had been made that the rate was excessive, and application had been made to Joseph M. Byrne & Company, the agent that placed the policies of insurance at the request of Mr. Crooks, they could have done the same thing you did, couldn't they? A They could have.

Q And they make a practice of it when there is complaint as to the rate? A I am quite sure they do.

Q It is quite common that agents should do that? A Yes.

Q And they would have had the same effect that you did in reducing the rate, would they

not? A They did. We really don't wait until the complaint is made to us. We go and do it as a matter of course.

Q You do that in all cases? A In all cases.

Q Did you do that work in all cases? A In all cases where a mercantile risk is involved.

THOMAS R. CROOKS, sworn for the defendant.

Direct examination by Mr. Gilhooly.

Q Mr. Crooks, what is your position with the Alliance Building and Loan Association? A Secretary.

Q And you have been for how long? A Since January, 1915.

Q And will you please tell the Court whether or not the Alliance Building and Loan Association is a mutual company? A It is.

Q And it is organized for the benefit of its members, is it not? A It is.

Q And the profits of the association are divided amongst the members, are they not? A It is.

Q And in the proportion to the amount of shares each member holds? A In proportion to the length of time which the shares have been in effect.

Q Now, Mr. Crooks, I show you a book and ask you what that book is? A That is the current minute book of meetings of directors of the association since April, 1920.

Q Mr. Crooks, will you turn to your minute book and tell us whether or not any resolution was ever passed by the board of directors regarding the placing of insurance on property on

which the association granted loans? A On February 8, 1924, a quorum being present—in fact, all members being present, a motion was duly made and seconded—(interrupted).

Mr. Gilhooly: Just a moment. I don't know whether Judge Osborne will have any objection to the resolution, but I would like to offer the resolution.

Mr. Osborne: I think we have no objection. It will have facts that are pertinent coming out. I just wanted to see what he was reading from.

The Court: All right. Read it.

Q I will ask you to read the motion. A "On a motion duly made and seconded the secretary was instructed to effect all insurance on properties covered by mortgages of this association as the interest of the association may appear, this to apply on new insurance as well as renewals."

Q Was there any other resolution pertaining to the particular insurance on the Blanchard Securities, Inc., property? A At that same meeting an application was received from the Blanchard, Inc., asking that the ground value be allowed on their claim for that property as regards the placing of insurance, that $20,000 be required. On a motion of Mr. Selby, seconded by Mr. Gunning, the officers were instructed to write $30,000 of straight insurance.

Q Was the amount of that insurance ever changed? A Yes.

Q And was that pursuant to a resolution of the board of directors? A Yes; I have a memorandum in my hands here of April 4, 1924,

a communication was received from the Blanchard Securities, Inc., complaining as to the amount of counsel fees and suggesting that their insurance for a smaller amount be permitted on the properties covered by the Alliance mortgage. The counsel was instructed to reply to Blanchard Securities, Inc., regarding these charges and the matter of insurance was left as heretofore, the amount to be $30,000, the amount of the loan. Now, in continuing my answer, in June, 1924, a communication was received from the Blanchard Securities, Inc., asking that additional $10,000 of insurance be cancelled providing fifty free shares of the Alliance Building and Loan Association, having a surrender value of approximately $2,300, be pledged as additional collateral. On a motion of Mr. Hand the "application was granted, the collateral to be retained until the loan has been reduced to $20,000."

Q Now, Mr. Crooks, I show you four policies of insurance and I ask you if they were in effect on property of the Blanchard Securities, Inc. A Yes.

Mr. Gilhooly: I offer these insurance policies.

(Insurance policies marked Ex. D. 1, D. 2, D. 3, D. 4.)

Mr. Gilhooly: Shall I identify them on the record, your Honor please?

Exhibit D. 1 being policy 36831 Springfield Insurance Company; Exhibit D. 2 being policy 03822 in the Connecticut Fire Insurance Company of Hartford; Exhibit D. 3 being policy U101015 in the Continental Insurance Company; Exhibit D. 4 the policy 920537 in the National Fire Insurance Company.

Q Mr. Crooks, I show you four fire insurance policies and I ask you if they were placed on the Blanchard Securities property? A They were.

Mr. Gilhooly: I would like to offer these.

(Four policies marked Exhibits D. 5, 6, 7 and 8.)

Mr. Gilhooly: Exhibit D. 5, policy 37458, Springfield Insurance Company; D. 6, policy 9837 Queen Insurance Company; Exhibit D. 7, 04109, Connecticut Fire Insurance Company, Exhibit D. 8 being policy 972572 in the National Fire Insurance Company.

Q Mr. Crooks, before the expiration of the policies in 1925, did you communicate with Mr. Blanchard, respecting the renewal of the policies? A I sent him the certificates of insurance, showing policies written for a three year term.

Q And what, if any, discussion did you have with him with respect to the term of the policy? A Mr. Blanchard called me up and objected to the three year term and asked that they be written for one year.

Q What did you do then? A I sent the policies to Joseph M. Byrne, got the certificates of insurance back and had them written for one year. The policies will show the alteration.

Q And then you re-submitted the certificates to Mr. Blanchard? A I did.

Mr. Gilhooly: Judge, I would like to call for the letter of October 24th. Have you got that?

I introduce by consent of Judge Osborne, copy of a letter dated October 24, 1925, ad-

dressed to Blanchard Securities, Inc., by Mr. Crooks, the secretary of the Alliance Building and Loan Association.

I also offer by consent letter dated October 19, 1925, addressed to Edward F. McGuire, president of the Alliance Building and Loan Association, signed by Blanchard Securities, Inc.

(Exhibits D. 9 and D. 10 read.)

Q Mr. Crooks, was there any action taken by the board of directors, changing in any manner the terms of the application made by Blanchard Securities, Inc., with respect to who should place the fire insurance? A There was not.

Q Was the mortgage which was actually executed in this case ever submitted to the Alliance Building and Loan Association for its approval? A It was not.

Q It was drafted in the ordinary course by counsel and then subsequently forwarded; is that true? A Yes, sir.

Mr. Gilhooly: That is all.

Cross examination by Mr. Osborne.

Q Mr. Crooks, you say that no action was taken with regard to this mortgage. Wasn't the loan ever approved? A The application was acted upon, but the mortgage was never acted upon.

Q When the loan was finally put through wasn't it approved? A It was not.

Q That is not the practice of that building and loan? A That is not the custom.

Thomas R. Crooks, cross.

Q That is all delegated to the attorneys? A To the counsel.

Q And they have authority to act for the association? A I don't know. It has never been delegated other than by custom.

Q It has always been the custom, then, of the association to have the attorneys draw the mortgage and pass upon it? A Yes.

Q Without anything further being done by the association; is that right? A Yes.

Q And so far as you know, this mortgage was in the usual form of mortgages, kept and held by the association at that time? A I have never examined the mortgage; I have not seen it now. I don't know.

Q Haven't you examined any of their mortgages? A Yes, sir.

Q Isn't that the usual form, up to that time, that they had their mortgages drawn in? A For the examination of the secretary? No.

Q No. Isn't this the form of mortgage, the common form of mortgage, the usual form which the association had its mortgages executed in? A I don't know.

Q You don't know. So far as you know, it is the form? A So far as I—(interrupted).

Q That is customarily used by the building and loan association? A So far as I know.

Q Now, you referred to some resolutions in your book there, didn't you? A Yes.

Q As relating to this transaction; is that right? A As relating to the placing of insurance, not the mortgage.

Q Well, those resolutions were not passed until after the mortgage was made, were they? A That is right, afterwards, but they had nothing whatever to do with the mortgage.

The Court: Well, they had this to do with the mortgage, the insurance was placed to protect you.

Witness: I am giving my answer—in giving my answer that the board had nothing to do with the mortgage, I construed it that you meant, did they pass or approve that mortgage. They certainly did pass on those things, as to what should be done; if you construe that as having something to do with the mortgage, then I would have to change my answer and say, "Yes, they did pass in some way on it."

Q And, insofar as they related to insurance, those resolutions were passed after the mortgage was executed? A Yes.

Q Isn't that so? A Yes.

Q Now, you did act as broker in this matter, didn't you? A I did.

Q You were told you would get the commissions, weren't you? A Nobody told me, I knew it.

Q Well, you expected to get it? A Certainly.

Q That is one of the perquisites of the place? A No. Perquisites?

Q Yes. A You mean, if I didn't get that that I wouldn't hold the position of secretary?

Q No. I mean to say that is one of the reasons why you—(interrupted). A It is one of the anticipations.

Q Of the office, yes. A Most assuredly it is.

Q One of the reasons why you want to place this insurance; isn't that right? A One of them, yes.

Q Now, you say these policies were written for three years and then changed? A The policies that matured in October, 1925, were written for three years.

Q Oh, you are not talking about the existing policies? A Absolutely not.

Q Wasn't that because the rate was high at the time? A No, sir.

Q Are you speaking now from your recollection or from—(interrupted). A I am speaking of a knowledge I had—a conversation with Mr. Blanchard where he asked me to write the policies for one year.

