STATE OF MINNESOTA, } ss
COUNTY OF HENNEPIN.

I HEREBY CERTIFY AND RETURN, That at the City of Minneapolis, County and State aforesaid, on the 30 day of January A. D. 1902. I served the Information 1 hereto attached upon the within named Tontine Savings Association, a corporation personally by then and there handing to and leaving with N. A. Strong, Genl' Manager for Tontine Savings Association, a Corporation a true and correct copy thereof.

Dated this 30 1st day of January 1902.

Sheriff's Fees Service, - $1.00
Travel, - - - - - $
Total, - - $1.00

U G Williams
Coroner acting Sheriff of Hennepin County, Minn.,
By G A Loth Deputy.

1829

State of Minnesota, District Court,

County of Hennepin. Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,
Plaintiff,
-vs-
Tontine Savings Association, a corporation,
Defendant.

INFORMATION.

Now comes W. B. Douglas, Attorney General of the State of Minnesota, for and on behalf of the State respectfully informs the Court and alleges:

I

That the Tontine Savings Association is a corporation organized under Title 2, Chapter 34, General Statutes of Minnesota for 1878, and amendements thereto; that said corporation commenced business on or about the 6th day of January, A. D. 1882; that the general nature of the business set forth in the original articles of association of the said Tontine Savings Association, is that said association shall buy, own, hold, deal in, sell and negotiate notes, bonds, stocks, mortgages and other evidences of indebtedness, to buy, own, acquire, improve, sell, exchange, plat, mortgage and deal in lands, tenements, hereditaments, real personal and mixed estates, and property, and particularly to issue and sell its investment contracts, maturable at such times and upon such conditions as the board of directors of said association may, from time to time, determine, and generally to do and perform all such lawful business and undertakings as shall be necessary or expedient for properly carrying on the business above named; that the principal office and place of business of the said defendant association is now, and since the date of its incorporation has been, in the City of Minneapolis, Hennepin County, State of Minnesota; that the authorized capital stock of said association is One Hundred Thousand

Dollars ($100,000), divided into one thousand (1,000) shares of One Hundred Dollars ($100) each; that the present officers of the said corporation are: S. W. Devore, President; E. D. Ziegel, Vice-President and Manager; N. A. Sprong, Secretary and Treasurer; which said persons, together with H. W. Meyer and E. O. Edson, constitute and are the present acting Board of Directors thereof; that of the whole One Hundred Thousand Dollars ($100,000) of authorized capital stock of said association, there has been paid in in cash, less than One Thousand Dollars ($1,000), and only a sufficient amount to enable the officers and directors of said Association, to provide the necessary furniture, stationery and office room to carry on the business of the corporation.

II.

That the sole business of the said Tontine Savings Association since its incorporation as aforesaid, has been and is now the making and issuance of a certain contract, each and every one of which purports to sell to the persons and parties named therein, a diemond of the weight of two carats and of the value of One Hundred Dollars ($100) per carat, upon the payment by the holder and owner of said contract, of the sum of Eighty Dollars ($80) as follows: Five Dollars ($5.00) to be paid to said association by the holder of said contract upon the delivery of the same to him, and the further sum of One Dollar and Twenty-five cents ($1.25) on or before the last day of each calendar week following the date of the said contract, which said payments of One Dollar and Twenty-five Cents ($1.25) are to be made each week for the period of sixty (60) consecutive weeks, the words and substance of said contract being as follows:

INCORPORATED UNDER THE LAWS OF THE STATE OF MINNESOTA.

THE TONTINE SAVINGS ASSOCIATION.

Home Office. Minneapolis, Minn.

Diamond Contract.

KNOW ALL MEN BY THESE PRESENTS, That if _____, the holder hereof, shall first well and truly make each and all of

the payments herein provided for, to be made by him at the times and in the manner herein specified, time, manner and the amount of payment being of the essence hereof, the Tontine Savings Association, of Minneapolis, Minnesota, will deliver to him, or to his legal representatives or assigns, under and according to the terms and conditions and in the manner and order hereinafter set forth, a commercial white, clear and flawless diamond, of the weight of two carats, and of the value of One Hundred Dollars per carat.

The holder hereof promises and agrees to pay the Association, at its home office in the City of Minneapolis, the full sum of Eighty Dollars in the following manner, to-wit: Five Dollars on delivery hereof, the receipt of which is hereby acknowledged, and One Dollar and Twenty-five Cents on or before the last day of each calendar week following the date hereof, for sixty consecutive weeks. If he shall fail to pay any of said installments within the week in which it is payable, the said delinquent installment, together with the additional sum of twenty-five cents, may be paid at any time before the end of the next succeeding calendar week; but if he shall fail or neglect to pay any of said weekly installments at the time and in the manner herein provided, and shall continue in such default for more than one week, then, and in that event, this contract shall, because of said default, become and be wholly null and void, and all payments theretofore made thereon shall be forfeited.

The weekly installments having been paid thereon to and inclusive of the sixtieth week, this contract shall be deemed fully paid and non-forfeitable, and the holder shall be entitled to receive the diamond herein described, provided, however, that if at such time the amount in the hands of the Association to the credit of this contract is not equal to the sum of Two Hundred Dollars heretofore provided, then the diamond shall not be delivered until the amount to the credit hereof shall equal said sum. Co-incident with such delivery to the holder of a contract of such diamond, he

shall surrender his contract to the Association for cancellation.

The Association shall employ One Dollar of each weekly installment of One Dollar and Twenty-five Cents paid in on this and other contracts, together with all fines, lapses and forfeitures accruing thereunder, in the purchase and delivery of the diamonds required for the performance of such contracts; and may retain all other sums paid in thereon, including the remaining twenty-five cents out of each weekly installment, for its own use and payment of all expenses.

This contract is transferable, but no transfer will be recognized by the Association unless first registered by the Association, for which registration a fee of One Dollar will be charged.

IN WITNESS WHEREOF, the Tontine Savings Association, has caused this contract to be signed by the President and Secretary thereof and its corporate seal to be hereto attached this _____ day of _____ 190__

(SEAL)

N. A. SPRONG,
Secretary.

E. W. DEVORE,
President.

That of the moneys so received by the said Tontine Savings Association the sum of One Dollar($1.00) of each One Dollar and Twenty-five Cents ($1.25) paid to said association as the purchase price, so-called, of the said diamond, and as the weekly installment due upon the said contract, is turned into and constitutes a fund called the redemption fund, and a part of which is used each week by the said Association in the performance, cancellation and redemption of the contracts made and issued as aforesaid; that of the sum of One Dollar and Twenty-five Cents ($1.25) paid in on each contract weekly as aforesaid, the sum of Twenty-five Cents ($.25) is appropriated and used by the said Association in defraying and meeting the various expenses of management, and for the use of its officers and directors of said association; that in and by the terms of said contract, it is provided that if default shall be made in the payment of any weekly installment at the time it shall become due, then there shall be imposed and charged against the said contract and owner thereof, the sum of Twenty-five Cents ($.25) as and for a fine, which said fine, when collected, is turned into the redemption fund, so-called, a part of which is used in the redemption, performance and cancellation of the contracts as aforesaid; that in and by the terms of said contract, and the rules and regulations of said Association, any failure upon the part of the owner and holder of the said contracts to make the payments at the time and in the manner in said contract agreed, the whole amount paid upon said contracts in weekly installments is forfeited to the said association, and the owner and holder thereof has no further right or interest in the same and the whole thereof is paid into the general redemption fund of the said Association, a part of which is used in the performance, cancellation and redemption of the various fully paid and mature contracts which become entitled thereto; that upon the completion of the full number of payments for said term of sixty (60) consecutive weeks, the contract so paid upon is listed for cancellation, performance and redemption, and is taken up by the said association and per-

formed, cancelled and redeemed in the manner hereinafter set forth, in the order of its maturity as the funds of the association applicable thereto will permit;

That under and by the rules, regulations and by-laws of the said association and in accordance with its usual custom and plan, the owner and holder of the said contract is given the option and is entitled to elect either to receive in the performance, cancellation and redemption thereof by the said association, a commercial white, clear and flawless diamond of the weight of two (2) carats and of the value of One Hundred Dollars ($100) per carat, or the sum of One Hundred and Sixty Dollars ($160) in cash, which sum the said Association guarantees to pay on said contract, under the plan and scheme of said Association, as the guaranteed money value of said contract; and it is further agreed by and between the said Association, and the owners and holders of the said contracts in the said contract, by-laws and regulations of the said Association, that the said contract shall not become due and entitled to performance, cancellation or redemption until there shall be in the possession of the said Association and in its said redemption fund, a sufficient sum to pay and cancel the same, either by the delivery of a diamond as aforesaid, or by the said cash payment, and the contract is reached for payment, cancellation and redemption in the order of its issuance and maturity.

III.

That under the scheme and plan of the said Tontine Savings Association, the only and sole use, purpose and employment of the funds and moneys received therein upon the said contracts, is the performance, cancellation and redemption, as aforesaid, of the said contracts as the same become due in the order of their execution and issuance; that the funds and moneys so received are not employed in any business, investment or speculation, produce no earnings and bear no interest, but are received and held by said association in idleness;

that at intervals of approximately seven (7) days, a part of the funds so received into the said redemption fund by the said association from the weekly instalment payments upon the said contracts, are appropriated to and used in the performance, cancellation and redemption of matured contracts standing for payment;

That the said Association is without any source of income or revenue whatsoever, except from the issuance of the said contracts as aforesaid, and from the weekly instalment payments made thereon by the owners and holders thereof; and the said association does not use in the payment, cancellation and discharge of the said contracts, any funds or money other than the redemption fund constituted as aforesaid.

That although the said Association agrees in its said contract to deliver to the owner and holder thereof, a diamond of a certain weight and value, the said Association does not perform, cancel and redeem the said contract by the delivery to the owner thereof, of a diamond, but in lieu thereof, pays to the said holder and owner from the said redemption fund, in full performance, cancellation and redemption of the said contract, the sum of One Hundred and Sixty Dollars ($160) in cash; that contrary to the agreement set out in said contract and the advertised plan and scheme of the said Association, and in violation of the rights of the owners and holders of contracts, the said Association and its officers charge against the said contract and the owner and holder thereof, and against the said redemption fund, the sum of Two Hundred Dollars ($200), the so-called commercial value of the diamond agreed to be delivered, and fraudulently and unlawfully, and in violation of the rights of contract holders, take and appropriate to their own use, and to the use of the stockholders in said Association on the basis of stock owned, and as and for a dividend thereon, from each contract cancelled, performed and redeemed as aforesaid by such cash payment, and from the owner and holder thereof, and from the said redemption fund, the sum of Forty Dollars ($40), the difference between the guaranteed or cash

value of the contract and the so-called commercial valve of the diamond; that the defendant Association does not deal in diamonds, or hold or own any diamonds, and that very few, if any, of the contracts made and issued by the said Association, are performed, cancelled and redeemed by the actual delivery of a diamond to the owners of said contract.

That the total sum of money which has been received by said Association upon said contracts as aforesaid, amounted on the 7th day of December, A. D. 1901, to Eight Hundred, Eighty-two Thousand, Four Hundred and One Dollars ($882,401); that of the said Eight Hundred and Eighty-two Thousand, Four Hundred and One Dollars ($882,401), there was paid by the said Association to its contract holders in the cancellation, performance and redemption of the said contract, the sum of Seven Hundred Five Thousand, Nine Hundred Twenty-one Dollars ($705,921); that the said sum so paid is inclusive of cash payments to the holders of contracts and funds disbursed by the said Association in the purchase of diamonds to be delivered to the said contract holders in the performance and cancellation of their said contracts; that the sum of One Hundred Seventy-six Thousand, Four Hundred and Eighty Dollars ($176,480) of the said sum of Eight Hundred Eighty-two Thousand, Four Hundred and One Dollars ($882,401), has been taken, transferred and appropriated from the said redemption fund, and from the holders and owners of the said contracts, to the use of the officers and stockholders in the said Association on the basis of stock owned and for dividends thereon.

And Complainant further represents and alleges, that from the 1st day of January, A. D. 1901, up to the first week in December, A. D. 1901, there has been unlawfully and fraudulently taken from the said redemption fund and appropriated to the use of the officers, the sum of One Hundred Three Thousand, Fifty-eight Dollars ($103,058); that the sum of money so taken and appropriated by the said officers and directors to their own use, is the funds and money paid in by the owners of contracts to the said redemption fund for the purpose

of retiring, cancelling and redeeming the contracts which are fully paid, and not otherwise; that the taking, using and appropriating by the officers and directors of the said Association, of the said difference between the guaranteed cash value of the said contract and commercial value of the diamond, is in violation of the contract made and entered into between the said Association and the persons with whom it does business.

That for a number of years prior to the beginning of the year 1901, the exact day being unknown to Complainant in the contract made and issued by the said defendant Association and under its plan and scheme of business, it was agreed and provided that the owner and holder thereof might elect, after having paid into said Association, the said weekly installment of One Dollar and Twenty - five Cents ($1.25) for the period of thirty (30) weeks, to have his said contract listed for payment and cancellation as of the class designated, first option contracts, and also upon making the said weekly payments upon the said contract for the period of forty-five (45) weeks, the said contract holder could elect to have his contract listed for payment and redemption as of the class known as second option contracts.

IV.

That on the 7th day of December, A. D. 1901, there were outstanding of all the classes of contracts hereinbefore mentioned, that is to say of the first option, second option, and fully paid sixty week contracts, the number of Eighteen thousand nine hundred and twenty-four (18,924); that of said total number there were One hundred and sixty-four (164) upon which payments had been made for the period of thirty (30) weeks, and thirty (30) upon which payments had been made for the period of forty-five (45) weeks, and Four thousand, two hundred and one (4,201), upon which payments had been made for the full period of sixty (60) weeks, all of which said three classes of contracts were standing for redemption, performance and payment; that of the total number of contracts outstanding, that is to say, Eighteen thousand, nine hundred and twenty-four (18,924), there were Fourteen thousand,

six hundred and thirty-four (14,634) upon which payments were being made, which had not rested at either option; that at the payment, cancellation and redemption of contracts made in the week ending December 7th, A. D. 1901, the latest contract paid and cancelled was issued by the said Association on the 13th day of November, A. D. 1899; that the average time required by the Association to pay contracts after the weekly installments of One Dollar and Twenty-five Cents ($1.25) have been made upon the said contracts for the full period of sixty (60) weeks and the said contracts become fully paid and matured, averages one (1) year; that the total amount received by the said Association upon contracts, on the 7th day of December A. D. 1901, which stand fully paid and matured, but which are unpaid and unredeemed, is Two hundred fifty-eight thousand, Dollars ($258,000); that on said date the total amount of money paid into said Association upon contracts still remaining in force and good standing, and not forfeited and lapsed to the Association, amounts to Four Hundred forty-eight thousand, three Dollars and Seventy-five Cents ($448,003.75).

And Complainant further represents and alleges, that the said Tontine Savings Association has no money, funds or properties with which to pay and discharge the said sum of Two Hundred and fifty-eight thousand Dollars ($258,000), received by the said association upon fully matured and paid contracts, other than the money received by the said Association weekly upon contracts unmatured and in force, and from contracts upon which payments have been made and forfeited and lapsed to the Association, and that said defendant is wholly insolvent.

That of the Four hundred forty-eight thousand, three Dollars and Seventy-five Cents ($448,003.75) paid to the Association upon contracts in force and upon which payments have not been made for the full period of sixty (60) weeks, it is estimated by the Association that at least sixty-five per cent (65%) thereof will lapse and become forfeited to the company; that under the general scheme and plan of said Association, it is estimated that the percentage of total lapses to total contracts written is at least seventy-five (75) to each one hundred (100); and that by reason of such percentage of lapsation, the said Tontine Savings Association undertakes to pay to its persistent contract holders, in return for the sixty-two Dollars ($62.) paid on

each contract by the holder thereof to the redemption fund, a diamond, the commercial value of which is represented by the said Association to be Two Hundred Dollars ($200), or in lieu thereof, the sum of One hundred and sixty Dollars ($160) in cash; that the difference between the Sixty-two Dollars ($62.) so paid to the redemption fund and the Two Hundred Dollars ($200), or other sum paid by the said Association for the said diamond, and the One hundred and sixty Dollars ($160) in cash paid by the Association to the contract holder, if the contract holder so elects, is wholly constituted and made up by the lapses and forfeitures of non-persistent contract holders.

V.

And it is further represented and alleged by Complainant that the defendant Association, by means of printed matter and advertisements and by the representations and assurances of its officers, directors, agents and employes working in this State and in the various States of the Nation, has held out and pretended, and in and by its present plan and scheme, continues to hold out and pretend, and represent to the public generally, and to all its contract holders, and to all persons and parties with whom it deals, that moneys, values and profits far in excess of the usual and customary earnings and profits of lawful business investments and enterprises, are to be had and enjoyed by the investor in the said diamond contract so-called; that the said representations and assurances made as aforesaid , are calculated and designed to appeal to the weakness and cupidity of human nature and the improvidence and ignorance of mankind; that the whole scheme and general plan of business of the said defendant Association is in violation of the lawful and established principles of business conduct and enterprise, and the undertakings and assurances of the said defendant are impossible and cannot be performed, except on the basis of lapsation and forfeiture as hereinbefore set out.

That in furtherance of said scheme, and as a part of the plan to mislead the public as to the true nature of the general plan and business of the said defendant Association, the incorporators and the directors and officers thereof, in violation of the laws of the

State of Minnesota regulating the business of investment and savings associations, assumed in the corporate name of the said defendant company, the words "savings association," and have continuously since the said date of incorporation, used and employed the said words, and do now use and employ the said words in the business of said Association, its advertisements and contracts, which words are designed and intended by the laws of said State to be used only by associations and companies engaged in the business of employing funds and moneys in profit and interest bearing investments and securities under the supervision and direction of the Public Examiner of said State.

And complainant alleges that the said plan and scheme of the said Tontine Savings Association is injurious to public interests, is conducted in violation of the express purposes and objects of its incorporation and in violation of the laws of the State of Minnesota; that the said defendant Association, by reason of the facts and matters in this information alleged, is offending against the provisions of the act creating it and is doing and is omitting to do, acts which amount to a surrender of its corporate rights, privileges and franchises, and is exercising franchises and privileges not conferred upon it by law: that all of the undertakings and assurances as set out in the said diamond contract and in the representations of officers, agents and employes of the said defendant association as hereinbefore set out, constitute a misuser and abuse of the corporate rights, privileges and franchises bestowed upon the said Tontine Savings Association by the State of Minnesota under and pursuant to the laws thereof; that such continued misuser threatens a substantial injury to the public and amounts to a violation of the fundamental conditions of the contract by which the franchise to exist as a corporation was granted.

WHEREFORE, The Complainant prays judgment that the usual Writ of Quo Warranto issue out of this Honorable Court, commanding the defendant to show cause before the court, at a time to be fixed by the court, why judgment should not be entered forfeiting all and singular its property rights, privileges and franchises heretofore granted to it by the State of Minnesota under and pursuant to the

laws thereof; and further demands judgment that this court adjudge and decree that said defendant by misuser and abuse of its corporate franchises, has forfeited all and singular its corporate rights, privileges and franchises, and that the said defendant corporation be dissolved and its affairs wound up; that it be restrained in the meantime from exercising any corporate rights, from collecting or receiving any debts or demands, from paying out or in any way transferring or delivering to any person, any of the money, property or effects of the said corporation, until the court shall otherwise order; and that ultimately a receiver be appointed to take charge of the property and effects of said corporation, with power to collect, sue for and recover the debts and demands that are due or to become due, and distribute such property among the creditors thereof, and for such other and further relief as may be just or the equities of the case may permit.

W. B. Douglas
Attorney General.

W. J. Donahower.
Asst. Attorney General.
Attorneys for State.

State of Minnesota
ss.
County of Ramsey

W. B. Douglas being first duly sworn deposes and says, that he is the Attorney General of the State of Minnesota; that he has read the foregoing complaint and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

W. B. Douglas.

Subscribed and sworn to before me
this 3rd day of January, A. D. 1902.

W. J. Donahower
Notary Public, Ramsey Co. Minn.

(Notarial Seal)

RECEIVED.
Jan 29 1901
U. G. Williams,
Coroner Acting Sheriff of Hennepin Co.
By Gordon T. Bright, Deputy

FILED
Jan 29 1902.
C. N. Dickey, Clerk.
By J. S. McLaughlin,
Deputy.

State of Minnesota, District Court,

County of Hennepin. Fourth Judicial District.

State of Minnesota, ex rel., W.B. Douglas, Attorney General,
Plaintiff,
-vs-
Tontine Savings Association,
a Corporation,
Defendant.

PETITION.

W. B. Douglas, as Attorney General of the State of Minnesota, gives the Court to understand and be informed, that to the best of his knowledge, information and belief, the Tontine Savings Association, a corporation organized and existing under and by virtue of Title 2, Chapter 34, General Statutes 1878, and amendments thereto, has:

First: Offended against the provisions of the act creating the said defendant Association, have forfeited its privileges and franchises by failure to exercise its powers; that it has done acts and omitted to do acts which amount to a surrender of its corporate rights, privileges and franchises; and that it is exercising franchises and privileges not conferred upon it by law.

Second: Grossly abused and misused its corporate powers and franchises. That said misuse and abuse has been repeated and willful, and such continued mis-user and abuse threatens a substantial injury to the public and amounts to a violation of the fundamental conditions of the contract by which the franchise to exist as a corporation was granted.

Third: That he as Attorney General, has reason to believe that these acts and omissions can be proved.

