

13913


No. _____

Supreme Court of Illinois

People ex-rel

vs.

National Home Building &
Loan Assn.

71641  7

Verdict General.

or vicarious opinion as this court may prefer.

decision of the lower court in this case may be affirmed with
appointed by the United States Court, I hereby consent that the
Billings & Loan Association is now in the hands of a receiver
importance of the decision in this case, and as the National Home
operated and recent decisions of this court have superseded the
concerning legislation and I am accordingly prepared to refer to

and as since the filing of that bill January 10, 1890, the statute
lawful efficiency of the bill or information filed by the people,

Inasmuch as the only question in this case is as to the

Association.

The National Home Billings & Loan

of Helena County.
Apprentice from Circuit Court

as set David G. W. Auditor, etc.,
The People of the State of Illinois,

}

The People vs
National Home
B & L Ass'n

Consent
to
Affirmance

IN THE SUPREME COURT OF ILLINOIS.

Filed Oct 23rd 1899
A. D. Cadwallader
Clerk

Docket No. 182

Agenda No. 143

SUPREME COURT OF ILLINOIS
NORTHERN GRAND DIVISION
OCTOBER TERM A.D. 1896.

CONTINENTAL INVESTMENT AND LOAN
SOCIETY,

162 vs. AD.

THE PEOPLE &c., ex rel. DAVID GORE,
AUDITOR OF PUBLIC ACCOUNTS.

Statement of Facts
&
Opinion
by
Magruder C. J.

John Ribbons

O.K.
FILED

R. R. [unclear]
CLERK SUPREME COURT

Record
Page 1.

UNITED STATES OF AMERICA:

STATE OF ILLINOIS)
)SS.
McLEAN COUNTY.)

PLEAS begun and held at the Court House in the City of
Bloomington, before the Hon. Thomas F. Tipton, one of the Judges
of the Circuit Court of the Eleventh Judicial Circuit of the state
of Illinois, in a certain cause in the Circuit Court of McLean
County, in said State, wherein People ex Rel &c., were Complain-
ants and The National Home Building and Loan Association was De-
fendant.

BE IT REMEMBERED, that heretofore, to-wit: on the 18th day
of January 1896, said Complainant, by the Attorney General of the
State of Illinois, came and filed in the office of the Clerk of
this Court his certain Notice and Bill, which are in the words and
figures following, to-wit:

Springfield, Ill., January 16th, 1896.

To the National Home Building and Loan Association of Bloom-
ington, Illinois, and F. J. Fitzwilliam, its President, and W. R.
Fitzwilliam, its Secretary:--

You are hereby notified that on Saturday the 18th
day of January, 1896, I shall commence a proceeding in the Circuit
Court of McLean County, to dissolve said, The National Home Build-
ing and Loan Association, and for the appointment of a Receiver to
take charge of the affairs and assets of said Association under

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the direction of the Court; you are also hereby notified that on said 18th day of January, 1896, at the hour of nine o'clock A. M. on said day, or as soon thereafter as counsel can be heard, I shall enter a motion in the cause so to be commenced as aforesaid before the Hon. Thomas F. Tipton, in the room usually occupied as a Court Room in the Court House at Bloomington, in said McLean County, for a rule upon said Association to show cause why it should not be dissolved; at which time and place you can appear and take such steps as may be proper in the premises.

M. T. Moloney,
 Attorney General.

Upon the back of said Notice appears the following endorsement:

State of Illinois)
)ss.
 McLean County.) Executed the within notice this 17th day of January 1896, by delivering a true copy thereof to F. J. Fitzwilliam and to W. R. Fitzwilliam, and delivering a true copy to W. R. Fitzwilliam as Secretary of the National Home Building and Loan Association of Bloomington, Illinois.

James Stone, Sheriff,
 By W. J. Bishop, Deputy.

SHERIFF'S FEES:

Service,	\$2.25
6 Miles,	.30
Return,	.10
Total,	<u>\$2.65</u>

Received the above fees, being two dollars and sixty-five cents from T. J. Scofield, this 18th day of January, 1896.

James Stone, Sheriff of
 McLean County, Illinois.
 By W. J. Bishop, Deputy.

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STATE OF ILLINOIS) IN THE CIRCUIT COURT OF SAID COUNTY.
)SS.
COUNTY OF McLEAN.) TO THE FEBRUARY TERM, A.D. 1896.

TO THE HONORABLE, THE PRESIDING JUDGE OF SAID COURT;

In Chancery Sitting:

And now comes the People of the State of Illinois, upon relation of David Gore, Auditor of Public Accounts of said State, by Maurice T. Moloney, Attorney General, and in the name and by the authority of the People of the State of Illinois, gives the Court here now to understand and be informed that the National Home Building and Loan Association is a body corporate, duly organized under an Act of the General Assembly of the State of Illinois, entitled, "An Act to enable associations of persons to become a body corporate to raise funds to be loaned only among the members of said association", in force July 1st, 1879, and all Acts amendatory thereof; that the said National Home Building and Loan Association was duly incorporated and authorized to do business on the 11th day of January, A.D. 1890, and under and by virtue of said authority, said association commenced business as such corporation, and as required by its charter has maintained its principal office and place of business at the City of Bloomington, in the County of McLean and State of Illinois.

Relator further avers, that it became and was his duty under and by virtue of the laws of the State of Illinois, as Auditor of Public Accounts, to cause an examination to be made of the financial condition of said Association and of its methods of doing business, and in the discharge of said duty he caused such examination to be made by a regularly appointed and duly authorized

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examiners; that the report of said examination with reference to the condition of said Association was rendered to relator on the 18th day of May A.D. 1895; that the examination so made and reported to relator, as aforesaid, was made with reference to its condition on the morning of April 6th A.D. 1895; that the official examiners so having examined said Association as aforesaid, were not nor was either of them officers or agents, or in any manner interested in said Association; that the report of said examination is now on file in the office of relator as Auditor of Public Accounts of said State.

Relator avers that such examination shows that said Association has conducted its business in an illegal and unsafe manner; that its expenses have largely exceeded in amount the sum which ordinary business prudence would dictate to be proper, and that the money so paid out by it as expenses was largely in excess of the amount which such an Association could afford to expend, when considered in connection with the actual earnings capacity of the money invested by it, and that such expenses under such conditions were contrary to safe and conservative business methods; that said Association paid to its President a compensation for his services in violation of the laws of the State of Illinois; that said Association has loaned large sums of money upon security wholly inadequate, and that the shareholders of said Association, by reason of the inadequacy of said security, have sustained great financial loss; that said Association has in many instances, loaned large sums of money, paid to it by its shareholders, on real estate already encumbered by prior liens held by different persons, in direct violation of the laws of the State of Illinois, and that said loans

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so made by said Association, have resulted in great financial injury to the shareholders of said Association; that said Association has made loans of amounts of money largely in excess of the value of the real estate mortgaged to the Association to secure the same, and that by reason thereof, a large proportion of the entire assets of said Association are unproductive of profit, and the interest due said Association upon said loans has not been paid, and the same has been permitted to accumulate, thereby still further reducing the adequacy of the security given to said Association, to the financial injury of its shareholders; that in the investment of the moneys paid into said Association by its shareholders said Association has exercised so little care and diligence as to the value of the security which it accepted that only a small per cent of the charges thereon which have accrued from month to month have been regularly or promptly paid, and that such charges upon a very large per cent of loans so made by said Association have not been collected by said Association, and that said charges which have been so permitted to remain unpaid aggregate a large sum of money; that said Association has at different times, and to different persons, loaned large sums of money on real estate, which real estate was not used or occupied as a homestead, and was not intended to be used or occupied as a homestead, in violation of the laws of the State of Illinois; that said Association has issued shares of stock to persons residing at different places in the State of Illinois, and in different States of the United States of America, hundreds of miles from its principal place of business, and has loaned money paid to it by its stockholders for investment in accordance with the statutes of the State of Illinois, to persons

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residing at different places in the State of Illinois and in other States of the United States of America, through agents representing it, for the purpose of making such loans, in violation of the laws of the State of Illinois; that it has enacted a by-law, the effect of which is to change its contracts with its shareholders in such manner as to depreciate the value of its shares of stock to its withdrawing shareholders, without the consent of such shareholders, and against their protest; that the assets of said Association are not such as to justify a continuance of business by it; that hundreds of its shareholders have filed with it notices of withdrawal, and that said Association has not been able to pay the withdrawal value of such shares of stock to such withdrawing shareholders, as contemplated and required by the laws of the State of Illinois; that said Association has refused to pay the withdrawal value of shares of stock to withdrawing shareholders under and by virtue of and in accordance with the contract made with said shareholders, but has offered to pay a certain proportion of said amounts upon condition that such shareholders would receipt in full to said Association, and surrender their respective shares of stock to it for cancellation; that its Secretary has offered to discount the claims of shareholders upon withdrawal of their shares of stock, which has injured the reputation of said Association, to such an extent that the confidence of its shareholders and the public in the integrity of said Association and its ability to maintain itself as an Association as required by law is destroyed; and that by reason of the loss of confidence in it, as aforesaid, large numbers of its shareholders have filed with it withdrawal applications, and are continuing to do so, thereby rendering the further transaction of

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business by it unprofitable to its shareholders.