Q Was that ever reduced to writing? A It was not.

Q You had no correspondence on the subject? A None.

Q He didn't want you to write these last policies, did he? told you not to? A He didn't tell me not to, but the correspondence shows for itself he did.

Q What is the date of the mortgage, do you know? A I do not.

Mr. Gilhooly: It speaks for itself.

The Court: Yes.

Q Isn't it referred to in your minute book? A Yes; but application was made for a loan prior, some other date than the mortgage. I can very readily ascertain—

The Court: The mortgage is in evidence.

Q Yes. The mortgage is in evidence and it bears date on the 22nd of February—no, wait a minute. I have a memorandum of it here—the third day of January, 1924. Now, haven't you

any reference to a mortgage of the third day of January in your minutes? A I have reference in my minutes on January 4th to a mortgage.

Q What is that? Is that that, what you read? A No. "Committee on the loan of the Blanchard"—if you want me read this—

The Court: Yes.

Witness: This is January 4, 1924, "The committee on loan of the Blanchard Securities Company reported in favor of a loan of $30,000 on the Clinton avenue property, premium 3%. On a motion the report was accepted and the loan granted."

Q That was the day after the execution of the mortgage, wasn't it? A If that mortgage is dated January 3, 1924.

Q And the other resolution which you have referred to was in February—or, February 8, 1924, wasn't it? A It was in February, 1924—February 8th.

Q You say you had a talk with Mr. Blanchard? A Yes.

Q Can you fix the date? A I cannot.

Q Who was present? A It was a telephone conversation. I don't know who was present on the other end.

Q Do you remember a conversation between Mr. Blanchard and yourself and Mr. Blanchard's son? A I do.

Q And there was some controversy about insurance then, wasn't there? A There was after the insurance had been placed and paid for.

Q Which insurance? A The insurance which matured in October, 1925.

Q That is that bunch of policies that expired? A Yes.

Q Not present? A Not present.

Q And there was some difference of opinion about it? A It was only a good natured conversation.

Q Do you remember telling them it was none of their business what company it was placed in? A I remember telling them it didn't concern them whether it was one policy or four policies. And I also remember telling them, "Mr. Blanchard, you can't fight with me," and I walked away and waved my hand.

Q And they wanted to know what companies they were being insured in and you couldn't tell them at all? A They knew; they had certificates.

Q You didn't tell them? A Off hand, I can't tell them now, and I couldn't tell them then.

Q You told them then they were not concerned as to whether it was one policy or four policies or what company it was in. A I didn't say "or what company it was in." I said as to whether it was one policy or four policies.

Q Did they ask you to see the policies? A They did not.

Q Where was this, at your office? A The policies were filed at my office with the other mortgage papers.

Q And was this conversation at your office? A It was not.

Q Where was it? A It was on Broad street, in front of the new Goerke building.

Q Don't you remember a conversation after that, Mr. Crooks, that took place in the bank? A I remember Mr. Blanchard, Junior and

Senior, coming into the bank, but as to the conversation I can tell you nothing about it.

Q Do you remember that step between this conversation and this in the bank? A The conversation I just repeated? I do not.

Q Well, to refresh your recollection, don't you recall that conversation in the bank, when you discussed these policies, you refused to issue them the policies and told them it was none of their business what companies they were in? A I absolutely did no such thing.

Re-direct examination by Mr. Gilhooly.

Q Just one question. Is there anything in your minutes or in the constitution and by-laws to draw legal papers which are not in conformity with the association? A There is not.

Q He is not given a discretionary power in that manner? A He is not.

Q He is relied upon to draw the papers in accordance with the contract made? A Entirely so.

C. HUBERT DERIVAUX, sworn for the defendant.

Direct examination by Mr. Gilhooly.

Q Mr. Derivaux, you are a member of the Bar of the State? A I am.

Q And have been for how long? A Over three years.

Q And did you prepare the mortgage between the Blanchard Securities, Inc., and the Alliance

Building and Loan Association, which is marked Exhibit C. 1? A I did.

Q Were you present when that mortgage was executed? A I was.

Q Were you present at the conferences in which this loan was consummated? A I was.

Q Was any discussion had with respect to the placing of insurance? A There was none.

Q There was no discussion between you and Mr. Blanchard or anybody else in that company respecting the variance from the application for the loan? A None, with the exception that at the time the money was paid out I believe we had—Mr. Blanchard, the policies he brought in did not total $30,000 and just as to that amount to make up the $30,000, but that is all.

Q There was a conversation as to the amount of the insurance, but nothing said with respect to who was to place the insurance? A Absolutely not.

Cross examination by Mr. Osborne.

Q Mr. Blanchard brought in some policies, did he? A He did.

Q They were accepted? A Yes. That is the custom of Mr. Crooks, that people who have insurance, why, he usually took it.

Q Yes. You drew this mortgage? A I did.

Q On the usual form, I suppose? A Yes.

Q And the same form you have been drawing all their mortgages on? A Yes, substantially—well, whether it is Grover Brothers or another I don't know.

Q But there has never been any criticism from the building and loan as to the form? A No; we have never had any difficulty.

Isaac C. Blanchard, direct.

Re-direct examination by Mr. Gilhooly.

Q This is the first occasion that came to your notice that anybody objected to paying the insurance? A It is.

Q You don't do it any more, do you? A No; I do not.

Mr. Gilhooly: That is our case, your Honor please.

ISAAC C. BLANCHARD, sworn for the complainant.

Direct examination by Mr. Osborne.

Q Are you an officer of the Blanchard Securities, Inc.? A I am.

Q Do you recall a conversation with Mr. Crooks at the bank in which you discussed insurance policies? A I do.

Q Can you state whether Mr. Crooks did say, or did not, that it was none of your business—(interrupted). A Mr Crooks made the statement it was none of our business what insurance companies he placed the insurance with and, when I questioned him further as to what insurance companies he usually placed the insurance, he was not qualified to tell me the names of the insurance companies. I asked him to name any one and he couldn't name a single insurance company, and he appeared to me to be very unqualified to write—

Mr. Gilhooly: I object.

The Court: No.

Q Not your opinion. Just state what happened. Now, why is it material for you and your company to know what companies your insurance is placed in?

Mr. Gilhooly: Your Honor please, I object on the ground it is not proper rebuttal. This matter was all covered in the direct case of the complainant.

The Court: I will sustain the objection.

Mr. Gilhooly: No cross.

Mr. Osborne: We rest.

MEMORANDUM OF VICE-CHANCELLOR.

Filed September 9, 1926.

IN CHANCERY OF NEW JERSEY.

Between BLANCHARD SECURITIES, INC., *Complainant,* *and* THE ALLIANCE BUILDING AND LOAN ASSOCIATION OF NEWARK, *Defendant.*	*On Bill, etc.* *Memorandum.*

Messrs. Osborne, Cornish & Scheck for complainant.

Messrs. Wolber & Gilhooly for defendant.

CHURCH, *V.-C.*

The facts in this case are, briefly, these: Complainant applied to the defendant for a loan, which was granted. The application was a printed form signed December 24, 1293. In it the applicant authorizes the defendant to place the insurance. It was not under seal. The mortgage, which was executed January 3, 1924—of, course, under seal—was prepared by defendant's attorney. It provides that complainant shall keep the property insured and assign the policy to defendant, and in default of complainant's doing this, defendant shall have the right so to do. Defendant accepted insurance under the terms of the mortgage from its execution until the time this controversy arose.

Memorandum of Vice-Chancellor.

The first point is, do the terms of the application govern or those of the mortgage? "A contract under seal embracing the whole subject matter of a former contract not under seal supersedes the former." Hargrave *v.* Conroy, 19 New Jersey Equity 281. I think, therefore, the terms of the mortgage in this case govern.

The second point is, shall defendant be allowed to have the mortgage reformed so that it will conform to the application? I think not. There was no mutual mistake. Complainant testified that the mortgage represented his understanding of the final contract. Defendant drew the mortgage, accepted it, and accepted insurance procured according to its terms. If defendant had so chosen, when the mortgage was returned to it executed, it could have declined to accept it, even though drawn by its own attorney, and insisted on strict adhesion to the terms of the application before making the loan. It did accept the mortgage, loan the money and accept insurance under the mortgage. In other words, it acquiesced in the terms of the mortgage and is now estopped from asking for its reformation.

I will advise a decree according to the terms of complainant's bill.

Final Decree.

FINAL DECREE.

Filed September 21, 1926.

IN CHANCERY OF NEW JERSEY.

Docket 59—Page 607.

