Association "For the Meretorious Purpose of... Mutual Benefit": a Chronicle of the Building and Loan Industry in Maryland from 1852-1961

John W. Sause Jr.

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ASSOCIATION "FOR THE MERETORIOUS PURPOSE OF . . . MUTUAL BENEFIT": A CHRONICLE OF THE BUILDING AND LOAN INDUSTRY IN MARYLAND FROM 1852-1961†

By JOHN W. SAUSE, JR.*

The discussion which follows had its inception in the circumstances surrounding the recent legislation providing for the regulation and supervision of building and loan associations in Maryland.¹ Shortly prior to that time, the Attorney General had concluded that "it is not altogether clear what a building and loan [association] is intended to be in Maryland";² and if this evaluation be correct, there is only confusion compounded in the definition provided by the legislation: "the word 'association' shall mean

† This is the first of two parts. The second part will appear in 22 Maryland Law Review 91.

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*Of the Maryland Bar; B.A. 1955, Williams College; LL.B. 1958, University of Virginia; Assistant State's Attorney for Baltimore City.


²Letter of C. Ferdinand Sybert, Attorney General, and Lawrence F. Rodowsky, Assistant Attorney General, to Albert W. Ward, Director of the Department of Assessments and Taxation, dated June 23, 1960, as yet unpublished.
building, savings and loan or homestead association or any other similar institution by whatever name called.'"\n
To some degree, the new legislation provides boundaries for framing a more precise definition of the future operation of corporations found subject to its provisions. But, in another and more contemporary sense, the Acts of 1961 are regulatory measures; and the avowed purpose of "promot[ing] and fostering... the building, savings and loan or homestead business," absent further definition of the nature of that business, suggests not so much that the definition to be reached will be a new one as that it will, through regulation, reflect the purposes of the already-existing system. Remedial legislation is best understood in perspective; and in the case of the recent building and loan legislation, such understanding is not only desirable but indispensable to proper evaluation of the effect of such measures upon the system found in operation. For this reason, and because the status of the new statutes is currently in doubt, no attempt has been here made to provide a more detailed examination of the nature and effect of the new law.

A word of caution to the reader. As used herein, the words "building and loan association" apply only to the corporations so nominated which exist under the laws of the State of Maryland — the so-called old-line or neighborhood associations. To approach this discussion with a preconceived picture based upon the fancy-facade goliaths existing under Federal charters will be inaccurate and misleading.

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* Petitions to submit Chapter 205 of the Acts of 1961 to referendum were filed with the Secretary of State. Thereafter, the legislature, meeting in special session reenacted the statute in slightly modified form as Chapter 1, Acts of 1961, Special Session. The Attorney General ruled that the referendum petitions were legally insufficient; and the matter is currently in litigation. Also before the courts is the question of whether, if the referendum petitions were adequate, their effect could be defeated by the enactment of a similar bill at a special session of the legislature. See, First Continental Savings and Loan Association, Inc. v. Albert W. Ward, etc., et al., Court of Appeals of Maryland, September Term, 1961, #344 (on appeal from the Circuit Court for Montgomery County); Freestate Savings & Loan Association, Inc. v. Director, State Department of Assessments and Taxation, Court of Appeals of Maryland, September Term, 1961, #355 (on appeal from the Circuit Court for Prince Georges County); James H. Pollack, et al. v. Albert W. Ward, Director, etc., Circuit Court of Baltimore City, Docket 1961, Folio A549, #A-41783. Although the result of the Attorney General's ruling with regard to the insufficiency of the referendum petitions would mean that the bill enacted at the special session was inoperative (Md. Laws 1961 (Spec. Sess.) Ch. 1, § 3), the State has thus far proceeded only under the terms of that measure, e.g. no director has been appointed in accordance with §§ 161A et seq.
I. FOLK BANKS OF THE MID-NINETEENTH CENTURY

Building and loan associations were born in a spirit of altruism perhaps more indigenous to the Industrial Revolution than the New Frontier. It has been indicated that the first such association was formed in 1831 at Sidebotham's Inn in what is now Philadelphia. But, whatever their domestic origin, the first Maryland associations were patterned on the plan of "Benefit Building Societies" first recognized by the British Parliament in the statute of 6 & 7 Will. 4, c. 32 (1836).

By 1852, these groups, then only partnerships or joint ventures, had been established in Maryland; and a bill was introduced that year in the legislature to permit their incorporation. The enthusiasm of its sponsors is reflected in the preamble:

"Whereas, Divers persons, chieflly amongst the industrial classes, in various parts of this State, particularly in the city of Baltimore, have associated themselves together for the meritorious purpose of accumulating, by small periodical deposits, a Savings' Fund, by which they may be enabled to procure for themselves respectively, a Homestead, and for their mutual benefit; thus presenting to persons so associated, a strong motive or inducement to economy and frugality, the exercise of which, cannot but promote their individual welfare, and contribute largely to the taxable property of the State;"

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7 Henry Lee, "Capitalists with the common touch," Coronet Magazine, Vol. 50, No. 2, December, 1960, pp. 128-132. Some authorities see these associations as having primeval roots in early Chinese groups. Sundheim, Law of Building & Loan Associations (3d ed. 1933) § 1; Thornton & Blackledge, Building and Loan Associations (1898) § 1. It has been thought sufficient here to confine historical references to the English ancestors.

8 Entitled "An Act for the Regulation of Benefit Building Societies," the statute referred to the business of such societies as the accumulation of "a Stock or Fund for the Purpose of enabling each Member . . . to erect or purchase One or more Dwelling House or . . . Houses, or other Real or Leasehold Estate to be secured by Way of Mortgage to such Society . . . ."