That in consideration of the premises relator on the 24th day of October, 1895, prepared, signed, sealed and mailed, postage prepaid, a notice to the President and Secretary of said Association, addressed to said President and Secretary, at Bloomington, Illinois, which notice is in the words and figures, as follows, to-wit:

"STATE OF ILLINOIS-- AUDITOR'S OFFICE,
"BUILDING AND LOAN ASSOCIATION DEPARTMENT.

"October 24th, 1895.

"To F.J. Fitzwilliam, President, and W.R. Fitzwilliam, Secretary of the National Home Building and Loan Association, of Bloomington, Illinois:

"Whereas, it appears from an examination of the affairs of the National Home Building and Loan Association, of Bloomington Illinois, that the said Association is conducting its business in an unsafe manner, and contrary to law as follows, to-wit:

1. "That it attempts, under cover of amendment to its charter to change its existing contracts with shareholders, in such manner as to deprive such shareholders of large amounts due them by the terms of the contract, so attempted to be changed, without the assent, and against the protest of such shareholders, thereby injuring the reputation of said Association for fair dealing, and constituting an unsafe and illegal manner of doing business.

2. "In that its Secretary has, by offering to discount the claims of shareholders upon withdrawal of their stock, encouraged the opinion that its stock should be sold at a discount, and thus

8 injured it in its reputation to a large extent, and rendered its further success questionable.

3. "In that it has on sundry and divers occasions loaned large sums of money on real estate not used nor intended to be used as homesteads, such practice not being warranted by law.

4. "In that it has on sundry and divers occasions loaned large sums of money on real estate already encumbered by prior liens to parties other than the Association, to the great loss of its shareholders, and against the provisions of the law.

5. "In that its affairs have been so managed that large numbers of shareholders have lost confidence therein, and have made applications to withdraw therefrom, and continue to do so, thereby rendering the further transaction of business by it difficult and unsatisfactory .

6. "In that it has loaned large sums of money upon security wholly inadequate, to the great loss and detriment of its shareholders.

7. "In that a large part of its entire assets are unproductive of any profit, and are a constant source of loss.

8. "In that its loans have been selected with so little care that only a small per cent of the charges thereon are regularly or promptly paid.

9. "In that compensation is paid to its President, contrary to the provisions of the statute.

10. "In that its assets are insufficient to justify a continuance of business by it.

11. "In that its expenses have largely exceeded in amount the sum which ordinary business prudence would dictate as proper, and

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largely in excess of what such Association could afford, its actual earning capacity being considered, contrary to safe business methods.

"Now therefore, I David Gore, Auditor of Public Accounts, do hereby notify you, the said F.J.Fitzwilliam, President, and W. R. Fitzwilliam, Secretary, of the said National Home Building and Loan Association, that unless such conduct of business in an unsafe manner, and contrary to law, be corrected, and such assets be made sufficient to justify a continuance of business within sixty (60) days from the date hereof, I shall report the said National Home Building and Loan Association to the Attorney General, to be by him proceeded against, according to the form of the statute in such case made and provided.

"In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of my office, at Springfield, the day and year first above written.

(SEAL)

"David Gore,

Auditor of Public Accounts'

Relator avers and states the fact to be, that the officers of said Association have conducted its business in an illegal and unsafe manner, and have paid to its officers, agents and others as salaries and for expenses incurred, sums of money which have exceeded what the services of its said officers were worth, and what the business of said Association and its earning capacity would justify it in expending; that the effect of this extravagant and unnecessary expenditure of money paid into or earned by said Association has been to decrease the value of the shares of stock held by its shareholders; that said Association on October 15th,

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1894, fixed the salary of its Secretary at the sum of Seven Thousand Dollars per annum, which sum was in excess of the value of the services of said Secretary to said Association, and was largely in excess of the ability of said Association to pay by reason of its unsatisfactory financial condition and the comparatively small income which it was receiving from the investments which it had made; that said Association paid a salary to its President, which is not authorized or warranted by the laws of the State of Illinois, and the payment of which salary to its President was a direct violation of the law under which said Association was created.

Relator further avers and charges the fact to be, that said Association has loaned large sums of money upon security wholly inadequate, and that the shareholders of said Association, by reason of the inadequacy of said security have sustained great financial loss, and that said Association has, in many instances, loaned large sums of money paid to it by its shareholders upon real estate already encumbered by prior liens held by different persons, in direct violation of the laws of the State of Illinois, and that said loans so made by said Association have resulted in great financial injury to the shareholders of said Association; that said Association has made loans of large amounts of money, which loans were in excess of the value of the real estate mortgaged to the Association to secure the same, and that by reason thereof, a large proportion of the entire assets of said Association are unproductive of profit, and the interest due said Association upon said loans has not been paid, and the same has been permitted to accumulate in many instances, thereby still further reducing the adequacy of the security given to said Association, to the financial injury of its shareholders: That in the invest-

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11,
ment of the moneys paid into said Association by its shareholders said Association has exercised so little care and diligence as to the value of the security which it accepted that only a small percent of the charges thereon, which have accrued from month to month have been regularly or promptly paid, and that such charges upon a very large percent of the loans so made by said Association have not been collected by said Association, and that said charges which have been so permitted to remain unpaid aggregate a large sum of money.

Relator avers and charges the fact to be, that on the morning of April 6th, 1895, said Association held mortgages upon real estate, securing eight hundred and ninety-four loans made by it, representing to said Association \$598,547.69; that of these loans thirty-three amounting to \$32,775.00 were paid in advance; that two hundred and forty-one of these loans, amounting to \$156,480.81 were paid to date; and that six hundred and twenty of these loans amounting to \$409,291.88 were delinquent; that the delinquency upon said loans represented the interest and charges due thereon to said Association for periods of time running from one to twenty-seven months; that a very large proportion of said loans, so delinquent as aforesaid, were made upon security entirely inadequate and that upon a foreclosure of the mortgages given to secure said loans that said Association would not be able to realize therefrom the respective amounts of money due thereon, and would be forced to accept said real estate in satisfaction of said loans, to the great financial detriment and loss of said Association and its shareholders.

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Relator further avers and states the fact to be, that on

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the morning of the said 6th day of April, 1895, said Association was the owner of ninety-one pieces of real estate, nearly if not all of which it had been forced to accept in satisfaction of unproductive loans, and said real estate has remained an unproductive asset, and to the extent that said pieces of real estate are unproductive, the shares of stock issued by said Association are diminished in value; that these ninety-one pieces of real estate were given as security to said Association for the sum of \$89,729.04; that the inadequacy of the security was so great that there was no incentive upon the part of the borrowers to pay the interest and other charges accruing to said Association by reason of said loans, and that said loans represent to said Association at the present time, the sum of \$106,946.01; that of these ninety-one pieces of real estate, so acquired by said Association, in satisfaction of said debts, it, the said Association, is deriving an income from only thirty-seven thereof, and that the remaining pieces of said real estate are entirely unproductive; and relator avers that the income which said Association realizes from said thirty-seven pieces of real estate amounts only to the sum of \$273,72 per month.

Relator further avers, and states the fact to be, that by reason of said unsafe methods in the investment of the funds of said Association it has been forced to commence foreclosure proceedings in two hundred and twelve cases, and that said proceedings are pending in different Courts in this and other States, and that said Association will ultimately be compelled to accept said properties in discharge of the debt to said Association, which said pieces of property were, respectively mortgaged to secure; that at

time said foreclosure proceedings were respectively brought, there was due said Association, by reason of said respective loans, large sums of money, being interest and premiums which had remained unpaid for months, and had been permitted to accumulate as additional charges against said real estate; that the foreclosure of said mortgages will, respectively, entail a large expense to said Association in attorney's fees, costs of proceedings in Court and the necessary expenses incident thereof, which said costs added to the principal, interest and premiums due said Association by reason of said loans will exceed the aggregate of the amounts loaned by said Association by the sum of, to-wit, many thousand dollars, and to the extent that said Association has sustained a financial loss by reason of the premises, the assets of said Association are diminished, and the value of the shares of stock issued by said Association are correspondingly diminished.

Relator further avers, that said Association in making real estate loans has not regarded the provisions of the statute, and the financial interests of its shareholders; that it is provided by law that such associations shall require as security for loans made by it, good and ample real estate, unincumbered, except by prior loans of such association. Relator avers, and charges the fact to be, that said Association has disregarded this provision of law, and has loaned large amounts of money, and as security therefor, has accepted mortgages upon real estate against which there were other and prior liens existing at the time such loans were made, and which liens were not held or owned by said Association. That as a result of this unwarranted action upon the part of the officers of said Association, subsequently thereto it be-

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came necessary for said Association, in order to protect the loans so made by it as aforesaid, to purchase the outstanding first liens aforesaid, and said Association did so purchase said liens, and in purchasing the same used the money paid into it for investment by its shareholders, and by reason of the premises was, in a number of instances, compelled to accept the property, so given as security as aforesaid, in satisfaction of the amount of money loaned upon said property, together with the interest and premiums which had accumulated by reason of said loans, and the amount expended by it in purchasing said outstanding first liens, and to the extent that said Association lost money by reason of the premises and acquired unproductive realty, the assets of said Association were diminished, and its shareholders thereby made to suffer a corresponding depreciation in the actual value of their respective shares of stock.