Between BLANCHARD SECURITIES, INC., *Complainant,* *and* THE ALLIANCE BUILDING AND LOAN ASSOCIATION OF NEWARK, *Defendant.*	*On Bill, &c.* *Final Decree.*

This cause coming on to be heard in the presence of Harry V. Osborne, of the firm of Osborne, Cornish & Scheck, of counsel with complainant, and Edward J. Gilhooly, of the firm of Wolber & Gilhooly, of counsel with the defendant, and the Court having examined and considered the pleadings and heard and considered the proofs taken orally and in open court, and heard and considered the arguments of counsel thereon, and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by it in its bill of complaint,

It is, on this 21st day of September, 1926, by 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, doth hereby order, adjudge and decree that the provisions in the mortgage set forth in the bill of complaint in

this cause constitute the agreement between the complainant and the defendant relating to fire insurance on the premises described in the said mortgage; and it is

FURTHER ORDERED, ADJUDGED and DECREED that the said agreement be in all things specifically performed by the said defendant throughout the entire term of the said mortgage; and that the said defendant accept from the complainant fire insurance policy which, as alleged in the said bill of complaint, the complainant furnished and tendered to the defendant; and that the defendant accept from the complainant any and all renewals of the said fire insurance policy throughout the terms of the said mortgage, provided only that such renewal or renewals be in the same fire insurance company, or any other fire insurance company authorized to do business in the State of New Jersey, and that such renewal policy or policies be in the form which shall be standard at the time of such renewal; and it is

FURTHER ORDERED, ADJUDGED and DECREED that the defendant, its officers, directors, agents and servants be, and they are hereby enjoined and restrained from subscribing to or carrying any fire insurance on the said premises, other than insurance furnished by the complainant from charging complainant with the cost thereof, unless complainant fails to furnish said insurance; and it is

FURTHER ORDERED that the said defendant pay to the said complainant the costs of this suit to be taxed, including a counsel fee of $150, which is hereby allowed to said complainant.

IT IS FURTHER ORDERED that true but uncertified copies of this decree and of said taxed costs

Final Decree.

be served on the solicitors of said defendant within ten days after the date hereof.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

A true copy.

THOMAS BARBER,
Clerk.

Notice of Appeal.

NOTICE OF APPEAL.

Filed December 14, 1926.

IN CHANCERY OF NEW JERSEY.

59-607.

Between

BLANCHARD SECURITIES, INC.,
Complainant,

and

THE ALLIANCE BUILDING AND LOAN ASSOCIATION OF NEWARK,
Defendant.

On Bill, &c.

Notice of Appeal.

The defendant hereby appeals from the decree made in the above-stated cause bearing date the 21st day of September, 1926, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all cases.

Dated, December 8, 1926.

WOLBER & GILHOOLY,
Solicitors for and of Counsel
with the Defendant.

I conceive there is good cause for appeal in the above-stated cause.

JOSEPH G. WOLBER,
Of Counsel with Defendant.

Amended Notice of Appeal.

Service of a copy of the within notice of appeal is hereby acknowledged this 13th day of December, 1926.

OSBORNE, CORNISH & SCHECK,
Solicitors for and of Counsel
with Complainant.

AMENDED NOTICE OF APPEAL.

Filed December 17, 1926.

IN CHANCERY OF NEW JERSEY.

59-607.

Between

BLANCHARD SECURITIES, INC.,
Complainant,

and

THE ALLIANCE BUILDING AND LOAN ASSOCIATION OF NEWARK,
Defendant.

On Bill, &c.

Amended Notice of Appeal.

The defendant hereby appeals from the decree made in the above-stated cause bearing date the 21st day of September, 1926, and which decree was recommended by Vice-Chancellor Alonzo Church, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all cases.

Dated, December 8, 1926.

WOLBER & GILHOOLY,
Solicitors for and of Counsel
with Defendant.

Amended Notice of Appeal.

I conceive there is good cause for appeal in the above-stated cause.

JOSEPH G. WOLBER,
Of Counsel with Defendant.

A true copy.

THOMAS BARBER,
Clerk.

Service of a copy of the within-amended notice of appeal is hereby acknowledged this 16th day of December, 1926.

OSBORNE, CORNISH & SCHECK,
Solicitors for and of Counsel
with Complainant.

PETITION OF APPEAL.

Filed December 17, 1926.

New Jersey Court of Errors and Appeals

BLANCHARD SECURITIES, INC., *Respondent,* and THE ALLIANCE BUILDING AND LOAN ASSOCIATION OF NEWARK, *Appellant.*	*Appeal from Court of Chancery.* *Petition of Appeal.*

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

The petition of The Alliance Building and Loan Association of Newark, the appellant in the above-stated cause, respectfully shows, that your petitioner finds it is aggrieved by a decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date September 21, 1926, wherein Blanchard Securities, Inc., was complainant, and the said The Alliance Building and Loan Association of Newark, defendant, in this respect, to wit:

That the said decree adjudges that the provisions in the mortgage set forth in the bill of complaint in this cause constituted the agreement between the complainant and the defendant relating to fire insurance on the premises described in said mortgage upon the ground that the same is erroneous, for that it was established by the proofs in the case that a certain application was made by the Blanchard Securities, Inc.,

for a loan of thirty thousand ($30,000) dollars on certain property described in the bill of complaint, which loan was to be made subject to the constitution and by-laws of said association, and Blanchard Securities, Inc., did expressly, and in said application, authorize The Alliance Building and Loan Association of Newark to place the fire insurance on the property in such company as said association might select. And it was further established by the proofs in the case that the by-laws of The Alliance Building and Loan Association of Newark expressly provide that the said association shall have power to insure all buildings upon which loans are made and also to renew the same for such amounts and under such rules and regulations as the Board of Directors shall determine and that the said Board of Directors pursuant to due corporate action did provide that all insurance on properties on which the association held loans should be placed through the secretary of said association. The decree is erroneous in that it requires The Alliance Building and Loan Association to accept insurance which has been placed by the borrower in said association and through the borrower's own agents or brokers, contrary to the provisions of the by-laws and regulations of the Board of Directors, as well as the aforesaid application.

And your petitioner humbly appeals from that part of the decree which adjudges that the said agreement be in all things specifically performed by the said The Alliance Building and Loan Association of Newark throughout the entire term of the said mortgage; and that the said defendant accept from the complainant fire insurance policy which, as alleged in the bill of com-

plaint, complainant furnished and tendered to the defendant; and that the defendant accept from the complainant any and all renewals of the said fire insurance policy throughout the term of the said mortgage provided only that such renewal or renewals be in the same fire insurance company or any other fire insurance company authorized to do business in the State of New Jersey, and that such renewal policy or policies be in the form which shall be standard at the time of such renewal; for the reason that the same is erroneous in that it has been established by the proofs in the case that the by-laws of the association and the regulations provided for by the directors of said association as well as the application for the loan with respect to the placing of fire insurance should control.

And your petitioner humbly appeals from that part of the decree which adjudged and decreed that The Alliance Building and Loan Association of Newark, its officers, directors, agents and servants, be enjoined and restrained from subscribing to or carrying any fire insurance on the said premises other than insurance furnished by the complainant and from charging the complainant with the cost thereof unless complainant failed to furnish said insurance; on the ground that the same is erroneous in that Blanchard Securities, Inc., did expressly authorize The Alliance Building and Loan Association of Newark to place the fire insurance on the mortgaged premises in such company as it might select and for the further reason that it has been established by the proofs in the case that the by-laws of said association and the regulations passed thereunder by the Board of Directors should govern with respect to the placing of fire insurance.

Petition of Appeal.

And your petitioner humbly appeals from that part of the decree which directs The Alliance Building and Loan Association to pay to the complainant the costs of this suit as well as a counsel fee of one hundred ($100) dollars, on the ground that the decree of the Court of Chancery is erroneous and the costs should not have been taxed against The Alliance Building and Loan Association of Newark.

And your petitioner humbly appeals from the decree heretofore entered in the above-entitled cause on the ground that the same is erroneous in that The Alliance Building and Loan Association of Newark in its counter-claim prayed that the mortgage executed by the Blanchard Securities, Inc., be reformed to the end that the same would comply with the express agreement entered into between said parties as evidence by the application for a loan made by Blanchard Securities, Inc., wherein and whereby Blanchard Securities, Inc., did expressly authorize The Alliance Building and Loan Association of Newark to place insurance on the property in such company as it might select, whereas the decree denies The Alliance Building and Loan Association of Newark the relief prayed for in its counter-claim.

And your petitioner humbly appeals from the entire decree in that the same was erroneous in that the complainant's proofs established no equity and the Court of Chancery was thereby without jurisdiction to grant the relief prayed for in complainant's bill.

Your petitioner therefore prays that the said decree of the said Chancellor may be in all particulars reversed, set aside and for nothing holden.

Petition of Appeal.

And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

WOLBER & GILHOOLY,
Solicitors for and of Counsel
with Appellant.

Service of a copy of the within petition of appeal is hereby acknowledged this 13th day of December, 1926.

OSBORNE, CORNISH & SCHECK,
Solicitors for and of Counsel
with Respondent.

ANSWER TO PETITION OF APPEAL.

Filed December 14, 1926.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BLANCHARD SECURITIES, INC., *Complainant-Appellee,* *vs.* THE ALLIANCE BUILDING AND LOAN ASSOCIATION OF NEWARK, *Defendant-Appellant.*	*On Appeal from the Court of Chancery.* *Answer to Petition of Appeal.*

The answer of Blanchard Securities, Inc., the above-named appellee, to the petition of appeal of The Alliance Building and Loan Association of Newark, the above-named appellant.