Benefit Building Societies, in existence as early as 1780, seem to have evolved in turn from earlier groups known as "Friendly Societies" which were "organized in England in the early days of the industrial revolution to provide for the mutual and cooperative savings of a few pennies per week by workingmen and to make small providential loans to their members for funerals and other extreme emergencies in the family." Russell, Savings and Loan Associations (1956) p. 23. See also, Scratchley, Benefit Building Societies (4th ed. 1868); Stone, Benefit Building Societies (1851); Wurtzburg, Building Societies (5th ed. 1920).
And whereas, it is the dictate of a sound policy, that the protection and encouragement of the Legislature, should be given to associations having in view ends and objects so commendable in their character. . . . 9

Apparently this enthusiasm was shared by the legislators, for the bill passed both Houses with only three dissenting votes and became effective as Chapter 148 of the Acts of 1852 on May first of that year. 10

In one respect, the Act of 1852 was purely an incorporation measure, authorizing citizens of the State "to associate for the purpose of organising or establishing Homestead or Building Associations." There being no general incorporation law in existence at the time, this portion of Chapter 148 related to purely procedural matters of corporate birth and existence: the power to adopt and enforce by-laws; the seal; the number and election of officers; recording the articles of association; the manner of making charter amendments; and the authority of officers to make affidavit of the consideration for mortgages. It was also provided that the corporations "shall be capable in law to hold and dispose of property, both real and personal. . . . "11

Section 10 authorized a merger of associations, formed prior to the Act, in corporations formed thereunder. Another provision (§9) made "members" of such associations competent witnesses in cases involving the corporation. The two sections last mentioned, with minor changes in syntax made in 1868, appear in the present Code.12 Each is something of an anachronism and merits no further attention. Passing notice might be made, however, of the fact that, by Section 11, the Legislature reserved power "to alter, amend or repeal this act at pleasure."

Terminating Associations

Like the latter-day Holy Roman Empire, the term "Building and Loan associations" is (but, unlike the Empire, always was) something more than a misnomer, for

9 Preamble Md. LAWS 1852, Ch. 148. A similar reference to the origins of the associations ("industrious classes") is made in the British statute. The Maryland Act came only two years after the first United States statute passed in Pennsylvania in 1850. SUNDHEIM, LAW OF BUILDING & LOAN ASSOCIATIONS (3d ed. 1933) § 2. SUNDHEIM's statement that such associations are "creatures of statute" should not be taken too literally in view of the recognition of the existence of other associations in Maryland in the Act of 1852.


11 Md. LAWS 1852, Ch. 148, §§ 1, 2, 9.

these groups were neither engaged in building nor, it was held, made loans. This semantic problem is characteristic of a difficulty which has pervaded almost every aspect of the development of these associations; and it is the cause of most, if not all, of the confusion which exists today.

The Act of 1852 did much to create the uncertainty, for other than to make a general reference to the purpose of the associations contemplated by it, the legislature merely presupposed their existence as they had evolved independent of any legislation, authorized the incorporation of that system, and, in certain areas, sought to regulate it. Similar sketchiness was noted in early charters and by-laws.

The failure to provide a more particular description of the system served in many ways to obscure the regulatory nature of the Act. Before turning to those provisions, it is therefore necessary to examine the nature of the operation of the early associations.

The early associations were self-liquidating, or "terminating." The basic idea was that all of the members subscribed to shares and agreed to pay for them in weekly installments until their par value was reached. At that time, the corporation was dissolved. Vitality was injected into the system when one of its members wished to purchase a home, at which time he obtained an amount

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13 Even before the passage of the Maryland Act of 1852 it was recognized in Britain that such associations were "really Investing and Borrowing societies..." Stone, BENNET BUILDING SOCIETIES (1851) p. 12. The term "building," which once had significance, was even then obsolete. Stone, op. cit. supra, pp. 1-12. The term "loan," as applied to Maryland associations was not appropriate, as will be seen. Undoubtedly, however, the Constitutional reasons for distinguishing the building and loan transaction from a "loan" did not exist in Great Britain as they did in Maryland. Compare 6 & 7 Will. 4, c. 32, § II, with Citizens Security & L. Co. v. Uhler, 48 Md. 455 (1878), as explained by Carozza v. Federal Finance Co., 149 Md. 223, 244-250, 131 A. 332 (1925). See also, SUNDHEIM, LAW OF BUILDING AND LOAN ASSOCIATIONS (3d ed. 1933) § 6.

14 E.g. Peter's Build. Ass'n v. Jaecksch, 51 Md. 198, 201 (1879); Lister v. Log Cabin Build. Asso., 38 Md. 115, 118 (1873).

15 This feature probably accounts for the lack of a provision limiting the duration of these corporations, although such provisions were common in this period. Cf. 1 Md. Code (1888) Art. 22, § 42; BALLANTINE, CORPORATIONS (Rev. ed. 1946) § 9; BRUNE, MARYLAND CORPORATION LAW AND PRACTICE (Rev. ed. 1953) § 42. See also Franz v. Teutonia Building Association, 24 Md. 259 (1866).

of money from the fund created by the capital contributions of himself and his fellow-members. This was not considered a "loan" in the ordinary sense of the word but rather an "advance" or anticipation of the money which he would ultimately receive from the shares to which he had subscribed.\(^7\)

But, it was felt that after a member had received his advance the "strong motive or inducement to economy and frugality" which had prompted his joining the association might leave him. Optimists might have viewed this as too cynical a view, but realists required some security for the future promise to pay installments on the original subscription. For this reason, a mortgage was given — not, of course, to secure a "loan" of money but to insure payment, by the member receiving the advance, of future installments which he had agreed to make.\(^8\) The member receiving the advance, in addition to the weekly "dues" to which he had already subscribed, was usually required to pay interest on the sum advanced to him.