WHEREFORE, Your Petitioner prays for leave to file, in the District Court for the Fourth Judicial District of the State of Minnesota, an information in the nature of Quo Warranto against said Tontine Savings Association, for the purpose of vacating the charter and annulling the existence of said corporation.

Dated: St. Paul, Jany. 30, A.D.1902.

W. B. Douglas
Attorney General.

State of Minnesota, County of Hennepin. | District Court, Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,
Plaintiff,
-vs-
Tontine Savings Association, a Corporation,
Defendant.

O R D E R.

Upon the petition in the above entitled cause, filed on behalf of the State of Minnesota by the Attorney General thereof,

IT IS ORDERED, That the request prayed for in said petition be granted, and that the Attorney General have leave to file an information in the nature of Quo Warrento against the Tontine Savings Association, the defendant above named.

By the Court:

J. F. McGee
District Judge.

Dated: Minneapolis, Minn., January 30th, A. D. 1902.

State of Minnesota, County of Hennepin. | District Court, Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General, Plaintiff,
-vs-
Tontine Savings Association, a Corporation, Defendant.

O R D E R.

Upon reading and filing of the information in the above entitled cause by the Attorney General,

IT IS ORDERED, That a writ in the nature of Quo Warranto issue thereunder, returnable on the 5th day of February, A. D. 1902, at 10:30 o'clock in the forenoon of said day in the court house in the City of Minneapolis in said County:

ORDERED Further, that a copy of this Order and said Writ and Information be served upon the President or other Managing Officer of said defendant corporation, on or before the 30th day of January, A. D. 1902.

Dated, Minneapolis, Minn., January 30th A. D. 1902.

By the Court:

J. F. McGee
District Judge.

Filed, Jan 30 1902.
C. N. Dickey, Clerk,
By H. E. Johnson, Deputy.

Received, Jan 30 1901.
U. G. Williams, Coroner,
Acting Sheriff of Hennepin Co.,
By Gordon T. Bright, Deputy.

STATE OF MINNESOTA, } SS
COUNTY OF HENNEPIN.

I HEREBY CERTIFY AND RETURN, That at the City of Minneapolis, County and State aforesaid, on the 30th day of January A. D. 1902 I served the Writ of Quo Warranto hereto attached upon the within named Fontine Savings Association, a Corporation personally by then and there handing to and leaving with N. A. Strong, Genl' Manager for Fontine Savings Association, a Corporation a true and correct copy thereof.

Dated this 30th day of January 1902

Sheriff's Fees Service, - $1.00
Travel, - - - - - - $.....
Total, - - $1.00

U. G. Williams
Coroner acting Sheriff of Hennepin County, Minn.,

By G. A. Loth
Deputy.

State of Minnesota, District Court,

County of Hennepin. Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,
Plaintiff,

-vs-

Tontine Savings Association, a Corporation,
Defendant.

WRIT OF QUO WARRANTO.

THE STATE OF MINNESOTA,

TO THE TONTINE SAVINGS ASSOCIATION, GREETING:

WHEREAS, W. B. Douglas, Attorney General of the State of Minnesota, who sues on behalf of said State, comes before this Court and makes and files an information in and by which he gives this court to understand and be informed, that you, the Tontine Savings Association, claim and assert, and hold yourself out to be a corporation incorporated pursuant to Title 2, Chapter 34, General Statutes of 1878 of the State of Minnesota, and amendments thereto, and that you are openly and publicly doing business as, and exercising the privileges of a corporation, incorporated under the laws of said State, and that you have,

First: Offended against the provisions of the act creating the said defendant Association; have forfeited your privileges and franchises by failure to exercise your powers; that you have done acts and omitted to do acts which amount to a surrender of your corporate rights, privileges and franchises; and that you are exercising privileges not conferred upon you by law.

Second: Grossly abused and misused your corporate powers and franchises. That such continued misuser threatens a substantial injury to the public and amounts to a violation of the fundamental conditions of the contract by which the franchise exist as a corporation was granted.

Third: That you have usurped, intruded into and unlawfully and fraudulently exercised the powers and franchises of a corporation

in the several particulars set forth in said information on file in the office of the clerk of said court, a copy of which said information has been herewith served upon you.

AND WHEREAS, the Attorney General, in and by said information further claims that you have forfeited all and singular your corporate rights, privileges and franchises, by neglect, abuse and misuse, and by the fraudulent and unlawful acts and things as set forth in said information.

AND WHEREAS, the Attorney General, in and by said information demands the judgment and decree by this court that you, the said Tontine Savings Association, by such neglect, abuse, misuse, usurpation and fraudulent and unlawful acts, have forfeited all and singular of your said corporate rights, privileges and franchises, and that you, said defendant, be excluded entirely therefrom, and that your charter be vacated and your corporate entity dissolved, and that you, your officers, servants and agents be inhibited, enjoined and restrained from the exercise of any and all such corporate rights, privileges and franchises; and that a Receiver be appointed of and for all of your property, and that said Receiver account for and distribute the same equitably among your creditors; and for such other and further relief as may be just or the equity of the case may permit;

AND WHEREAS, On the 30th day of January A. D. 1902, upon said information, an Order was duly made and filed herein by the Honorable J. F. McGee, one of the Judges of the District Court in and for the Fourth Judicial District of said State, for the issuance of a writ as prayed for in said information;

NOW THEREFORE, by authority of the State of Minnesota, you, the said Tontine Savings Association, are hereby strictly commanded and required, under the penalty which will follow upon failure to comply herewith, to be and appear before the District Court in and for the Fourth Judicial District, before the Honorable J. F. McGee, one of the Judges thereof, in the District Court House in the City of Minneapolis said County and State, on the fifth day of February A. D. 1902 at 10:30

o'clock in the A. M. of that day, and then and there answer and respond to said information sand this writ, and show by what warrent or alleged right you claim to have used and enjoyed the rights, libertics, privileges and franchises in said information described; and shew cause, if any you have, why the said rights, liberties, privileges and franchises, and each and every of them, should not be adjudged and decreed forfeited to the State, and why your charter should not be vacated and your existence as a corporation annulled, and why you should not be adjudged guilty of usurping and intruding into, and unlawfully holding and exercising all and singular said corporate rights, privileges and franchises, and why judgment should not be rendered against you that you be excluded from all and singular thereof, and why you should not be dissolved as a corporation, and why a receiver of your property as prayed for in said information, should not be appointed; and also then and there that you abide such further order, if any, as this court shall make in the premises.

This writ to be served in the manner prescribed by law for the service of a summons in a civil action, on or before the 30th day of January A. D. 1902, and returned to this court.

Witness the Honorable Chas. B. Elliott, Judge of the District Court of the Fourth Judicial District of the State of Minnesota, and the seal thereof, at Minneapolis, on this 30th day of January A. D. 1902.

(District Court)
(Seal)

C. N. Dickey,
Clerk of the District Court
4th Judicial District.

(Endorsed)
Received, Jan 30 1901.
U. G. Williams, Coroner
Acting Sheriff of Hennepin Co.
By Gordon T. Bright, Deputy.

Returned and Filed, Feb 7-1902.
C. N. Dickey, Clerk,
By H. E. Johnson, Deputy.

State of Minnesota, } ss.
County of Hennepin }

I HEREBY CERTIFY AND RETURN, That at the City of Minneapolis, County and State aforesaid, on the 6th day of February A. D. 1892, I served the hereunto attached Order and Affidavit on the within named Santiene Savings Association, a Corporation personally by then and there handing to and leaving with Sandford W. Despres, President of said Corporation a true and correct copy thereof, and at the same time and place exhibiting to him so that he could see and read the same, the original signature of Honorable J. F. McGee Judge of the District Court of Hennepin County, Minnesota, to said original.

Dated this 6th day of February ~~189~~ 1902

Sheriff's Fees Service, $ 1.00
Travel, - - $ .16
Total, - - - $ 1.16

W. G. Williams
Coroner, acting Sheriff of Hennepin County, Minnesota.

By J. D. Salmon
Deputy

State of Minnesota, District Court,

County of Hennepin. 4th Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,

-vs-

Tontine Savings Association, a Corporation,

Defendant.

O R D E R .

Upon reading the annexed affidavit of W. J. Donahower, Assistant Attorney General of the State of Minnesota, and upon the information in the nature of quo warranto on file in the office of the Clerk of the District Court of the County of Hennepin and State of Minnesota, and upon all the files and records in said action;

It Is Hereby Ordered, that the Tontine Savings Association, the defendant herein, and its officers and agents, be and the same are hereby restrained from using, disposing of, or paying out in any manner whatsoever, any of the funds or moneys in the treasury of the said Association, or under its control, or which may, after the service of this Order, be paid into the said Association by the owners and holders of the said contracts in this proceeding hereinbefore described, or from selling or disposing of any of the property or assets of the said defendant association, pending the determination of the proceedings instituted by the Attorney General to dissolve the said corporation, and to abide the further order of this court in the premises.

J. F. McGee
District Judge.

Dated: Minneapolis, Minn., Feby. 6th, A. D. 1902.

State of Minnesota, District Court,

County of Hennepin. 4th Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,

-vs-

Tontine Savings Association, a Corporation,

Defendant.

AFFIDAVIT.

State of Minnesota, }
County of Ramsey. } ss.

W. J. Donahower being first duly sworn deposes and says, that he is and during all the times hereinafter mentioned was, the Assistant Attorney General of the State of Minnesota; that on or about the 7th day of December, A. D. 1901, and at various times subsequent to said date, he examined into and investigated the books of account and records and business dealings of the Tontine Savings Association, the defendant in this action; that from such investigation and examination it was found that the business of said association was being conducted by the officers and agents thereof in a manner unauthorized by law, and in violation of the rights of the persons with whom the association was dealing, and that the general plan and scheme of the said Association was such as to work a substantial injury to the rights and well-being of the public; that subsequent to such examination an action was started in the District Court of Hennepin County by the State of Minnesota, on the relation of the Attorney General, in the nature of Quo Warranto, to have the said defendant association restrained from further continuing business, and for the winding up and dissolution of the same, and for judgment of ouster of all its corporate rights, privileges and franchises; that the information filed by the Attorney General in said action, and the Writ issued by the Hon. J. F. McGee, one of the Judges of the District Court of Hennepin County has been

served upon the said defendant corporation as provided by law, and in conformity with the order of the court.

Your affiant further states that he is informed and verily believes that said defendant association has now in its possession, a large sum of money, to-wit: more than Twenty-five Thousand Dollars ($25,000), which the officers of the said association intend to use in the cancellation and redemption of certain contracts owned by the officers of said association and held in the name of third persons; that it is proposed to pay out in redeeming each of said contracts, the sum of Two Hundred Dollars ($200), which said sum is to be taken from the moneys paid into the association by contract holders; that the use of the funds of the said association for said purpose, is, as your affiant verily believes, in violation of the rights of the contract holders and prejudicial to the interests of persons whose funds the association holds.

W. J. Donchower

Subscribed and sworn to before me

this 6th day of February, A.D.1902.

James A. Martin
Notary Public in and for Ramsey
County, Minn.

(Notarial)
(Seal)

(Endorsed)
Received, Feb 6 1902.
U. G. Williams, Coroner,
Acting Sheriff of Hennepin Co.,
By A. L. Townsend, Deputy.

Filed, Feb-7 1902.
C. M. Dickey, Clerk,
By H. E. Johnson, Deputy.

State of Minnesota, | District Court,
County of Hennepin. | Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,
Plaintiff,
-vs-
Tontine Savings Association, a corporation,
Defendant.

State of Minnesota, }
County of Hennepin. } ss.

Sanford W. Devore, Norman A. Sprong and Edward D. Ziesel, each being first duly sworn upon oath, does state that said Sanford W. Devore is the President, said Norman A. Sprong is the Secretary and Treasurer, and said Edward D. Ziesel is the Vice President and Manager of the above named defendant, Tontine Savings Association of Minneapolis, Minnesota; that they each have heard read the affidavit of W. J. Donahower made and filed on the 6th day of February, 1902, in the above entitled Court and cause, which affidavit was used as the basis of the restraining order issued by said Court in said cause on said last named date by the Hon. J. F. McGee, one of the judges of said Court, in which restraining order it was by said judge ordered "that the Tontine Savings Association, the defendant herein, and its officers and agents, be and the same are hereby restrained from using, disposing of, or paying out in any manner whatsoever, any of the funds or moneys in the treasury of the said Association, or under its control, or which may, after the service of this order, be paid into the said Association by the owners and holders of the said contracts in this proceeding hereinbefore described, or from selling or disposing of any of the property or assets of the said defendant Association, pending the determination of the proceedings instituted by Attorney General to dissolve the said corporation, and to abide the further order of this Court in the premises."

Said affiants each further say that the business of said Tontine Savings Association is not being, nor has it been conducted in a manner unauthorized by law or in violation of the rights of persons with whom the Association is or ever has been dealing; and deny that the general plan and scheme of the Association is or ever has been such as to work a substantial injury to the rights or well being of the public.

These affiants further state that an information in the nature of a Quo Warranto was on the 31st day of January, 1902, filed in the above entitled Court and cause on the relation of the Attorney General of said State, praying for judgment of ouster against this defendant; but affiants further allege that said Tontine Savings Association has made answer to said information, which said answer has been duly served upon the Attorney General and filed in said Court and cause and is herewith submitted for the inspection of the Court to be used as supplemental to this affidavit upon this motion.

These affiants further state that said Tontine Savings Association has in its possession a considerable sum of money applicable to the payment of its contracts mentioned in said information, and has in addition thereto in its possession a sum exceeding Twenty Thousand Dollars belonging to the expense fund of said Association and not applicable to the payment of said contracts. That these affiants did intend to use the said sum of money in its possession applicable to the payment and cancellation of its said contracts for that purpose and in strict accordance with the terms of its contracts with its contract holders and by their consent and agreement; but affiants further allege that none of the officers of said Association own or are interested in the payment of any contract issued by said Tontine Savings Association, either of the kind mentioned in the said information of the Attorney General in said action, or in the affidavit of said W. J. Donahower, or in said answer, or of any other kind; nor does any third person own or hold any such contract for the use and benefit of any officer of said Association, nor have the officers of said Association ever misapplied or intended to misapply a single dollar of the funds of said Association,

or to use said funds in any other manner than as provided by the contracts of said Association with its contract holders, which contracts are truly set forth in the answer of the said Tontine Savings Association herewith submitted to this Court.

Affiants further state that it is absolutely necessary for the Tontine Savings Association to use enough of the expense fund of said Association to pay the current expenses including about five hundred dollars due for rent and stationery and to pay the weekly salaries of its clerks and expressage on funds received which will not exceed two hundred and fifty dollars per week.

Affiants further state that said Tontine Savings Association under the said restraining order issued in said Court and cause is unable to pay its attorneys to defend the above entitled action, for which purpose it has employed E. H. Crooker, Esq., and the firm of Hicks, Carleton & Cross, attorneys of this Court.

WHEREFORE your affiants pray that the said restraining order of this Court, issued in said action on the 6th day of February, 1902, signed by the Hon. J. F. McGee, one of the judges of said Court, be so far modified that said Tontine Savings Association be permitted to pay out of funds other than those applicable to the payment of its contracts its said clerical force their weekly salaries and its necessary office expenses, not exceeding the aggregate of $250.00 per week and the rent and stationery now due not exceeding the sum of five hundred dollars until the further order of the court made herein, and that said Tontine Savings Association be also permitted to pay to its said attorneys reasonable fees for the conduct of the defense in this action in this Court, its said Treasurer being required to keep an accurate account of all such incidental expenses, clerical salary and attorney's fees so paid, and as in duty bound your affiants will ever pray.

Subscribed and sworn to before me
this 8th day of February, 1902.

H. W. Moyer
Notary Public, Hennepin County, Minnesota.

(Notarial Seal)

Sanford W. Devore

Norman A. Sprong

Edward D. Ziesel

Filed, Feb 13 1902.
C. N. Dickey, Clerk,
By H. E. Johnson, Deputy.

State of Minnesota, District Court,

County of Hennepin. Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,
Plaintiff,
-vs-
Tontine Savings Association, a corporation,
Defendant.

The above entitled cation came on regularly for hearing before the Honorable J. F. McGee, one of the Judges of said Court, in Chambers, on Saturday, the 8th day of February, 1902, at 11 o'clock A. M. of said day, on the application of the defendant for a modification of the restraining order heretofore made, to-wit: on the 6th day of February, A. D. 1902, in this matter, and the complainant appearing by W. J. Donohower, Assistant Attorney General of the State of Minnesota, and the Defendant appearing by Edward H. Crooker and Hicks, Carleton & Cross, its Attorneys, after and the Court being fully advised in the premises, IT IS HEREBY

ORDERED, That the restraining order heretofore issued herein, be and the same is, hereby modified, and the said defendant association is hereby authorized and permitted to pay its current bills, which accrued and became due on the first day of February, 1902, and the rent for the offices occupied by it, the total amount to be paid out on said account, not to exceed the sum of Five Hundred ($500.) Dollars; and the defendant is further permitted and allowed to pay out for its current expenses, including the wages of its employes, express charges and other current expenses, an amount not exceeding Two Hundred and Fifty ($250) Dollars per week, until the further order of this Court, and said defendant association is further permitted and allowed to pay out for Attorneys fees an amount not to exceed Two Thousand ($2000) Dollars. Otherwise said order to remain in full force and effect.

This order is made without prejudice to the defendant, to apply at any time for a further modification of said restraining order, or to move the Court for a dissolution thereof, if it be so advised.

Dated February 8th, 1902.

J. F. McGee
District Judge.

THE PONTINE SAVINGS ASSOCIATION.

Capital Stock $100,000. Home Offices New York Life Building.

Incorporated. Minneapolis, Minn.

Bills paid Feby. 10, 02.

Corser & Co. Rent of offices	$112.67
N. W. Tel. Exch. Co. Phone rent	4.50
Cootey Lithograph Co. Stationery	37.50
Miller Davis Ptg. Co. Printing	250.00
A. B. Farnham & Co. "	86.25
	$490.92

Filed, Feb 10 1902.

C. N. Dickey, Clerk,

By H. E. Johnson, Deputy.

State of Minnesota, District Court,

County of Hennepin. Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,
Plaintiff,
-vs-
Tontine Savings Association, a corporation,
Defendant.

A N S W E R .

And now comes the Tontine Savings Association and for its answer to the information heretofore filed herein:-

Except as hereinafter expressly admitted, qualified or specially denied, denies each and every allegation, and every part or portion thereof, in said information contained.

Admits and alleges that it is duly incorporated under and pursuant to the provisions of Title 2, Chapter 34, General Statutes of Minnesota for 1878, and the amendments thereto, and that the general nature of its business, as set forth in its articles of incorporation, is as alleged on the first page of said information, and that it commenced business as such corporation on or about the 6th day of January, 1894; admits that its principal office and place of business now is, and since its organization has been in the City of Minneapolis; admits that its authorized capital stock is one hundred thousand dollars ($100,000.00), divided into one thousand (1000) shares of one hundred dollars ($100.00) each; admits that its present officers are S. W. Devore, President; E. D. Ziesel, Vice President and Manager, N. A. Sprong, Secretary and Treasurer, and that said officers, together with H. W. Meyer and E. O. Edson constitute and are its present Board of Directors.

Admits and alleges that the sole business of said defendant Association now is, and since the month of August, 1897, has been

the selling of diamonds, but denies that prior to August, 1897, it was engaged in said business of selling diamonds on the installment plan, or on any plan, or at all.

Admits that the contracts set out on the third and fourth pages of said information is a true and correct copy of a part of the contract; that it now is, and since the 18th day of March, 1901, has been making with its patrons, and alleges that each party with whom defendant Association makes said contract first signs and delivers to said defendant Association his written and printed application therefor, and that said application constitutes and is a part of said contract; that a true copy of said application is hereto attached marked "Exhibit B" and made a part hereof.

And defendant Association alleges that prior to said 18th day of March, 1901, and since August, 1897, it was engaged in the business of selling diamonds on substantially the same plan as at present and that it was then making a contract with its patrons, a true copy of which is hereto attached, marked "Exhibit A" and made a part hereof.

Admits that of the weekly installments received by it on its diamond contracts, whether of the form now in use or of the form of "Exhibit A" it retains twenty-five cents out of each installment for its expenses and uses one dollar, and the whole thereof, in the performance and cancellation of its diamond contracts.

Admits that under the provisions of "Exhibit A" the contract which defendant Association was making with its patrons prior to March 18th, 1901, the owner and holder of each contract is given the option to receive in cancellation and performance of his contract, when the same is reached in the order of performance, a commercial white, clear and flawless diamond of the weight of two (2) carats and of the retail value of one hundred dollars per caret, or, in lieu thereof, the sum of one hundred and sixty dollars ($160.00) in cash; but denies that it now does, or since said 18th day of March, 1901, has agreed with its patrons or contract holders to pay to them

the sum of one hundred and sixty dollars ($160.00), or any sum of money whatever, in lieu of a diamond, or that it has since said time guaranteed the value of the diamond to be delivered on its contracts, and alleges that the contract it is now making with its patrons, a copy of a portion of which is set out in the information herein, is a simple contract for the delivery of a diamond according to the terms thereof without any other option whatever, or any money payment, or guaranteed value; and defendant Association further alleges that all the terms of the contracts that it makes with its patrons are and have been incorporated in and set out in its diamond contracts and the applications therefor and that the same are not in any way changed, modified or affected by any rules, regulations or by-laws. Admits that it is agreed in and by defendant Association's contracts that its said contracts shall not become entitled to a performance until the same shall become the oldest outstanding contract and there has been paid into the Association and there is in its possession enough funds applicable thereto to provide for the purchase of the diamond required for the performance thereof at the rate of one hundred dollars per caret.