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on the 21st day of September, 1926, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be taxed in favor of this appellee.

OSBORNE, CORNISH & SCHECK,
Solicitors for and of Counsel
with Appellee.

Service of the within answer is hereby acknowledged this 13th day of December, 1926.

WOLBER & GILHOOLY,
Solicitors for Appellant.

Exhibit C. 1.

THIS INDENTURE, made the third day of January, in the year of our Lord One Thousand Nine Hundred Twenty-four BETWEEN Blanchard Securities, Inc., a corporation of the State of New Jersey, having its principal office in the City of Newark in the County of Essex and State of New Jersey, parties of the first part; and the Alliance Building and Loan Association of Newark, a corporation of the State of New Jersey, party of the second part:

WHEREAS, the said Blanchard Securities, Inc., a corporation, is justly indebted to the said party of the second part in the sum of Thirty Thousand ($30,000) Dollars, lawful money of the United States of America, secured to be paid by a certain bond or obligation, bearing even date with these presents, in the penal sum of Sixty Thousand ($60,000) Dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of Thirty Thousand ($30,000) Dollars, lawful money as aforesaid, to the said party of the second part, its successors or assigns, in the manner following, viz.: By the payment of One Dollar per month on each of one hundred fifty shares of the capital stock of said Association owned by Blanchard Securities, Inc., and standing in its name on the books of said Association, and assigned to said party of the second part as collateral security for the pay-

ment hereof, and on which this loan is based, on the first Thursday of each and every month hereafter, or such other time as may hereafter be appointed for that purpose, until the said shares shall attain the par value of Two Hundred Dollars each, together with interest on said sum of Thirty Thousand ($30,000) Dollars, to be computed from the day of the date hereof at the rate of six per cent. per annum and payable monthly at the same time and in the same manner as the stock payments aforesaid, and also all fines that may become due, as provided for by the Constitution and By-Laws of said Association, which have been duly assented to by said party of the first part and are made a part hereof.

And it is thereby expressly Agreed, that should any default be made in the payment of the said interest, or installment on said shares, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or installment on said shares remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of sixty days, or should the said parties of the first part refuse or neglect for ten days after demand to produce and exhibit to the party of the second part the vouchers showing the payments of such tax, assessment, water rent or other lien due and payable, then and from thenceforth, that is to

say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of Thirty Thousand ($30,000) Dollars, or the unpaid residue thereof with all arrearage of interest thereon, fines, shall at the option of the said party of the second part, or its legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in any wise notwithstanding: as by the said bond or obligation, and the conditions thereof, reference being thereunto had, may more fully appear.

Now this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to its successors and assigns forever, All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Irvington in the County of Essex and State of New Jersey.

Beginning in the northerly line of Clinton Avenue at a point therein distant twenty-nine feet and four one-hundredths of a foot easterly

from the easterly line of Twenty-first Street; thence running along the northerly line of Clinton Avenue south sixty-six degrees forty-six minutes twenty seconds east eighty feet and forty-five one-hundredths of a foot; thence North forty-one degrees fifty-seven minutes forty seconds east one hundred nineteen feet and seventy-six one hundredths of a foot; thence North forty-eight degrees two minutes twenty seconds west seventy-six feet and twenty one-hundredths of a foot, and thence South forty-one degrees fifty-seven minutes forty seconds west one hundred forty-five feet and sixty one-hundredths of a foot to the northerly line of Clinton Avenue and the point or place of BEGINNING.

It is expressly understood and agreed that the party of the first part hereby mortgages the right to maintain the chimney and gutter on the building hereby mortgaged which chimney and gutter overhangs or extends on the adjoining premises owned by the party of the first part as shown by survey made by Marshall A. Congleton, surveyor, dated January 9th, 1924.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances:

TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said party of the second part, its successors

and assigns, to its and their own proper use, benefit and behoof forever. AND the said part of the first part, and heirs the above described and granted premises, and every part thereof, with the appurtences, in the quiet and peaceable possession of the said party of the second part, its successors, legal representatives and assigns against every person whomsoever will WARRANT and forever DEFEND.

PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, its successors or assigns, shall well and truly pay unto the said party of the second part, its successors or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected, and to be erected upon the lands above conveyed, insured against loss or damage by fire in some safe and responsible insurance company or companies to an amount approved of by the said party of the second part, its successors or assigns, and assign the policy and certificate thereof to the said party of the second part; and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation and secured by these presents, payable on demand with interest

at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

And the said Blanchard Securities, Inc., the owner of the lands above described, for itself, its successors and assigns, does further covenant and agree to and with the said party of the second part, its successors and assigns, that he or they will not claim and shall not be entitled to any credit on the interest payable on this mortgage for taxes paid on the real property embraced herein, but will pay and bear all such taxes, so that the mortgagee shall receive the rate of interest above agreed on without reduction or abatement.

In Witness Whereof, the said party of the first part has caused these present to be signed by its proper officers and its corporate seal to be hereto affixed, the day and year first above written.

BLANCHARD SECURITIES, INC.

By: William L. Blanchard,

(seal) President.

Isaac C. Blanchard,

Secretary.

State of New Jersey, }
County of Essex. } *ss.*

Be It Remembered, That on this eleventh day of January, in the year One Thousand Nine Hundred and twenty-four before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Isaac C. Blanchard known to me to be the Secretary of the Blanchard Securities, Inc., a Corporation, the Mortgagor within named, who being by me duly sworn on his oath said and made proof to my satisfaction

that he is such Secretary, and that he well knows the Common Seal of said Corporation, and that the Seal affixed to the within Mortgage is such Common Seal and was thereto affixed by William L. Blanchard the President of said Corporation, and that the said Mortgage was by the said President also signed and delivered as and for the voluntary act and deed of said Corporation in the presence of said Deponent, who thereupon subscribed his name thereto as attesting witness.

ISAAC C. BLANCHARD.

Sworn and subscribed before me
at Newark, N. J., this 11th day
of January A. D. 1924.

JOSEPH G. WOLBER,
A Master in Chancery of New Jersey.

MORTGAGE

Blanchard Securities, Inc.,
to
Alliance Building and Loan Association

(Stamp) Compared by 38 & 17

Dated, January 3rd 1924.

Received in the Register's Office of the County of Essex, N. J., on the 21st day of January, A. D., 1924, at 11:26 o'clock in the forenoon, and Recorded in Book B 50 of Mortgages for said County, on pages 401-403.

HOWARD S. DODD,
Register.

Wolber & Gilhooly,
763 Broad St.,
Newark, N. J.

Entered J G W

Complainant's Exhibits.

Exhibit C. 2.

Policy #8100407, Scottish Union and National Insurance Company of Edinborough

Amount $20000

Covers property of Blanchard Securities Inc situate at 913-917 Clinton Ave Nwk N J

Covers interest of owner and Alliance Building and Loan Association as Mortgagee.

This policy was effected by Blanchard Securities Inc.

Exhibit C. 3.

March 10th, 1924.

Alliance Building and Loan Association,
Newark, New Jersey.

Gentlemen:

Your letter of March 8th, 1924, in regard to insurance on property 915-17 Clinton Ave., Irvington, received. Am sorry that you decided that $30,000.00 worth of insurance must be carried, as we must pay premium on something that we could never recover on from the Insurance Company, but we are willing to abide by your decision.

But when you ask that your Secretary place the insurance, that is wrong, as he knows nothing of the business, and is not qualified to handle insurance; on the other hand, we get work from Insurance Companies, and feel we are obligated to give them our business.

It seems to be the rule in your Building and Loan for everyone to charge the borrower a bonus. We call attention to your lawyers bill of $523.11. When we bought this property, lawyers fee was under $150.00.

We mortgaged with the 9th Ward Building and Loan for $30,000.00 six different titles, where your loan was only one title, and the lawyer for 9th Ward charged us $225.36. Am sending you these two bills, and hope you will take them up and see that we are not overcharged.

We feel we owe you or your officers nothing, as we have paid our Bonus, and are willing to place insurance, and pay a reasonable fee for the search.

Yours truly,
BLANCHARD SECURITIES, INC.

WEB C

Exhibit C. 4.

October 22, 1925.

Thomas L. R. Crooks, Esq.,
Washington Trust Co.,
Broad Street,
Newark, N. J.

Dear Sir:—

We return to you herewith, for cancellation, the following certificates of insurance for policies on building at 9-13-15-17 Clinton Avenue, Irvington, which certificates you recently forwarded us.

Connecticut Fire Ins. Co.	#04109
Springfield Fire & Marine Ins. Co.	#341758
National Fire Ins. Co.,	#972572
Queen Ins. Co. of America	#9837

You are also receiving the bill for premiums on these policies, which, under the circumstances, we cannot see our way clear to pay.