In characteristically lucid style, Judge Alvey summarized the system in 1878:

"[T]he contract, as between the Association and the shareholder receiving the advance, assumes this form: — The Association proposes to sell to the shareholder the right of presently receiving the fixed value of the shares, upon being allowed a certain deduction from the amount, commonly called a bonus [but in the parlance of the Act of 1852, a 'premium'], it being, in fact, a deduction made at the time, and the shares thus discounted or redeemed are to be paid for by the continuance of the subscription and payment of weekly dues, and fines, if any incurred, until the required amount shall be raised to pay each unredeemed shareholder the fixed value of his shares in


Thus it is that the weekly payments constituted the purchase money which the shareholder is required to pay for what he has received in advance, or in anticipation of the time for the redemption of all the shares; and it is for the security and ultimate payment of these weekly dues and fines that the mortgage is given. The supposed benefit of the contract to the mortgagor consists mainly of the length of time and gradual manner in which payments are required to be made. He is not in the position of an ordinary borrower of money; he remains a member of the Association, subject to its constitution and by-laws; and in taking the advance on his shares, he is only allowed to anticipate, for a premium or bonus, the final redemption of all the shares when the funds realized may be sufficient to pay on each unredeemed share [its par value] . . . over and above all losses."

The profits from this "advance" transaction enhanced the value of the stock and thus operated to discharge the mortgagor-member's obligation by advancing the time at which the association would be terminated. Gradually, with the interest payments of borrowing members and the weekly dues of all the members, the cash value of each share of unadvanced stock reached the predetermined par value. At this point, the association ceased to exist; and all mortgages, whether the amount advanced had been paid in full or not, were released. Members who had not received advances were entitled to any surplus:

"When an adequate amount has been regularly accumulated to satisfy the claims of the deferred shareholders, [they] . . . will be authorized to have their acquittance money, and to divide the surplus profits — the prepaid members, will then also be released from their mortgages.

"When such objects have been effected, the Association, having completed its mission, terminates."22

20 Low Street Build. Asso. v. Zucker, supra, n. 16, 452-453. For other descriptions of the Terminating association, see the texts cited in footnote 74, infra.
22 Peter's Build. Ass'n v. Jaecksch, 51 Md. 108, 202 (1879); Lister v. Log Cabin Build. Asso., supra, n. 16, 121.
Regulatory Features of the Act of 1852

But, there were inherent in the plan six features which, while indispensable to the operation of these associations, could easily become vehicles of oppression to unwary members, particularly the uneducated classes among which they traditionally operated. Although the Act of 1852, unlike its English parent, did not style itself a regulatory act, its effect, as interpreted by the Court of Appeals, was no more than to check these potential abuses.

1. Entrance fees.

The character of these associations made small overhead particularly desirable; and so small a matter as establishing the account of an entering member could, especially in the early days of the association, be a costly matter. Furthermore, it was, and is, not unusual to make a one-time, special charge against new members of any mutual-type organization.

Section 3 of the Act of 1852 therefore conferred the power upon corporate building and loan associations "in their articles of association . . . to prescribe the entrance fee to be paid by each stockholder at the time of subscribing. . . ."23 This prohibited the charging of entrance fees to borrowing members only; and also required that the fee have the added stability derived from incorporation in the charter rather than merely the by-laws.24

2. Bonus.

If a person were to become a member after the association had been in operation for a period of time, he would obviously derive an unfair advantage from the accumulation of dues already paid in by the other members. For example, if a new member should enter an association after it had been operating for two years and it thereafter continued for another three years, at which time all of the unredeemed shareholders were paid in full and the organization liquidated, he would derive the same benefit from payment of dues for three years as those who had made weekly payments of the same amount for the full term.

Thus, Section 5 of the Act of 1852 made "provision for equalization of members, that they may share equally the profits of the concern". 25

"Any person applying for membership, or for stock in any such corporation, after the end of one month from the time of incorporation, may be required to pay, on subscribing, such bonus or assessment as may from time to time be fixed or assessed, in such manner as may be provided by the corporation, in order to place such new member or stockholder on a footing with the original members and others holding stock at the time of such application." 26

The limit of any bonus or assessment which might be charged was thus fixed by statute and readily ascertainable at the time that the new member entered. It was, as so defined, nothing more than "back dues." 27

3. Fines and forfeitures.

As the Court of Appeals observed in an early case:

"From the character of . . . building associations, the imposition of adequate fines, as agreed upon by the by-laws, is justified in order to prevent default in the punctual payment of the weekly dues, upon which the success of the company depends; or in case of default, that some reasonable equivalent for the consequent damage sustained, may be provided." 28

Section 4 of the Act of 1852 conferred power "to enforce the payment of all instalments, and other dues . . . by . . . fines and forfeitures . . ." 29 Although the provision

26 Md. Laws 1852, Ch. 148, § 5. The provision, with only slight changes in syntax made in 1868, now appears as 2 Md. Code (1957) Art. 23, § 147.
27 White v. Williams, 90 Md. 719, 728, 45 A. 1001 (1900); Geiger v. German Build. Asso., supra, n. 25, 574; Home Mut. Build. Asso. v. Thursby, 58 Md. 284, 287 (1882); McCahan v. Columbian Build. Asso., 40 Md. 226, 233 (1874). It must be remembered that there was a clear distinction between a "bonus" and a "premium." White v. Williams, supra, 724, 728; Geiger v. German Build. Asso., supra, pp. 574; McCahan v. Columbian Build. Asso., supra, pp. 233. A "bonus" was also different from a pre-release fee, which was sometimes called by the same name; e.g. Oak Cottage Bldg. Assn. v. Eastman, 31 Md. 556, 560 (1869).
28 Shannon v. Howard Mut. Build. As., 36 Md. 383, 393 (1872). The Court referred to such fines as "in the nature of liquidated damages." It was somewhat extraordinary for equity courts to enforce such payments. Cf. Superior Construction Co. v. Elmo, 204 Md. 1, 14, 102 A. 2d 739 (1954).
29 Md. Laws 1852, Ch. 148, § 4. The provision, with only slight changes in syntax, now appears as 2 Md. Code (1957) Art. 23, § 146.
did leave the actual amount somewhat to the discretion of the individual association, there was some regularity achieved by requiring that the amount be fixed in the charter or by-laws rather than by the action of the governing body of the association in individual cases. The Court of Appeals adopted a rule of strict construction:

"These associations [cautioned Judge Alvey] should not expect of the courts, and especially Courts of Equity, to indulge the severest construction of their by-laws, in reference to fines and forfeitures, that can be suggested; particularly where it can be seen that such construction would operate with harshness and oppression upon the party in default."