Admits that the sole and only use, purpose and employment of the funds received by defendant Association on its diamond contract is the performance of its said contracts and that it does not invest said funds in any business investment or speculation and that the same are paid out in the performance of its contracts, in the order of their redemption and that the same is done with the knowledge and consent of each and every of its contract holders.

Admits that defendant Association has no source of substantial income or revenue except from the issuance of said contracts and the installments or payments received thereon.

Denies that defendant Association does not deliver diamonds on the said diamond contracts, and alleges that in all cases it has delivered diamonds unless the contract holder has preferred to receive the cash payment in lieu thereof and so notified defendant Association. Alleges that under and pursuant to the form of contract

it was issuing prior to March 18, 1901, - being in the form of "Exhibit A" hereof, - defendant Association guaranteed its diamonds to be delivered thereon to be of the cash value of one Hundred and sixty dollars for a two caret stone and agreed to pay said sum to the contract holder in lieu thereof if he so elected at the time of delivery, and alleges the option to take the cash or the diamond under said form of contract was and is at all times with the contract holder and not with the Association, and alleges that it was and is agreed in and by said contract, and by the express terms thereof, that in case the contract holder did elect to take said one hundred and sixty dollars in lieu of said diamond that the Association might retain for its own use the difference between said one hundred and sixty dollars and the two hundred dollars it is by said contracts authorized to pay for said diamonds.

And defendant association alleges that each and every of the diamonds it has delivered to its patrons have been of the value as represented and agreed, and better and more valuable stones than those sold by a retail dealer for two hundred ($200.00) dollars; that it is usual for diamond dealers to agree to repurchase at a reduced price diamonds sold by them, and that forty dollars is not an excessive profit to make on a diamond of the retail value of two hundred ($200.00) dollars, and that one hundred and sixty ($160.00) dollars is about the price at which reputable jewelers would agree to repurchase a diamond sold by them for the retail price of two hundred ($200.00) dollars.

And defendant Association expressly denies that it has ever taken or appropriated to its own use any sum of money whatever which it was not expressly stipulated and agreed in and by its said contracts that it might take, or without the knowledge and consent of each and every of its contract holders. And alleges that defendant Association now has and at all times has on hand diamonds for delivery on its contracts and that it now has and at all times has had an agreement made for the purchase of such diamonds as it needs for the performance of its contracts.

And defendant Association alleges that under the contract that it is now making with its contract holders, and has been making since the 18th day of March, 1901, it simply agrees to deliver diamonds, and that its plan of business, as now operated, and as represented by its officers, agents, and literature, does not contain any guaranty of the value, nor any agreement to repurchase said diamonds, or to pay money in lieu thereof, and that when the contracts now being made with its contract holders are reached in the order of performance the holders thereof will not be entitled to receive anything thereon or on account thereof except the diamonds described in said contracts. And defendant Association alleges that its plan and method of doing business now is and at all times has been fairly and fully described in its literature, without any misrepresentation whatever, or any statements or promises at variance with its contracts; and that its books of account are, and always have been, accurate and complete and show all its transactions; and that said books are and always have been open to inspection and examination by any and all of its patrons, and by the Attorney General of the State of Minnesota, and have been frequently examined both by the Attorney General and its patrons. That defendant Association now does and at all times has issued weekly and monthly statements to all its patrons showing truly the condition of its business, the number of contracts written, the number of contracts cancelled by performance, and the amount of money disbursed, and that its patrons now are and always have been entirely satisfied with defendant's plan of business and with the way it worked out in actual experience. That the Attorney General has never received any complaint from any of the defendant's contract holders, and that said contract holders are fully satisfied with defendant and its plan and business methods, and with its success. That said plan has been in operation over four years, and that during said entire period defendant has kept and performed each and every of its promises and agreements with its contract holders,

and has redeemed and performed all its contracts within the time estimated and represented by it. That of the first twelve thousand five hundred of the contracts issued by this defendant to its contract holders, each and every such contract upon which the contract holder has complied with the terms thereof, has been paid, cancelled and redeemed by this defendant in strict accordance with the terms thereof. That its condition now is better than at any previous time, and that it is now performing its contracts in less time than previously and that the time required for performance is steadily decreasing; and that said plan as operated by defendant has been and is a success in every way to the complete satisfaction of all its contract holders.

Admits that up to the 7th day of December, 1901, the total amount received by defendant Association on its said contracts amounted approximately to the sum of eight hundred and eighty-two thousand four hundred and one dollars ($882,401.00) and that it had paid out to its contract holders or on account of diamonds for the performance of its diamond contracts approximately the sum of seven hundred and five thousand nine hundred and twenty-one dollars ($705,921.00); but denies that defendant Association or either or any of its officers has ever taken, transferred or appropriated any sum whatever from the fund applicable for the performance of its contract, or from the owner or holder thereof not expressly provided so to be taken, transferred and appropriated in its said contracts, or without the knowledge and consent of each and every of its contract holders.

Denies that between the 1st day of January, 1901, to the first week in December, 1901, or at any time, there was wrongfully or unlawfully taken from the "redemption fund" or appropriated to the use of the officers of said Association, or to any use not expressly provided for by the terms of defendant's contract with its patrons, the sum of one hundred and three thousand and fifty-eight dollars ($103,058.00), or any sum whatever.

Admits the allegation contained in the last paragraph of

the eighth page of said information, and alleges that the form of contract therein described is the same as "Exhibit A" hereto attached.

Admits the allegation on the ninth page of said information except that defendant Association alleges that the total number of contracts therein alleged as outstanding includes both fully paid contracts and contracts in process of payment and except that defendant alleges that the average time required to pay defendant's contract after full payment has been made thereon by the holders does not and will not exceed eleven months. And defendant Association alleges that during the year and a half last past the time taken to pay and perform its contracts has been and is steadily decreasing and that it will eventually fall below ten months after full payment by the contract holder.

Admits that defendant Association is without any funds or property with which to discharge its contracts except such as is or may be received as installments on its contracts, and alleges that under its said contracts defendant Association is not liable on its said contracts, or any thereof, until sufficient of said installments have been paid in thereon to pay or perform them in the order provided for in said contracts, and expressly denies that defendant Association is insolvent.

Denies that of the contracts now in force and in process of payment defendant Association estimates that sixty five per cent. will lapse and forfeit to the Association, or any per cent. in excess of twenty per cent. or that it estimates that the percentage of total lapsations to total contracts written is or will be seventy five out of one hundred or any number in excess of forty out of each one hundred. And defendant Association alleges that the element of lapsation is variable at different times and that as the confidence of its patrons in the success of its plan of business and in the honesty of the Association has increased that the lapsation of its contracts has decreased so that at the present time the lapsation is not so great as it was four or two years ago.

WHEREFORE, Defendant prays judgment that the Writ of Quo Warranto heretofore issued herein be quashed, and the restraining order be dissolved, and that defendant be dismissed hence with its costs and disbursements herein.

Hicks, Carleton & Cross

Edward P. Crocker
Attorneys for defendant.

APPLICATION FOR DIAMOND CONTRACT.

To the Tontine Savings Association of Minneapolis, Minnesota:

I....., *the undersigned, hereby make application for the purchase by me and the sale to me of*.....*two-carat diamond*.....

This application is to be forwarded to the home office of the Association at Minneapolis, Minnesota, subject to its approval, and, if approved, a contract of sale is to be issued by said Association and on each of said contracts I have paid the sum of Five Dollars. I hereby agree to pay a weekly installment of One Dollar and Twenty-five Cents on each contract on or before the last day of each calendar week following the date thereof, for sixty consecutive weeks, pursuant to the terms and conditions of said contract, under penalty of forfeiture, hereby waiving all notice. It is understood and agreed by the applicant hereto that each contract issued hereon is one of a series embracing all the diamond contracts issued by the Association, and that all of said contracts are issued and fulfilled by the Association in connection with and according to the plan on which it now is and has been selling diamonds, and that the agent taking this application is not authorized to collect more than the first payment of Five Dollars on each contract applied for, and that the weekly installments are to be paid or remitted as per instructions received from the home office. This application is made with a full knowledge of all the provisions of said contract and published literature of the Association, and said Association shall not be held responsible for agent's statements at variance therewith.

In Witness Whereof, *I have hereunto set my hand this*.....*day of*.....*190*.....

(*Applicant must sign in person*).....

City of.....

Street and Number.....

State of.....

Mail Contract to.....

.....*Agent.*

For Value Received I hereby Sell, transfer and assign all my right, title and interest in the within contract to the person indicated in the following assignment form. (FILL OUT

BY WHOM ASSIGNED. (OWNER MUST SIGN)	TO WHOM ASSIGNED. (PURCHASER.)	LOCAL ADDRESS OF THE PURCHASER.	DATE OF TRANSFER
			190
			190
			190
			190
			190

THE INSTALLMENTS on this Contract are due and payable on or before the last *the date of the Contract and must be paid by Saturday of each week, or a fine of 25 ce* *stallment, which installment together with the fine must be paid by Saturday of the f* *cancelled.*

WHEN THIS CONTRACT is reached in the order of performance and the holder her *advise this Association whether, in settlement of Contract, he will accept the Diamo* *guaranteed value thereof in cash of $160.00 for a two carat; $80.00 for a one carat, a* *mond, which this Association will pay without contest.*

THE INSTALLMENTS upon this Contract are payable at the.....

.....

NO FURTHER NOTICE of installments falling due will be given, neither is it *sonal calls to collect.*

For Value Received I hereby Sell, transfer and assign all my right, title and interest in the within contract to the person indicated in the following assignment form (FILL OUT CAREFULLY AND PLAINLY.)

BY WHOM ASSIGNED (OWNER MUST SIGN)	TO WHOM ASSIGNED (PURCHASER.)	LOCAL ADDRESS OF THE PURCHASER.	DATE OF TRANSFER.	TRANSFER REGISTERED	SECRETARY'S ENDORSEMENT	ASSIGNME NUMBE
			190	190		
			190	190		
			190	190		
			190	190		
			190	190		

THE INSTALLMENTS on this Contract are due and payable on or before the last day of each calendar week following the date of the Contract and must be paid by Saturday of each week, or a fine of 25 cents will attach on the delinquent installment, which installment together with the fine must be paid by Saturday of the following week or the Contract will be cancelled.

WHEN THIS CONTRACT is reached in the order of performance and the holder hereof receives notice accordingly, he must advise this Association whether, in settlement of Contract, he will accept the Diamond accruing by said maturity or the guaranteed value thereof in cash of $160.00 for a two carat; $80.00 for a one carat, and $50.00 for a five-eighths carat Diamond, which this Association will pay without contest.

THE INSTALLMENTS upon this Contract are payable at the.....

.....*unless the holder is otherwise notified.*

NO FURTHER NOTICE of installments falling due will be given, neither is it permitted for collectors to make personal calls to collect.

INCORPORATED UNDER THE LAWS

SERIES

THE TONTINE ASSOCIATION

HOME OFFICE.

Exhibit A

DIAMOND CONTRACT

THIS CONTRACT IS ONE OF A SERIES OF CONTRACTS OF LIKE TENOR NU

Know All Men by These Presents, *That if*_____

truly make each and all of the payments herein provided for, to be made by him at the time and in the manner he
hereof, **THE TONTINE SAVINGS ASSOCIATION**, *of Minneapolis, Minnesota, will sell and deliver to him,*
perfect diamond, of the weight of two carats, the same to be delivered whenever, after full payment thereof, this contra

The holder hereof hereby promises and agrees to pay to the Association, at its home office in the city of Minnea
following manner, to-wit: $5.00 on delivery hereof, the receipt of which is hereby acknowledged, and $1.25 on or befor
consecutive weeks; if he shall fail to pay any of said installments within the week in which it is payable, the said
cents, may be paid at any time before the end of the next succeeding calendar week; but if he shall fail or neglec
herein provided, and shall continue in such default for more than one week, then, and in that case, this contract shal
payments theretofore made hereon shall be forfeited. Provided, however, that if default in the payment of said weekly
or forty-five, and no more thereof, then this contract shall not be annulled, but shall thereupon become and be parti
ively, of its full face value, which non-forfeitable periods shall be called respectively "first option," and "second o
contract is reached in the order of performance herein provided, a diamond, of the weight and quality described in
or option at which payment hereon is stopped.

The different options allowed the holder hereof shall be tendered and, if accepted, performed by the Associati
holder hereof, unless he shall notify the Association in writing of his acceptance thereof during the calendar week
acceptance being of the essence hereof, he shall be deemed to have passed and waived his right to such option, and
thereupon, for this contract, cease to be a non-forfeitable period. Provided, that the Association will not deliver any
to the period or option at which the delivery of a diamond is desired and it is reached in the order of performance h

The Association shall employ one dollar out of each weekly installment paid in on this and similar contracts
ance of these contracts, and may retain all other or further sums paid in hereon for the purpose of defraying its exp
installments so that the portion thereof herein provided for, to be used for that purpose is sufficient to provide for the d
order of performance at the rate of $100.00 per carat, which price the Association is expressly authorized to pay or ret
be so applied by the delivery of a diamond as described in said option.

The order of performance of contracts shall be as follows: 1st. First options of contracts in first series in nu
with second options of contracts in first series in numerical order; then first options of contracts in third series alte
contracts in second series in numerical order;

This alternative system of performance shall thereafter continue between fir
lowest series, and second options of contracts in second lowest series, this contract
by this association with its patrons.

This contract is transferable, but no transfer will be recognized by the Compa
one dollar will be charged.

In Witness Whereof, **The Tontine Savings Association** *has caused thi*

*seal to be hereto attached, this*_____ *day of*_____

S. A. Sprong Secretary.

OF THE STATE OF MINNESOTA.

NUMBER

AVINGS

ON

MINNEAPOLIS, MINN.

HBERED FROM 1 TO 100.

_____, *the holder hereof, shall first well and* ein *specified, time, manner and amount of payment being of the essence* or *to his legal representatives or assigns, a commercial white, clear and* ct *shall be reached in the order of performance herein provided.*
polis, *as and for the consideration hereof, the full sum of $80.00 in the* the *last day of each calendar week, following the date hereof, for sixty* delinquent *installment, together with the additional sum of twenty-five* to *pay any of said weekly installments at the time and in the manner* l, *because of said default, become and be wholly null and void, and all* installments *shall occur when the holder hereof shall have paid thirty* ally *paid up and non-forfeitable for five-sixteenths, or one-half, respect-*ition" *and the Association will deliver to the holder hereof, when this* the *accompanying coupon which represents the non-forfeitable period*

on *in the order herein provided. And when any option is tendered the* next *following the giving of said notice, time and manner of notice of* cannot *thereafter accept the same; and the period of such option shall* diamond *on account of this contract unless and until it is fully paid up* erein *provided.*
, *in the purchase and delivery of the diamond required for the perform-*enses. *As often as there is paid to the Association enough of said weekly* delivery *of the diamond required to fulfill the next or lowest option in the* ain *for the diamonds delivered in performance hereof, such amount shall*

nerical *order; then first options of contracts in second series alternating* rnating *with fully paid up contracts in first series, and second options of*

st *options of contracts in third lowest series, fully paid up contracts in* being *a continuation of the series of diamond contracts previously made*

ny *unless first registered by the Company, for which registration a fee of*

s *contract to be signed by its President and Secretary, and its corporate*

_____ *190* ____

E. M. Dewey

President.

COUPON 1—FIRST OPTION.

This Coupon, when reached in the order of performance, if accepted, entitles the holder of the annexed contract to receive in full performance of said contract a commercial white, clear and perfect Diamond of the weight of ⅝ carat.

COUPON 2—SECOND OPTION.

This Coupon, when reached in the order of performance, if accepted, entitles the holder of the annexed contract to receive in full performance of said contract a commercial white, clear and perfect Diamond of the weight of 1 carat.

COUPON 3

This Coupon represents the fully paid up contract, and when reached in the order of performance entitles the holder to receive a commercial white, clear and perfect Diamond of the weight of 2 carats.

SERIES

NUMBER

THE

TONTINE SAVINGS ASSOCIATION.

MINNEAPOLIS, MINN.

DIAMOND CONTRACT.

WEEKLY INSTALLMENTS.

$1.25

HOME OFFICE.

New York Life Building,
Minneapolis, Minnesota.

State of Minnesota, }
County of Hennepin. } ss.

E. D. Ziesel came before me personally, and being duly sworn doth say that he is the Vice President and Manager in the above entitled action; that the foregoing answer is true of his own knowledge.

E. D. Ziesel

Subscribed and sworn to before me
on this 11th day of February A.D.1902.

Clarence Z. Brown
Notary Public, Hennepin County, Minn.

(Notarial)
(Seal)

(Endorsed)

Due service of the within answer at the City of Minneapolis admitted this 11 day of February, 1902.

W. B. Douglas
Attorney for plff.

Filed, Feb 11 1902.

C. N. Dickey, Clerk,

By H. E. Johnson, Deputy.

State of Minnesota, | District Court,
County of Hennepin. | Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,
Plaintiff,
-vs-
Tontine Savings Association, a corporation,
Defendant.

Demurrer.

Now comes the State of Minnesota, plaintiff in the above entitled action, and by its Attorney General W. B. Douglas, demurs to the answer of the defendant herein, on the grounds,

That said answer does not state facts sufficient to constitute a defence to the charges and allegations of the information filed herein.

Dated, February 13th, A. D. 1902.

W. B. Douglas
Attorney General.

W. J. Donahower

(Endorsed)

Service of the within Demurrer admitted this 13th of February, 1902.

Hicks, Carleton & Cross
Attys. for Deft.

Filed, Apr 17 1902.
C. N. Dickey, Clerk,
By H. E. Johnson, Deputy.

State of Minnesota, County of Hennepin.

District Court, Fourth Judicial District.

State of Minnesota, ex rel., W. C. Douglass, Attorney General, Plaintiff,

-Vs-

Tontine Savings Association, a corporation, Defendant.

The above entitled proceeding came on for hearing before the undersigned judge of the above entitled court at Chambers on the 13th day of February, 1902, on a demurrer interposed by the plaintiff to the answer of the respondent, and on a motion by the respondent to vacate the restraining order herein.

W. J. Donahower, Assistant Attorney General, appeared in support of said demurrer and E. H. Crooker, Esq., and Messrs. Hicks, Carleton & Cross in opposition thereto; and the Court having heard the arguments of counsel and duly considered the same and being fully advised in the premises, it is

O R D E R E D: That said demurrer be and the same hereby is overruled.

IT IS FURTHER ORDERED That the plaintiff have three days from the date of the filing of this order in which to interpose a reply to the answer of the respondent herein, if it be so advised.

IT IS FURTHER ORDERED That the motion on the part of the respondent to vacate the restraining order herein be and the same hereby is denied.

Dated February 21, 1902.

It is ordered that this case stand for trial on the merits before me on Feb. 25th 1902, at 2 P. M.

By the Court:

J. F. McGee
Judge.

M E M O R A N D U M .

By leave of the Court first had and obtained the Attorney General filed herein on January 29th, 1902, an information in the nature of quo warranto on which a writ of quo warranto issued which was served upon the respondent Tontine Savings Association, and to which the latter, on February 11th, 1902, interposed its answer, to which latter pleading the State interposed a general demurrer, which, by the foregoing order, is overruled.

An examination of the information herein discloses that the respondent is a corporation organized under the laws of this State, and is engaged in a business which, if conducted in the manner, and along the lines charged in the information, ought not to be permitted to continue. But the answer puts in issue practically every material charge of a serious nature contained in the information, and the demurrer, therefore, presents, if it presents any question, one that would touch merely on a small section of the case, and as this is a very important matter, both to the State and to the respondent, I am of the opinion, when the question of the right of the respondent to carry on its business in this State is submitted to the court, it ought to be on testimony showing the exact facts and all the facts, and not in the fractional manner in which it is presented by the demurrer.

When presented in the manner suggested, there can be a speedy and full determination of the questions raised, which will finally determine whether the respondent's method of doing business is legitimate or illegitimate.

Filed, Feb 21 1902.

C. N. Dickey, Clerk,

By H. E. Johnson, Deputy.

State of Minnesota, County of Hennepin.

District Court, Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General, Plaintiff,

-vs-

Tontine Savings Association, a Corporation, Defendant.

REPLY.

Now comes W. B. Douglas, Attorney General of the State of Minnesota, and in reply to the answer of the defendent herein:

1st. Denies that in and by the terms of any of the contracts described in the said answer or in the application addressed to the association by the purchasers of the said diamond contracts, was it agreed that in the event of the cancellation of the said contract by the payment to the owner and holder thereof, of the sum of one hundred and Sixty Dollars ($160), in lieu of the two caret diamond described in said contracts, that the difference between the said One Hundred and Sixty Dollars ($160), and the sum of Two Hundred Dollars ($200), the retail price of the said diamond, was to remain with the defendant association and become the property of its officers, agents or stockholders; that in and by the representations and assurances made by the officers, directors and agents of the said association, and in its printed literature and advertisements, it was represented to and understood by the various purchasers of the diamond contract, so-called, that the whole of the said sum of Forty Dollars ($40), the difference between the One Hundred and Sixty Dollars ($160) paid in cash, if the contract holders so elected, and the Two Hundred Dollars ($200) charged by the defendant association for the said diamonds, was to remain a part of the funds of the association, to be used in the redemption, cancellation and performance of the contracts remaining unpaid; that by reason of the appropriation and use of the said Forty Dollars ($40), as in the information alleged, the time required to

redeem, cancel and perform the contracts of the said association after the said contracts were fully paid and mature, was greatly increased, to the detriment and inconvenience of the owners and holders thereof.