We have already placed policy #8100407 for $20,000. in the Scottish Union & National Insurance Co., and left the original policy with proper endorsement in favor of the Alliance B & L Association of Newark, as mortgagee. We shall therefore, not require and not accept the insurance represented by the four certificates above referred to. The amount of this policy, $20,000., is as agreed upon by the Board of Directors and the Blanchard Securities, Inc. at the time of the placing of the mortgage.

The experience of Blanchard Securities, Inc. has proven that it is much better practice to place risks of this sort in one company rather than to distribute it among several companies, and the holding of the insurance by one company saves considerable negotiations in the event of a loss, and usually assists in the settlement of any loss. Another matter that appeals very strongly to us is that the policies which you have caused to be placed on the property are only for a period of one year, and at a rate of 1.80, whereas the policy which we have caused to be taken out in the Scottish Union is for three years and the rate is 4.50.

A day or two ago we received a letter from Mr. McGuire, the president of the Alliance B & L Association, in which he said that the question of the policy, or policies, to be placed upon the Clinton Avenue property would be taken up at the November meeting of the Board. The insurance now on the property expires today, and we do not desire a situation to arise where our property will be uninsured and the Building & Loan Association unprotected under its mortgage.

Yours very truly,

Complainant's Exhibits.

Exhibit C. 5.

A Fee of Three Dollars Will Be Charged for Each Inspection.

The Alliance Building and Loan Association
45 Clinton Street

Newark, N. J. Dec 24 1923

The undersigned desires to procure a Loan of $30.000 on the following property, subject to the Constitution and By-Laws of above Association:

Location 913-915 & 917 Clinton Ave Irvington N. J.

Dimensions of Ground 78x145

Value of Ground, $11.700

Are there buildings on ground? If so, state: 1st, size 75x145

2d, Building Material Brick 3rd, Purpose of Use Service & Garage

4th, Value, $65.000 5th, Present Insurance, $15.000 6th, Annual Rent, $6,500.

If buildings are to be erected, state: 1st, Size .....

2d, Building Material.....

3rd, Purpose of Use .....

4th, How far Advanced .....

5th, Value, $.....

6th, Insurance to be Placed, $.....

7th, Annual Rent to be Charged, $.....

Is Owner to Occupy or Rent? Rent

Is Property under Foreclosure? No

Is the Property Free and Clear? Yes

Is the Street Curbed? Yes Flagged? Yes Paved? Yes Sewered? Yes Supplied with Water? Yes With Gas? Yes

Defendant's Exhibits.

Plans and Specifications to be in the Committee's hands by.....

Is any portion of this Loan to be used for improving this Property? No

913-915 & 917 Clinton Ave

78′ 145′

Montgomery Ave 21 Street

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 Blanchard Securities Inc

Address 45 Touner St Newark N. J.

We have examined the property within described and value it as follows:

Land, $11700— Buildings, $4000— Total, $51700— and recommend that a loan of $30000— be granted, and that insurance of not less than $30000 be carried on same.

Committee Appointed:

Wm E. Selby.	Wm E Selby
J Wm Hatt.	J William Hatt
Munson G. Doremus.	Munson G. Doremus
	Committee

Dated .....

.....

Exhibit D. 1.

Policy No 36831. Springfield Amt 5000
Covers period from Oct. 22, 1924 to Oct 22, 1925
Prop. 913-917 Clinton Ave Irvington.
Owner: Blanchard Securities Inc
Mortgagee Alliance B & L Association
Policy Effected through T. L. R. Crooks Broker.

Defendant's Exhibits.

Exhibit D. 2.

Pol. No 03822—Connecticut Fire Amt 5000
Covers period from Oct 22/24 to Oct 22, 1925
Property 913-917 Clinton Ave Irvington
Owner Blanchard Securities Inc.
Mortgagee Alliance B & L Association
Policy effected through T. L. R. Crooks Broker.

Exhibit D. 3.

Policy No 101015 Continental—Amt 5000
Covers period from Oct 22, 1924 to Oct 22, 1925
Prop. 913 917 Clinton Ave. Irvington
Owner Blanchard Securities Inc
Mortgagee Alliance B. & L Assn
Policy effected through T. L. R. Crooks, Broker

Exhibit D. 4.

Pol. No 920537—National Fire Amt 5000.
Covers period from Oct 22, 1924 to Oct 22, 1925
Property 913-917 Clinton Ave Irvington
Owner Blanchard Securities Inc
Mortgagee Alliance B & L Assn
Policy effected through T. L. R. Crooks Broker

Exhibit D. 5.

Policy No. 972572; National Fire Amount $5000
Covers period from Oct. 22 1925 to Oct 22 1926.
Property 913-917 Clinton Ave. Irvington, N. J.
Owner: Blanchard Securities Inc.
Mortgagee—Alliance B & L Assn.
Policy effected through T. L. R. Crooks, Broker.

Defendant's Exhibits.

Exhibit D. 6.

Policy No. 0419: Connecticut Fire. Amount $5000
Covers period from Oct 22, 1925 to Oct 22, 1926.
Property 913-917 Clinton Ave. Irvington. N. J.
Owner: Blanchard Securities Inc.
Mortgagee: Alliance B & L Association.
Policy effected through T. L. R. Crooks, Broker.

Exhibit D. 7.

Policy No. 9837 Queen Ins Co. Amount $5000
Covers period from Oct 22, 1925 to Oct 22, 1926.
Property: 913-917 Clinton Ave. Irvington, N. J.
Owner: Blanchard Securities Inc.
Mortgagee: Alliance B & L Assn.
Policy effected through T. L. R. Crooks. Broker.

Exhibit D. 8.

Policy No. 37458. Springfield Fire. Amount $5000
Covers period from Oct. 22, 1925 to Oct 22, 1926.
Property 913-917 Clinton Ave Irvington N. J.
Owner Blanchard Securities Inc.
Mortgagee: Alliance B & L Assn.
Policy effected through T. L. R. Crooks Broker.

Defendant's Exhibits.

Exhibit D. 9.

BLANCHARD SECURITIES, INC.
45 Poinier Street
Wm. L. Blanchard, President
Phone So. Orange 1601
Marion A. Blanchard, Vice-President
I. Clifford Blanchard, Sec'y and Treas.
Phone So. Orange 1600
Telephone Waverly 2652

Newark, N. J. October 19, 1925.

Mr. Edward F. Maguire, President,
Alliance Building & Loan Assn.,
Newark, N. J.

My dear Sir:

We have received from Mr. T. L. R. Crooks, four certificates of insurance policies for $5,000.00 each covering the property owned by us at 913-917 Clinton Ave., Irvington, N. J. which we absolutely refuse to accept.

We must positively handle this insurance ourselves and will forward you to day a policy in the sum of $20,000.00 covering the above premises, issued by the Scottish Union & National Insurance Co. and must insist you accept the policies that we have checked and are satisfied with.

As far as the brokerage is concerned, we are satisfied to have Mr. Crooks act as broker in this instance and see that he receives proper recognition as such.

We absolutely refuse to accept policies of which we have no knowledge and have never been checked by us and certainly hope you will take this matter up as it is of vital importance to us.

Defendant's Exhibits.

We might further add that our relationship with the Scottish Union-and National Insurance Co. has been such that they do not stand on technicalities and anything reasonably implied in the good many years of our business connections with them, have always been fulfilled by them They have just suffered quite a loss through a big fire of ours and we are doing our best to help re-imburse them.

Yours very truly,
BLANCHARD SECURITIES, INC.
W. L. Blanchard,
President.

WLB/F

Exhibit D. 10.

October 24, 1925

Blanchard Securities, Inc.
45 Pioneer Street,
Newark, New Jersey

Attention of Mr. William L. Blanchard

My dear Mr. Blanchard:

We are in receipt of your communication of October 22nd, returning four certificates of insurance, which, properly, should be in your possession as they are furnished by the Companies for that purpose. If you wish us to retain them, we shall place them safely among our papers.

In my conversation with you, when these policies were originally placed by me, I directed your attention to the difference in the rate, and asked whether you desired the property insured for a one or three year period. In that conversation you informed me positively that you

desired the policy to cover a one year period. Never having received any request from you to the contrary, I have accordingly renewed it for the same period. If you wish these policies drawn for a three year period and will so advise me, I will be pleased to have them changed. In the absence of any communication from you, I shall consider that the one year period is satisfactory to you, as it was a year ago and will then allow the policies to stand as they are now drawn.

Mr. Maguire has advised me that the policy which you left with him has been returned to you in a letter which you referred to as having received and for your information I would advise you that the policies placed by the Association on your property will be continued in force in order that our interest as Mortgagee and yours as owner will be protected.

Yours very truly,

Signed T L R Crooks
Secretary

TLRC:RS
P

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

BLANCHARD SECURITIES, INC.,
Complainant-Respondent,

and

THE ALLIANCE BUILDING AND LOAN ASSOCIATION of Newark,
Defendant-Appellant.

BRIEF FOR APPELLANT.

FACTS.