4. **Premium.**

The matter of receiving advances of money with which to purchase homes was of course one of the dominant purposes of the early associations. Indeed, there was some jockeying for position among the members as to the order in which the funds were to be distributed as they became available, which was very slow indeed. An association usually received no more than 25¢ on a share each week; and when sufficient funds had been accumulated to make an advance, the process began all over again. The matter was usually resolved by conducting a sort of auction among the members. As contained in the charter of one early association, "When the funds on hand, of this association, are sufficient to redeem one or more shares of its stock, said funds shall be offered to redeem that holder's share who offers to receive the lowest sum therefor." Another association made advances to "[t]he member who will pay the longest interest in advance. . ."
Section 6 of the Act of 1852 expressly recognized this method of choosing those who would receive advances:

"Such corporation . . . [may] advance to any member thereof, for such premium as may be agreed upon, the sum which he would be entitled to receive, upon the dissolution of the corporation for any number of shares therein held, or [may] purchase from any member thereof, the share or . . . shares, of stock held by him, at such price or sum as, according to the articles of association, such member may agree to receive. . . ."  

Although it was argued that this provision "recognizes two classes of Building Associations, one of which may charge a premium, and the other may buy the shares at a discount," it was ultimately held that the provision merely referred to the same sort of transaction. As thus interpreted, the statute placed four restrictions on the premium which might be charged: (a) it must reflect "an equitable and profitable method of selecting its borrowers," (b) it must be a fixed amount, (c) it must

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be deducted from the par value of the shares;\textsuperscript{40} (d) interest could not be charged on the premium.\textsuperscript{41} Apart from the statute, however, there seems to be no reason why a premium might not be charged in any form.\textsuperscript{42}

5. \textit{Form of obligation.}

As already noted, after a member had received an advance, the associations required some security for the fulfillment of his promise to pay future installments of dues. The receipt of an advance did not change the basic nature of his agreement with the association,\textsuperscript{43} and the security which he gave was not, as in an ordinary transaction, to secure the repayment of the principal advanced to him but to insure his continued performance of the original contract to pay dues until the maturity of the association.

Two aspects of these security obligations made them somewhat antithetical to traditional mortgage principles. First, even if the association operated successfully, it was difficult to predict the length of time which would be necessary to accumulate sufficient cash to terminate the association.\textsuperscript{44} Further, although most of the associations made provision for the release of the mortgage upon repayment of the amount advanced,\textsuperscript{45} without such provision payments might still be required beyond that time if there were not sufficient capital on hand to repay all of the mem-

\textsuperscript{40} White v. Williams, \textit{supra}, n. 37, 725; Geiger v. German Build. Asso., \textit{supra}, n. 38, 573-574. \textit{Cf.} Birmingham v. Md. Homestead Asso., 45 Md. 541 (1877). See also Fentz v. Citizens' Fire Ins., etc., Co., 35 Md. 73, 75 (1872).


\textsuperscript{42} \textit{Cf.} Coltrane v. Baltimore Building & Loan Ass'n, \textit{supra}, n. 38; Coltrane v. Blake, \textit{supra}, n. 38; White v. Williams, \textit{supra}, n. 37. It is important to keep in mind the distinction between a "premium" and a "bonus" as those terms are used in the Act of 1852. See footnote 27, \textit{supra}.

\textsuperscript{43} Coltrane v. Blake, \textit{supra}, n. 38, reversing Coltrane v. Baltimore Building & Loan Ass'n, 110 F. 283, 312-319 (C.C.D. Md. 1901), and reinstating the report of the Master at pp. 286-312. Although this factor is implicit in the Maryland cases [Murphy v. Preston, 107 Md. 444, 69 A. 114 (1908)], the State courts reached a different conclusion from the Fourth Circuit as to the effect which this had upon the obligation of a borrower upon an involuntary dissolution of the association.


bers who had not received advances on their shares. Thus, neither the duration of the mortgage, nor the total sum which the borrowing member would be obligated to repay, were fixed, definite or certain.

Secondly, since the money advanced came from a common fund, in which the recipient had as much interest as another member with the same number of shares, the transaction was not a "loan" and, a fortiori, the laws of usury did not apply. As observed by the Court of Appeals, the transaction "was not a loan of money but a dealing with a partnership fund, in which the person to whom money was advanced had an interest in common with the other members of the * * * association." Absent a statute, the rate of interest could be any amount fixed by the association and the member. In fact, what was uniformly referred to as "interest," not having the same basis as that form of charge, was really a sort of service charge.

In the first instance, the Act of 1852 served to authorize mortgages to secure the terms of building and loan association "advances;" and, in the case of interest, it operated to limit the rate which might be charged. Section 7 provided, inter alia, that after an advance to a member:

"[T]he payment of the unpaid instalments . . . on the share or shares so purchased or redeemed, with interest . . . on the money paid therefore . . . and all fines and penalties incurred in respect thereof, by any . . . member, shall be secured to such corporation by mortgage on real or leasehold property, or by the hypothecation of stock of such corporation, held by such member. . . ."

46 Hampstead Build. Ass'n v. King, 58 Md. 279, 280 (1882); Peter's Build. Ass'n v. Jaecksch, 51 Md. 188, 202 (1879); Lister v. Log Cabin Build. Ass'n, id., 122. In this context, capital meant cash. Low Street Build. Ass'n v. Zucker, 48 Md. 448, 455 (1878).