Relator further avers and charges, that said Association has at different times and to different persons throughout the State of Illinois and elsewhere loaned large sums of money paid to it by its shareholders upon their respective shares of stock, for investment in accordance with law, on real estate, which said real estate was not at the time used or occupied as a homestead, and was not intended to be used or occupied as a homestead, and that the loans so made were secured by real estate which was in many instances vacant and unoccupied and in other instances used for business purposes, and that the money so loaned on said real estate was not intended by the borrowers for use in building a home for the borrower or for the purpose of improving a homestead; that said act of said Association in so making said loans as aforesaid, was in violation of the laws of the State of Illinois relating to

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and governing such associations, in that said law requires said associations to invest the moneys accumulating from month to month for the purpose of building and improving homesteads. Relator avers that in making such loans as aforesaid that said Association acted without warrant or authority of law.

Relator further avers and charges, that the laws of the State of Illinois providing for the creation of such associations and for their government and control authorize the creation of such associations for the mutual benefit of its shareholders to assist them in acquiring and owning homesteads, and that said laws do not authorize the creation of such associations for the purpose of doing business as an association throughout the United States, but that the spirit and purpose of the said law confines said associations to the localities in which they are respectively created; that said Association has entirely disregarded the laws of its creation in this regard, and in violation of said law has engaged in selling and disposing of shares of stock throughout the State of Illinois and throughout many other states of the United States of America, and has loaned money through agents representing it in many states, and has not confined its business to the locality in which it was authorized to do business as such an association; that as a result of its unwarranted action in the premises, its shareholders have been made to suffer by reason of its careless methods, and the character and value of securities which it has accepted for loans made by it, and the assets of said Association have been greatly diminished thereby.

Relator further avers and charges, that prior to the 15th day of January, 1895, that the by-laws of said Association concerning the withdrawal by its shareholders of the withdrawal value of

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shares of stock held by them, respectively, provided among other things, that members whose shares of stock were not pledged to said Association might withdraw all or any part of their shares by giving the Secretary thirty days notice of their desire to do so, and that the Board of Directors should refund to such withdrawing members all that they had paid in to such Association, excepting their membership fees and fines. That said by-laws further provided, that withdrawing shareholders should be entitled to receive interest on installments of stock paid in by them as follows: On stock from one to two years old, six per cent per annum, on stock two to three years old seven per cent per annum, and on stock three years old or over eight per cent per annum; that on or about the 15th day of January, A.D. 1895, at a meeting of the shareholders of said Association a majority of its shareholders amended said by-law relating to the withdrawal value of its shares of stock, and in and by said amendment provided, that the Board of Directors of said Association should refund to its withdrawing members all that they had respectively paid into said Association, except membership fees, fines and their respective proportionate shares of expenses, to be determined by reference to the association's books at the closing of the same last preceding the date of the receipt of the withdrawal application, and said by-law declared such fees, fines and expenses to be a lien upon the stock of each member. It was further provided by said amendment that withdrawing members should be entitled to receive interest on the installments of stock paid in by them in accordance with the provisions of said amendment, which provisions were identical with the provisions of the old by-law relating to interest. That a large number of the share-

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holders of said Association protested against the adoption of said amendment, on the ground that they had not consented to said amendment, and the enforcement of the same against them would be to violate the conditions of the contract entered into between them and said Association at the time they became members of said Association, and purchased shares therein. That notwithstanding the fact that said Association cannot violate the rights of its shareholders so as to reduce the amount of money which they would be respectively entitled to receive under the provisions of the law, as they existed at the time the shares of stock were respectively issued without the consent of such members, nevertheless said Association has insisted, and still insists, forcing its withdrawing shareholders to accept the amounts of money which they are respectively entitled to, less their proportion of the expenses of said Association, in accordance with the provisions of said amended by-law. Relator further avers, and charges the fact to be, that said Association has refused to settle with withdrawing shareholders upon any other basis than that provided by said amended by-law, and has forced its withdrawing shareholders to accept the amount ^{provided} under and by virtue of said amended by-law, in full and complete satisfaction of all their claims against said Association; and relator avers, that by reason of the premises withdrawing shareholders have been made to suffer large financial loss, and that said Association in so forcing the effect of said by-law upon members who did not consent thereto, but who were opposed to the adoption of said amendment, has violated its duty to such members, and has withheld from them amounts of money which said Association was not entitled to retain, to their financial detriment.

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Relator further avers that the statutes of the State of Illinois governing such associations make it the duty of said associations to pay to withdrawing shareholders the respective amounts due them upon their stock, upon the expiration of a period of thirty days after the withdrawal notice was given; that the said Association has not regarded this provision of law, but has permitted many months to expire after the expiration of said thirty days, without paying back to the withdrawing shareholder the amount of money to which he was entitled by virtue of said withdrawal notice, and the shares of stock theretofore issued to him by said association; that large numbers of shareholders have filed applications for withdrawal from said Association, and that in some instances a period of more than six months have elapsed, as relator is informed and believes, from the expiration of said thirty days, and the stock of such withdrawing shareholders has not been redeemed in accordance with the requirements of law and the provisions of the by-laws of said Association. Relator further avers, that the Secretary of said Association has, in a number of instances, either directly or indirectly, offered to discount, and in a number of cases has actually discounted the claims of such withdrawing shareholders, and has caused their said shares of stock to be assigned directly to himself, or to some person designated by him, and that such methods upon the part of the Secretary of said Association has injured its reputation to such an extent that the confidence of its shareholders and of the public in the integrity of said Association and in its ability to maintain itself as an association, and as required by law, has been practically destroyed, and that by reason of the loss of confidence in it, as aforesaid, its

19. shareholders to a large extent have filed with it withdrawal applications, and are continuing to do so, and have thereby rendered the further transaction of business by it unprofitable to its shareholders.

Relator avers and charges the fact to be, that the expenses of said Association during its history have been far in excess of the necessities of said Association; that the Secretary of said Association has withdrawn large amounts of money from the funds thereof, and appropriated the same to his own personal use, to an unnecessary and unjustifiable extent; that during the first three years of the history of said Association its Secretary withdrew from the moneys paid into said Association by its shareholders over \$119,000.00. This amount was withdrawn under and by virtue of a by-law which permitted him to use five cents per share per month of fifty-five cent stock, and ten cents per share per month of one dollar and ten cent stock, for the purpose of an expense fund; that the Secretary has assumed that amount to be intended for his personal use, and out of which to defray the expenses of the office at Bloomington, Illinois; out of this amount during said period he paid the rent, light, heat, expense of clerks and incidentals, and the books of said Association show that during the first three years of the history of said Association that the said \$119,000.00 netted the said Secretary the sum of over \$50,000.00; that during the first year it netted the said Secretary the sum of \$11,622.56, the second year the sum of \$18,439.07, and the third year the sum of \$21,536.96. That this fund was not applied to the payment of expenses which accrued from time to time in the transaction of business by said Association in different

parts of the State of Illinois and in the different states in which it transacted business; that upon the foreclosure of mortgages the attorney's fees and costs were paid by said Association out of other funds than said expense fund, and was carried into the real estate account of said Association. Relator avers, that the retention by said Secretary of said amounts of money, as aforesaid, was an outrage upon the shareholders of said Association; relator avers and charges that this extravagance upon the part of the officers of said Association and their carelessness as to the character of security which they accepted for loans made by said Association has so far shaken the confidence of the shareholders of said Association in the integrity and good business judgment of its officers, that the affairs of said Association cannot be so operated as to enable it to carry out the contracts entered into between it and its shareholders; that by reason of the fact that the large number of pieces of real estate which it holds and owns are unproductive, and that there are in process of foreclosure over two hundred additional pieces of real estate which must become, and which relator avers will be, unproductive in the hands of said Association, and by reason of the fact that a large proportion of the loans made by said association are not profitable to said Association, but that interest and premiums due thereon have been permitted to remain unpaid and to accumulate for periods ranging from one to twenty-seven months, that the assets of said Association are gradually, but certainly, growing less and less, from year to year, and that the best interests of its shareholders will be subserved by a dissolution of said Association and the distribution of its assets in accordance with the order of this Honorable Court.