On December 24, 1923, Blanchard Securities, Inc., applied to the Alliance Building and Loan Association of Newark, for a loan of thirty thousand ($30,000) dollars. The said Blanchard Securities, Inc., offered as collateral security for said loan certain of its property situate at No. 913-917 Clinton avenue, Irvington, New Jersey. The application which was made out by William L. Blanchard acting on behalf of Blanchard Securities, Inc., stated in part as follows:

> "The undersigned desires to procure a loan of thirty thousand ($30,000) dollars on the following property subject to the constitution and by-laws of the above association";

The application then proceeded to describe the property and it stated further:

> "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" (State of Case, p. 73).

The application made by the complainant was accepted by the defendant association and the loan of thirty thousand ($30,000) dollars was granted by the defendant to the complainant. In attempting to carry into execution the terms of the aforesaid application, a mortgage was executed by the complainant to the defendant. The clause whereby the defendant was authorized to place the insurance was not incorporated in the mortgage, but in its place and stead a printed form of mortgage was used which provided that the complainant should keep the building erected, and to be erected upon the land thereby conveyed insured against loss or damage by fire, in some safe and responsible insurance company or companies, in an amount approved by the said defendant, its successors or assigns, and assign the policy and certificate thereof to the defendant; and in default thereof it should be lawful for the said defendant to effect such insurance, etc.

At the time of the granting of the aforesaid loan and of the execution of said mortgage the complainant had already in effect on its property a policy of insurance in the amount of fifteen thousand ($15,000) dollars. This policy of insurance was to expire by its own limitation on October 22, 1924. Although the loan was granted for thirty thousand ($30,000) dollars the building and loan association agreed to permit the sum of twenty thousand ($20,000) dollars to be the amount of the insurance on the property inasmuch as the complainant pledged some additional free shares of stock then held by William L. Blanchard in the defendant association, as additional security for the loan (State of Case, p. 37).

Section 9 of the constitution and by-laws of the Alliance Building and Loan Association of Newark provides as follows:

> "This association shall have power to insure all buildings upon which loans are made and also to renew the same for such amounts, under such rules and regulations as the Board of Directors shall determine. The association shall have the power to pay any premiums then remaining unpaid and collect the amount in the same manner and with like fines as interest and dues."

The aforesaid by-law was in effect at the time of the execution of the mortgage aforesaid and has not been amended or repealed (State of Case, p. 21).

In February, 1924, a resolution was passed by the directors to the effect that all insurance on property on which the association had granted loans should be placed by the secretary (State of Case, p. 36). When the fire insurance policy in the amount of twenty thousand ($20,000) dollars which was in effect when the mortgage loan was granted and the mortgage executed expired in October, 1924, the secretary of the building and loan association in compliance with the by-laws and resolution aforesaid placed four (4) policies of insurance in the aggregate amount of twenty ($20,000) dollars on the property. This insurance was effected through T. L. R. Crooks, as broker. Mr. Crooks was secretary of the association (Exhibits D. 1, 2, 3 and 4; State of Case, pp. 25, 29, 37, 74, 75). These policies were for a period of one year and were to expire on October 22, 1925.

When the policies of insurance thus placed by the secretary were about to expire in October, 1925, the secretary of said association renewed said policies and informed the Blanchard Securi-

ties, Inc., of his action and he sent to them certificates of the policies. These policies were introduced as evidence and were marked Exhibits 5, 6, 7 and 8 (State of Case, pp. 75-76). The Blanchard Securities, Inc., declined to permit the association through its secretary or anyone else to effect this insurance and obtained a policy in the amount of twenty thousand dollars and forwarded it to the association (State of Case, p. 27). The defendant association refused to accept the policy thus placed by the complainant. The complainant contended that it was not desirable to have the insurance placed in four separate companies nor was it desirable to have the policies run for a period of one year, but that it desired to have the policy run for a period of three years (State of Case, p. 71, Exhibit C. 4). The secretary of the association testified that before renewing the policy he communicated with William L. Blanchard, president of the complainant company and was informed that the insurance should be placed for a period of one year (State of Case, p. 78, Exhibit D. 10).

Upon the refusal of the building and loan association to accept the policy of insurance forwarded to them by the Blanchard Securities, Inc., the latter company filed its bill in the Court of Chancery alleging therein that the provisions in the mortgage should control and that the mortgagor was therein empowered to place the insurance itself and praying that the contract thus made be specifically performed and it prayed for further relief in that the building and loan association be prohibited from carrying any other insurance and be restrained from charging the Blanchard Securities, Inc., with the amount of the premiums on the insurance placed by it, the building and loan association. The

building and loan association filed its answer wherein it set forth that the Blanchard Securities, Inc., expressly agreed in the application for its loan that the loan was made subject to the constitution and by-laws of the association; that the by-laws provided as aforesaid; that the resolution was passed by the Board of Directors authorizing the secretary to place the fire insurance on properties on which the association held loans; that the Blanchard Securities, Inc., in its application for loan expressly authorized the building and loan association to place fire insurance on the property in such company as they might select. By way of counter-claim the building and loan association prayed that the mortgage be reformed to carry out the terms of the written application.

After a hearing a decree was advised in favor of Blanchard Securities, Inc., and it is from this decree that the within appeal is taken.

LAW POINTS.

I. The application for loan, the By-Laws of the Building and Loan Association and the resolution of the directors passed thereunder should control the rights of the parties.

In the memorandum filed by the Vice-Chancellor it was stated that the defendant accepted insurance under the terms of the mortgage from its execution until the time this controversy arose. It further was stated that the defendant association acquiesced in the terms of the mortgage and is now estopped from asking for its reformation. This is not strictly in accord with the fact. It is true that the defendant association accepted the insurance which was in effect when the mortgage was executed. To have

done otherwise would have caused the borrower to sustain a loss by having to accept the return premium on the policies at a short rate.. This it did not desire to do. However, in October, 1924, Mr. T. L. R. Crooks, the secretary of the defendant association, placed insurance on the property to take the place of the policy then expiring and this insurance was in effect for the ensuing year, and it was not until the insurance so placed by the secretary was about to expire in 1925 that the present controversy arose. It appears from the facts in the case that the complainant made an application to procure the loan in question from the defendant building and loan association subject to the constitution and by-laws of the association, and it further expressly authorized the association to place the fire insurance on the property which was to be offered as a pledge in such company as they may select. In addition the following language appeared in the mortgage executed by the complainant company.

> "As provided for by the Constitution and By-Laws of said Association, which have been duly assented to by said party of the first part and are made a part hereof." (Exhibit C. 1, p. 64, ll. 15-18.)

The aforesaid provision in the constitution and by-laws was in effect as evidenced by section 9 thereof at the time when the mortgage was executed and it was therein provided that the association *shall* have power to insure all buildings upon which loans are made and also to renew the same for such amounts, under such rules and regulations as the Board of Directors *shall* determine. To be true the mortgage executed by the complainant provided that the mortgagor shall and will keep the buildings erected insured against loss or damage by fire,

etc., and assign the policy and certificate thereof to the mortgagee and that in default thereof it shall be lawful for the mortgagee to effect such insurance. It also appeared that pursuant to the power contained in the by-laws the directors did establish and regulate and provide the rule for the placing of fire insurance (State of Case, p. 36). Upon a casual reading of the by-laws, the aforesaid resolution and the provision in the mortgage with reference to the placing of fire insurance it might appear that the provisions are inconsistent and irreconcilable, but it is respectfully submitted that they can be read together and are not inconsistent. In the first place it is well settled that the by-laws of a corporation may be enforced as a contract between the corporation and the stockholders, and between the latter *inter sese*. *Muller* v. *Hillsborough, etc. Association,* 42 N. J. Eq. 459; *Baumohl* v. *Goldstein,* 95 N. J. Eq. 597. It is also well settled and is a general principle that persons entering mutual companies are presumed to know the terms of the charter and by-laws under which they organized. Nor can the officers of such association dispense with the terms and conditions of such charters and by-laws, unless they are expressly authorized to do so. *Locher* v. *Supreme Council, etc.,* 65 N. J. L. 649. That one is a borrowing member of a building and loan association does not entitle him to ignore the fact that he is still a member of such association into which he has voluntarily entered and that he is bound by its articles and by-laws which constitute part of his contract and that therefore they must be given proper effect in construing the contract. *Campbell* v. *Eastern Building and Loan Association,* 98 Va. 729, 37 S. E. 350. Thus it will be seen that the complainant was not only charged with notice of

the by-laws of the association but the by-laws became a part of the contract between the complainant and the defendant. This would be the general rule in any event, but the position of the defendant is especially fortified by the fact that the complainant did expressly agree that the constitution and by-laws of said association were duly assented to by it and that they were a part of the mortgage. Two questions thus far affirmatively appear. The first is whether or not the terms of the mortgage are inconsistent with the provisions of the by-laws and the resolution of the directors passed thereunder. Second, there is the further question presented if it is concluded that there is an inconsistency and that is whether or not the directors of the defendant association had the power to provide that the secretary should place fire insurance on properties on which the association held mortgage loans to the end that the resolution in the light of the particular by-law mentioned aforesaid would be applicable to the mortgage executed prior to the passage of the resolution.