2nd. Plaintiff denies that the Attorney General has never received any complaint from any of the defendant's contract holders and that said contract holders are fully satisfied with defendant and its plan and business methods, and with its success, and alleges that within the past three (3) years, complaint has been made to the said Attorney General by the owners and holders of the said contracts, and furthermore that complaint has been made at various times by the owners and holders of the said contracts, to the Governor and to the Secretary of State and to the Public Examiner.

3rd. And plaintiff further alleges that under the general plan, scheme and management of the said defendant association, whenever there is complaint made to it or its officers, agents or employes by the owners and holders of the said contracts, of the unreasonable delay in the cancellation, redemption and performance of the said contracts, or for other cause, the contracts owned and held by the persons so complaining are purchased by the various brokers, employes and agents of the said association, at the solicitation of the officers and directors thereof.

4th. Further replying to the allegations of defendant's answer herein, plaintiff alleges that under the general plan and scheme of the said association, and pursuant to instructions from its officers and directors, the agents and representatives of the said association throughout the nation, in soliciting contracts, represent to the persons who take out contracts in the said Association, that if they shall elect to take in cancellation, payment and performance of the said contract, the sum of One Hundred and Sixty Dollars ($160) in cash, in lieu of the advertised diamond, that the said Association stands ready and willing to redeem and cancel its said contracts by the payment of the said sum of One Hundred and Sixty Dollars ($160);

that said Association does not keep on hand any diamonds; that when the holder of a contract elects to take a diamond in cancellation and performance of his contract, the management of the said Association buys one for such delivery, and that only for this purpose and in this manner does the Association, buy, own, hold or deal in diamonds of any kind or in any manner whatsoever.

5th. Plaintiff denies that the defendant Association in the cancellation, redemption and performance of his said contracts, delivers to the owners and holders thereof, a diamond of the commercial value of Two Hundred Dollars ($200), and alleges that when the owner of one of said contracts elects to take a diamond in the cancellation and performance thereof, that the diamond delivered by the Association is of inferior quality and of a commercial value far less than that advertised. Plaintiff denies that the said Association buys back from its contract holders any diamonds which may have been delivered, or that its present plan contemplates the repurchase of any diamonds delivered in the cancellation and performance of its contracts, but that it is the present plan and purpose of the said Association under the contract which it is now issuing, to continue its plan of paying cash in lieu of the delivery of a diamond.

6th. Plaintiff denies that the said defendant Association performs its contracts and agreements with the persons with whom it deals within the time estimated and represented by the management of said Association, its agents and brokers at the time that the application for the said contracts are made by prospective contract-holders, but that the time required to cancel and perform the said contracts is far in excess of the time represented by the Association, its agents and brokers, in the making and issuing of the said contracts; and plaintiff denies that the condition of the said Association is better than it has been for a year or more past, or that the Association is more prosperous, but alleges that the condition of the said defendant Association as to its ability to perform its contracts

is variable and is dependent wholly upon the element of new business, lapsation and forfeiture.

7th. For further reply plaintiff denies each and every allegation of new matter in said answer contained, not herein expressly admitted or denied.

W. B. Douglas
Attorney General,

W. J. Donshower
Asst.Atty.General,
Attorneys for Plaintiff.

State of Minnesota,)
) ss.
County of Ramsey.)

W. B. Douglas being first duly sworn deposes and says, that he is the Attorney General of the State of Minnesota; that he has read the foregoing reply and knows the contents thereof, and that the same is true, to the best of his knowledge, information and belief.

W. B. Douglas

Subscribed and sworn to before me
this 13th day of February, A.D.1902.

W. J. Donahower
Notary Public, Ramsey Co., Minn.

(Notarial)
(Seal)

(Endorsed)
Service admitted this 24th
day Feby. 1902.

E. B. Crocker, Henry G. Hicks
Attys. for deft.

Filed, Feb 25 1902.
C. N. Dickey, Clerk,
By J. S. McLaughlin, Deputy.

State of Minnesota, County of Hennepin.

District Court, Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General,
Plaintiff,
-vs-
Tontine Savings Association, a corporation,
Defendant.

It is hereby ordered that the restraining order heretofore issued in the above entitled action on the 6th day of February, 1902, be and the same hereby is further modified so that the defendant Tontine Savings Association may pay out of any funds in its possession not applicable to the payment of its diamond contracts the sum of $466.67 as follows:

For the rent due on the first day of March, 1902, for its offices in the New York Life Building, the sum of, $112.67

For telephone service due for the month of March, 1902, the sum of, $ 4.00

For salaries and expenses of its two travelling agents for the month of February 1902, the sum of $350.00

And that except as hereinabove and hereinbefore modified the said restraining order shall still be and remain in full force and effect until the further order of this Court.

Dated March 7th, 1902.

By the Court:

J. F. McGee
Judge.

Filed, Mar 7 1902.
C. N. Dickey, Clerk,
By H. E. Johnson, Deputy.

State of Minnesota, District Court,
County of Hennepin. Fourth Judicial District.

The State of Minnesota, ex rel., W. B. Douglas, Attorney General, Relator,

-vs-

Tontine Savings Association, Respondent.

----------oOo----------

The above entitled proceeding came on to be heard before the above entitled Court on the 25th day of February, 1902, upon an information in the nature of quo warranto, filed by the Attorney General of the State of Minnesota in said Court, by leave of the Court first had and obtained, on the 31st day of January, 1902, and upon the answer of the respondent and reply of the State therein and thereafter duly filed.

W. J. Donahower, Assistant Attorney General, appeared on behalf of the State, and E. H. Crooker, Esq., and Messrs. Hicks, Carleton & Cross on behalf of the respondent, and the Court having heard the evidence adduced by the respective parties and the arguments of their counsel and having duly considered the same, makes the following findings of fact:

I.

That the respondent, Tontine Savings Association, is a corporation organized under Title II of Chapter 34, General Statutes 1878 and amendments thereto; that said corporation commenced business on or about January 6th, 1894; that its principal office and place of business was then and ever since has been and now is in the city of Minneapolis, Hennepin County, Minnesota; that the general nature of its business, as set forth in its original articles of association is that said association shall buy, own, hold, deal in, sell and

negotiate notes, bonds, stocks, mortgages and other evidences of indebtedness, buy, own, acquire, improve, sell, exchange, plat, mortgage and deal in lands, tenements, hereditaments, real, personal and mixed estate and property and particularly to issue and sell its investment contracts maturable at such times and upon such conditions as the board of directors of such association may from time to time determine, and generally to do and perform all such lawful business and undertaking as shall be necessary or expedient for properly carrying on the business above named; that the authorized capital stock of such association is $100,000, divided into 1,000 shares of $100 each; that S. W. Devore is President of said association, E. D. Ziesel is Vice President and Manager, and N. A. Sprong is Secretary and Treasurer; that the entire authorized capital stock of $100,000 has been issued; that said Devore and Sprong each own 37-1/2 and said Ziesel 17-1/2 per cent of the same, and that H. W. Moyer and E. O. Edson own the remaining 7-1/2 per cent thereof; that said five persons last above named constitute the present board of directors of the respondent association, all of whom reside in the City of Minneapolis, Minnesota, except E. O. Edson, who is a resident of the City of Cedar Rapids in the State of Iowa.

That between the first day of January and the 13th day of March, 1894, $2750 was paid in on said stock by said Devore, Sprong Ziesel and others, and is all that ever has been paid in on the capital stock of said association and is all that has ever been called for by the Board of Directors of said corporation; that the only business transacted by said corporation since the date of its organization is as hereinafter stated.

II.

That at and immediately following the date of its organization the respondent issued and undertook to sell what was by it designated an investment contract, on which the holder was required to pay $2 per month, a default in making a payment terminating the contract and forfeiting all previous payments, the association guar-

anteeing the payment of $1,000 at the end of forty years. This contract, not proving attractive to the investing public, was abandoned.

That on the abandonment of the forty year plan above mentioned, the association put into operation the same plan the term being reduced from forty to twenty years, the monthly payment and the amount guaranteed being the same, which plan in turn failed to attract investors and was supplanted on August 2nd, 1897, by the so-called diamond contract involved herein; that the contracts maturable in forty years have all been retired and the twenty year contracts have also been taken care of, with the exception of eleven now outstanding for the retirement of which the company has provided a fund of about $1800 which, under the terms of said contracts, suffices for the retirement of the same.

III.

That on the 2nd day of August, 1897, the respondent commenced the issuing and selling of its diamond contracts; that the following is a copy of said contract and is the first diamond contract that was issued.

Incorporated Under the Laws of the State of Minnesota.

Series 1 — Number 1

THE

TONTINE SAVINGS

ASSOCIATION.

HOME OFFICE. MINNEAPOLIS, MINN.

$200 MERCHANDISE INVESTMENT CONTRACT.

KNOW ALL MEN BY THESE PRESENTS, That THE TONTINE SAVINGS ASSOCIATION, of Minneapolis, Minnesota, promises to deliver to H. C. Sites or to his or her legal representatives or assigns, a Diamond, upon the conditions set forth herein.

This contract is one of a series of contracts of like tenor numbered from 1 to 100, to each of which is attached four coupons, as shown hereon, which constitute a part of the contract.

The holder of this contract having paid $5.00 for the issue hereof, agrees to pay thereafter to the Association, at its home

office, on the first day of each calendar week following the week in which this contract is issued, until the conditions herein are complied with, the sum of $1.25, which sum shall be applied as follows: Twenty-five cents shall be retained by the Association for its expenses, and One Dollar shall be placed in the redemption fund to be used in the redemption of coupons as hereinafter provided. The amount paid for the issuing of this contract, together with all fines and transfer fees paid, shall go to the expense fund of the Association.

It is understood and agreed that a failure to pay said weekly sum within the week, shall subject the holder hereof to a fine of twenty-five cents, and said delinquent installment and fine must be paid on or before the last day of the following calendar week or this contract shall, because of said default in payment, become null and void, and all payments made hereon shall be forfeited. It being especially understood and agreed that time and amount of payment are of the essence of this contract.

It is further agreed that the holder hereof shall pay as follows, in order to become entitled to the option of maturing any one of the four coupons hereto attached: He shall pay 15 weekly installments in order to mature the first coupon, 30 weekly installments in order to mature the second coupon, 45 weekly installments in order to mature the third coupon, 60 weekly installments in order to mature the fourth coupon.

PROVIDED, That if any coupon shall be reached in the order of redemption before the full number of weekly payments necessary to its maturity have been paid, the holder hereof shall pay the unpaid installments in order to mature the coupon; and, PROVIDED FURTHER, That if the full number of payments necessary to mature any coupon hereon have been made and the said coupon shall not have been then reached in the order of redemption, and the holder hereof desires to mature said coupon, this contract shall be considered to be fully

paid, and no further dues will be required to mature the coupon. Said coupon will be redeemed when it is reached in the order of redemption, as hereinafter provided, and only when there is a sufficient amount in the maturing fund to redeem it. Whenever any coupon hereto attached is reached in the order of redemption it shall be deemed to have matured, and this Association will redeem said coupon by delivering to the holder hereof a Diamond, as specified in said coupon; but it is agreed that the holder may pass the maturity of any coupon and elect to continue payments hereon until he has made enough payments to mature the next coupon. The Association will then redeem said coupon when it is reached in the order of redemption by delivering to the holder hereof a Diamond, as specified in said next coupon. Whenever any coupon hereon is reached in the order of redemption, and the holder hereof passes the option of maturing the said coupon, and elects to continue weekly payments necessary to the maturity of the next coupon hereon, he thereby waives the right to revert to and take advantage of the option thus passed.

The Association shall notify the holder hereof of the maturity of any coupon hereon, and the holder hereof shall, within the calendar week next succeeding the date of giving said notice, declare in writing to the Association his option to pass or mature said coupon, and if no such notice be given, and if no further dues be paid hereon, the coupon will be deemed to have matured and the option of passing it will be denied. The redemption of any coupon hereon shall affect the termination and cancellation of this contract.

Whenever there is in the redemption fund an amount sufficient to redeem the next coupon in the order of redemption, such amount shall be so applied to the purpose of redemption by delivery of a Diamond, as described in said coupon (at the rate of $100 per carat). The option of maturity shall attach to coupons in the following order:

The first coupon to be matured shall be Coupon No. 1, of Contract No. 1, of Series No. 1; and so continuing until all the first coupons on contracts of the first series have been exhausted.

The next coupon to be matured shall be Coupon 1 of Contract 1 of Series 2, then Coupon 2 of Contract 1 of Series 1; and so continuing to alternate between the first coupons of the consecutive contracts of Series 2, and the second coupons of the consecutive contracts of Series 1, until all said coupons are exhausted.

The next coupon to be matured shall be Coupon 1 of Contract 1 of Series 3, then Coupon 3 of Contract 1 of Series 1, then Coupon 2 of Contract 1 of Series 2; and so continuing to alternate between the first coupons of the consecutive contracts of Series 3, and the third coupons of the consecutive contracts of Series 1, and the second coupons of the consecutive contracts of Series 2, until all said coupons are exhausted.

The next coupon to be matured shall be Coupon 1 of Contract 1 of Series 4, then Coupon 4 of Contract 1 of Series 1, then Coupon 3 of Contract 1 of Series 2, then Coupon 2 of Contract 1 of Series 3; and so continuing to alternate between the first coupons of the consecutive contracts of Series 4, and the fourth coupons of the consecutive contracts of Series 1, and the third coupons of the consecutive contracts of Series 2, and the second coupons of the consecutive contracts of Series 3, until all said coupons are exhausted.

This alternative system of options shall thereafter continue in like manner between the fourth coupons of the lowest series of contracts, the third coupons of the second lowest series of contracts, the second coupons of the third lowest series of contracts, and the first coupons of the fourth lowest series of contracts.

This contract is transferable, but no transfer will be recognized unless first registered by the Association, for which registration a fee of One Dollar will be charged.

IN WITNESS WHEREOF, THE TONTINE SAVINGS ASSOCIATION has caused this contract to be signed by its President and Secretary, and its corporate seal to be hereto attached, this 2nd day of August, 1897.

(SEAL) N. A. Sprong, Secretary. F. M. Van Slyke, President.

Coupon 1-- FIRST OPTION.

This Coupon forms a part of the hereto annexed contract, and it will be redeemed, at the option of the holder of the contract and in the manner therein provided by delivery of a commercial white, clear and perfect Diamond of the weight of 1/2 carat, on delivery of which this coupon and the annexed contract shall be surrendered and canceled.

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COUPON 2-- SECOND OPTION.

This Coupon forms a part of the hereto annexed contract, and it will be redeemed, at the option of the holder of the contract and in the manner therein provided by delivery of a commercial white, clear and perfect Diamond of the weight of 1 carat, on delivery of which this coupon and the annexed contract shall be surrendered and canceled.

----------oOo----------

COUPON 3-- THIRD OPTION.

This Coupon forms a part of the hereto annexed contract, and it will be redeemed, at the option of the holder of the contract and in the manner therein provided by delivery of a commercial white, clear and perfect Diamond of the weight of 1-1/2 carat, on delivery of which this coupon and the annexed contract shall be surrendered and canceled.

----------oOo----------

COUPON 4-- FOURTH OPTION.

This Coupon forms a part of the hereto annexed contract, and it will be redeemed, at the option of the holder of the contract and in the manner therein provided by delivery of a commercial white, clear and perfect Diamond of the weight of 2 carat, on delivery of which this coupon and the annexed contract shall be surrendered and canceled.

That the following is a copy of the application upon which said contract was issued:

Series 1. Series 1.

Application to the

T O N T I N E S A V I N G S A S S O C I A T I O N ,

New York Life Building, Minneapolis, Minn.

I, H. C. Sites, the undersigned, hereby make application for 3 Merchandise Investment Contracts to be issued by the Tontine Savings Association of Minneapolis, Minn., for which I have paid to said Association, or to its duly authorized agent (on account of each contract to be issued to me), the sum of $5.00, and I agree to accept of said contracts subject to all of the conditions contained therein.

IN WITNESS WHEREOF I have hereunto set my hand this 26th day of July 1897.

Applicant Must sign in person. H. C. Sites.

Address: :City of Fort Wayne, State of Indiana
:
:Number and Street 82 Calhoun St.

Agent Van Slyke.

(Endorsed in pencil: "#1-1st S. #51, 2nd S. #100 3d S.
1 2 3 "
1 51 100

That the following are copies of the receipts issued on the cancellation of the contract above mentioned.

THE TONTINE SAVINGS ASSOCIATION,

MINNEAPOLIS, MINN.

Received of the TONTINE SAVINGS ASSOCIATION the sum of $160.00 in full payment for a 2 carat Diamond which I have received from the said Company in full satisfaction of Merchandise Contract No. one Series No. One, matured upon Option contained in Coupon No. 4; which Diamond I hereby grant, bargain and sell to the Tontine Savings Association for the said sum.

Name H. C. Sites

Date Dec. 7 1897. Address Fort Wayne, Ind.

THE TONTINE SAVINGS ASSOCIATION.

MINNEAPOLIS, MINN.

Dec 7 1897

Received of the Tontine Savings Association a 2 carat Diamond as described in coupon No. 4 Merchandise Investment Contract No. One series No. One of which I am the owner.

I hereby acknowledge full satisfaction of said contract and authorize its cancellation.

Name H. C. Sites

Address Fort Wayne, Ind.

That on December 7th, 1897, said association by its check paid to the holder of said contract $160 in cash.

That a pamphlet issued by said Association in connection with said contract aforesaid stated, on pages 4 and 5 thereof, under the heading, "You will wear Diamonds ! How?" the following:

At an initial expense of $5 this Association issues a merchandise contract on which the holder thereafter pays $1.25 as weekly dues for fifteen weeks.

The first coupon on the contract then becomes fully paid, and when it is reached in the order of redemption, the holder will be entitled to receive from the Association a 1/2-carat commercial white, clear, and perfect diamond, of the value of $50. (Only $23.75 having been paid.)

If, however, the contract holder desires a one-carat diamond he may continue to pay dues for 15 weeks longer. The second coupon on the contract then becomes fully paid, and, when it is reached in the order of redemption, the holder will be entitled to receive a diamond of 1 carat.

If the holder desires to possess a diamond of 1-1/2 carat, he passes the option of maturing the second coupon and pays dues for 15 weeks longer. When the third coupon will become fully paid, and the option attaches of maturing it, when it is reached in the order of redemption, by taking a 1-1/2 carat diamond.

If the holder desires a still larger diamond he passes the third option of maturity and pays dues for 15 weeks more, when the fourth and last coupon will become fully paid, and the holder will be entitled to receive a 2-carat diamond, when said coupon is reached in the order of redemption. Thus the option of maturing the consecutive coupons attaches after each period of 15 weeks of payment of dues; and the holder may pass any option.

Coupons are matured by redemption in a regular order, which is fully described in the contract, a copy of which is given in this booklet.

If a coupon is reached in the order of redemption before the holder has made the full number of payments necessary to mature it, he must, in order to mature it, pay the unpaid dues. (To illustrate--If dues have been paid for 10 weeks and the coupon is then reached in the order of redemption the holder must pay dues for the remaining 5 weeks in order to affect the redemption of the coupon. This may all be paid at one time.) Thus all contract holders pay the same amount for the maturity of correspondingly numbered coupons.

If the full number of payments necessary to the maturity of any coupon have been paid, and the coupon has not then been reached in the order of redemption, and the holder desires to mature the coupon, he may cease payment of dues and await its redemption in the regular order.

Contracts are issued in series of 100, thus--

Series No. 1 has contracts No. 1 to No. 100.

Series No. 2 has contracts No. 1 to No. 100.

Series No. 3 has contracts No. 1 to No. 100.

and so continuing indefinitely.

The alternations of the option of maturity extend over four series of contracts. After the option of maturity attaches to the last of the 4th coupons of the lowest series of contracts it attaches to the first of the first coupons of the 4th series above it. Thus, as one series is wiped out another is brought into the field of maturity.

The following table shows the amount necessary to mature each of the four coupons, and the size of diamond received:

	Cash Paid	Size of Diam.	Price	Profit
To mature 1st coupon	$23.75	1/2 Carat	$50 00	$26 25
" " 2nd "	42 50	1 Carat	100 00	57 00
" " 3rd "	61 25	1-1/2 Carat	150 00	88 75
" " 4th "	80 00	2 Carats	200 00	120 00

And Page 11 of said pamphlet contains the following:

"The Association will from time to time issue a report giving general information of business done. This will enable patrons to figure approximately when their coupons will be reached in their order of redemption, and they can then act intelligently in passing or accepting their options.

"Many people do not know the value of diamonds. In order that they may fully appreciate and know the value of the diamonds we deliver, we agree to buy them back at the time of delivery, at the rate of $80.00 per carat; or in other words, we would as soon purchase the diamonds of our patrons as of the importers.

"Number of weekly payments required on each option are as follows:

15	weeks	on 1st	option,	1/2	carat diamond.
30	"	2nd	"	1	" "
45	"	3rd	"	1-1/2	" "
60	"	4th	"	2	" "

IV.

That on the first day of January, 1899, the first option part of said contract was abandoned by said association; and on the same date the second option was changed so that the diamond to be delivered thereunder was to be a 5/8 carat instead of a one carat diamond, or $50 in cash instead of $80 in cash; and the third option was changed so as to provide for the delivery of a one carat diamond

or $60 in cash instead of a one and a half carat diamond or $120 in cash; the fourth or sixty week option remaining unchanged.

That said contract in its altered form is as follows:

"SERIES. THE NUMBER

TONTINE SAVINGS

ASSOCIATION.

HOME OFFICE. MINNEAPOLIS, MINN.

DIAMOND CONTRACT.

THIS CONTRACT IS ONE OF A SERIES OF CONTRACTS OF LIKE TENOR NUMBERED FROM 1 to 100.