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Relator further avers, and charges the fact to be, that said Association is insolvent, and that its assets are not sufficient to justify a continuance of business by it; that the gross assets of said Association are \$1,266,968.57; that its general liabilities amount to the sum of \$1,107,236.85; that it has sustained by reason of losses upon loans a loss of \$121,895.71; and that under and by virtue of its by-laws it is liable for interest upon withdrawal of its shares of stock for the sum of \$103,471.14, and that its total liabilities amount to the sum of \$1,332,603.70, and that its total liabilities exceed its total assets by the sum of \$65,635.13 . Relator therefore charges, that the condition of said Association requires its dissolution, and a forfeiture of its corporate rights to the State, and the collection of its assets and the distribution thereof among those legally entitled to the same.

Relator therefore prays that a summons may be issued for the said National Home Building and Loan Association, and that said Association, which is hereby made defendant to this bill, be required to answer the same, but not under oath, answer under oath being hereby waived. Relator prays, that said Association may be enjoined and restrained by the order of this Honorable Court from doing any business under its charter, and that the officers of said Association be respectively enjoined from receiving or paying out any moneys belonging to said Association, and that it, the said Association may be required to show cause why its business as such an Association shall not be closed, and its charter dissolved.

Relator further prays, that on the hearing hereof that said corporation may be dissolved and a receiver appointed to take

charge of the affairs and assets of said Association, and that said Receiver be directed to take possession of all moneys, securities, notes, evidences of indebtedness, books, papers, property, effects, assets, all things soever belonging to said Association, and to collect all moneys, property and things of value owned by and due said Association, and that the officers of said Association be directed to turn over the said property of said Association, as aforesaid, to said Receiver, and that said officers be restrained from any way interfering with said Receiver in the discharge of his Receivership, and that the said Association and its officers be respectively restrained from receiving through the mails, or otherwise, and opening the same, letters or communications addressed to said Association, and that said Association and its officers be required to turn over to the said Receiver all letters, communications, moneys, books and property of every nature and kind whatsoever, which may at any time come into the possession of said Association or said officers, respectively, and which were intended for and belong to said Association, or which in any way relate to the assets or liabilities of said Association, or the winding up of its business and affairs, and that the said Association and its officers, and all persons indebted to said Association or having any kind of property belonging to said Association be required to pay to and deliver the same to the Receiver.

Relator further prays that a writ of temporary injunction may issue herein, restraining said Association and its officers, as they are herein respectively prayed to be perpetually enjoined; that all restraining orders prayed for herein may be made perpetual, and that the said National Home Building and Loan Association

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may be dissolved and its franchise forfeited, and its assets collected and distributed in accordance with law, and that a Receiver be appointed for said Association, and that the writ of injunction may issue herein, and for such other and further relief in the premises as may be equitable and just.

And relator will ever pray, etc.

David Gore.
Auditor of Public Accounts,
of the state of
Illinois.

M. T. Moloney,
Attorney General.

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON.)

DAVID GORE, having been first duly sworn on oath says, that he is the Auditor of Public Accounts of the State of Illinois; that he has read or heard the foregoing bill, and is familiar with its contents; that he has investigated the truth of the contents of said bill, and believes the same to be true.

David Gore.

Subscribed and sworn to before me
this 17th day of January, A.D. 1896.

(SEAL) Brand Whitlock.
 Notary Public.

In Vacation after November Term, 1895:

SATURDAY, JANUARY 18th, 1896:

People of the State of)
Illinois, ex Rel David)
Gore, Auditor Public Ac-)
Counts.)

6906 -vs-) To Appoint Receiver.

National Home Building &)
Loan Association.)

And now on this day comes the People of the State of Illinois by Maurice T. Moloney, Attorney; and T.J. Schofield Assistant Attorney General, and moves the Court for a rule upon said Association to show cause why it should not be dissolved.

And it appearing to the Court that the notice of this application for said rule was duly served upon F.J. Fitzwilliam and W.R. Fitzwilliam, the President and Secretary of said Association; and the Court having heard said bill read and proof that the notice was duly served on the 17th day of January 1896, by delivering true copies thereof to the said Frank J. Fitzwilliam and W. R. Fitzwilliam, President and Secretary of said Association, that the rule to show cause, as prayed for in said bill, be and is hereby entered.

It is further ordered by the Court that if the defendant desires to demur to the said bill, that it shall have leave to do so, Said demurer to be filed so that the same may be heard on Saturday the 25th of January, 1896, at 9 o'clock A.M.

It is further ordered that if said Association does not desire to demur to said bill, but desires to plead to or answer the same, that it shall file its said plea or answer by the First

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day of the next Term of this Court. Ordered further that the Complainant have leave to amend the bill by next Tuesday.

Thomas F. Tipton, (SEAL)

Judge.

And afterwards, to-wit: on the 21st day of January 1896, said Complainant by the Attorney General, came and filed in the office of the Clerk of this Court, his certain Amended Bill, which is in the words and figures following, to-wit:

State of Illinois) In the Circuit Court of said County,
County of McLean.) ss. To the Term, A.D. 1896.

To the Honorable, the Presiding Judge of said Court.

In Chancery Sitting:

And now come the People of the State of Illinois, upon relation of David Gore, Auditor of Public Accounts, of said state, by Maurice T. Moloney, Attorney General, and in the name and by the authority of the People of the State of Illinois, gives the Court here now to understand and be informed, that the National Home Building and Loan Association is a body corporate, duly organized under an Act of the General Assembly of the State of Illinois, entitled, "An Act to enable Associations of persons to become a body corporate to raise funds to be loaned among the members of said association", in force July 1st, 1879, and all Acts amendatory thereof; that the said National Home Building and Loan Association was duly incorporated and authorized to do business on the 11th day of January A.D. 1890, and under and by virtue of said authority

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said association commenced business as such corporation, and as required by its charter has maintained its principal office and place of business at the City of Bloomington, in the County of McLean, and State of Illinois.

Relator further avers, that it became and was his duty under and by virtue of the laws of the State of Illinois, as Auditor of Public Accounts, to cause an examination to be made of the financial condition of said Association and of its methods of doing business, and in the discharge of said duty he caused such examination to be made a regularly appointed and duly authorized examiners; that the report of said examination with reference to the condition of said Association was rendered to relator on the 18th, day of May, A.D. 1895; that the examination so made and reported to relator as aforesaid, was made with reference to its condition on the morning of April 6th, A.D. 1895; that the official examiners so having examined said Association as aforesaid, were not nor was either of them officers or agents, or in any manner interested in said Association; that the report of said examination is now on file in the office of relator as Auditor of Public Accounts of said State.

Relator avers that such examination shows that said Association has conducted its business in an illegal and unsafe manner; that its expenses have largely exceeded in amount the sum which ordinary business prudence would dictate to be proper, and that the money so paid out by it as expenses was largely in excess of the amount which such an Association could afford to expend, when considered in connection with the actual earning capacity of the money invested by it, and that such expenses, under such conditions

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were contrary to safe and conservative business methods; that said Association paid to its President a compensation for his services in violation of the laws of the State of Illinois; that said Association has loaned large sums of money upon security wholly inadequate, and that the shareholders of said Association, by reason of the inadequacy of said security, have sustained great financial loss; that said Association has in many instances, loaned large sums of money, paid to it by its shareholders, on real estate already encumbered by prior liens held by different persons, in direct violation of the laws of the State of Illinois, and that said loans so made by said Association, have resulted in great financial injury to the shareholders of said Association; that said Association has made loans of amounts of money largely in excess of the value of the real estate mortgaged to the Association to secure the same, and that by reason thereof, a large proportion of the entire assets of said Association are unproductive of profit, and the interest due said Association upon said loans has not been paid, and the same has been permitted to accumulate, thereby still further reducing the adequacy of the security given to said Association, to the financial injury of its shareholders; that in the investment of the moneys paid into said Association by its shareholders said Association has exercised so little care and diligence as to the value of the security which it accepted that only a small per cent of the charges thereon which have accrued from month to month have been regularly or promptly paid, and that such charges upon a very large per cent of loans so made by said Association have not been collected by said Association, and that said charges which have been so permitted to remain unpaid aggregate a large

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sum of money; that said Association has at different times, and to different persons, loaned large sums of money on real estate, which real estate was not used or occupied as a homestead, and was not intended to be used or occupied as a homestead, in violation of the laws of the State of Illinois; that said Association has issued shares of stock to person residing at different places in the State of Illinois, and in different States of the United States of America, hundreds of miles from its principal place of business, and has loaned money paid to it by its stockholders for investment in accordance with the statutes of the State of Illinois, to persons residing at different places in the State of Illinois and in other States of the United States of America, through agents representing it, for the purpose of making such loans in violation of the laws of the State of Illinois; that it has enacted a by-law the effect of which is to change its contracts with its shareholders in such manner as to depreciate the value of its shares of stock to its withdrawing shareholders, without the consent of such shareholders, and against their protest; that the assets of said Association are not such as to justify a continuance of business by it; that hundreds of its shareholders have filed with it notices of withdrawal, and that said Association has not been able to pay the withdrawal value of such shares of stock to such withdrawing shareholders, as contemplated and required by the laws of the State of Illinois; that said Association has refused to pay the withdrawal value of shares of stock to withdrawing shareholders under and by virtue of and in accordance with the contracts made with said shareholders, but has offered to pay a certain proportion of said amounts upon condition that such shareholders would receipt in

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stock to it for cancellation; that its Secretary has offered to discount the claims of shareholders upon withdrawal of their shares of stock, which has injured the reputation of said Association, to such an extent that the confidence of its shareholders and the public in the integrity of said Association and its ability to maintain itself as an association as required by law is destroyed; and that by reason of the loss of confidence in it as aforesaid, large numbers of its shareholders have filed with it withdrawal applications, and are continuing to do so, thereby rendering the further transaction of business by it unprofitable to its shareholders.