48 Cf. Williar v. Loan Ass'n, 45 Md. 546, 562 (1877); Robertson v. Am. Homestead Ass'n, 10 Md. 397, 411 (1857).


50 Cf. Magness v. Loyola Sav. & L. Ass'n, supra, n. 47, 571, where the mortgage involved refers to "interest or compensation."

51 Md. Laws 1852, Ch. 148, § 7. As substantially expanded, the section now appears as 2 Md. Code (1957) Art. 23, § 150. With regard to cases where stock, instead of property, was to be pledged, there was the further limitation that "no greater sum of money shall . . . be drawn out by any member than shall have been already paid in by him on all his shares, at the time of such hypothecation . . . ." The hypothecation referred to in the statute is to be distinguished from another transaction of the same name in which a member pledged his shares as security for the debt of another. See Lumber Co. v. Bldg. & Savings Ass'n, 176 Md. 403, 5 A.
Similarly, Section 6 of the Act provided that the association might receive "security for the payment by such member to such corporation of the unpaid instalments to be paid on the share or shares so sold or redeemed" but added a limitation upon the rate of interest:

"together with interest, at the rate of six per centum per annum, on the sum . . . so paid or advanced. . . ."\(^1\)

Even as so limited, the rate of interest was exceedingly liberal. For instance, after half of the amount advanced had been repaid, the borrower, still paying interest of 6% on "the sum so paid or advanced," was in effect paying interest at the rate of 12% on the money which he had received and not repaid.\(^2\)

In the first case to reach the Court of Appeals following the passage of the Act, it was held that (i) the indefiniteness of time and the principal amount due were not objectionable in building and loan association mortgages and (ii) interest could be charged in the manner prescribed by the statute. It was there concluded that:

"We have carefully considered the question of the legal operation and effect of mortgages to 'building associations,' such as are contemplated and provided for by the Act of 1852, and have no hesitation in pronouncing them, if executed in conformity with the provisions of that Act, free from all objection on the ground of usury."\(^3\)


The plan of the early terminating associations was clearly of a mutual type. All members were required to pay weekly dues, and if delinquent, fines.\(^4\) Of course, only

\(^1\) 2d 458 (1939); Savings & Loan Assn. v. Fedder, 175 Md. 127, 199 A. 785 (1938); Frederick v. Lyons, 173 Md. 95, 194 A. 815 (1937).

It was also customary for building and loan association mortgages to contain covenants to pay taxes and keep the mortgaged premises insured. E.g. Watson v. Loan & Savings Assn., 158 Md. 339, 343, 448 A. 420 (1930); White v. Williams, 90 Md. 719, 721, 45 A. 1001 (1900); Geiger v. German Build. Assn., 58 Md. 569, 571 (1882); McCahan v. Columbian Build. Assn., 40 Md. 226, 231 (1874). Such covenants were enforceable. Gustav Adolph Build. Assn. v. Kratz, 55 Md. 394, 397 (1881).

\(^2\) Even this is purely hypothetical, since it was not known how much longer the borrowing member would be required to pay dues and interest before the termination of the association.


borrowing members were required to pay interest; but it was not consistent with early theories that they pay other, or higher, dues than the members who had not received an advance. As they met each week, the duties of the members were practically identical whether or not they had received an advance; and the interest of each in the success of the association was inseparable.

However, the term "redeemed" shareholders early came to be applied to those who had received an advance, i.e., had anticipated the full par value of the shares to which they had subscribed. The appellation, as noted by the Court of Appeals, was somewhat unfortunate, since it implied more of a termination of membership than was actually the case. A "redeemed" shareholder was nonetheless a member, and had a joint interest in the association; and it is perhaps helpful to confine any adjective which might be applied to a member receiving an advance, to his share interest rather than his membership interest. Even this distinction is not completely accurate, since the "redeemed" shareholder still shared in the profits of the association in the sense that, as the association prospered, the day for the release of his obligation was advanced. The only way in which his status actually differed from that of the unredeemed, or "free" shareholder was that, since he had anticipated the full value of his shares, he waived all right to participate in any surplus which might exist at the maturity of the association. An early case described the rights of the members inter se:

"[As] we understand the relative position of the two classes of members, they might perhaps be better designated as the 'advanced,' or prepaid, and the 'de-

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56 Lister v. Log Cabin Build. Asso., id.
57 Magness v. Loyola Sav. & L. Ass'n, supra, n. 53; Williar v. Loan Ass'n, 45 Md. 546, 562 (1877); McCahan v. Columbia Build. Asso. of East Balto., No. 2; 40 Md. 226, 236 (1874); Lister v. Log Cabin Build. Asso., supra, n. 54, 120.
58 It is somewhat surprising that these corporations developed along the lines of a stock corporation, since they always more closely resembled a non-stock corporation. Compare, e.g., 2 Md. Code (1957) Art. 23, § 135 with § 158.
60 Free shareholders were defined simply as "subscribers to . . . capital stock, who were not borrowers from the association . . . ." Steinberger v. Savings Asso., 84 Md. 625, 634, 36 A. 439 (1897).
ferred,' or unpaid shareholders. They are all continuing members, however classified, until the Association is determined, unless they cease to be so, in pursuance of the Articles.

"The advanced or 'prepaid' members are obliged to pay the interest on the money advanced, besides their weekly dues — they have not ceased to be members, by the prepayment, but continue to hold an interest in the management and success of the Association, as upon that depends their earlier relief, not only from the payment of weekly dues, but their final release from their mortgages.

"The unpaid members are not absolved from the punctual payment of their weekly dues. They are entitled to any residuum of profits, the exclusive interest in which has been devolved upon them, by virtue of the contract, with the prepaid members, through the act of the company, furnishing the equivalent consideration.

"Both are interested, and under mutual obligation to contribute to the accumulation of the common fund, by the payment of their weekly dues, until the time provided for its final distribution and settlement."