KNOW ALL MEN BY THESE PRESENTS, That if ..... the holder hereof, shall first well and truly make each and all of the payments herein provided for, to be made by him at the time and in the manner herein specified, time, manner and amount of payment being of the essence hereof, THE TONTINE SAVINGS ASSOCIATION, of Minneapolis, Minnesota, will sell and deliver to him, or to his legal representatives or assigns, a commercial white, clear and perfect diamond, of the weight of two carats, the same to be delivered whenever, after full payment thereof, this contract shall be reached in the order of performance herein provided.

The holder hereof hereby promises and agrees to pay to the Association, at its home office in the City of Minneapolis, as and for the consideration hereof, the full sum of $60.00 in the following manner, to-wit: $5 on delivery hereof, the receipt of which is hereby acknowledged, and $1.25 on or before the last day of each calendar week, following the date hereof, for sixty consecutive weeks; if he shall fail to pay any of said instalments within the week in which it is payable, the said delinquent installment, together with the additional sum of twenty-five cents, may be paid at any time before the end of the next succeeding calendar week, but if he shall fail or neglect to pay any of said weekly installments at the time and in the manner herein provided, and shall continue in such

default for more than one week, then, and in that case, this contract shall, because of said default, become and be wholly null and void, and all payments theretofore made hereon shall be forfeited. Provided, however, that if default in the payment of said weekly installments shall occur when the holder hereof shall have paid thirty or forty-five, and no more thereof, then this contract shall not be annulled, but shall thereupon become and be partially paid up and nonforfeitable for five-sixteenths, or one-half, respectively, of its full face value, which non-forfeitable periods shall be called respectively "first option", and "second option", and the Association will deliver to the holder hereof, when this contract is reached in the order of performance herein provided, a diamond, of the weight and quality described in the accompanying coupon which represents the non-forfeitable period or option at which payment hereon is stopped.

The different options allowed the holder hereof shall be tendered and, if accepted, performed by the Association in the order herein provided. And when any option is tendered the holder hereof, unless he shall notify the Association in writing of his acceptance thereof during the calendar week next following the giving of said notice, time and manner of notice of acceptance being of the essence hereof, he shall be deemed to have passed and waived his right to such option, and cannot thereafter accept the same; and the period of such option shall thereupon, for this contract, cease to be a non-forfeitable period. Provided, that the association will not deliver any diamond on account of this contract unless and until it is fully paid up to the period or option at which the delivery of a diamond is desired and it is reached in the order of performance herein provided.

The Association shall employ one dollar out of each weekly installment paid in on this and similar contracts, in the purchase and delivery of the diamond required for the performance of these contracts, and may retain all other or further sums paid in hereon for the purpose of defraying its expenses. As often as there is paid

to the Association enough of said weekly installments so that the portion thereof herein provided for, to be used for that purpose is sufficient to provide for the delivery of the diamond required to fulfill the next or lowest option in the order of performance at the rate of $100.00 per carat, which price the Association is expressly authorized to pay or retain for the diamonds delivered in performance hereof, such amount shall be so applied by the delivery of a diamond as described in said option.

The order of performance of contracts shall be as follows: 1st. First options of contracts in first series in numerical order; then first options of contracts in second series alternating with second options of contracts in first series in numerical order; then first options of contracts in third series alternating with fully paid up contracts in first series, and second options of contracts in second series in numerical order.

This alternative system of performance shall thereafter continue between first options of contracts in third lowest series, fully paid up contracts in lowest series, and second options of contracts in second lowest series, this contract being a continuation of the series of diamond contracts previously made by this association with its patrons.

This contract is transferable, but no transfer will be recognized by the Company unless first registered by the Company, for which registration a fee of one dollar will be charged.

IN WITNESS WHEREOF, The Tontine Savings Association has caused this contract to be signed by its president and Secretary, and its corporate seal to be hereto attached, this ..... day of ..... 190.....

N. A. Sprong,
Secretary.

S. W. Devore,
President.

(Corporate Seal Tontine Savings Association, Minneapolis, Minn.)

On the margin of the contract and as a part of it are the following words and figures, viz:

COUPON 1--FIRST OPTION.

This Coupon, when reached in the order of performance, if accepted, entitles the holder of the annexed contract to receive in full performance of said contract a commercial white, clear and perfect Diamond of the weight of 5/8 carat.

COUPON 2--SECOND OPTION.

This Coupon, when reached in the order of performance, if accepted, entitles the holder of the annexed contract to receive in full performance of said contract a commercial white, clear and perfect Diamond of the weight of 1 carat.

COUPON 3.

This Coupon represents the fully paid up contract, and when reached in the order of performance entitles the holder to receive a commercial white, clear and perfect Diamond of the weight of 2 carats.

That on the back of said contract appears the following endorsement:

"THE INSTALLMENTS on this Contract are due and payable on or before the last day of each calendar week following the date of the Contract and must be paid by Saturday of each week, or a fine of 25 cents will attach on the delinquent installment, which installment together with the fine must be paid by Saturday of the following week or the contract will be cancelled.

WHEN THIS CONTRACT is reached in the order of performance and the holder hereof receives notice accordingly, he must advise this Association whether, in settlement of Contract, he will accept the Diamond accruing by said maturity or the guaranteed value thereof in cash of $160.00 for a two carat; $80.00 for a one carat, and $50.00 for a five-eighths carat Diamond, which this Association will pay without contest."

That on March 18th, 1901, the second and third of the

original four options were abandoned by said association, which said association, since said last mentioned date, has only issued what was originally the fourth or sixty week option contract, changed on said March 18th, 1901, so as to provide that all fines should thereafter go to the redemption fund instead of the expense fund and omitting therefrom the following provision:

"When this contract is reached in the order of performance and the holder thereof receives notice accordingly, he must advise this association whether, in settlement of contract, he will accept the diamond accruing by said maturity or the guaranteed value thereof in cash of $160 for a 2-carat, $80 for a one-carat, and $50 for a 5/8-carat Diamond, which this Association will pay without contest."

The following is a copy of said contract:

T H E

NUMBER..... T O N T I N E S A V I N G S

A S S O C I A T I O N

DIAMOND CONTRACT.

HOME OFFICE. MINNEAPOLIS, MINN.

KNOW ALL MEN BY THESE PRESENTS, That if ....., the holder hereof, shall first well and truly make each and all of the payments herein provided for, to be made by him at the times and in the manner herein specified, time, manner and the amount of payment being of the essence hereof, the Tontine Savings Association of Minneapolis, Minnesota, will deliver to him, or to his legal representatives or assigns, under and according to the terms and conditions and in the manner and order hereinafter set forth, a commercial white, clear and flawless diamond, of the weight of two carats, and of the value of One Hundred Dollars per carat.

The holder hereof promises and agrees to pay the Association, at its home office in the City of Minneapolis, the full sum of Eighty Dollars in the following manner, to-wit: Five Dollars on delivery hereof, the receipt of which is hereby acknowledged, and One Dollar

and twenty-five cents on or before the last day of each calendar week following the date hereof, for sixty consecutive weeks. If he shall fail to pay any of said installments within the week in which it is payable, the said delinquent installment, together with the additional sum of twenty-five cents, may be paid at any time before the end of the next succeeding calendar week; but if he shall fail or neglect to pay any of said weekly installments at the time and in the manner herein provided, and shall continue in such default for more than one week, then, and in that event, this contract shall, because of said default become and be wholly null and void, and all payments theretofore made thereon shall be forfeited.

The weekly installments having been paid thereon to and inclusive of the sixtieth week, this contract shall be deemed fully paid and non-forfeitable, and the holder shall be entitled to receive the diamond herein described, provided, however, that if at such time the amount in the hands of the Association to the credit of this contract is not equal to the sum of Two Hundred Dollars heretofore provided, then the diamond shall not be delivered until the amount to the credit hereof shall equal said sum. Co-incident with such delivery to the holder of a contract of such diamond, he shall surrender his contract to the Association for cancellation.

The Association shall employ One Dollar of each weekly installment of One Dollar and Twenty-five Cents paid in on this and other contracts, together with all fines, lapses and forfeitures accruing thereunder, in the purchase and delivery of the diamonds required for the performance of such contracts; and may retain all other sums paid in thereon, including the remaining twenty-five cents out of each weekly installment, for its own use and payment of all expenses.

This contract is transferable, but no transfer will be recognized by the Association unless first registered by the Association, for which registration a fee of One Dollar will be charged

IN WITNESS WHEREOF, the Tontine Savings Association has caused this contract to be signed by the President and Secretary thereof and its corporate seal to be hereto attached this ..... day of ..... 190.....

N. A. Sprong,
Secretary.

S. W. Devore,
President."

(SEAL)

That on the back of said contract appears the following endorsement:

"THE INSTALLMENTS on this Contract are due and payable on or before the last day of each calendar week following the date of the Contract and must be paid by Saturday of each week, or a fine of 25 cents will attach on the delinquent installment, which installment together with the fine must be paid by Saturday of the following week or the Contract will be cancelled.

THE INSTALLMENTS upon this contract are payable at the ....., unless the holder is otherwise notified.

NO FURTHER NOTICE OF Installments falling due will be given, neither is it permitted for collectors to make personal calls to collect."

That the application that preceded the issuing of said contract was as follows:

"APPLICATION FOR DIAMOND CONTRACT.

To the Tontine Savings Association of Minneapolis, Minnesota.

I, ..., The undersigned, hereby make application for the purchase by me and the sale to me of .....two-carat diamond.....

This application is to be forwarded to the home office of the Association at Minneapolis, Minnesota, subject to its approval, and, if approved, a contract of sale is to be issued by said Association and on each of said contracts I have paid the sum of Five Dollars. I hereby agree to pay a weekly installment of One Dollar and Twenty-five Cents on each contract on or before the last day of each calendar week following the date thereof, for sixty consecutive

weeks, pursuant to the terms and conditions of said contract, under penalty of forfeiture, hereby waiving all notice. It is understood and agreed by the applicant hereto that each contract issued hereon is one of a series embracing all the diamond contracts issued by the Association, and that all of said contracts are issued and fulfilled by the Association in consecutive order in connection with and according to the plan on which it now is and has been selling diamonds, and that the agent taking this application is not authorized to collect more than the first payment of Five Dollars on each contract applied for, and that the weekly installments are to be paid or remitted as per instructions received from the home office. This application is made with a full knowledge of all the provisions of said contract and published literature of the association, and said association shall not be held responsible for agent's statements at variance therewith.

IN WITNESS WHEREOF, I have hereunto set my hand this ..... day of ....., 190.....

(Applicent must sign in person) .....

City of ..... State of .....

Street and Number .....

Mail contract to .... Agent."

That none of the diamond contracts which have been issued and sold by the respondent since March 18th, 1901, have yet become entitled to performance but that the contracts which respondent is now performing are contracts of the form issued and sold as aforesaid prior to said March 18th, 1901.

V.

That on the last day of each month said respondent association issues and circulates a pamphlet called "Diamond Bulletin", containing usually about sixteen pages of matter, said pages being six by nine inches and containing a statement of the business alleged to have been done and names of persons who have been owners of contracts paid during the preceding month, with their addresses

and testimonials; that on the outer side of the back cover of each of said Bulletins, under the heading "Progress", "Amount disbursed monthly in cancellation of Diamond Contracts", is a statement by months, beginning with January, 1899, and ending with the month of January, 1902, stating what purports to have been the amount of money disbursed by the association in the performance and cancellation of diamond contracts during each month, the amount for January, 1899, being stated at $5,500; January, 1900, $13,100; January, 1901, $30,062.50; January, 1902, $67,312.50; that on the outer side of the front cover of each of said pamphlets, after giving the date of incorporation and the amount of authorized capital is the following: "In August, 1897, this Association introduced a special feature in the form of diamond contracts or the sale of diamonds on the instalment plan under the Tontine principle. To date of this statement (statement of January 31, 1902) we have disbursed in satisfaction of diamond contracts almost a million dollars, $996,325.00; the January disbursements $67,312.50/"

That the statements in ard on the covers of each of said monthly Diamond Bulletins, of the amount "disbursed in satisfaction of Diamond contracts" are and were false, deceptive and misleading in this, that the amount in each and every case stated as having been disbursed in cancellation of diamond contracts was overstated twenty per cent, that twenty per cent of each of said amounts stated in said diamond bulletins, both in the monthly tabulated statements and in the aggregate sum shown on each bulletin was not disbursed in cancellation of diamond contracts but was in the manner hereinafter stated transferred to the expense fund and taken by the officers of said association from said expense fund and distributed as dividends and salaries to the five directors of said association who are the holders and owners of all the stock of said association. Said aggregate amount so illegitimately withdrawn and overstated in said diamond bulletins aggregates$185,628.50; that the last of said bulletins issued January 31st, 1902, states that said association has disbursed in satisfaction of diamond contracts $996,325, when in

fact only $810,496.50 was disbursed for the purpose stated; that each and every one of said statements to the same extent last indicated falsely overstates the money disbursed in cancellation of diamond contracts.

That on the inner side of the outer cover of each of said diamond Bulletins, under the heading "Our Plan Explained", is the following printed statement:

BRIEFLY STATED, this Association's contract with its patrons is as follows: When you sign an application for a Diamond Contract you pay the agent or the Association Five Dollars down, whereupon an explicit contract is delivered to you by the Association. This contract calls for the payment of $1.25 per week for sixty consecutive weeks, making the total payments amount to $80.00. If you keep up those payments for the full sixty weeks, then, when the contract is reached in the order of performance, that is, when yours is the oldest outstanding contract, the Association will deliver to you a two-carat, commercial white, clear and flawless Diamond worth $200.00 at retail.

All contracts whatsoever issued by any person or concern, should either guarantee as to the amount or as to the time. In most cases, if not all, building and loan societies or companies guarantee as to the time of payment to their respective patrons and estimate the amount which shall be due them.

In the plan of the Diamond Contract issued by this Association we reverse that order and make the amount the essence of our contract and the time is estimated.

To illustrate: If you pay the sixty consecutive payments your contract then becomes fully paid and non-forfeitable and you will be entitled to receive the diamond if reached in the order of performance at that time. But should the period of maturity exceed sixty weeks, or run over as the common expression is, you will be to no expense of further payment of installments, but will be holding practically what an insurance company would term a paid-up policy. In their companies the policy would be payable to your beneficiary

at your death, in which case time is also estimated, and is termed "your period of expectancy of life". You may die much earlier than that period, or you may live long after it, but the law of average protects the company or association in its estimate. In our case the amount would be payable to you when yours became the oldest outstanding contract. The period of maturity will not remain steadily at any given point, as the volume of new business and amount of lapsations are subject to the same fluctuations that surround any ordinary business enterprise, but the law of average fully protects you against an unreasonable length of time and guarantees perpetuity to the business.

It is said that fully eighty per cent. of the membership of beneficiary organizations let their payments or dues lapse at one period or another, and as naught is returned to them such lapses accrue to the benefit of those who do make full payment.

This Association does not invest the money paid in as installments and has no liabilities further than to receive the money, retain for expenses twenty-five cents of each $1.25 paid in on installments and place one dollar in the maturity fund to redeem the oldest outstanding contract, which is promptly called in and cancelled as often as there is paid to the Association enough of said weekly installments to provide for such maturities."

VI.

That from the year 1897 said association has, on Saturday of each week, issued printed statements in the following form:

TONTINE SAVINGS ASSOCIATION
OF MINNEAPOLIS, MINN.

D I A M O N D C O N T R A C T .

Summary of Business for Week Ending
Saturday, February 8, 1902.

Number of Contracts Written	263
Number of Contracts cancelled by Maturity and Lapsation	71

That each and all of said statements falsely overstated the number of contracts canceled by lapsation; that taking the statements issued on the last Saturday of each month, beginning with the last one issued in March, 1901, the statement of the number of contracts canceled by maturity and lapsation is as follows:

March 30th, 1901, number of contracts canceled by maturity and lapsation, 123.

That in fact only 47 were canceled by maturity and only 9 actually lapsed, $87 accruing therefrom to the redemption fund, and 68 were of the class hereinafter mentioned in which an entry of a contract was made in the register but the contract never became operative and no payments were ever made on the same.

April 27th, 1901, number of contracts canceled by maturity and lapsation, 102.

That in fact only 47 were canceled by maturity, only 3 actually lapsed, $9 accruing therefrom to the redemption fund, and 35 were of the class which never became operative.

May 25th, 1901, number of contracts canceled by maturity and lapsation, 95.

That in fact only 46 were canceled by maturity, only two lapsed, $5 accruing therefrom to the redemption fund, and 39 were of the class which never become operative.

June 29th, 1901, number of contracts canceled by maturity and lapsation, 87.

That in fact only 49 were canceled by maturity, only two lapsed, $10 accruing therefrom to the redemption fund, and 36 were of the class which never became operative.

July 27th, 1901, number of contracts canceled by maturity and lapsation, 115.

That in fact only 53 were canceled by maturity, ten actually lapsed, $27 accruing therefrom to the redemption fund, and 50 were of the class which never became operative.

August 31, 1901, number of contracts canceled by maturity and lapsation, 110.

That in fact only 61 were canceled by maturity, only 3 actually lapsed, $32 accruing therefrom to the redemption fund, and 38 were of the class which never became operative.

September 28th, 1901, number of contracts canceled by maturity and lapsation, 114.

That in fact only 70 were canceled by maturity, there were no lapses, but 41 were of the class which never became operative.

October 26th, 1901, number of contracts canceled by maturity and lapsation, 111.

That in fact only 72 were canceled by maturity, there were no lapses, but there were 30 of the class which never became operative.

November 30th, 1901, number of contracts canceled by maturity and lapsation, 198.

That in fact only 104 were canceled by maturity, only 4 actually lapsed, $9 accruing therefrom to the redemption fund, and 88 were of the class which never became operative.

December 28th, 1901, number of contracts canceled by maturity and lapsation, 148.

That in fact only 75 were canceled by maturity, only 8 actually lapsed, $40 accruing therefrom to the redemption fund, and 61 were of the class which never became operative.

January 25th, 1902, number of contracts canceled by maturity and lapsation, 156.

That in fact only 86 were canceled by maturity, only 3 actually lapsed, $6 accruing therefrom to the redemption fund, and 68 were of the class which never became operative.

That the last of said statements was issued February 8th, 1902, and stated the number of contracts canceled by maturity and lapsation during the week ending on that day was 71, but in fact 40 contracts were canceled by maturity, there were 25 contracts on which no payments had ever been made and no contracts in fact lapsed and nothing accrued to the redemption fund from lapses.

VII.

That in connection with its present form of contract said association issues a pamphlet in which appears a copy of the Diamond Contract and of the article "Our Plan Explained", with the following as a preface thereto: "A Bit of History."

"The Tontine Savings Association has been in the mutual investment business since January, 1894, during which time it has received and disbursed nearly ONE MILLION DOLLARS.

Its patronage has been confined to no one locality, but has been extended over most of the states from the Atlantic to the Pacific, and from British Columbia to the Gulf; therefore the Association needs no introduction, and its unparalleled success stands as a guarantee of its future.

Our diamond plan has been in operation over four years and is simply the application of the tontine principle--the survival of the persistent--to the sale of diamonds.

Under our plan we have sold a very large number of commercial white, clear and flawless, two-carat diamonds at a cost to the purchaser of $80.00 each; for which diamond any reliable jeweler in the land would gladly pay $160.00".

VIII.

That Exhibit A, hereto attached, is the back cover of one of the aforesaid pamphlets, purporting to show a sign containing the words "Tontine Savings Association" above the eleventh story and across the entire Fifth Street side of the New York Life Insurance Company's Building, in the City of Minneapolis, said cut being followed by the statement "Home of the Tontine Savings Association, New York Life Building, Minneapolis, Minn."

IX.

That on August 2nd, 1897, the first day upon which said diamond plan was put into operation, said association issued 300 contracts, of which finally nine lapsed, the total amount accruing to

the association from the lapsation being $26; 104 rested on the first or 15 week option, 72 on the second or 30 week option, 32 on the third or 45 week option and 82 on the fourth or 60 week option.

That the last payment in the usual course on the first option would have been made November 15th, 1897, on the second option February 27th, 1898, on the third option June 11th, 1898, and on the fourth option September 24th, 1898.

That on August 21st, 1897, 19 days from the date of its issue and 86 days before the last instalment thereon would have been due, the holder of the first of the first option contracts paid in advance the twelve instalments not yet due and thereupon the contract was redeemed at a cost to the redemption fund of $50.

That the amount paid in by the contract holder was an entrance fee of $5 to the local agent, and fifteen instalments of $1.25 each-- 15 of which went to the redemption fund and $3.75 to the expense fund.

That to redeem said contract there was taken from the redemption fund $50, or $35 more than the redemption fund received from the contract holder.

That all but two of said first option contracts were redeemed prior to November 15th, 1897, and of said two one was redeemed on the 15th and the other on the 18th of November.

That from the holders of said 104 first option contracts there was received by the association $2470 as follows: $520 in entrance fees, retained by local agents, the 25 cents on each instalment or $390 to the expense fund, and the $1 per week or $1560 to the redemption fund; and to redeem said contracts the redemption fund paid out $5200 or $3640 more than it received from said contract holders.

That of said 104 contracts nine were paid in August, 1897, 46 were paid in September, 1897, 40 in October, 1897, and 9 in November, 1897.

X.