That in consideration of the premises relator on the 24th day of October 1895, prepared, signed, sealed and mailed, postage prepaid, a notice to the President and Secretary of said Association, addressed to said President and Secretary, at Bloomington, Illinois, which notice is in words and figures, as follows, to-wit:

"STATE OF ILLINOIS-- AUDITOR'S OFFICE,
 "BUILDING AND LOAN ASSOCIATION
 DEPARTMENT."

"October 24th, 1895.

" To F.J.Fitzwilliam, President, and W.R.Fitzwilliam, Secretary, of the National Home Building and Loan Association, of Bloomington, Illinois:

1. " Whereas, it appears from an examination of the affairs of The National Home Building and Loan Association of Bloomington, Illinois, that the said Association is conducting its business in an unsafe manner, and contrary to law as follows, to-wit:
2. "That it attempts under cover of an amendment to its charter

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to change its existing contracts with shareholders, in such manner as to deprive such shareholders of large amounts due them by the terms of the contract, so attempted to be changed, without the assent and against the protest of such shareholders, thereby injuring the reputation of said Association for fair dealing, and constituting an unsafe and illegal manner of doing business.

3. "In that its Secretary has, by offering to discount the claims of shareholders upon withdrawal of their stock, encouraged the opinion that its stock should be sold at a discount, and thus injured it in its reputation to a large extent, and rendered its further success questionable.

4. "In that it has on sundry ^{and divers} occasions loaned large sums of money on real estate not used nor intended to be used as homesteads, such practice not being warranted by law.

5. "In that it has on sundry and divers occasions loaned large sums of money on real estate already encumbered by prior liens to parties other than the Association, to the great loss of its shareholders, and against the provisions of the law.

6. "In that its affairs have been so managed that large numbers of shareholders have lost confidence therein, and have made application to withdraw therefrom, and continue to do so, thereby rendering the further transaction of business by it difficult and unsatisfactory.

7. "In that it has loaned large sums of money upon security wholly inadequate, to the great loss and detriment of its shareholders.

8. "In that a large part of its entire assets are unproductive of any profit, and are a constant source of loss.

9. "In that its loans have been selected with so little care that only a small per cent of the charges thereon are regularly or

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promptly paid.

10 "In that compensation is paid to its President, contrary to the provisions of the Statute.

11 "In that its assets are insufficient to justify a continuance of business by it.

12. "In that its expenses have largely exceeded in amount the sum which ordinary business prudence would dictate as proper, and largely in excess of what such Association could afford, its actual earning capacity being considered, contrary to safe business methods.

"Now, therefore, I David Gore, Auditor of Public Accounts, do hereby notify you, the said F.J.Fitzwilliam, President, and W.R.Fitzwilliam, Secretary, of the said National Home Building and Loan Association, that unless such conduct of business in an unsafe manner, and contrary to law be corrected, and such assets be made sufficient to justify a continuance of business within sixty (60) days from the date hereof, I shall report the said National Home Building and Loan Association to the Attorney General, to be by him proceeded against, according to the form of the statute in such case made and provided.

"In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of my office, at Springfield, the day and year first above written.

"David Gore,

(SEAL)

Auditor of Public Accounts."

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Relator avers, that thereafter, and on the 28th day of December A.D.1895, he made a supplemental examination of the condition of the said National Home Building and Loan Association of Bloomington, Illinois, for the purpose of determining whether or not the requirements of said notice so given to it as aforesaid, had or had not been complied with, and that he avers and states the fact to be, that the financial condition of said Association has not been improved since the giving of said notice to the Association, and that the conditions which existed at the time said notice was so given to said Association on said 24th day of October,1895, still continue to exist and that the financial condition of said Association is still insufficient to justify a continuance of business by it. Relator further avers that the said amendment to the by-laws of said Association referred to in said notice of October 24th,1895, and hereinafter referred to at length, still exists, and that said Association so continued to insist upon the legality of said by-law, and still continues to settle with its withdrawing shareholders, under and by virtue of its provisions. Relator avers, that the officers of said Association agreed to discontinue the illegal practices of which it has been guilty, but relator avers and charges the fact to be, that said illegal practices have resulted in rendering the business of said Association unprofitable to its shareholders, and that its condition is still, financially, such as not to justify a continuance of business by it, and that its said financial condition is such as to render it impossible for its officers to correct the effect of their said illegal practices, and relator avers that its financial condition has not been improved by said Association.

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Relator avers and states the fact to be, that the officers of said Association have conducted its business in an illegal and unsafe manner, and have paid to officers, agents and others, as salaries and for expenses incurred sums of money which have exceeded what the services of its officers were worth, and what the business of said Association and its earning capacity would justify it in expending; that the effect of this extravagant and unnecessary expenditure of money paid into or earned by said Association has been to decrease the value of the shares of stock held by its shareholders; that said Association on October 15th, 1894, fixed the salary of its Secretary at the sum of Seven Thousand Dollars per annum, which sum was in excess of the value of the services of said Secretary to said Association, and was largely in excess of the ability of said Association to pay by reason of its unsatisfactory financial condition and the comparatively small income which it was receiving from the investments which it had made; that said Association paid a salary to its President, which is not authorized or warranted by the laws of the State of Illinois, and the payment of which salary to its President was a direct violation of the law under which said Association was created.

Relator further avers and charges the fact to be, that said Association has loaned large sums of money upon security wholly inadequate, and that the shareholders of said Association, by reason of the inadequacy of said security have sustained great financial loss, and that said Association has, in many instances, loaned large sums of money paid to it by its shareholders upon real estate already encumbered by prior liens held by different persons, in direct violation of the laws of the State of Illinois, and that said loans so made by said Association have resulted in

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great financial injury to the shareholders of said Association; that said Association has made loans of large amounts of money, which said loans were in excess of the value of the real estate mortgaged to the Association to secure the same, and that by reason thereof a large proportion of the entire assets of said Association are unproductive of profit, and the interest due said Association upon said loans has not been paid, and the same has been permitted to accumulate in many instances, thereby still further reducing the adequacy of the security given to said Association, to the financial injury of its shareholders; that in the investment of the moneys paid into said Association by its shareholders said Association has exercised so little care and diligence as to the value of the security which it accepted that only a small percent of the charges thereon, which have accrued from month to month have been regularly or promptly paid, and that such charges upon a very large per cent of the loans so made by said Association have not been collected by said Association, and that said charges which have been so permitted to remain unpaid aggregate a large sum of money.

Relator avers and charges the fact to be, that on the morning of April 6th, 1895, said Association held mortgages upon real estate, securing eight hundred and ninety-four loans made by it, representing to said Association \$598,547.69; that of these loans thirty-three, amounting to \$32,775.00 were paid in advance; that two hundred and forty-one of these loans, amounting to \$156,480.81; were paid to date; and that six hundred and twenty of these loans amounting to \$409,291.88 were delinquent; that the delinquency upon said loans represented the interest and charges due thereon to

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said Association for periods of time running from one to twenty-seven months; that a very large proportion of said loans, so delinquent as aforesaid, were made upon security entirely inadequate, and that upon a foreclosure of the mortgages given to secure said loans that said Association would not be able to realize therefrom the respective amounts of money due thereon, and would be forced to accept said real estate in satisfaction of said loans, to the great financial detriment and loss of said Association and its shareholders.

Relator further avers and states the fact to be, that on the morning of the said 6th day of April, 1895, said Association was the owner of ninety-one pieces of real estate, nearly if not all of which it had been forced to accept in satisfaction of unproductive loans, and said real estate has remained an unproductive asset, and to the extent that said pieces of real estate are unproductive, the shares of stock issued by said Association are diminished in value; that these ninety-one pieces of real estate were given as security to said Association for the sum of \$89,729.04; that the inadequacy of the security was so great that there was no incentive upon the part of the borrowers to pay the interest and other charges accruing to said Association by reason of said loans, and that said loans represent to said Association at the present time, the sum of \$106,946.01; that of these ninety-one pieces of real estate, so acquired by said Association, in satisfaction of said debts, it, the said Association is deriving an income from only thirty-seven thereof, and that the remaining pieces of said real estate are entirely unproductive; and relator avers, that the income which said Association realizes from said

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thirty-seven pieces of real estate amounts only to the sum of \$273.72 per month.