A complete termination of the membership status of one receiving an advance on his shares could be effected in only four ways: (a) when the association reached maturity through being able to pay all of its free shareholders at least the full par value of their shares; (b) by some default in the association;\(^6\) (c) by his default in meeting his obligation,\(^6\) in which case his membership in the association was foreclosed along with his interest in the secured property;\(^6\) or (d) where the by-laws so pro-

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\(^6\)Lister v. Log Cabin Build. Asso., id., 119-120. See also Murphy v. Preston, 107 Md. 444, 69 A. 114 (1908).
vided, the repayment of the amount of his advance, with interest.66

Although there was no specific requirement in the Act that building and loan associations be of a mutual type, its provisions served to insure such organization. To be sure, the conferral of the right to secure, by mortgage, the payment of an indefinite principal amount, for an indefinite term, and the payment of fines and forfeitures probably would not have existed in the absence of statute.67 However, to accept the basic theory of building associations, and therefore to legalize these mortgage features, is not necessarily to provide for any restraints upon that system. The British statute, for instance, legalized the transaction without providing any such restrictions with regard to interest.68 In that sense, the Maryland Act of 1852 was a regulatory measure.

The regulatory character of the Act can clearly be seen as it operated to thwart attempts to change the basic system, primarily through ill-disguised efforts to exact charges beyond that specified in the statute. Because of those provisions, the devices necessary to the successful operation of the system — dues,69 entrance fees,70 bonuses,71 premiums,72 and fines73 — retained their traditional forms. In short, complete mutuality was preserved because any attempt to expand the traditional scope of these devices, being in conflict with the implications of the statute, particularly with regard to interest, was held to be futile.74

See the cases cited supra, n. 45.


6 & 7 Will. 4, c. 32, § II, provided in part:

[I]t shall and may be lawful to and for any such Society to have and receive from any Member or Members thereof any Sum or Sums of Money, by way of Bonus on any Share or Shares, for the Privilege of receiving the same in advance prior to the same being realized, and also any Interest for the Share or Shares so received or any Part thereof, without being subject or liable on account thereof to any of the Forfeitures or Penalties imposed by any Act or Acts of Parliament relating to Usury." See also supra, n. 13.


See cases cited supra, n. 27.

See cases cited supra, ns. 39-42.

See cases cited supra, ns. 28, 30.

Washington Bldg. Assn. v. Andrews, 95 Md. 696, 53 A. 513 (1902). Only in one case is the Act of 1852 seen as a regulatory Act. Coltrane v. Blake, 113 F. 785, 788 (4th Cir. 1902). Probably the failure to more clearly define the Act as a regulatory measure, as was done in Great Britain, was due to a nineteenth Century distaste for imposing restrictions upon business.
Although the Terminating association took root and flourished in Maryland and elsewhere, its operation, in addition to being delicately balanced, had definite shortcomings. The fountain of all difficulty was the feature of automatic termination — in theory the goal, but in practice the paradox, of the early associations. The problem was variously stated, and its components are confusingly interrelated; but all discussion centered around three aspects of the system: the bonus, the uncertainty of duration of the association, and the premium. 75

The problem of most practical concern to the associations resulted from the bonus or back dues which were required from persons who became members after the beginning of corporate operation. 76 The difficulty involved no particular feeling of compassion for those obliged to pay the charge, but rather its stagnating effect upon the fulfillment of the association's objectives. Every year of corporate life increased the bonus which the association would be obliged to charge new members; and eventually a point was reached when prospective borrowers would look to younger associations in which this expense would not be so great. When that occurred, the association would cease to grow; 77 and its operation would thereafter be confined to accumulating the cash fund with which to mature its unredeemed shares.

The Act of 1852 did not, of course, make it mandatory that building and loan associations incorporate. But the advantages of incorporation, coupled with the exemptions from the mortgage laws conferred upon such corporations, was tempting; and once the association had subjected itself to the law, it was subject to all of its provisions.

For other descriptions of the Terminating association, see ENDLICH, BUILDING AND LOAN ASSOCIATIONS (2d ed. 1895) §§ 18-20, (1st ed. 1882) §§ 41-43; RUSSELL, SAVINGS AND LOAN ASSOCIATIONS (1956) pp. 23-24; SUNDHEIM, LAW OF BUILDING & LOAN ASSOCIATIONS (3d ed. 1933) § 11; THOMPSON, BUILDING AND LOAN ASSOCIATIONS (2d ed. 1899) §§ 4-5; THORNTON & BLACKLEDGE, BUILDING AND LOAN ASSOCIATIONS (1898) § 7.

75 The discussion immediately following is a synthesis of the criticism of the Terminating plan as seen in varying degree by the following writers: DAVIS, BENEFIT BUILDING SOCIETIES (1887) pp. 15-24; ENDLICH, BUILDING ASSOCIATIONS (1882) § 46, (2d ed. 1895) § 23; SCRATCHLEY, BENEFIT BUILDING SOCIETIES (4th ed. 1868) pp. 28-30; STONE, BENEFIT BUILDING SOCIETIES, (1851) pp. 12-18; SUNDHEIM, BUILDING AND LOAN ASSOCIATIONS (3d ed. 1933) § 11; THOMPSON, BUILDING ASSOCIATIONS (2d ed. 1899) § 6; THORNTON & BLACKLEDGE, BUILDING AND LOAN ASSOCIATIONS (1898) § 7.