That on August 2nd, 1897, the Association issued 72 contracts that rested on the second option, or thirty week option, on which, in the usual course, the last instalment of $1.25 would have been paid on February 27th, 1898; that on October 4th, 1897, 62 days after the date of the issue of the contract and nearly five months before the last instalment thereon would have been due, the holder of the first of said second option contracts paid in advance the weekly instalments to and including February 27th, 1898, and thereupon said contract was redeemed at a cost to the redemption fund of $100; that the amount paid in by the contract holder was an entrance fee of $5.00 which went to the local agent, 30 instalments of $1.25 each, $30 of which went to the redemption fund and $7.50 to the expense fund, making a total paid by the contract holder of $42.50; that to redeem that contract there was taken from the redemption fund 62 days from the date the contract was issued, the sum of $100 or $70 more than the redemption fund received from the contract holder.

That from said 72 contracts there was received by the association $3060 as follows: $360 in entrance fees, retained by local agents, 25 cents on each instalment, or $540, to the expense fund, and the $1 per week or $2160 to the redemption fund; and to redeem said contracts there was taken from said redemption fund $7200 or $5040 more than it received from the contract holders.

That of said 72 contracts 21 were paid in October, 1897, 7 in November, 1897, 36 in December, 1897, and 8 in January, 1898.

XI.

That on August 2nd, 1897, said association issued 32 contracts that rested on the third or 45 week option on which, in the usual course the last instalment of $1.25 would have been paid on June 11th, 1898; that on November 10th, 1897, 100 days after the contract was issued, the holder paid in advance the instalments due to and including June 11th, 1898, and thereupon said contract was redeemed at a cost to the redemption fund of $150; that the amount

paid in by the contract holder was an entrance fee of $5 which went to the local agent, 45 instalments of $1.25 each, $45 of which went to the redemption fund and $11.25 of which went to the expense fund, making a total paid by the contract holder of $61.25.

That to redeem that contract there was taken from the redemption fund, 100 days from the date the contract was issued, the sum of $150 or $105 more than the redemption fund received from that contract holder.

That from said 32 contracts there was received by the association $1960 as follows: $160 in entrance fees retained by the local agents, 25 cents on each instalment or $360 to the expense fund, and the $1 per week or $1440 to the redemption fund; and to redeem said contracts the redemption fund paid out $4800 or $3360 more than it received from the contract holders.

That of said 32 contracts 5 were paid in November, 1897, 8 in December, 1897, 15 in January, 1898, and 4 in February, 1898.

XII.

That on August 2nd, 1897, said association issued 82 contracts that rested on the fourth or 60 week option, on which, in the usual course, the last instalment of $1.25 would have been paid on September 24th, 1898; that on December 7th, 1897, 127 days after the contract was issued, the holder paid in advance the instalments due to and including September 24th, 1898, and thereupon said contract was redeemed at a cost to the redemption fund of $200; that the amount paid in by the contract holder was an entrance fee of $5, which went to the local agent, 60 instalments of $1.25 each, $60 of which went to the redemption fund and $15 to the expense fund, making a total paid by the contract holder of $80.

That to redeem the contract there was taken from the redemption fund, 127 days from the date the contract was issued the sum of $200 or $140 more than the redemption fund received from that contract holder.

That from said 82 contracts there was received by the association $6560 as follows: $410 entrance fees retained by the local agents, 25 cents on each instalment or $1230 to the expense fund and $1 per week or $4920 to the redemption fund, and to redeem said contracts the redemption fund paid out $16400 or $11480 more than it received from the contract holders.

That of said 82 contracts 18 were paid in December, 1897, 16 in January, 1898, 23 in February, 1898, 16 in March, 1898, 7 in April, 1898, and 2 in May, 1898.

That said redemption fund received from the 300 contracts issued on August 2nd, 1897, $10,080, paid in by contract holders, and $26 resulting from lapsation of nine of said 300 contracts, or $10,106, and paid out $33,600 to the same contract holders.

That between August 2nd, 1897, the date of the issue of the first 300 contracts, and May 4th, 1898, the date of the payment of the last of said 300 contracts, there were written, according to the contract register of the respondent association 4473 contracts of which number there ultimately lapsed but 93; the amount accruing to the association from such lapsation was $378; that of the 4473 contracts which appear on the register of the respondent to have been written between the dates last above stated, there were 1161 on which no payment had ever been made.

XIII.

That on the 7th day of December, 1901, the Attorney General of the State of Minnesota caused an examination to be made of the books and affairs of the respondent association; that on that day there were 18924 contracts in force, of which number there were 14634 upon which payments were being made and which had not rested at the 30 or 45 week period and had not reached the 60 week period, all of said number of contracts being in goodstanding; there were 164 contracts upon which payments had been made and which rested at the 30 week period, and 30 contracts upon which payments had been made and which rested at the 45 week period, and 4201 contracts upon

which payments had been made for the full period of sixty weeks, all of which said three classes of contracts were standing awaiting redemption and payment. That the total amount received by said association upon said 4395 fully paid and matured contracts was $344,887.50, of which sum $21,975 was paid on account of entrance fees, $64,682.50 was paid to the expense fund on account of payment of 25 cents per instalment per week and $258,330 was paid to the redemption fund.

That prior to said 7th day of December, 1901, said association had received from said 14634 contracts upon which payments were then being made but which had not been matured the sum of $448,003.75; that the amount necessary to pay, perform and redeem said 4395 matured contracts on said December 7th, 1901, was $845,400; that the only fund of said association available or liable for the payment and redemption of said 4395 matured contracts was the redemption fund; that there was in said redemption fund at the close of business on said December 7th, 1901, the sum of $113.50 and no more.

XIV.

That in the book-keeping of said association there are only two accounts kept, the expense and redemption accounts; that in the expense account is kept all the funds of the association other than that going into the redemption account or fund; that to and including the 31st day of January, 1902, there had been checked out of said redemption fund $996,325, purporting to be on account of the payment and redemption of contracts to that date; that the total number of contracts performed and redeemed by said association from August 2nd, 1897, to January 31st, 1902, by delivery of diamonds was 71; that the total number of contracts canceled and redeemed by said association during the time aforesaid, by delivery of diamonds and payment of cash was 6850, for the performance, payment and cancellation of which, said redemption fund is charged on the books of said association with the sum of $996,325; that to said last mentioned sum, said 6850 contracts canceled as aforesaid contributed $296,150,

lapsation during said entire period from August 2nd, 1897, to and including January 31st, 1902, contributed $9,160.75 and no more, and contracts in force and in goodstanding on which payments were being made but upon which the payments had not been completed on January 31st, 1902, contributed $691,014; that the total number of contracts written by the association to January 31st, according to its contract registers, was 41,305, 13,030 of which are denominated by the association lapsed contracts; that in fact on 11,712 of said so-called lapsed contracts no payments had ever been made; that only 1318 contracts on which one or more payments had been made of said 41,305 contracts, lapsed from the date said diamond contract was put into operation on August 2nd, 1897, to and including January 31st, 1902; that the total amount accruing to said association and to the redemption fund of said association from all lapses that have taken place during the period last stated is $9160.75.

XV.

That the respondent association, under the terms of its diamond contract, incurs no liability to its contract holders except so far as it is obligated to apply moneys belonging to the redemption fund to the payment and cancellation of contracts; that said association has no reserve fund and under its plan of doing business it professes to pay off the oldest outstanding contract as often as there is a sufficient amount in the redemption fund to pay the same, the moneys coming into the redemption fund being paid out in redemption of contracts each day, so that at the close of each day's business there is less than $200 to the credit of said fund; that said association has no source of income or revenue except from the issuance of its said diamond contracts and from the payments made thereon, nor does it use, in the payment, cancellation or discharge of its said diamond contracts, any money other than that received therefrom.

XVI.

That the total receipts and disbursements of said association from August 2nd, 1897, to December 31st, 1901, as shown by the books of said association were as follows:

Weekly Installments paid on Contracts	$1,245,406.25
Fines,	1,040.00
Transfer Fees,	1,816.00
Membership Fees received at Home Office,	250.00
	$1,248,512.25

THE ABOVE FUNDS WERE DISTRIBUTED AS FOLLOWS:

To the Expense Account,		
Fines	$1,040.00	
Transfer Fees	1,816.00	
Membership Fees received at Home Office	250.00	
Twenty-five Cents on each installment,	249,081.25	
Difference between $200 and $160 transferred to Expense account	185,828.50	$ 438,015.75
To cancellation of Contracts		
One Dollar paid on each installment,	996,325.00	
Less amount transferred to expense	185,828.50	
Amount paid to Contract holders or for Diamonds		810,496.50
		$1,248,512.25

That the above account does not include the item of $5 entrance fee on each contract, which sum is retained generally by the local agents, only $250 of which appears in the above account.

That the receipts and disbursements of said association for the year 1901, as shown by its books, were as follows:

Receipts and Expenditures from January 1st to December 31st, 1901.

From 25 ¢ on each $1.25 installment	$132,029.50
" Transfer of $40 difference between $200 and $160	105,270.00
" Fines,	616.25
" Transfer fees,	1,286.00
" Membership fees,	250.00
	$239,451.75

DISBURSEMENTS.

To Dividends acct.	$89,000.00
" Salaries "	23,126.67
" Legal "	4,557.01
" Furniture & Fixtures acct.	1,285.70
" Stationery & Printing "	6,332.60
" Telegrams "	524.24
" Postage & Express "	2,343.22
" Agents Convention in August,	6,052.37
" Miscellaneous acct.	7,161.89
" Commissions on Collections,	69,541.88
" Assistance to Agents,	4,512.66
	$214,436.24
Balance,	25,013.51

XVII.

That in each and every case in which a contract has been paid, performed and canceled by payment of cash, the amount of cash in fact paid to the contract holder on each of the four options has been as follows: First option, $40; second option, $80, third option, $120; fourth option, $160; that the officers of said association have charged said redemption fund as follows: First option, $50; second option, $100; third option, $150; fourth option, $200, for each and every contract redeemed, and have wrongfully, unlawfully and fraudulently appropriated to their own use the difference between the amount actually paid in cancellation of said contracts and the amount withdrawn from the redemption fund to pay and cancel the same; that the total amount so wrongfully, unlawfully and fraudulently withdrawn from said redemption fund and by said officers converted to their own use between the 2nd day of August, 1897, and the 31st day of December, 1901, was $185,828.50; that the officers of said association caused said sum of $185,828.50 to be transferred from the

redemption fund to the expense fund and declared dividends payable out of said expense fund on the stock of said association as follows: In 1898, $510; 1899, $1,000; 1900, $20,000; 1901, $89,000; January, 1902, $15,000; February 1st, 1902, $10,000; making a total of $135,510; that the office force in the home office of said association consists of five persons other than the officers; that to and until the first day of January, 1898, the President of said association was paid a salary of $2400 a year; that since said date he has been paid a salary of $5,000 per year; that until the first day of January, 1899, the Secretary and Treasurer of the respondent was paid a salary of $2400 per year, that since said last mentioned date said officer has been paid a salary of $5,000 per year; that until the first day of April, 1901, the Vice President and General Agent was paid a salary of $1800 per year, that since said last mentioned date said officer has been paid, as Vice President and General Manager, $5,000 per year.

XVIII.

That the first fifteen week option contract was issued August 2nd, 1897, and was paid August 21st, 1897; time 19 days.

That the last 15 week option contract paid was issued December 31st, 1898, and paid December 26th, 1900; time 1 year, 11 months and 26 days.

That the first 30 week option contract was issued August 2nd, 1897, and was paid October 4th, 1897; time 63 days.

That the last 30 week option contract paid was issued January 22nd, 1900, and was paid January 29th, 1902; time 2 years and 7 days.

That the first 45 week option contract was issued August 2nd, 1897, and was paid November 10th, 1897; time 100 days.

That the last 45 week option contract paid was issued January 29th, 1900, and was paid February 4th, 1902; time 2 years and 6 days.

That the first 60 week option contract was issued August 2nd, 1897, and paid December 7th, 1897; time 127 days.

That the last 60 week option contract paid was issued December 31st, 1898, and paid December 26th, 1900; time 1 year, 11 months and 26 days.

XIX.

That persons connected with said association, other than the president, vice president and secretary, have by assignment become the owners of a very large number of the matured contracts of said association; that the action of said agents and representatives of said association in dealing with said contracts was known to the officers of said association and the assignments of said contracts to said persons were entered upon the contract registers of said association from time to time, and the said contracts at their maturity were paid to such persons. That one E. O. Edson, a director and stockholder of said association, on the second day on which said association issued contracts, to-wit: August 9th, 1897, took three third option and 27 fourth option contracts and on said contracts, between March 10th, 1898, and June 24th, 1898, said Edson paid to the redemption fund of said association $1755 and received therefrom $4680. That on the same date one Mrs. L. J. Edson became the owner of one-third-option contract, and one Dilly I. Edson became the owner of nine fourth-option contracts on the same date and of five fourth-option contracts on August 25th, which contracts matured and were paid on the same basis as the ones paid to said E. O. Edson. That said Edson has by assignment to him of contracts issued to other persons become the owner of 73 of the contracts of said association in payment of which said association has paid to said Edson the sum of $10,360.

That one R. H. Murtaugh, a member of the office force of the respondent association, has by assignment become the owner of 83 of said contracts and in satisfaction thereof has been paid by said association $7320. That in this manner fully from 700 to 1,000

contracts have been assigned to persons in one way or another connected with or in the employ of the respondent association.

XX.

That the contracts of said association are numbered consecutively from 1 to 41,305; that the last contract redeemed was numbered 12,473, issued on January 30th, 1900, and appears in contract register Volume III; that all contracts entered in the contract registers prior to said date have been canceled by payment, or are in course of payment, or marked lapsed; that subsequent to the date of the redemption of said last mentioned contract and beginning in Volume IV and continuing in Volume V, are found 2174 cases in Volume IV and 3 cases in Volume V, in which there purports to have been issued contracts, the names of the holders and the dates being entered but nothing to indicate that any payment has ever been made, and the entry in each case has not been marked lapsed, while other similar cases where no payment was made on the same pages are marked lapsed; that the contract registers, six in number, opposite the name of each contract holder, contains a series of spaces one-third of an inch square, and when a contract lapses a large letter "L" is stamped in the space, and when a payment is made a star is stamped in the space; that each page of said contract registers contains spaces for 50 names; that throughout said volumes, where these open dates are found, other and similar cases where no payment was made are stamped with the stamp indicating a lapse.

That in Contract Register Volume IV, Series 262, being numbered 26150, the first 49 spaces on said page are dated March 16th, 1901, and otherwise said 49 spaces are entirely blank, the 50th space being occupied; that said 49 open dates are included in the consecutive numbering of said contracts.

That the number of contracts written by said association by years is as follows: 1897, August 2nd to December 31st, 2201; 1898, 4202; 1899, 5657; 1900, 10640; 1901, 15911; January, 1902, 1404; and February 1st to 6th, 1902, 290.

XXI.

That when said diamond plan was put into operation August, 1897, and for some time thereafter, the market value of diamonds was such that said association was able to and did purchase half carat diamonds at $30, 1 carat diamonds at $65, which diamonds so purchased were delivered in the performance and cancellation of said contracts; that thereafter, and about three and a half or four years ago, the price of diamonds advanced rapidly until a 1 carat diamond was and is now worth and costs said association $100 per carat; that the term "commercial white clear flawless diamond" is a term which describes in the diamond trade a definite and well known quality of diamond, and that such diamonds have an established value and are now of the retail value stated and represented in respondent's contracts and literature; that all of the diamonds delivered by the respondent in discharge of its said diamond contracts have been of the grade and quality described in said contracts and of the retail value therein and in its literature stated and represented since the advance in price of said diamonds as aforesaid; that the term used in some of the respondent's contracts, viz: "commercial white, clear and perfect diamond" is synonymous with the term "commercial, white, clear and flawless diamond."

XXII.

That the diamond plan of the respondent association is an illegal, immoral, vicious and fraulent plan; that said respondent has abused and misused the corporate powers and franchises conferred upon it by the statute under which it is incorporated; that such misuser and abuse of such corporate powers and franchises have worked and threatens substantial injury to the public and amount to a violation of the fundamental conditions of the contract by which the franchise to exist as a corporation was granted to respondent.

That said misuser consists in using the franchise to exist as a corporation, conferred upon it by law, to promote and carry on an unlawful, fraudulent and immoral scheme, the ultimate effect of

which will be to inflict great financial injury on thousands of persons and to stimulate and foster the spirit of illegitimate speculation and gambling.

C O N C L U S I O N S O F L A W .

First: That the diamond plan of the respondent association and the manner in which the same has been executed are illegal, immoral, vicious and fraudulent; that said plan cultivates, stimulates and tempts cupidity and fosters a spirit of illegitimate speculation and gambling and amounts to and is an abuse and misuser of the corporate powers and franchises conferred upon the respondent association by the statute under which it is incorporated; that such misuser and abuse of such corporate powers and franchises have worked and threaten substantial injury to the public and amount to a violation of the fundamental conditions of the contract by which the franchise to exist as a corporation was granted to respondent.

Second: That the plaintiff is entitled to judgment herein as follows:

1. Forfeiting the charter and articles of incorporation and ousting the respondent from the right to exercise the franchises, powers and privileges heretofore enjoyed by the respondent Tontine Savings Association and granted to it by the law under which it is incorporated, because and by reason of the misuser of said franchises, powers and privileges in the respects hereinbefore found and stated.

2. Dissolving said corporation.

3. Awarding said plaintiff a permanent injunction, enjoining and restraining the respondent, its officers and agents, from exercising any of the rights, privileges or franchises of the said respondent, from collecting or receiving any of the moneys, debts or payments due to said corporation and from paying out or in any manner delivering or transferring to any person or persons any of the said property, money or effects of the said corporation, or money in the hands of said corporation received from contract holders, or in any manner interfering with any of the rights, privileges or property

of the respondent corporation until otherwise ordered by this Court.

4. Appointing George P. Flannery Receiver of said respondent corporation, authorizing said George P. Flannery, on filing with the Clerk of this Court a bond for the faithful performance of his duties as such receiver, in the penal sum of $20,000, approved by this Court, to take charge of the property and effects of said respondent corporation, to collect and sue for and recover all debts and demands due said corporation, including any moneys of said corporation illegally or illegitimately diverted from the redemption or expense funds of said association or any funds or moneys of said corporation illegitimately or illegally converted to their own use by the officers and stockholders, or any thereof of said respondent corporation, and generally to have and possess the full powers of a receiver in equity with authority to possess all the rights and properties of said corporation of every kind and nature, and to prosecute and defend any and all actions necessary for the protection and preservation of said estate and the interests of all parties interested therein.

5. Ordering, directing and requiring said respondent and its officers and agents to endorse and transfer all checks and drafts and deliver to said receiver, on demand of the latter, said checks and drafts and all the moneys, effects, books, papers and property of every kind, nature and character, belonging to, owned by or in which said corporation has any interest.

6. Ordering and directing said receiver to convert all of the property which may come into his hands as such receiver into cash and distribute the same under the direction and order of this Court.

Let judgment be entered accordingly, awarding a writ of ouster.

By the Court:

J. F. McGee
Judge.

Dated Minneapolis, Minn., March 19, 1902.

M E M O R A N D U M .

The respondent is a corporation incorporated under Title II of Chapter 34, General Statutes of 1878 and amendments thereto, and commenced business on or about January 6th, 1894. Its principal office and place of business then was and ever since has been in the City of Minneapolis, Minnesota. The only business ever transacted by the company, so far as disclosed by the evidence, is as follows: In January, 1894, it commenced issuing what it denominated an investment contract, the terms of which are not clearly disclosed by the evidence, but it appears that a payment of $2 per month was required and a default in payment terminated the contract and forfeited all payments made, and the company guaranteed a payment of $1,000 on the bond at the expiration of 40 years.

This scheme proved short lived and was modified so as to guarantee the payment of the $1,000 in 20 years, and this modified form of contract also proved unsuccessful and, on August 2nd, 1897, was supplanted by the diamond contract involved herein. Under the latter contract the contract holder pays $5 as an admission fee, which is retained by the local agent who obtains the contract, and $1.25 per week for 60 successive weeks, with the right to rest at the expiration of 15 weeks and receive a 1/2-carat diamond of the retail value of $50, or to rest at 30 weeks and receive a 1-carat diamond of the retail value of $100, or at 45 weeks and receive a 1-1/2-carat diamond of the retail value of $150, or complete the full term of 60 weeks and receive a 2-carat diamond of the retail value of $200. On January 1st, 1899, the first option part of this contract was abandoned and the second option was changed so that the diamond to be delivered thereunder was to be a 5/8 carat diamond instead of a 1-carat diamond, and the third option was changed so as to provide for the delivery of a 1-carat diamond instead of a 1-1/2-carat diamond, the fourth or 60 week option remaining unchanged. On March 18, 1901, what had been the second and third of the four original options were abandoned, leaving only the 60 week feature remaining of

the original contract.

Attached to the original contract were four coupons, representing respectively the first, second, third and fourth options, and attached to the contract of January, 1899, were three coupons, representing what had been the second, third and fourth of the four original options.

The original contract provided as follows: The option of maturity shall attach to the coupons in the following way: The first coupon to be matured shall be Coupon 1 of Contract 1 of Series 1, and so continuing until all the first coupons on contracts of the first series have been exhausted. The next coupon to be matured shall be Coupon 1 of Contract 1 of Series 2, then Coupon 2 of Contract 1 of Series 1, and so on continuing and alternating between the first coupons of the consecutive contracts of Series 2 and the second coupons of these consecutive contracts of Series 1 until all said coupons are exhausted. The next coupon to be matured shall be coupon 1 of Contract 1 of Series 3, then Coupon 3 of Contract 1 of Series 1, then Coupon 2 of Contract 1 of Series 2, etc., etc., etc.