Relator further avers and states the fact to be, that by reason of said unsafe methods in the investment of the funds of said Association it has been forced to commence foreclosure proceedings in two hundred and twelve cases, and that said proceedings are pending in different Courts in this and other States, and that said Association will ultimately be compelled to accept said properties in discharge of the debt to said Association, which said pieces of property were, respectively, mortgaged to secure; that at the time said foreclosure proceedings were respectively brought, there was due said Association, by reason of said respective loans, large sums of money, being interest and premiums which had remained unpaid for months, and had been permitted to accumulate as additional charges against said real estate; that the foreclosure of said mortgages will, respectively, entail a large expense to said Association in Attorney's fees, costs of proceedings in Court and the necessary expenses incident thereof, which said costs added to the principal, interest and premiums due said Association by reason of said loans will exceed the aggregate of the amounts loaned by said Association by the sum of, to-wit, many thousands of dollars, and to the extent that said Association has sustained a financial loss by reason of the premises, the assets of said Association are diminished, and the value of the shares of stock issued by said Association are correspondingly diminished.

Relator further avers that said Association in making real estate loans has not regarded the provisions of the Statute, and the financial interests of its shareholders; that it is provided

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by law that such Associations shall require as security for loans, made by it, good and ample real estate, unincumbered, except by prior loans of such association. Relator avers, and charges the fact to be, that said Association has disregarded this provision of law, and has loaned large amounts of money, and as security therefor, has accepted mortgages upon real estate, against which there were other and prior liens existing at the time such loans were made, and which liens were not held or owned by said Association. That as a result of this unwarranted action upon the part of the officers of said Association, subsequently thereto it became necessary for said Association, in order to protect the loans so made by it as aforesaid, to purchase the outstanding first liens aforesaid, and said Association did so purchase said liens, and in purchasing the same used the money paid into it for investment by its shareholders, and by reason of the premises was, in a number of instances, compelled to accept the property, so given as security as aforesaid, in satisfaction of the amount of money loaned upon said property, together with the interest and premiums which had accumulated by reason of said loans, and the amount expended by it in purchasing said outstanding first liens, and to the extent that said Association lost money by reason of the premises and acquired unproductive realty, the assets of said Association were diminished, and its shareholders thereby made to suffer a corresponding depreciation in the actual value of their respective shares of stock.

Relator further avers and charges, that said Association has at different times and to different persons throughout the State of Illinois, and elsewhere loaned large sums

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of money paid to it by its shareholders upon their respective shares of stock, for investment in accordance with law, on real estate, which said real estate was not at the time used or occupied as a homestead, and was not intended to be used or occupied as a homestead, and that the loans so made were secured by real estate which was in many instances vacant and unoccupied and in other instances used for business purposes, and that the money so loaned on said real estate was not intended by the borrowers for use in building a home for the borrower or for the purpose of improving a homestead; that said act of said Association in so making said loans as aforesaid, was in violation of the laws of the State of Illinois relating to and governing such associations, in that said law requires said associations to invest the moneys accumulating from month to month for the purpose of building and improving homesteads. Relator avers, that in making such loans as aforesaid that said Association acted without warrant or authority of law.

Relator further avers and charges that the laws of the State of Illinois providing for the creation of such associations and for their government and control, authorize the creation of such associations for the mutual benefit of its shareholders to assist them in acquiring and owning homesteads, and that said laws do not authorize the creation of such associations for the purpose of doing business as an association throughout the United States, but that the spirit and purpose of the said law confines said associations to the localities in which they are respectively created; that said Association has entirely disregarded the law of its creation in this regard, and in violation of said law has engaged in

selling and disposing of shares of stock throughout the State of Illinois and throughout many other States of the United States of America, and has loaned money through agents representing it in many states, and has not confined its business to the locality in which it was authorized to do business as such an association; that as a result of its unwarranted action in the premises, its shareholders have been made to suffer by reason of its careless methods, and the character and value of securities which it has accepted for loans made by it, and the assets of said Association have been greatly diminished thereby.

Relator further avers and charges, that prior to the 15th day of January, 1895, that the by-laws of said Association concerning the withdrawal by its shareholders of the withdrawal value of shares of stock held by them, respectively, provided, among other things, that members whose shares of stock were not pledged to said Association might withdraw all or any part of their shares by giving the secretary thirty days notice of their desire to do so, and that the Board of Directors should refund to such withdrawing members all that they had paid into such Association, excepting their membership fees and fines. That said by-laws further provided, that withdrawing shareholders should be entitled to receive interest on installments of stock paid in by them as follows: On stock from one to two years old, six per cent per annum, on stock two to three years old seven per cent per annum, and on stock three years old or over eight per cent per annum; that on or about the 15th day of January A.D. 1895, at a meeting of the shareholders of said Association a majority of its shareholders amended said by-law relating to the withdrawal value of its shares of stock,

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and in and by said amendment provided, that the Board of Directors of said Association should refund to its withdrawing members all that they had respectively paid into said Association, except membership fees, fines and their respective proportionate shares of expenses, to be determined by reference to the association's books at the closing of the same last preceding the date of the receipt of the withdrawal application, and said by-law declared such fees, fines and expenses to be a lien upon the stock of each member.

It was further provided by said amendment that withdrawing members should be entitled to receive on the installments of stock paid in by them in accordance with the provisions of said amendment, which provisions were identical with the provisions of the old by-law relating to interest. That a large number of the shareholders of said Association protested against the adoption of said amendment, on the ground that they had not consented to said amendment, and the enforcement of the same against them would be to violate the conditions of the contract entered into between them and said Association at the time they became members of said Association, and purchased shares therein. That notwithstanding the fact that said Association cannot violate the rights of its shareholders so as to reduce the amount of money which they would be respectively entitled to receive under the provisions of the law, as they existed at the time the shares of stock were respectively issued without the consent of such members, nevertheless said Association has insisted, and still insists, forcing its withdrawing shareholders to accept the amounts of money which they are respectively entitled to, less their proportion of the expenses of said Association, in accordance with the provisions of said amended by-law. Relator

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further avers, and charges the fact to be, that said Association has refused to settle with withdrawing shareholders upon any other basis than that provided by said amended by-law, and has forced its withdrawing shareholders to accept the amount provided under and by virtue of said amended by-law, in full and complete satisfaction of all their claims against said Association; and relator avers, that by reason of the premises withdrawing shareholders have been made to suffer large financial loss, and that said Association in so forcing the effect of said by-law upon members who did not consent thereto, but who were opposed to the adoption of said amendment, has violated its duty to such members, and has withheld from them amounts of money which said Association was not entitled to retain, to their financial detriment.

Relator further avers that the statutes of the State of Illinois governing such associations make it the duty of said associations to pay to withdrawing shareholders the respective amounts due them upon their stock, upon the expiration of a period of thirty days after the withdrawal notice was given; that the said Association has not regarded this provision of law, but has permitted many months to expire after the expiration of said thirty days, without paying back to the withdrawing shareholder the amount of money to which he was entitled by virtue of said withdrawal notice, and the shares of stock theretofore issued to him by said association; that large numbers of shareholders have filed applications for withdrawal from said Association, and that in some instances a period of more than six months have elapsed, as relator is informed and believes, from the expiration of said thirty days, and the stock of such withdrawing shareholders has not been redeemed.

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ed in accordance with the requirements of law and the provisions of the by-laws of said Association. Relator further avers that the Secretary of said Association has, in a number of instances, either directly or indirectly offered to discount, and in a number of cases has actually discounted the claims of such withdrawing shareholders, and has caused their said shares of stock to be assigned directly to himself, or to some person designated by him, and that such methods upon the part of the Secretary of said Association has injured its reputation to such an extent that the confidence of its shareholders and of the public in the integrity of said Association and in its ability to maintain itself as an Association, and as required by law, has been practically destroyed, and that by reason of the loss of confidence in it, as aforesaid, its shareholders to a large extent have filed with it withdrawal applications, and are continuing to do so, and have thereby rendered the further transaction of business by it unprofitable to its shareholders.