76 See page 8, supra.

77 In defense of the Terminating plan, it must be noted that if all members of the association desired to receive loans, the problem would not arise. All members were not, however, prospective borrowers.
This position was particularly precarious, for without any opportunity for expansion, the future operation of the association was determined by factors entirely beyond its control. First and foremost, the extent of profit to be derived thereafter depended upon the ratio between the redeemed and unredeemed shares. If the former number were small, the unredeemed shareholders would be deriving little benefit from the continuance of the association. Furthermore, the system made no provision for operating expenses or for losses; and, while the effect was not so pronounced when the association was expanding, these charges when offset against the now-fixed income of the association only slowed the process of maturing the unredeemed shares. The two solutions which were provided to overcome the effect of this impasse — forced loans and agreements for premature termination of the society — were satisfactory to no one.78

The inability to foresee the extent of the effect of the so-called "bonus impasse," or even the extent of losses or expenses during the life of the association, produced a second and independent difficulty. The situation is succinctly stated by a British observer:

"[N]o society can possibly possess, at the end of the originally specified time, sufficient funds to give to each Investor the full amount of his shares . . . unless: — Throughout the whole previous duration of the association, there has been no loss sustained, either through bad investments or other causes, or from extraneous expenses (not covered by sufficient extra contributions from each member over and above the receipts from fines, fees, &c.), and also unless no month has ever passed during which any part of the subscriptions has remained unproductive, so that, in other words, no loss of interest has at any time occurred."79

Because of these factors, it was never possible to do more than approximate the duration of the obligation of either the borrower80 or the investor.81

Thirdly, the accumulation of a large amount of uninvested (and uninvestible) capital in the latter years of an association could only have been considered as presenting

79 Scratchley, op. cit. supra, n. 78, 32. (Emphasis omitted.)
81 See supra, n. 75.
ironic contrast to the situation which had prevailed in the early days of its operation. Then, the accumulation of the fund out of which advances were made to members was frustratingly slow. And, after a member received an advance, the process of accumulating a new fund began all over. This had the effect, as already seen, of justifying the charge of a “premium” to the borrowing member in addition to an entrance fee, interest, and any bonus which might be necessary.

Critics viewed the elimination of the impasse which the bonus eventually created as the primary objective of reform. Legal minds in the United States furnished two solutions — the Serial plan and the Permanent (or Perpetual) plan — and the Maryland legislature attempted the adoption of a British remedy — the “non-participating” plan.

Serial Associations

Under the Serial plan, a new “series” of terminating stock was issued at the beginning of each fiscal year, or half-yearly. Since a member entering an association could join the most recent series or wait until the issuance of a new one, the problem of bonus was reduced to a negligible quantity; and basis was provided for steady growth during the entire life of the corporation. The system was popular in some States, but by 1893 only 8 of the associa-

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82 See pages 10-12, supra.
83 There was marked unconcern for the objections based upon the premium and the uncertainty of the member’s obligation. The emphasis in the Ninth Annual Report of the Commissioner of Labor, “Building and Loan Associations”, H.R. Exx. Doc. No. 209, 53d Cong. Sess. 22 (1894) is typical of this single-mindedness:

“[T]he terminating plan . . . involves three serious defects which it was desirable to obviate, namely, the dissolution of the association when the stock matured; the large amount of back dues [i.e. bonus] which the stockholder would have to pay who took stock after the association had been running for some time, and, lastly, the making of forced loans — that is, compelling the shareholder to become a borrower whether he wanted to do so or not.”

84 There were two other forms of association, the Bowkett and the Starr-Bowkett plans. These were based upon rather esoteric economic principles and were never adopted in the United States. DAVIS, BENEFIT BUILDING SOCIETIES (1887) pp. 28-35; ENDLICH, BUILDING ASSOCIATIONS (1882) §§ 44-45; SUNDHEIM, LAW OF BUILDING & LOAN ASSOCIATIONS (3d ed. 1933) § 16; THOMPSON, BUILDING ASSOCIATIONS (2d ed. 1899) § 7 (1st ed. 1892) §§ 21-22; THORNTON & BLACKLEDGE, BUILDING AND LOAN ASSOCIATIONS (1898) §§ 11-12; WURTZBURG, BUILDING SOCIETIES (5th ed. 1920) p. 3.
85 For a discussion of the Serial plan see the works referred to in the preceding footnote, as follows; ENDLICH (2d ed.) § 24, (1st ed.) §§ 47-49; SUNDHEIM, § 12; THOMPSON (2d ed.) §§ 6, 8, (1st ed.) pp. 5-7; THORNTON & BLACKLEDGE, § 8.
86 Among the eight states having the largest number of building and loan associations in 1893, in four of them — Illinois (96.9%); Pennsyl-
tions in Maryland were of this type; and there is little more than passing reference to the existence of the plan in the decisions of the Court of Appeals, although a research report of the Legislative Council in 1940 suggests that this type of association "is still the predominant plan on the Eastern Shore of Maryland." The dearth of judicial consideration and the almost exact similarity to the Terminating association render further attention to this solution unnecessary.

Permanent Associations

The solution adopted in Maryland, and elsewhere, presented a more radical departure from the Terminating plan. Where the Serial plan involved nothing more than a number of Terminating plans operating within the framework of a single corporate charter, in which all members of the same "series" had a common termination date, each individual member of the Permanent association had a separate termination date. Since the plan depended in no way upon equality of relationship among the members, the bonus was completely eliminated. The two plans were "contra-distinguished" in an early Maryland case:

"[The terminating association] . . . was to cease to exist, when it should have sufficient funds on hand to
pay the holders of every unredeemed share of its stock [the par value of their shares] . . . , clear of all losses and liabilities; and the stipulation in the mortgage was for the payment of weekly dues, and interest on the sum advanced until the time mentioned should arrive when the association should cease to exist. [A Permanent association] . . . is not to terminate, but the contract of the mortgagor is to end and his obligation to pay is to cease, and his mortgage to be released so soon as the amount paid by him as . . . dues, together with profits on his redeemed stock shall amount to the sum advanced to him. Notwithstanding the redemption of . . . his stock, [a borrowing member] . . . continued to be a member of the association, entitled to share in its profits, and to receive dividends upon the shares so redeemed, in the same manner as if no advance had been made thereon."

This termination of membership applied alike to the borrowing and non-borrowing member. In the case of each, when dues and dividends increased all shares which had been subscribed by a member to their par value, his interest terminated. The borrowing member would receive a release of his mortgage; and the free shareholder the return of his dues, together with credited dividends.