Of each weekly instalment of $1.25 paid in, 25 cents goes to the expense fund of the association, the remaining $1.00 to the redemption fund. The contracts are assignable, $1 per contract being charged for registering the assignment. This fee goes to the expense fund. If an instalment is not paid when due, it may be paid before the close of the following week with a fine of 25 cents. The fines, prior to March 18th, 1901, went to the expense fund; since that time they have gone to the redemption fund.

The authorized capital stock of the association was $100,000, divided into 1,000 shares of $100 each, all of which has been issued and all of which is owned by the five persons who compose the board of directors of the respondent association. On that stock only $8750 has ever been paid, but there has been paid in dividends $135,610 since the diamond plan has been in operation, $89,000 of which was paid during the year 1901, $15,000 during the month of

January, 1902, and $10,000 on the first day of February, 1902.

The association put the diamond plan into operation on August 2nd, 1897, and on that day issued 300 contracts, 104 of which rested on the first or 15 week option, 72 on the second, 32 on the third and 82 on the fourth or 60 week option. Of the 104 first option contracts 9 were paid in the month they were issued, 46 in September, 1897, 40 in October, 1897, and the remaining 9 in November, 1897. Of the 72 second option or 30 week contracts, 21 were paid in October, 1897, 7 in November, 1897, 36 in December, 1897, and 8 in January, 1898. Of the 32 contracts that rested on the third option, 5 were paid in November, 1897, 8 in December, 1897, 15 in January, 1898, and 15 in February, 1898. Of the 82 contracts that completed the 60 week period, 18 were paid in December, 1897, 16 in January, 1898, 23 in February, 1898, 16 in March, 1898, 7 in April, 1898, and 2 in May, 1898.

It will be observed that with the exception of two of the first option contracts all those contracts were paid long before the time arrived for making the last payment thereon, the holder being allowed to make the payments not due, in advance. The result of the first day's business fairly indicates how the plan under which the respondent association is doing business operates. The redemption fund of the association received from the 300 contracts issued on the first day in which the company did business, $10080. It invested none of the proceeds. It has no reserve fund. It incurs no liability on the contracts except to pay them from the redemption fund when there is money enough there to make the payment. Only 9 of the 300 contracts lapsed, resulting in the forfeiture of $26 to the redemption fund, and by May 5th, 1898, and within 8 months, the redemption fund paid to the contract holders who had paid in $10106, including $26 lapses, the sum of $33,600.

Between the 2nd of August, 1897, the date of the issue of the first of said 300 contracts, and May 4th, 1898, the date of the payment of the last of said 300 contracts, only 93 contracts actually

lapsed, the total amount accruing to the redemption fund from such lapsation being $378.

It thus appears that the first day's business was finally closed up and the contracts retired, the last one on May 4th, 1898, the money which redeemed the same being contributed as follows: The contracts redeemed contributed $10060, lapsation $378, and new business not then matured contributed $23,142.

It is apparent that the contract holders who took the first 300 contracts received from the redemption fund $23520 more than they paid in, so that if the institution quit business on May 4th, 1898, it would have quit owing contract holders whose contracts had not matured $23520, or rather it would take that amount to return the sum they had paid in; and as, under its system of doing business, it has less than $200 in the redemption fund at the close of business each day, there would be a loss saddled upon the contract holders whose contracts had not yet matured of the sum of $23,520. There being no reserve fund and the ability of the association to mature contracts being dependent entirely upon the money paid into the redemption fund by contract holders, it is perfectly apparent that there are no means by which the loss on the first day's business ever can be wiped out. On the contrary, it not only has not been wiped out, but has continued to increase. On the 7th day of December, 1901, the Attorney General caused an examination of the books and affairs of the respondent association to be made and on that day there were 18,924 contracts in force, of which number there were 14,634 upon which payments were being made and which had not rested at the 30 or 45 week period and had not reached the 60 week period, all of said 14,634 contracts being in good standing. Of the remainder there were 164 contracts upon which payments had been made and which rested at the 30 week period and 30 contracts upon which payments had been made and which rested at the 45 week period, and 4201 contracts upon which payments had been made for the full period of 60 weeks, all of which said three classes of contracts were standing

awaiting redemption and payment. The contracts thus matured and awaiting payment aggregated 4395 and had paid into the association $344,887.50, of which $258,330 was paid to the redemption fund. Prior to that day the 14,634 contracts that were still paying and in good standing but not matured had paid in to the association $448,003.75 which had been disbursed and the amount necessary on that day to pay to redeem the 4395 matured contracts was $845,400. When the business done on the first day was closed up on May 4th, 1898, there was what may, for want of a better term, be called a deficit of $23,520. At the close of business 3 years 7 months and 3 days later, or on December 7th, 1901, that deficit had increased so that there had been received from contracts that had not then matured but were in good standing $448,003.75, which was gone and 4395 fully matured contracts awaiting redemption, to redeem which would require $845,400, with the sum of $113.50 in the redemption fund with which to pay the same. In other words, the deficit had increased in 3 years, 7 months and 3 days from $23520 to $1,292,290.25--that is, if the company quit business on that day, it would lack the amount last stated of having enough to pay the matured contracts and simply restore the $448,003.75 to the contract holders whose contracts had not yet matured.

The Diamond Bulletin issued by the association January 31st, 1902, states that $996,325 had been paid out of the redemption fund and, of course, under the method by which business was done by the association, on the close of that day there would be less than $200 in the fund, and to that date 6850 contracts of all options had been redeemed, and to that sum of $996,325 the 6850 contracts redeemed by it contributed $296,150, lapsation during the entire period, from August 2nd, 1897, to January 31st, 1902, contributed $9,160.75 and no more, while the new business then paying but not yet matured contributed $691,014; showing that the deficit, if I may so use the term, is increasing rapidly. The total of actual lapsation from August 2nd, 1897, to January 31st, 1902, has been in number practically 4-1/2 per cent and in amount less than one per cent of the amount paid from

the redemption fund. The total fines from the beginning have only been $1040 and they have only gone into the redemption fund since March 18, 1901, the amount paid to that fund therefrom being $293.25. It is apparent from the statement of the total receipts and disbursements of the association, found in the 16th Finding of Fact, that, assuming that an entrance fee of $5 was received on each of the 41,305 contracts, the association received from the diamond contract business $1,455,037.25. In other words, it paid out to contract holders $810,496.50 at an expense to the latter of $644,540.75.

The number of contracts written in 1898 were 4202; 1899, 5657; 1900, 10,600; 1901, 16,915. The average rate of increase for the four years was 60.56 per cent, and, assuming that the rate of increase does not exceed that average and the association continues in existence for only 16 years more, the number of contracts then in force will be 89,512,680. Or, for convenience in computation, the number may be placed at 90,000,000 and as only 60 week option or $200 contracts are now written, the amount necessary to redeem the contracts that will be in force at the expiration of the twenty-second year of the operation of the diamond contract would be $18,000,000,000; and continued to the expiration of the fiftieth year the contracts in number would many times exceed the population of the globe and the amount of money necessary to redeem them would exceed all the money that there has been in the world since the creation of Adam, and the deficit that would exist would require an expert mathematician to express in numbers.

The theory of the persons who originated this plan, as is evidenced from their printed literature, is that it is a sort of perpetual motion plan, and of necessity it would have to be because from the time the first contract was matured it never could liquidate and its ability to do so decreased as time went on.

The plan would seem to have been borrowed from that of the Guaranty Investment Company described in United States vs. McDonald, 59 Fed. Rep. 563, where the general nature of the plan is considered

at length and with great thoroughness by Judge Grosscup. The similarity between the two will appear from the following statement of the Court:

"For these bonds the applicant has already paid $10, a portion of which goes to the agent as his commission, the remainder to the company for its maintenance, (Here the fee is $5.), and he has agreed to pay each succeeding month, for each bond purchased, $1.25 more, the 25 cents to be retained by the company for its maintenance, and the $1 going into the treasury, or so-called trust fund, for the redemption of the bonds. The trust fund is also increased by certain fines imposed for deferred payments and other delinquencies. For this the applicants receive the promise of the company, embodied in the bond, that out of the redemption fund they will respectively receive, for each bond held, $1,000, the payment to be made in the following order: First, Bond No. 1, then Bond No. 5, then Bond No. 2, then Bond No. 10, and so on, the priority alternating between the unpaid bond bearing the lowest absolute number and the unpaid bond bearing the lowest number divisible by five, one class being known as numerals and the other class known as multiples. In instances where bonds have lapsed for non-payment of premiums, the lowest bond takes its place."

In this case the Court at length discusses the supposed resemblance between this method of doing business and various other forms of investment and the insurance business, and makes the distinction very plain, and after analyzing the plan proceeds:

"Now, does this constitute a lottery? There is no doubt, gentlemen, upon the face of it, that it constitutes a cheat. The testimony shows that this company has been in existence now for two years, and has had 50,023 applications. According to the constitution of its organization it has, therefore, received more than a half million dollars from the $10 preliminary fee. The testimony shows that it has paid out $206,000 from the so-called trust fund. If it had paid out all it received, as the constitution of the company required

it to do, then it has received as maintenance, from the dues, more than $40,000. Therefore, after an experience of two years the officers and stockholders have received more than $500,000, and its so-called beneficiaries have received but $206,000. That is plunder of the public. It is said that this has been done fairly. The Court, of course, is not sitting here to pass upon the fairness of any such transaction. Two hundred years ago, when coaches were robbed by highwaymen on the heaths of London, it was always said that the highwaymen acted with courtesy, but nobody but an ignorant fool returned to London without knowing he had been plundered.

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"The only substantial difference between the scheme disclosed to you by the proof and the well-recognized lotteries of the world, such as the Louisiana Lottery Company, is that the latter are, in comparison, honest and free from the opportunities of chicanery. The wheel of the lottery and the hat of the raffle are to the fortune hunter incomparably fairer contrivances for the determination of his chances. He is not dependent in them upon the honesty or accuracy of a secretary with whom it is as easy to put one application through the register as another. The whole scheme disclosed by the proof is a cunning trick to attract the cupidity and ignorance of men.

"The great menace to the civilization not only of the United States but of the world is the growing tendency to gamble or engage in lottery. Two hundred years ago their promoters were characterized in the statutes of England as rogues. No prospect is so attractive as that which is wrapped up in the mysteries of a chance. To the winner comes some money, many congratulations, wide advertisement throughout the newspapers, and the propensity to go in again. To the losers, one hundred fold in number, come stripped homes, impoverished wives and children, lost opportunities of building up a competence legitimately, and, in too many instances, the temptation to go in again upon means that are obtained from an employer or cestui que trust, first by supposed borrowing, then by intentional theft,

forgery and embezzlement. The rainbow of hope lures and lures until its chaser falls over the precipice into suicide or the penitentiary."

It was said on the argument that the contract was a contract for the sale of personal property and therefore was valid.

In Brua's Appeal, 55 Pa. St. 294,299, it was said:

"That the transaction in this case assumed the form of a contract about a matter lawful in itself, was not conclusive as to its real motive, as the finding shows; that was the form which the South Sea bubble took in England, the tulip speculation in Holland, and the morus multicaulis in this country; and the form served only as a thin covering of the most frightful system of gambling ever known."

In the case of the United States vs. Durland, 65 Fed. Rep. 408, the plan had or pretended to have what this one expressly disclaims having, that is, a reserve fund, and there the Court used language directly applicable to the case at bar, viz:

"You will see that the bond contains the contract between the company and the bondholder. It developes upon its face the entire financial scheme, and by it you will discover that the company does not make itself or its capital liable for the payment of the bonds. No matter what its capital is, the bondholders cannot get a dollar of it. It is referred to in the circulars, you will see, which recommend this company, and referred to presumably to show the advantages of investing in these bonds, and yet, according to the contract, the bondholders cannot touch the capital, cannot recover a dollar on account of it because, I repeat, the terms of the bond confine the holders to a proportion simply of the money they pay, with the small accumulation of interest that may be obtained from an investment of what is called the reserve fund. You thus see that the company assumes no responsibility whatever, except to return to the bondholders, at the times and under the circumstances stated in the bond, a part of the money that it receives from them.

x x x x x x x x x x

"So long as subscribers, in abundance, could be found for the bonds, who would pay their instalments as they matured, the company, of course, could pay its bonds; and many of the holders might realize the large profits promised in the circulars and pamphlets referred to, the bonds, under the scheme, having a chance of being called in and redeemed. (And in this respect the scheme bears resemblance to a lottery.) At specific times and rates, in advance of maturity the holders of those so redeemed might in some instances realize enormous profits and these profits would be realized to the disadvantage of the other bondholders. And the large profits thus realized, when made public, would reinforce the effect of the representations referred to and render the bonds very popular with a certain class of people; and the business would seem to prosper enormously. And such was the experience of the company. But was it a legitimate, honest business? Or was it a delusive scheme, wild and visionary, a mere bubble that must necessarily explode when its true nature came to be understood? It seems to me that the Company's means of making payment depends entirely on existing subscribers continuing to pay their subscriptions, and its success in obtaining new subscribers who will also thus pay,--and principally upon the latter. The money obtained from one set of bondholders would serve to redeem the bonds of other subscribers then or previously redeemable. But as soon as the people who incline to invest in such schemes lose their faith and the sale of bonds and the payment of instalments consequently cease, the means of paying the bonds is at an end, as I understand the scheme. It is true the company would not be in default on its bonds, because the promise in them is to pay only out of money received from the bondholders. But is the situation of the bondholders under such circumstances consistent with the representations made in the circulars and pamphlets? You must consider and determine."

In the case last cited, the officers of one of those companies were indicted for using the mails to promote a fraudulent scheme to obtain money and the jury returned a verdict of guilty.

In re National Indemnity & Endowment Company, 21 Atlantic 879, the association had petitioned the court for and had obtained articles of incorporation, purporting to be an association for beneficial and protective purposes, within the meaning of an Act of the Pennsylvania Legislature giving the court power to charter such societies. On discovering the real purpose of the association, the court on its own motion issued an Order to show cause why the charter should not be revoked, and on the hearing revoked the charter, and in doing so filed the opinion from which the following quotations are taken, which opinion on appeal was adopted by the Supreme Court. There, as here, there were certain periodical payments, an entrance fee and a payment of $200 when there was money enough in the treasury to pay, the certificate paid being the oldest outstanding certificate. The Court said:

"An examination of the scheme or plan of this company, as appears by the certified abstract attached to the auditor's report, convinces us that this is not a society for beneficial or protective purposes to all its members; but it is a beneficial society to its officers and a scheme to hand over the sum of $200 to a few of the first members who join, at the expense of those coming in later, and this on an investment of about $50 by each of the fortunate low number certificate holders. It is quite apparent that this can only continue so long as the treasury can be replenished by bringing in new members. For example, start with four members, and, according to the scheme, certificate holder No. 1 has paid $5 for his certificate, and twenty monthly payments, which will amount to $40 more, and the small monthly dues, and $5 for a new certificate; he can then draw $200, as soon as there is that amount in the certificate or endowment fund. It is perfectly plain that No. 1 carries off about $150 that was paid in by Nos. 2, 3, 4. The question now arises, how are the remaining three

numbers to get their $200 each? If they keep on paying until another $200 accumulates in the endowment fund, No. 2, according to the scheme, take this, and the same as to Nos. 3 and 4. But it is plain that this plan is much more beneficial to No. 1 than to any of the others. No. 2 has the advantage of No. 3, and 3 of 4. But what becomes of poor No. 4? He is certainly entitled to sympathy. It will not be difficult to convince him that he does not belong to a beneficial society. In reply, the inventors of this scheme say: 'This is not a fair illustration; we constantly receive new members; their payments will help raise funds to pay Nos. 2, 3 and 4, and so on ad infinitum.' This is where the vice of this beneficial society appears. Each member finds that his only hope for realizing his $200 depends on getting in as many new victims as possible. It should be noticed that this endowment fund is not to be invested so as to earn or accumulate anything, but as often as $200 accumulates in the treasury the lowest numbered certificate holder takes it, provided his preliminary payments have been made. It is very plain that each member who grasps the desired $200 gets about $150 of money that never belonged to him and his investment never earned.

"It is equally plain that the time will come when new members cease to join, and the treasury will be empty, and a large number of certificate holders will not get a cent, although they have paid their dues and assessments just as promptly as their more lucky associates, who have carried off their $200 each. And there is nothing in the world to prevent the low number certificate holders from taking the $200 each, and severing all connection with the company. It is said that they must take a new certificate before they draw their money. This is so, but they only pay $5 for it, and when they have drawn their $200 a piece on an outlay altogether of about $50 they can well afford to throw the new certificate in the fire. Take another illustration: We have seen that it takes the assessments of four members for a period of more than twenty months to pay and retire certificate No. 1. Now, if it requires the assessments of four members for this length of time to pay No. 1, it will require the assessments of at

least twelve more to pay Nos. 2, 3 and 4, and, as this company is said to have 700 members it would be an interesting exercise in figures for some beneficial society expert to calculate when the seven hundreth man will get his $200, and how many members this company will need to bring in to provide the money for this man, and this calculation ought to be made on the theory that each man who grasps his $200 can, and probably will, sever all connection with the company. But it is unnecessary to follow this line of illustration further. A careful examination of the petition leads us to the conclusion that the purposes and objects of this company come nearer a scheme to cheat and defraud than a beneficial society. We are satisfied that we made a grave error in granting the certificate of incorporation, and that it is and was void ab initio. If this is so, the company has no legal existence whatever, and our certificate is being used to mislead and deceive the public, and believing that it is our duty, and that we have the power, we propose to revoke this certificate. We regret exceedingly that we were ever induced to sign it, and we regret that we have not the power to make any order to wind up the affairs of this company, so as to protect as far as possible all persons who have been dealing with it. But as we understand the situation this company has no legal existence, and we have no jurisdiction, on what is now before us, except to revoke our illegal certificate of incorporation."

The Supreme Court on appeal said: "Without going into detail, the auditor and the court below have sufficiently demonstrated that the only persons likely to be benefited by the scheme set forth in the charter are the officers themselves. It manifestly belongs to that class of associations, by far too numerous, the practical effect of whose operations is to enrich a few at the expense of confiding and ignorant people. Such corporations are "unlawful and injurious to the community," and in this age of deception and fraud too much care cannot be exercised in scrutinizing the provisions of charters with sounding names and alluring schemes to benefit the public. We are in no doubt of the power of the court to revoke this alleged charter. It never was a charter. It was not authorized by

any act of assembly, and is absolutely void. Had it been authorized by the act of 1874, it could only be reached by a quo warranto. But a void charter confers no rights, and the court below was justified in revoking the order which gave it apparent validity."

In McLaughlin v. National Mutual Bond & Investment Co., 64 Fed. Rep., 908-911, it is said:

"It is evident that the attractiveness of the present project is due to the opportunity which it affords for acquiring money by chance, and not as the reward of industry, frugality, or sagacity. The interesting question to those who participate in it is one of fate, and nothing else. It is this: Which of them shall be forced to forfeit, and so "fall in fortune's strife"; and which of them, surviving that catastrophe, will have obtained redemption in their bonds before the final and inevitable collapse occurs? Upon these contingencies the monthly and quarterly payments are put in jeopardy, and according to the issue of the game, the company, the holder of these stakes, distributes them among the winners. All such schemes are inhibited. They are deceptive and fraudulent, and in their nature simply gambling."

See also the following cases:

State ex rel. Attorney General vs. Interstate Savings Investment Co., 60 Fed. 220.
People vs. North River Sugar Refining Co.,24 N.E.834.

The franchise which the respondent has from the state is a franchise to exist as a corporation. State v. Minnesota Thresher Manufacturing Company, 40 Minn. 213. To use that franchise for the purpose of promoting a scheme like the one the evidence shows the diamond plan of respondent to be is, in my opinion, a misuser of a franchise sufficient to entitle the State to a judgment of ouster.

This, it seems to me, is too clear to admit of argument or to warrant the citation of authorities.

The taking of the 20 per cent of the face amount necessary for the cash redemption of contracts from the redemption fund and transferring the same first to the expense fund and later, in the form of dividends and salaries, to the officers of the respondent association, has been branded by a finding of fact as fraudulent. I have given much consideration to the evidence bearing upon this point and have been compelled to the conclusion that the directors of the respondent association were actuated by fraudulent motives in taking the sum of $185,828.50 from the redemption fund and converting it to their own use, and it is only fair to the persons whose conduct is thus seriously impeached that the reasoning by which that conclusion was reached be stated.

The principles applied in reaching that result may be thus stated:

First: That the redemption fund in the hands of the respondent association is in character a trust fund.

Second: That the relation of the respondent association to that fund is that of a trustee, a relation that exacts the utmost good faith and the most scrupulous integrity.

Third: That a trustee cannot profit by his trust.

Fourth: That where property comes into the hands of a trustee impressed with a trust and the trustee claims that the title to the property subsequently passed from him as trustee to himself personally, by virtue of the terms of the trust agreement it is incumbent upon him to demonstrate clearly and unequivocally that such is the necessary meaning and effect of the language of the instrument. Nothing will be taken in his favor by intendment. Resort cannot be had to presumptions to support the asserted claim. Silence is negation, and doubt as to the right is fatal to the claim.

The head and front of the respondent association is apparently its president, S. W. Devore. Mr. Devore testified that he was the author of the article "Our Plan Explained" that runs through the literature of the respondent, and he doubtless is as competent as any person connected with the respondent to justify the transfer

of this immense sum of money from a trust fund to the pockets of himself and his four associates who compose the board of directors of the respondent and are the holders of all of its capital stock--if the act can be justified.