At the time of the execution of the mortgage it appears that the directors of the association had not provided rules and regulations for the placing of fire insurance, although section 9 of the by-laws permitted them so to do. The word "shall" was used in two instances in the particular section, and it is respectfully urged that a fair interpretation of the language used in that section indicated that the directors were authorized to pass such a resolution at any time and that it was intended to be operative in connection with any mortgage loan. It must be borne in mind that loans granted by a building and loan association continue for a considerable length of time, and the fair inference from the

language was that the same was intended to cover all mortgages held by the association. It seems to us that if there is any intent to exclude prior mortgages or to make a resolution to be passed pursuant to this by terms only applicable to mortgages to be executed after the passage of the resolution that appropriate language would have been used to carry into effect that intention. Now, at the time of the execution of the mortgage in question there was no rule or regulation made by the directors and it could reasonably be urged that the provision in the mortgage was to remain applicable until such times as another regulation would be adopted. To be true it was not the intent of the building and loan association to permit the complainant in this cause to place its own insurance because the application for the loan in question expressly provided that the association was to place the insurance, but this argument is merely advanced to show that both the provision of the mortgage and the resolution of the directors are not inconsistent with each other to the end that any change in one or the other would impair the obligations of a contract.

We respectfully urge that it was within the powers of the directors to pass a resolution such as the one which was passed authorizing the secretary to effect fire insurance and that this resolution became applicable to any mortgages previously executed. We are mindful that it is the settled law of this State that a by-law or an amendment to a by-law will not be given a retrospective effect unless the language thereof is plain and unambiguous, nor will a by-law nor an amendment to a by-law be given any effect if it impairs the obligations of a contract already in existence. It is our contention in this case

that the resolution passed by the directors was merely regulatory of the business affairs of the association. As previously stated, the borrower was not only charged with notice of the by-laws of the association, but the by-laws became a part of its contract, to the same extent as if they were written out at length in the mortgage. The mortgagor knew in fact, or in any event in contemplation of law, that the association shall have power to insure all buildings and it knew that this power was subject to being exercised under such rules and regulations as the Board of Directors shall determine. The complainant cannot be heard to say that by reason of the terms contained in the mortgage it became entitled to a vested right with respect to the placing of the insurance because in executing its mortgage and signing the application for the loan it realized that it was subject at all times during the term of the mortgage to the superintending powers of the directors with respect to the placing of the insurance. The rate which he would have to pay is the same whether he places the insurance itself or whether the secretary of the association places insurance, as the rates are controlled by the Schedule Rating Bureau. To be true, its rates in the instant case was less than the rate that would have been charged on the policies placed by the association but that was because the insurance which he placed was for a period of three years instead of one year. He cannot complain of this because he informed the secretary that he wanted the policies placed for a period of one year. It was urged in the court below and will probably be urged here that if the association had the power to change the by-laws with respect to the insurance that the association could change the term or period of the mortgage. This does

not necessarily follow, for in one instance the directors are regulating the affairs of the company and in the second instance they would be impairing the vested rights. Surely the complainant in the present case could not urge that he obtained a vested right to place its own insurance by reason of the terms contained in the mortgage because by its own contract (and the application for a loan upon acceptance of the company became a contract) he expressly authorized the association to place the insurance.

A mortgage as such is not a contract but is in effect a conveyance of the land upon certain conditions. There are certain covenants usually contained in a mortgage, which, of course, can be enforced, but the mortgage in this case was not a contract between the parties. On the contrary, the mortgage was signed and delivered for the purpose of carrying into execution the terms of the contract already entered into between the complainant and the defendant.

In the determination of the present controvery it should also be borne in mind that in the month of October, 1924, the insurance then on the property expired and four policies of insurance were placed by Mr. Crooks as secretary in accordance with the resolution of the directors. Exhibits D. 1, D. 2, D. 3 and D. 4. It is significant to note that Mr. Blanchard permitted Mr. Crooks to place these policies over his objection at that time. It is apparent that Mr. Blanchard on behalf of his company must have concluded that he was bound by the by-laws and resolution passed by the directors in February, 1924.

For the foregoing reason we respectfully contend that by reason of the application for loan, the mortgage itself, the by-laws of the associa-

tion and the resolution passed in February, 1924, by the Board of Directors, the building and loan association was absolutely within its right in having the secretary effect the insurance in October, 1925, and over which the present controversy arose, and that the decree to the effect that the provisions in the mortgage constituted the agreement between the complainant and the defendant relating to the fire insurance on the premises described in the mortgage was erroneous.

DECREE LIMITS THE SELECTION FOR THE INSURANCE COMPANY.

The decree appealed from directs the building and loan association to accept from the complainant the policy which the complainant furnished and tendered to the defendant and to accept any renewal of said policy in the same insurance company or in any other fire insurance company authorized to do business in the State of New Jersey. The complainant expressly authorized the association to place the insurance in any company it saw fit and there is absolutely nothing contained in the mortgage to limit the selection to be made by the association.

COMPLAINANT'S PROOFS ESTABLISH NO EQUITY.

The bill filed by complainant is in fact a bill for specific performance. The complainant does not pray for the specific performance of a contract but prays for the specific performance of a covenant in the mortgage. If the complainant prays for the specific performance of the only contract in existence between the parties (the application), then his bill must fail, because the

defendant has placed the insurance on the property as called for by that contract.

If the defendant association institutes a suit at law to recover the premium advanced by it on the insurance placed for the complainant, then the complainant could urge in the law court all the defenses which he seeks to urge here, and at law the complainant would probably be successful, as it could readily contend that the prior contract merged in the subsequently executed mortgage.

Insofar as the complainant seeks to compel the association to accept his fire insurance policies, the complainant had no standing at this time in the Court of Chancery. The only evidence produced in support of complainant's claim is that the association threatened to charge against its mortgage account the amount of the premium. Complainant is not entitled to any relief on this ground at this time. The complainant is entitled to a cancellation of the mortgage on its property just as soon as it has paid into the association a sum, which, together with the accumulated profits, equals $30,000. Until such time the complainant has no cause for complaint and it can only raise the propriety of the actions of the defendant company in a suit to redeem the lands from the lien of the mortgage when the complainant has paid in the aforesaid sums sufficient to equal the amount of the loan. Consequently, its action was premature insofar as any redress in that court is concerned.

WAS THE CONTRACT (APPLICATION) MERGED IN THE MORTGAGE?

We have in evidence a contract in the form of an application, as well as the mortgage. The application provides one thing with respect to the placing of fire insurance and the mortgage another. The complainant in order to prevail must satisfy this Court that the contract as set forth in the application became merged in the mortgage which was executed subsequently. If it fails to establish a merger then it is without redress here, because the original contract specified the intent of the parties, and if there is a merger then the complainant seeks to establish that the language of the mortgage is the final agreement between the parties. We do not think it necessary for this Court to determine whether or not a merger has taken place. We are mindful that where parties have stipulated in a contract as to a particular feature and they subsequently execute an instrument which deals with that particular subject matter, that our courts have construed the first agreement to have merged into the latest agrement. If the complainant can establish that the application became merged in the mortgage, then he has made out a part of defendant's case on its counter-claim, and it is on the assumption of a merger that the defendant is seeking affirmative relief by its counter-claim.

DEFENDANT ENTITLED TO REFORMATION OF MORTGAGE.

The complainant's bill must fail if the application has not merged in the mortgage, but if it should determine that the application has merged in the mortgage then we urge that the mortgage

should be reformed to set forth the true meaning and intent of the parties.

It is axiomatic in equity that he who seeks equity must do equity. The complainant seeks the aid of this Court to determine that the language in the mortgage shall supplant that of his written application, but we urge that if the complainant seeks the extraordinary aid of this Court that it should be compelled to do equity and it should be compelled to comply with the terms of a solemn obligation entered into by it.

Mr. Blanchard prepared in his own hand the application, and he does not seek to show to this Court that there was any misrepresentation made to him with respect to this application, and with respect to the placing of fire insurance. He does not contend that he did not understand the nature of the agreement which he made. On the contrary, he went to this association to ask for a loan of funds and to get that loan he promised to comply with the constitution and by-laws of the association, and he also agreed to let the association place the insurance on his property in such association as it saw fit. This was all very well until the mortgage loan was procured and the moneys advanced to him by the association. Then the complainant suffered change of heart and says in effect that through an error made by the draftsman, we have been given an advantage which we did not expect to have and which we did not bargain for but we mean to take full advantage of it.

In this connection it should be borne in mind that at the time the mortgage was executed there was absolutely no discussion pertaining to the placing of insurance, and, consequently, it cannot be said that a new agreement was arrived

at between the parties. If there had been a discussion on this phase of the case at that time, then there might be an agreement inserted as to the right of the association in placing the insurance. It should also be borne in mind that no resolution was passed by the Board of Directors authorizing a variance from the terms of the written application.