Relator avers and charges the fact to be, that the expenses of said Association during its history have been far in excess of the necessities of said Association; that the Secretary of said Association has withdrawn large amounts of money from the funds thereof, and appropriated the same to his own personal use, to an unnecessary and unjustifiable extent; that during the first three years of the history of said Association its Secretary withdrew from the moneys paid into said Association by its shareholders over \$119,000.00. This amount was withdrawn under and by virtue of a by-law which permitted him to use five cents per share per month of its shareless stock, — and ten cents per share per month of

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one dollar and ten cent stock, for the purpose of an expense fund; that the Secretary has assumed that amount to be intended for his personal use, and out of which to defray the expenses of the office at Bloomington, Illinois; out of this amount during said period he paid the rent, light, heat, expense of clerks and incidentals, and the books of said Association show that during the first three years of the history of said Association that the said \$119,000.00 netted the said Secretary the sum of over \$50,000.00; that during the first year it netted the said Secretary the sum of \$11,622.56; the second year the sum of \$18,439.07; and the third year the sum of \$21,536.96. That this fund was not applied to the payment of expenses which accrued from time to time in the transaction of business by said Association in different parts of the State of Illinois and in the different states in which it transacted business; that upon the foreclosure of mortgages the attorneys' fees and costs were paid by said Association out of other funds than said expense fund, and was carried into the real estate account of said Association. Relator avers that the retention by said Secretary of said amounts of money, as aforesaid, was an outrage upon the shareholders of said Association; Relator avers and charges that this extravagance upon the part of the officers of said Association and their carelessness as to the character of security which they accepted for loans made by said Association, has so far shaken the confidence of the shareholders of said Association in the integrity and good business judgment of its officers that the affairs of said Association cannot be so operated as to enable it to carry out the contracts entered into between it and its shareholders; that by reason of the fact that the large number

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of pieces of real estate which it holds and owns are unproductive, and that there are in process of foreclosure over two hundred additional pieces of real estate which must become, and which relator avers will be unproductive in the hands of said Association, and by reason of the fact that a large proportion of the loans made by said Association are not profitable to said Association, but that interest and premiums due thereon have been permitted to remain unpaid and to accumulate for periods ranging from one to twenty-seven months, that the assets of said Association are gradually, but certainly growing less and less from year to year, and that the best interests of its shareholders will be subserved by a dissolution of said Association and the distribution of its assets in accordance with the order of this Honorable Court.

Relator further avers and charges the fact to be, that said Association is insolvent, and that its assets are not sufficient to justify a continuance of business by it; that the gross assets of said Association are \$1,266,968.57; that its general liabilities amount to the sum of \$1,107,236.85; that it has sustained by reason of losses upon loans a loss of \$121,895.71; and that under and by virtue of its by-laws it is liable for interest upon withdrawal of its shares of stock for the sum of \$103,471.14; and that its total liabilities amount to the sum of \$1,332,603.70; and that its total liabilities exceed its total assets by the sum of \$65,635.13; Relator therefore, charges that the condition of said Association requires its dissolution, and a forfeiture of its ^{corporate} right to the State, and the collection of its assets and the distribution thereof among those legally entitled to the same.

Relator therefore prays that a summons may be issued for the said National Home Building and Loan Association, and that

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said Association, which is hereby made defendant to this bill, be required to answer the same, but not under oath, answer under oath being hereby waived. Relator prays that said Association may be enjoined and restrained by the order of this Honorable Court from doing any business under its charter, and that the officers of said Association be respectively enjoined from receiving or paying out any moneys belonging to said Association, and that it, the said Association, may be required to show cause why its business as such an Association shall not be closed, and its charter dissolved.

Relator further prays, that on the hearing hereof that said corporation may be dissolved and a receiver appointed to take charge of the affairs and assets of said Association, and that said Receiver be directed to take possession of all moneys, securities, notes, evidences of indebtedness, books, papers, property, effects, assets and all things soever belonging to said Association and to collect all moneys, property and things of value owned by and due said Association, and that the officers of said Association be directed to turn over the said property of said Association, as aforesaid, to said Receiver, and that said officers be restrained from any way interfering with said Receiver in the discharge of his Receivership; and that the said Association and its officers be respectively restrained from receiving through the mails, or otherwise, and opening the same, letters or communications ^{addressed} to said Association, and that said Association and its officers be required to turn over to the said Receiver all letters, communications, moneys, books and property of every nature and kind whatsoever, which may at any time come into the possession of said Association or said officers, respectively, and which were intended for and belong

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to said Association, or which in any way relate to the assets or liabilities of said Association, or the winding up of its business and affairs, and that the said Association and its officers, and all persons indebted to said Association or having any kind of property belonging to said Association be required to pay to and deliver the same to the Receiver.

Relator further prays that a writ of temporary injunction may issue herein, restraining said Association and its officers, as they are herein respectively prayed to be perpetually enjoined; that all restraining orders prayed for herein may be made perpetual, and that said National Home Building and Loan Association may be dissolved and its franchise forfeited, and its assets collected and distributed in accordance with law, and that a Receiver be appointed for said Association, and that the writ of injunction may issue herein, and for such other and further relief in the premises as may be equitable and just.

And relator will ever pray, etc.

David Gore.
Auditor of Public Accounts of
the State of Illinois.

M. T. Moloney.
Attorney General.

State of Illinois)
)ss.
County of Macoupin .)

DAVID GORE, having been first duly sworn on oath, says, that he is the Auditor of Public Accounts of the State of Illinois; that he has read or heard the foregoing bill, and is familiar with its contents; that he has investigated the truth of

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the contents of said bill, and believes the same to be true.

David Gore.

Subscribed and sworn to before me

this
this 20th day of January A.D. 1896.

(SEAL)

A. J. Duggan,

Notary Public.

And afterwards, to-wit: on the 25th day of January 1896, said Defendant by its Solicitors, came and filed in the office of the Clerk of this Court its certain Demurrer and Plea, which are in the words and figures following, to-wit:

State of Illinois, McLean County ss.

In the Circuit Court: To the February Term, 1896.

The People etc., Ex Rel etc.,)

-vs-)

National Home Building & Loan)
Association.)

GENERAL AND SPECIAL DEMURER TO BILL, EXCEPT AS TO THAT PART CHARGING INSOLVENCY AND INSUFFICIENCY.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in said bill contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to said bill, except that part charging insolvency and insufficiency of assets, generally and specially, and for causes of demurrer, shows to the Court the following matters:

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1st. Because all of the allegations in the bill beginning with the second paragraph on page 2 and including page 5 are repeated in substance on page 10, and the pages following; and some of said allegations are repeated three different times in the bill.

2nd. That the allegations on page 3 and on page 11 of the bill, "that said Association has made loans of money illegally in excess of the real estate mortgaged to secure the same, etc.", is not included in the notice given by the Auditor to the officers of said Association.

3rd. That the allegations on page 4, "that said Association has issued shares of stock to persons residing at different places in the State of Illinois, and in different states in the United States of America etc.," is not included in the notice given by the Auditor to the officers of said Association; and the doing of the same is not contrary to law.

4th. That the allegations in the paragraph beginning on page 16 is not included in the notice given by the Auditor to said Association.

5th. That the notice given by the Auditor was wholly insufficient to apprise defendant of what sum, if any, was required to make its assets sufficient to justify a continuance of business.

6th. That the only possible way of complying with many of the requirements of said Notice was by making good any deficiency of assets that might exist, and the notice given did not state what amount, if any, was required to make the assets sufficient to justify a continuance of business.

7th. The paragraph on page 10 does not show that any sums were unlawfully expended except that a salary was paid to the President, and the amended bill shows that this requirement was compli-

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ed with by the said Association, nor is it alleged that said salary was paid to the President for services as President.

8th. That the allegations on page 11 and 14 that, "said Association has made loans on previously incumbered real estate", is wholly insufficient, in that it does not allege that such loans were so made knowingly, and that said allegation is set forth three different times in the bill, nor is it alleged that it was a practice of said Association to loan on incumbered real estate.

9th. That the allegation on page 15 that said Association has loaned money on real estate other than homesteads etc., does not show a violation of any law.

10th. That the allegations in the paragraph beginning on page 17, show that the by-law complained of was legally passed, and is binding on all stockholders, and its construction affects only those who are shareholders, and is a matter in which the state has no interest.

11th. That by the amended bill it is admitted that all the requirements of the Auditor's notice were complied with in so far as it was possible for the Association to comply with the same, except the requirement that the assets should be made sufficient to justify the continuance of business. It shows compliance with all matters except those affecting the rights of shareholders already in, and are matters in which the State has no interest.

12th. That the allegation on page 20 that, "said Association has not paid to its withdrawing shareholders the amount due them upon the expiration of a period of thirty days after notice was given", is not a violation of any law.

13th. That the further allegation on the same page, "that

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the Secretary did discount the claims of some withdrawing shareholders etc." is shown by the amendment to the bill to have been corrected within the sixty days, and it is not alleged that the said acts were done with the knowledge and consent of the said Association.

14th. That the allegations contained in the paragraph beginning on page 21, do not charge any unlawful disbursements of the funds of said Association.

15th. That the charging of the interest as a liability is unwarranted by law.

16th. That, that part of the statute under which the Auditor's examination was made, and this proceeding is had, is unconstitutional.

17th. That all of the complaints in the Auditor's notice, except those charging insolvency and a want of sufficient assets to justify a continuance of business, are not of such a character as to rightfully concern the Auditor or the State.

Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint, as to so much thereof as before is set forth, this defendant demurs, and prays the judgment of this honorable Court whether it shall be compelled to make any further answer to such parts of the said bill so demurred to as aforesaid.

J. R. LONG.

FIFER & BARRY,

Solicitors for Defendant.

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State of Illinois, McLean County ss.

In the Circuit Court: To the February Term, 1896.

PEOPLE ETC. EX REL ETC.)
VS.) NO.
NATIONAL HOME BUILDING &)
LOAN ASS'N.)

PLEA TO A PART OF BILL.