In answer to the following question of the Attorney General: "In your answer, Mr. Devoro, you allege that you do not take any money from the redemption fund which is not provided by contract with your members; now, as to the fund or the moneys taken by the association when the contract holder elects to take cash in lieu of the diamond, could you point out to me in your contract or your application the words and language that form that understanding or agreement?" Mr. Devore answered: "I would have to have the contract. I would undertake to find it in the contract or literature. (Witness shown contract Defendant's Exhibit A.) 'As often as there is paid to the association enough of said weekly instalments so that the portion thereof provided for to be used for that purpose is sufficient to provide for the delivery of the diamond required to fulfill the next or lowest option in the order of performance at the rate of $100 per carat, which price the association is expressly authorized to pay or retain from the diamond delivered in performance hereof, such amount shall be so applied by the delivery of a diamond as described in said option."

From the fact that no other provision of the contract was referred to, it must be taken that the one quoted is the sole basis of the right and only justification of the act.

Confessedly the money was trust property.

Prima facie the act was wrongful.

Did the provision quoted authorize the transfer of twenty per cent of the entire redemption fund to respondent's stockholders?

In the first place, the language quoted does not purport to deal with the question of cash settlements at all.

On its face the meaning of the language is perfectly plain and is simply this, that when and as often as a contract is performed by delivery of a diamond (which the contract elsewhere states is to

be of the retail value of $100 per carat), the association is authorized to pay therefor $100 and to purchase the same may take from the redemption fund and retain that amount.

The provision in question manifestly deals only with cases in which a diamond is purchased and delivered in performance of a contract, while the $185,828.50 was all taken in cases where diamonds were not delivered but settlement made on a cash basis.

If there were a provision in the contract, providing that in cases in which contracts were canceled by payment of cash instead of the delivery of diamonds, that the association might take from the redemption fund an amount equal to the retail value of the diamond called for and retain therefrom for its own use an amount equal to a sum that represented the difference between the retail and wholesale price of the diamond, then there would be a basis for the contention of the respondent.

The association had two methods of settling with its contract holders; one by delivery of a diamond, the other by paying cash. In settling by the former method the contract contained a provision by which there accrued to the association in the way of profit the difference between the wholesale and the retail price of the diamonds. In settling by the latter method there is no provision in the contract for any profit in the transaction to the association other than the twenty-five cents per week per instalment.

The case is not one of construction of a clause of doubtful meaning in a contract.

The contract in question contains no provision on the subject.

It might, from a standpoint of its interest, have been well for the association, when drafting its diamond contract, so as to provide for profit to it when settlement was made by the delivery of a diamond, to have also provided that a similar profit should accrue to it when a settlement was made on a cash basis, but this was not done.

If the respondent in good faith, though mistakenly, believed that the provision quoted gave it the right exercised, and acted upon

that belief, its act, while unwarranted, could not properly be characterized as fraudulent.

The law, in its benevolence, makes proper allowances for simplicity, stupidity and gullibility.

There are a number of facts disclosed by the record that in my opinion completely negative the idea that the officers of respondent believed that the provision quoted authorized the appropriation by it of the funds in question.

First: The fact that the language relied on deals only with cases of performance by delivery of diamonds and does not refer to the subject of cash settlements, all but conclusively negatives the bona fides of the claim.

Second: 6779 contracts have been redeemed by cash payments the first on August 21st, 1897, and the last on February 5th, 1902, and in case of every cash redemption made the redemption fund was drawn on for 20 per cent more than the amount that sufficed to make the redemption and that 20 per cent was disbursed as salaries and dividends to the five directors who are the owners of all the capital stock of respondent.

Now, the provision of the diamond contract relied on to authorize the act aforesaid did not appear in the contract until January, 1899, while the practice of taking from the redemption fund 20 per cent more than sufficient to redeem the contracts obtained from August 21st, 1897, when the first contract was redeemed.

Certainly no such provision was relied on prior to January, 1899, because no such provision existed prior to that date, yet the taking of the money from the redemption fund in the manner stated was a matter of daily occurrence for 16 months prior to January 1st, 1899.

Third: On the last day of each month the association issued its "Diamond Bulletin" on the front and back cover of which, in large type, it stated the amounts by months and the total amount from August, 1897, to the date of each bulletin, "disbursed in cancel-

lation of diamond contracts",--the amount stated in the bulletin of January 1st, 1902, being $996,325.

On the trial there was no suggestion that these amounts contained a dollar that was not disbursed in cancellation of diamond contracts, but after the trial, from the books, I undertook to make a statement of the receipts and disbursements of the association from the beginning, in which I charged the redemption fund with $996,325 disbursed in cancellation of diamond contracts and with the $185,828.50 taken therefrom and disbursed by the officers of the respondent to themselves as dividends and salaries.

This statement was submitted to the officers of the association for criticism and correction and then it developed for the first time that the $185,828.50 was included in the $996,325 advertised as having been disbursed in cancellation of diamond contracts--that in fact only $810,406.50 of said sum had been disbursed in cancellation of contracts and the remaining $185,828.50 had been diverted from the redemption fund and disbursed to the five directors as before stated, $89,000 of that sum having been distributed in 1901 in the form of dividends on a paid up capital of only $2750 and $25,000 in the same way in the first 32 days of the present year.

To summarize: First, the contract does not purport to authorize the act characterized as fraudulent.

Second: The practice of taking the funds in the amount and manner stated from the redemption fund existed for 16 months prior to the insertion of the clause in question in the diamond contract.

Third: The association every month in the Diamond Bulletin, represented and stated that the moneys making up the gross sum of $185,828.50 were disbursed as they should have been in cancellation of diamond contracts, when, in fact, they had not been, but had been mis-appropriated by themselves.

The facts compel the conclusion reached that the diversion of that immense sum of money was a fraudulent act and not the result of a mistaken but bona fide belief that the contract furnished requisite authority for the act.

The amount so diverted would have sufficed to have redeemed:

4645 contracts of the 1st option, or

2322 contracts of the 2nd option, or

1548 contracts of the 3rd option, or

1161 contracts of the 5th option.

The effect of the misappropriation of the funds in question on the rights of the holders of matured and unpaid contracts is obvious.

Again, if other acts in the execution of the plan were characterized by falsehood and deception, that fact would have a tendency to throw light on the question of the motives of the officers of respondent in taking the $185,828.50 from the redemption fund.

The Saturday statements as to the amount of new business done during the week and contracts canceled by maturity and lapsation were grossly false, deceptive and misleading in overstating the number of new contracts actually written and the number of old ones that actually lapsed, the overstatement in each case reaching nearly 12,000 contracts or more than one-fourth of the entire business done since the "diamond plan" went into operation.

The number of actual lapses since August 2nd, 1897, has been only 1318, while the number reported in the literature of the company has been 13,030. The difference, or 11,712, consists of entries on the contract registers purporting to show the names of contract holders and dates of issue and nothing else. In these cases, if the entries were made bona fide and the names are those of persons who were in being when the alleged contracts were written, then it is admitted that none of the persons whose names appear opposite these 11,712 entries ever accepted the contracts and it is also a conceded fact that none of these contracts ever went into effect or became operative and that not a cent was ever paid to the association on account of them.

The statement that a contract has lapsed is a statement first, that a contract existed and, second, that it has ceased to exist because of a breach of its terms and conditions warranting forfeiture.

In 11,712 of the 13,030 lapses the contracts never took effect--never had an existence as contracts, and therefore lapse was impossible.

To apply the term "death" where there never was life would be a palpable misnomer.

Deducting the 11,712 entries from the total number shown by the six contract registers leaves but 29,593 contracts actually written, of which latter number 1318 or practically four and one-half per cent actually lapsed.

In the article "Our Plan Explained", which has appeared in every monthly bulletin and other pamphlets, occurs the statement: "It is said that fully 80 per cent of the membership of beneficiary organizations let their payments or dues lapse at one period or another and as naught is returned to them such lapses accrue to the benefit of those who do make full payment."

To be sure, this is not a statement that 80 per cent of the diamond contracts had lapsed or would lapse but it is a statement run in a conspicuous place on the cover of every monthly bulletin, including that of January 31st, 1902, and in the other pamphlets issued and circulated by the company, and is designed to catch the eye and create the impression that such a result might be expected in the operation of the diamond plan, when the records of the association show and the officers who circulated that statement knew that under the diamond plan only about four and one-half per cent in number of the contracts lapsed and that less than one per cent of the total receipts of the redemption fund accrued from lapsation.

Of the same general character is the cut on the outer side of the back cover of the small pamphlet--a cut showing the New York Life Insurance Company's ten story office building, situated within a stone's throw of the Court House in the City of Minneapolis--a building that, with the grounds on which it stands, cost upwards of a million dollars--with an immense sign below the cornice and above the tenth story, running the entire length of the Fifth Street side of the building, containing the corporate name of respondent.

"Tontine Savings Association", and beneath the cut of the building the following, "Home of the Tontine Savings Association, New York Life Building, Minneapolis, Minn." Of course, no such sign ever was on the building and the fact, outside of the record though it may be, is that the respondent occupies a part of one of the lower stories on the Second Avenue South side of the building. True, the statement is not made in so many words that the respondent owns the building, but the cut, supplemented by the statement beneath it that the building is the home of respondent and the sign half a block long above the tenth story containing respondent's corporate name conveys and is intended to convey the impression to respondent's patrons, only two per cent of whom are in Minneapolis and only ten per cent in the State of Minnesota, that it owns the building--that it owns a valuable property worth upwards of a million dollars, when its paid up capital is only $2750.

In this instance as well as in the preceding one as to per cent of lapsation in beneficiary organizations, the deception and falsehood rest in suggestion, which is often as effective as direct assertion.

It is a matter perhaps of common knowledge that it has been the history of organization operated upon plans similar to the one disclosed by the record in this case that, when they have gone upon the rocks and their workings have thereafter been closely scrutinized and fraudulent practices discovered, the main and principal fraudulent means resorted to for the purpose of profit by those in control of the association has been to leave what are known as "open dates", that is, dates not marked lapsed nor ones indicating any payment made, and at the proper time to take a stamp and fill the spaces opposite these dates, taking the money out and appropriating the same. Whether this has been done in this case or not, that is, whether such a means of illegitimately obtaining money have been practiced does not appear from the evidence because it is a subject that was not touched upon in the oral examination of the witnesses, but, as

found in Finding No. 20, there are, in Volume IV--the next volume to be reached in the order of payment, the present contracts in course of payment being in Volume III--2174 entries containing names and dates but with all else blank, no payment nor lapse indicated.

In Volume IV, Series 262, being numbered 26150, the first 49 spaces on the page are dated March 16th, 1901, and otherwise said 49 spaces are entirely blank, the 50th space being occupied, and these 49 blanks are included in the consecutively numbered contracts of the respondent.

In order to make this plain, it is repeated that in the space where the name of the contract holder and address should be shown and the spaces where, if payments were made, they should be indicated by a star stamp, or if no payments were made by a lapse stamp, all is blank. When all contracts prior to these 49 were reached, all that it would be necessary to do would be to insert some name, the date already being in, and take the stamp and stamp the 49 spaces as though payments had been made, and take out $9800, and it would be practically impossible to afterwards detect, without a confession, that such an act had been done.

The utmost that can be said is that the books are in a condition to facilitate fraudulent practices of the character indicated.

On the general question as to whether the method of the respondent association in dealing with its patrons and the public generally has been one of falsehood, misrepresentation, deception and fraud, let it be supposed that on January 31st, 1902, the association issued a statement containing the following information, of the truth of which the evidence in this case leaves no question, viz.:

That when, on May 4th, 1898, the last of the 300 contracts issued on August 2nd, 1897, was paid, the redemption fund, to make these redemptions, had to and did exhaust all the moneys paid to it by those contract holders, all the funds resulting from lapsation, $378, and then had to use all the moneys paid in by maturing contracts,

taking from the latter source $23,142 and that this practice of robbing Peter to pay Paul continued until December 7th, 1901, when the amount taken from Peter had increased to $448,003.75, with an additional sum of $845,400 due on matured contracts, and still further continued until the close of business on January 31st, 1902, when the amount taken from Peter had increased to $691,044. That, instead of the suggested 80 per cent of lapsed contracts there were only about 4-1/2 per cent of the actual contracts written; that the amount accruing to the redemption fund from lapsation was less than one per cent. That the time of maturity of first option contracts had increased from 19 days to a little over two years, and the other options correspondingly. That the association paid out to contract holders in 4 years and 6 months, $810,496.50 at an expense to the latter of $644,540.75.

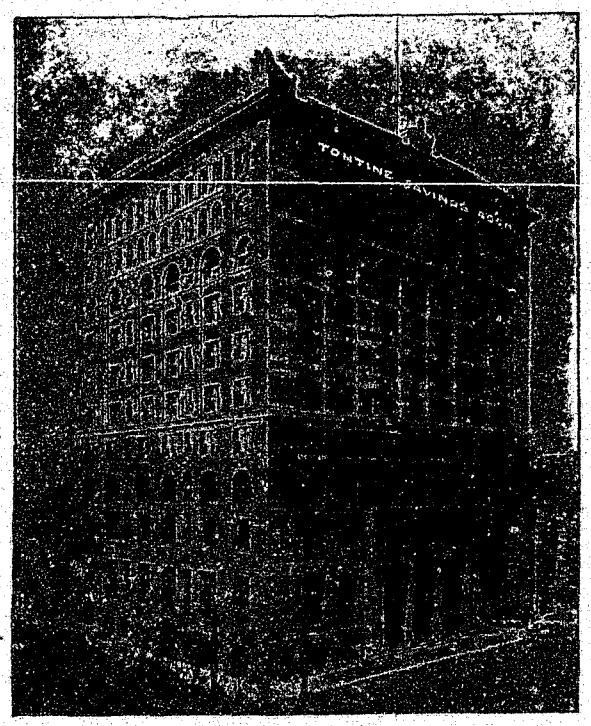
Let it be supposed, I say, that these facts were disclosed, how many contracts would the association write after the people who take such contracts were aware of the truth. Would not a statement of the truth have led to the speedy collapse of the association? In withholding such information and giving out information of an opposite import, was the association not resorting to fraudulent practices? Was it not imposing upon the public?

It is immaterial, so far as results are concerned, whether a fraud is perpetrated by directly asserting a falsehood or by concealing the truth or whether misrepresentation is by way of suggestion. Some resort to one form, some to another; but this association appears to have resorted to all three forms, and it clearly and satisfactorily appearing from the evidence that its corporate franchise, that is, its right to exist as a corporation, has been from 1897 used for the purpose of promoting a dishonest, vicious and fraudulent scheme, but one result can follow and that is a judgment of ouster.

J. F. McGee
Judge.

Filed, Mar 20 1902.
C. N. Dickey, Clerk,
By H. E. Johnson, Deputy.

EXHIBIT A.



HOME OF THE
TONTINE SAVINGS ASSOCIATION,
NEW YORK LIFE BUILDING,
MINNEAPOLIS, MINN.

KNOW ALL MEN BY THESE PRESENTS, That we, George P. Flannery as principal, and The American Surety Company (a corporation of New York) duly authorized to do business in the State of Minnesota, as surety, are held and firmly bound unto the State of Minnesota, in the sum of Twenty Thousand Dollars ($20,000.00), lawful money of the United States of America, to be paid to the State of Minnesota; for which payment well and truly to be made we bind ourselves, our heirs, executors and assigns, firmly by these presents.

Sealed with our seals, and dated the 21st day of March, 1902.

The condition of this obligation is such, that whereas, in an action in the District Court of Hennepin County, Fourth Judicial District, entitled "The State of Minnesota ex rel. W. B. Douglas, Attorney General, Relator, vs. Tontine Savings Association, Respondent", George P. Flannery, the above named principal, has been appointed receiver by an order and judgment duly made and entered in said action.

NOW, THEREFORE, if said George P. Flannery shall faithfully perform all of his duties as such receiver, then the above obligation to be void, otherwise to remain in full force and virtue.

Signed, Sealed and Delivered in Presence of

Howard A. Sands

Eddys E. Cole

Geo. P. Flannery (SEAL)

AMERICAN SURETY CO. of N. Y.

By E. C. Cooke
Res. Vice-President.

Attest C. R. Fowler
Res. Assistant Secretary.

(Corporate Seal)

State of Minnesota, }
County of Hennepin. } ss.

On this 21st day of March, A. D. 1902, before me, a Notary Public within and for said County, personally appeared George P. Flannery, to me known to be the person described in, and who executed the foregoing and within instrument, and acknowledged that he executed the same as his free act and deed.

(Notarial)
(Seal)

C. R. Fowler
Notary Public, Hennepin County, Minnesota.

State of Minnesota,)
) ss.
County of Hennepin.)

BE IT REMEMBERED, that on the 21st day of Mch A. D. 1902, before me personally appeared E. C. Cooke and C. R. Fowler, to me personally known, who, being by me severally sworn, say: the said E. C. Cooke says: That he is the resident Vice-President of the American Surety Company of New York, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors.

And the said C. R. Fowler says: That he is the resident Assistant Secretary of said Company and that the seal affixed to the foregoing instrument, is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors.

And the said E. C. Cooke and the said C. R. Fowler each acknowledge the said instrument to be the free act and deed of said corporation.

(Notarial)
(Seal)

Geo. C. Storer
Notary Public, Hennepin County, Minn.

(Endorsed)

I hereby approve the within Bond and the surety therein named.
Dated March 21st, 1902.

J. F. McGee
Judge of the District Court.

Filed, Mar 21 1902.

C. N. Dickey, Clerk,

By H. E. Johnson, Deputy.

State of Minnesota, County of Hennepin. | District Court, Fourth Judicial District.

State of Minnesota, ex rel., W. B. Douglas, Attorney General, Relator, against Tontine Savings Association, a Corporation, Respondent.

JUDGMENT AND DECREE.

The Order of this Court having been duly made and entered in the above entitled cause on the 19th day of March, A. D. 1902, that judgment be entered in favor of the relator and against the respondent, the Tontine Savings Association, forfeiting the charter thereof and articles of incorporation, and ousting said respondent from the right to exercise the franchises, powers and privileges enjoyed by the said respondent corporation, and granted to it by the law under which it is incorporated; and to have its affairs wound up and a receiver appointed to take charge of its property and effects, to collect, sue for and recover all the debts and demands due said corporation, including any money of said corporation illegally or illegitimately diverted from the redemption or expense funds of said association, or any funds or moneys of said corporation illegitimately or illegally converted to their own use by the officers and stockholders, or any thereof, of said respondent corporation, and generally to have and possess the full powers of a receiver in equity, with authority to possess all the rights and properties of said corporation of every kind and nature, and to prosecute and defend any and all actions necessary for the protection and preservation of said estate and the interest of all parties interested therein.

And the further order of this court having been duly made and filed herein on said date, designating George P. Flannery receiver of the said respondent association;

Now, Therefore, on motion of W. B. Douglas, Attorney General

and W. J. Donahower, Asst. Attorney General, Attorneys for said relator,

It Is Ordered, Determined and Adjudged, that the charter and articles of incorporation of the said respondent, Tontine Savings Association, be forfeited and the said respondent association be ousted and excluded from the right to exercise the franchise, powers and privileges of a corporation, and that its franchise to exist as a corporation under the laws of the State of Minnesota, is vacated and annulled, and that said corporation is dissolved, and that the said respondent corporation, its officers and agents be and they are hereby enjoined and restrained from exercising any of the rights, privileges and franchises of the said respondent, or in any manner interfering with any of the rights, privileges or property of the respondent corporation, and that the said respondent and its officers and agents, are ordered, directed and required to endorse and transfer all checks and drafts and deliver to the said receiver, on demand of the latter, all of the same and all the moneys, effects, books, papers and property of every kind, nature and character, belonging to, owned by or in which said corporation has any interest, and that the said receiver convert all of the property which may come into his hands as such receiver, into cash, and distribute the same under the direction and order of this court.

And it is further Ordered, Determined and Adjudged, that a Writ of Ouster issue herein, conformable to the provisions and requirements of this Judgment.

Dated and signed this 24th day of March, A. D. 1902.

By the Court,

C. N. Dickey,
Clerk District Court,
4th Judicial District.

JUDGMENT ROLL

Filed March 24th, A. D. 1902.

C. N. Dickey,
Clerk.

CLERK'S CERTIFICATE. Form 114. 3-1901-1m. District Court, Hennepin County.

State of Minnesota, } ss.
County of Hennepin.

District Court,
Fourth Judicial District.

I, C. N. Dickey, Clerk of the above named Court, do hereby certify that I have compared the paper s writing to which this certificate is attached with the original information, petition and order granting leave to file information, order for writ in the nature of Quo Warrento, writ of Quo Warrento, affidavit and restraining order, affidevit asking a modification of the restraining order and order modifying restraining order, answer, demurrer to answer, order overruling demurrer to answer, reply, order modifying restraining order, findings of fact, conclusions of law and order for judgment, with memorandum attached, bond of receiver and judgment and decree constituting the judgment roll,

in the action therein entitled, as the same appear of record and on file in the said Clerk's office, at the Court House in said Hennepin County, Minnesota, and find the same to be true and correct copies thereof, and of the whole thereof.

In Testimony Whereof, *I have hereunto set my hand and affixed the seal of said District Court, at the City of Minneapolis, in said County, this* 18th *day of* April, *A. D. 1902.*

C. N. Dickey
Clerk of District Court,

By .....
Deputy.

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No 87355

STATE OF MINNESOTA,

COUNTY OF HENNEPIN.

DISTRICT COURT,

FOURTH JUDICIAL DISTRICT.

State of Minnesota, ex rel.,

W.B.Douglas,Attorney General,

Plaintiff

AGAINST

Tontine Savings Association,

a corporation,

Defendant

Certified Copy of

Judgment Roll.

Filed Apl. 24, 1902

P.E. Hanson

Secy. of State

Geesaman & Murphy Co.