It becomes patent that the draftsman of the mortgage did not carry into effect the intention of the complainant and the defendant when he prepared the mortgage in question. This gives rise to a question as to whether or not counsel for the association had authority to vary from the contract made between the borrower and the association. Mr. Crooks testified that no such power existed in the counsel for the association (State of Case, p. 45). He admitted that he did not examine the mortgage in question, but it is apparent that he assumed that counsel had prepared it in accordance with the requirements of the association. We do not intend to place any blame on the man who prepared this mortgage because the writer is sure that in many mortgages to building and loan associations the same situation will appear as does in this case. A standard form is used and no thought is given to changing the standard form, even though it did not conform to the true intent and meaning of the parties. We contend that counsel for the association had absolutely no authority to vary from the form of the application.

In the case of *First Italian Building and Loan Association* v. *Di Niscia, et al.*, 78 N. J. Equity 299, 82 Atl., p. 22, it appeared that the secretary of the association in question credited certain payments on account of a mortgage loan

then in dispute, in a manner contrary to the by-laws of the association. The defendants sought to avail themselves of this action by the secretary. This Court in a *per curiam* decision, affirmed the Court of Chancery for the reasons stated in the opinion of the Vice-Chancellor.

Vice-Chancellor Stevens there said:

> "Thirdly, as the contract appearing from the minutes of July, 1907, was to advance money for the purpose of completing the building, it was incumbent on the defendants to show that such contract was changed by the mutual agreement of the respective parties. The secretary certainly had no implied authority to vary the terms of the contract and no express authority authorizing him to do so is shown."

It is clear that counsel had no authority to vary from the terms of the application, and the Board of Directors and the officers of the association might well rest secure in the belief that the contract was carried out according to its terms and there was no obligation on their part to oversee the form and terms of the mortgage.

The province of courts of equity is to reform a contract so as to make it speak what the parties originally intended. Story's Equity Jurisprudence, 14th Ed., Sec. 976, page 354. The same author also says that strictly speaking the Court does not reform the instrument; it corrects the written evidence of the agreement to make it correspond with the agreement of the parties. This is what we are asking in our counter-claim. We maintain, and we think it is established beyond a doubt, that the original intention of the parties was that the association was authorized to place the fire insurance on the property in such company as it may select. We are only asking that the written evidence,

which is the mortgage in this case, be made to correspond with the agreement of the parties. In section 979, the same author says:

> "One of the well recognized and firmly established jurisdiction of court of equity is to reform written contracts where there has been an innocent omission or insertion of a material stipulation, contrary to the intention of the parties, and under a mutual mistake. * * * It is sometimes said that a mistake of law is no ground for equitable relief, but this rule only applies to cases where the contract as entered into, speaks the true agreement of the parties. In such cases equity will not ordinarily reform the contract merely because one or both of the parties were mistaken as to its legal consequence, but where through a mistake of the parties or the draftsman there is a failure to express the actual contract of the parties as contemplated, owing to the use of inapt words or where the legal effect of the terms employed by the parties in putting their contract in writing results in an agreement different from the one really entered into a court of equity will reform the writing so as to effectuate the intention of the parties, even though the mistake was one of law."

In section 980, he says:

> "* * * it is within the province of a court of equity to reform the deed so as to effectuate the true intent of the parties; or where an instrument is drawn which is intended to carry into effect an agreement previously entered into, but which by mistake does not fulfill that intention. It must be alleged and proven that the instrument sought to be corrected failed to express the real agreement or transaction because of mistake common to both parties or because of mistake of one party and fraud or inequitable conduct of the other."

As to the correction of error in description where it appeared that an honest mistake of fact had been made by the secretary is the case of *Slack* v. *Craft,* 57 Atl. 1014.

In the case of *Stern, et al.* v. *Connolly,* 123 Atl. 153, 95 N. J. Eq. 356, decided in the Court of Chancery in 1923, it appeared that Connolly agreed to buy, and Louis Stern Sons, Inc., agreed to sell about 25,000 empty barrels. Delivery was to be completed within a definite time. Within the time stipulated only 15,000 barrels had been delivered. A suit was instituted at law to recover damages for the failure to deliver the remaining 10,000 barrels. Louis Stern Sons, Inc., filed a bill in the Court of Chancery to restrain the action at law to have the contract reformed to state the true intent of the paries. It was contended in that court that the parties intended to sell, and to purchase all the empty barrels which were obtained at that particular plant over that specified period. It was also proved that Stern was not in the cooperage business, but was in the fat rendering business. That court held that the complaint was intended to have the contract reformed, stating in part:

> "Where an agreement has been entered into between parties, and the terms thereof are subsequently reduced to writing, and that writing fails to correctly and accurately set forth the terms of the agreement as made, the court of equity, upon clear proof thereof, will reform the instrument and make it conform to the real agreement between the parties. This is a well-established principle of equity jurisprudence; and if the proofs in this case made it clear that such a situation existed between these parties, the complainant would be entitled to a reformation."

Proceeding further, Vice-Chancellor Lewis, quoting from the case of *Hunt* v. *Rhodes,* 1 Pet. (26 U. S.) I, 7 L. Ed. 27, U. S. Supreme Court stated:

> "Where an instrument is drawn and executed, which professes, or is intended to carry into execution an agreement, whether in writing or by parole, previously entered into, but which, by mistake of the draftsman, either as to fact or law, it does not fulfill, or which violates, the manifest intention of the parties to the agreement, equity will correct the mistake, so as to produce a conformity of the instrument to the agreement."

There is not one scintilla of evidence in the case to establish that the parties to this litigation had any other intent than for The Alliance Building and Loan Association of Newark to place the fire insurance. I could mention any number of reasons why it is advantageous for the association to place insurance, but that would hardly interest the Court and would throw no light on a solution of this controversy. We are only asking the complainant to perform the agreement which it made and which was assented to by the defendant. We are asking no more. We are satisfied that there was a mutual mistake insofar as the mortgage was concerned, and this Court should correct that instrument to conform to the true intent of the parties. If it is urged that there was no mutual mistake then how can Mr. Blanchard explain his failure to speak up and point out that a variance had been made between the mortgage and the application for the loan. If there was any semblance of an agreement to change the terms of that application mutually entered into between the parties then I would say that the right to relief in the defendant would be seriously questioned. But

there was none. If Mr. Blanchard knew (and he testified that he read the mortgage) that the mortgage did not clearly state the intent of the parties, and he failed to speak forthwith, then it can hardly be said that his conduct would appeal to the Court of Chancery, which is a court of conscience. If the situation were reversed, and we take a case where it was expressly provided in the application that the borrower would have a right to place the insurance in such company as he might select, and the draftsman, in preparing the mortgage to carry into execution the contract of the parties previously entered into, inserted a provision whereby he gave the association express right to place the insurance, I have no hesitancy in saying that this Court would correct the mistake at once. I cannot distinguish the two cases, and I think we have clearly illustrated our right to the reformation for which we pray. No objection was manifested by my adversary as to the form of the decree which we prayed for, and the language annexed to the counter-claim is the language that we asked to be inserted in the mortgage in the place and stead of the language which now therein appears.

In conclusion, we would say that it does not appear to us that the complainant has made out any case requiring the interposition of the Court of Chancery, and the exercise of its extraordinary remedies. We urge that the complainant was bound by any reasonable regulation which was passed by the Board of Directors pertaining to the management of the association's business; that the true contract between the parties was expressed in the application; that counsel had no authority to vary from that application; that a mutual mistake was made by the parties in the

mortgage which is the latest instrument executed; or if there was only a mistake on the part of the draftsman, that it is unconscionable for the complainant to take advantage of this error, and lastly that the defendant has established its right to a reformation of the mortgage.

If it is urged by the complainant that it was put to additional expense in placing insurance on the property in question, we would answer by showing that the complainant had full knowledge of the intention of Mr. Crooks to place the insurance. He knew that Mr. Crooks had placed it the previous October and he paid the premiums to Mr. Crooks. He knew that renewals had been effected because if an examination is made of the renewal policies of Mr. Crooks, it will appear that three of them were written by the companies on the 25th day of September, 1925, and one was written on October 9, 1925, and that prior to October 19, 1925, certificates of these policies were forwarded by Mr. Crooks to the Blanchard Securities, Inc. This appears by Exhibit D. 9 wherein Mr. Blanchard, writing on behalf of his company, says that he is returning the certificates of insurance, and he then proceeds to say, "We must positively handle this insurance ourselves, and will forward you today a policy in the sum of $20,000, etc."

The date of the policy for $20,000 introduced in evidence by the complainant shows that it was issued on October 19, 1925. Defendant has not by any conduct on its part led the complainant into placing this insurance, and when complainant did so it placed the insurance with the knowledge that other insurance had already been placed and it was only placed by Mr. Blanchard

in a determined effort on his part to assert what in our opinion was an erroneous right.

Respectfully submitted,

WOLBER & GILHOOLY,
Solicitors for and of Counsel with
Defendant-Appellant.

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