Defendant by protestation not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged, for a plea to so much and such part of said bill as charges that said Association is insolvent, and that its assets are not sufficient to justify a continuance of business by it, says, that its gross assets are \$1,266,968.57; that its liabilities are \$1,007,236.85 which leaves its net assets \$260,000, and defendant avers that on, to-wit: the 6th day of April 1895, the time when it was alleged in said bill the Auditor made his examination of said Association, this defendant had and now has net assets of the amount last stated.

Defendant avers that prior to the 15th day of January 1895, the following by-laws were in force:

"Members whose shares are not pledged to the Association may withdraw all or a part of their shares by giving the Secretary thirty days notice of such desire. The Board of Directors shall refund to such withdrawing members all that they have paid into the Association except membership fees and fines, provided that at no time shall more than one half of the funds of the treasury of the corporation be applicable to the demands of withdrawing shareholders without consent of the Board of Directors."

"Art. 3. Sec. 2. This Association will pay to withdrawing shareholders, interest on the installments paid in by them as follows: On stock six months old and over 6% per annum; on stock two

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years old and over 7% per annum; on stock three years old and over 8% per annum; interest to be computed for the average time the money has been in use by the Association."

Art.V Sec.1. "The By-laws of this Association may be amended by a majority vote of the shares represented at any annual meeting."

Defendant avers that on, to-wit: after the examination of it by the said Auditor in the year 1894, the said Auditor notified this defendant that said by-law was too liberal to the withdrawing members; that it was a discrimination in favor of the withdrawing members, and against the persistent members, and that all members should bear their proportionate share of the expenses, and that a change should be made in that regard, which notice was as follows:

"In that it, the Association has paid to its withdrawing members the full amount of installments paid by them, together with a certain amount of interest thereon, without regard to the fact that a certain part of such installments had been deducted and disbursed in the payment of expenses, such practice resulting in serious loss to its remaining and persistent stockholders, contrary to safe business methods."

Defendant avers that in compliance with the request of the Auditor in that regard, and believing that it was for the best interest of the Association, the said by-law was amended at a regular annual meeting of the stockholders held on, to-wit: the 15th day of January 1895, in which meeting a majority of the whole number of shares in force was present in person and by proxy and the same was amended by a majority vote of the stock represented. The by-law as amended is as follows:

"Members whose shares are not pledged to the Association may withdraw all or a part of their shares by giving the Secretary thirty days notice of such desire. The Board of Directors shall refund to such withdrawing members all that they have paid into the Association except membership fees and fines, and their proportionate share of the expenses to be determined by reference to the Association's books at the closing of the same last preceding the date of the receipt of the application to withdraw, and such fees, fines, and expenses are hereby declared to be charges and liens up-

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on the member's stock, provided that at no time shall more than one half of the funds of the treasury of the corporation be applicable to the demands of withdrawing shareholders without the consent of the Board of Directors. Such withdrawing members shall be entitled to receive interest on the installments of stock paid in by them as follows: On stock one to two years old 6% per annum; on stock two years to three years old 7% per annum; on stock three years old or over, 8% per annum; interest to be computed for the average time the money has been in use by the Association; but no interest will be paid on installments paid on stock after application is made to withdraw."

Defendant avers that after said by-law was amended as aforesaid, the same was filed in the office of the Secretary of State, and by that officer submitted to the Attorney General of the State of Illinois, and was approved by him, and the same was duly filed and recorded in the office of the Recorder of Deeds in the County of McLean in the State of Illinois; in which the principal office of this defendant is located. And defendant avers that after the said by-law was amended as aforesaid, the said Auditor then complained that this defendant had attempted to modify the contracts of its members, and that it did not pay to withdrawing members what they were entitled to under the by-law as it stood before the amendment; and defendant avers that in the charge made in the bill that the general liabilities of this defendant amount to the sum of \$1,107,236.85 there is the sum of to-wit, \$100,000 charged to this defendant as a liability, by reason of the change in the by-law as aforesaid on the theory as claimed by the Auditor as aforesaid, that the by-law is not binding upon any stockholder who was not present and voted for the same, or who did not assent thereto; and defendant avers that under the allegations in the bill that if the by-law as amended is binding on all shareholders, then the said Association is solvent and has sufficient assets to justify a continuance of business.

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Defendant further avers that in order to charge this defendant with \$100,000 as a liability under the by-law as aforesaid, the said Auditor figures that the said by-law is not binding upon any stockholder, whether he voted for the amendment or not, or whether he has since assented thereto, whereas defendant avers the fact to be that more than a majority of the entire stock in force was present in person and by proxy and that there was no dissenting vote to the adoption of said amendment, and that even under the construction of the by-law as contended for by the Auditor, he has charged the Association with a liability by reason of said amendment of at least double what it should be.

Defendant avers that the charge made by the said Auditor of losses upon loans, to-wit, of \$122,000 is reached, not by actual closing out of the different loans and transactions, but by the appointment of inspectors sent by him to different parts of the country where loans were made, and by other persons; and defendant avers that such inspection, examination and appraisement of property so made by said Auditor as aforesaid was not, and is not, contemplated by the statute under which the said Association is created, and this proceeding had, and such inspection, examination and appraisement of the property so made was unauthorized by law, and this defendant should not be charged with any losses on real estate by reason thereof.

Defendant further avers that the charge made by the Auditor that this defendant is liable for interest upon withdrawal of its shares of stock for the sum of, to-wit, \$103,000 by reason of the by-laws aforesaid, and that said sum of interest is calculated as the interest alleged to be due on the entire stock in force

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whether the same has been presented for withdrawal or not; and defendant avers that it is not legally chargeable with said interest on stock not filed for withdrawal, and avers that of the sum aforesaid the sum of to-wit, \$83,000.00 is charged as a liability on stock in force on which notice of withdrawal has not been given.

Defendant avers that the by-law as amended is lawful and binding upon all members of the Association, and that it should not be charged with the sum of \$100,000, or any part thereof by reason of said by-law, and that if not so charged, it is solvent under the allegations made in the bill.

Defendant avers that the interest charged on the installments of stock aforesaid as a liability against it, is not a liability under the law, and defendant should not be charged with the sum of \$103,000 as a liability for said interest or for any other sum on account thereof in excess of, to wit, \$20,000.00.

Defendant avers that by reason of the matters herein set forth it is solvent and has sufficient assets to justify a continuance of business.

Therefore this defendant doth plead the same in bar to so much of the said complainant's bill as hereinbefore is particularly mentioned, and prays the judgment of this honorable Court, whether he should be compelled to make any further answer to so much of the said bill as is hereinbefore pleaded to, and prays to be dismissed with his costs and charges in this behalf most wrongfully sustained.

J.R. LONG

FIFER & BARRY,

Solicitors for Defendant.

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At a regular term of the Circuit Court of the Eleventh
 Judicial Circuit of the State of Illinois, begun and held at the
 Court House in Bloomington, in and for the County of McLean, on
 Monday the Third day of February, in the year of our Lord, One
 Thousand Eight Hundred and Ninety Six, being the First Monday of
 said month.

Present, Hon. Thomas F. Tipton,
 One of the Judges of said Circuit presiding,
 James H. Leaton, Clerk,
 John A. Sterling, State's Attorney,
 James Stone, Sheriff,
 Clayton C. Herr, Official Reporter

On the Chancery Docket of said Court the following proceedings
 were had:

TUESDAY, MARCH 17th, 1896:

The People of the State of)
 Illinois, ex Rel David Gore,)
 Auditor Public Accounts,)
 6906 -vs-) To Appoint Receiver.
 National Home Building and)
 Loan Association.)

This cause having come on to be heard upon the bill of
 complaint herein, and the demurrer of the defendant thereto, and
 the demurrer being sustained, and the complainant standing by its
 said bill of complaint and declining to amend the same, the said
 bill of Complaint of the complainant be and the same is hereby dis-
 missed, without costs to the defendant.

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And now said Complainant by the Attorney General of the State of Illinois, prays an Appeal from the Decree of this Court to the Supreme Court, Central Grand Division of this State, which is by the Court allowed.

Pantagraph Printing and Stationery Co., Bloomington, Ill.

STATE OF ILLINOIS,
McLEAN COUNTY.

I, JAMES H. LEATON, Clerk of the Circuit Court of McLean County,

in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all Proceedings had of record in our said Court, in a certain cause lately therein pending, on the Rehearing side thereof, wherein People ex Rel. David Gore Auditor &c were Complainant Plaintiff and National Home Building and Loan Association was Defendant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Bloomington, Ill., this 18th day of April A. D. 1896

J. H. Leaton Clerk.
By Deputy.



Assignment of Errors

The Court Erred in sustain-
ing the Defendants De-
murrer to the Complainant's
bill of Complaint.

The Court Erred in dismissing
the said Complainant's
bill of Complaint.

MT Moloney
Attorney General
J J Scofield &
J M L Kruel
of Counsel.

Filed May 19, 1896
E. J. Smirch
Clk