The General Incorporation Act of 1868

In view of the provision in the Act of 1852 which limited a building and loan association to the issuance of no more than 1,000 shares of stock, it was probably not possible, as a practical matter, to establish a serial or permanent association in Maryland prior to 1868. In that year, the legislature passed the State's first General Incorporation Act, which brought together a variety of "classes" of corporations which had theretofore been authorized under

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92 Md. Laws 1852, Ch. 148, § 3.
94 Md. Laws 1868, Ch. 471.
95 Building and Loan associations were comprehended within § 18 of the General Incorporation Act:
"Class 5. For the formation of homestead or building associations, or associations for the loan of money on real or personal property . . ., provided that the property owned or acquired by such corporation is located in this State . . . ."
So much of the Act of 1852 as was retained was placed in §§ 84-91 of the Act of 1868.
separate acts. Generally speaking, the Act made uniform the provisions relating to the mechanics of incorporation and corporate powers and government and "define[d] the general powers of the corporations, created under this law, and prescribe[d] the general regulations thereof, except in the cases, where there may be special provisions, applicable to particular corporations." Although the effect of this statute upon building and loan associations became second in importance only to the original Act of 1852, the only perceptible difference, and even the significance of that was perhaps unrecognized, was the removal of the 1,000-share limitation.

There was also a cryptic provision inserted in the general law after the sections relating to building and loan associations:

"That such of the provisions of the foregoing Sections, [i.e., the Act of 1852] as shall be found applicable to corporations which may be formed in this State, for the purpose of loaning money on real or personal property, shall be held to apply to said corporations." Exactly what sort of Eutopian creature this language envisioned was not clear. The words themselves invited a good deal of picking and choosing among the building and loan sections to find what provisions would be "found applicable" to this other type of corporation. Viewed in a favorable light, the statute might represent nothing more than an attempt to provide the means for overcoming the difficulties of the Terminating associations; but there is more than a touch of avarice. Whatever the meaning, the language was clumsy; and fortunately, the statute was short-lived.

Davis v. West Saratoga Bldg. Union, 32 Md. 285, 294 (1870). See also, Brune, Maryland Corporation Law and Practice (Rev. ed. 1953) §§ 6, 13.

The statute failed to provide for at least one feature of the building and loan operation. Md. Laws 1868, Ch. 471, § 59, required all stock subscriptions to be paid in full within two years. Cf. Frank v. Morrison, 55 Md. 399 (1881); Musgrave v. Morrison, 54 Md. 161 (1880); Morrison v. Dorsey, 48 Md. 461 (1878). See also, Md. Laws 1872, Ch. 206.

The Legislature had created a similar type of corporation by special act. E.g., Md. Laws 1867, Ch. 358; Balto. Perm. B. & L. Soc. v. Taylor, 41 Md. 409 (1875); Md. Laws 1868, Ch. 427: Birmingham v. Md. Homestead Asso., 45 Md. 541 (1877); Md. Laws 1868, Ch. 255: Montl. Perm. Build. Soc. v. Lewin, 38 Md. 445 (1873). Compare with the associations formed under the General Incorporation Act. Williar v. Loan Ass'n, 45 Md. 546 (1877); Pentz v. Citizens' Fire Ins. etc. Co., 35 Md. 73 (1872). It might well have been intended to obviate potential objections to such restricted conferral of benefits [e.g. Birmingham v. Md. Homestead Asso., 45 Md. 541 (1877)] or simply to rid the General Assembly of the task of forming special corporations.
The Non-Participating Associations

In 1872, the Legislature repealed this provision and enacted what is now 2 Md. Code (1957) Article 23, §154. The intention was now crystal-clear: "The provisions of the [Act of 1852] . . . shall be taken and held to apply to corporations which have been or may hereafter be formed . . . for the purpose of loaning money on real or personal property or for buying, selling, leasing or otherwise dealing in land. . . ."\textsuperscript{100}

The approach of the Act of 1872 was to fashion a new corporate creature along the lines of the "Permanent association" as it had existed in Great Britain since 1846.\textsuperscript{101} These "non-participating associations," as they came to be called,\textsuperscript{102} were given express power to enforce the payment of dues, interest, premiums and fines; and similar power with reference to entrance fees and bonuses could undoubtedly be implied from the mandatory interpolation of the provisions of the building and loan statutes.

The basic transaction with the borrowing member as described by the statute was similar to that of the Terminating association:

"[I]t shall and may be lawful for any of the corporations mentioned in this section . . . to redeem or purchase [the shares of a member] . . . at a sum or price, as such member may agree to receive therefor, or to loan to such member the par value of its shares . . . then to receive from such member . . . security by way of mortgage on real or personal property, or by the hypothecation of unredeemed shares of its stock so sold by such member, and that said mortgage or hypothecation shall be conditioned for the repayment . . . of the money loaned or advanced to him in weekly installments, including dues, legal interest on the money so advanced or loaned . . . and also all fines, assessments and penalties incurred according to the by-laws. . . ."\textsuperscript{103}

Four other features of the Act were, however, quite novel.

\textsuperscript{100} Md. Laws 1872, Ch. 178. There was possibly some historical basis for such an amalgamation of purposes in the history of building and loan associations. Cf. Davis, Benefit Building Societies (1887) pp. 23-27; Stone, Benefit Building Societies (1851) pp. 8-11; Scratchley, Benefit Building Societies (4th ed. 1868) pp. 34-40; Stone, op. cit. supra, p. 100, pp. 12-17.

\textsuperscript{101} Davis, op. cit. supra, p. 100, pp. 20-24; Scratchley, Benefit Building Societies (4th ed. 1868) pp. 34-40; Stone, op. cit. supra, p. 100, pp. 12-17.

\textsuperscript{102} O'Sullivan v. Traders' Assn., 107 Md. 55, 60, 68 A. 349 (1907).

\textsuperscript{103} Md. Laws 1872, Ch. 178.
1. **Paid-up or prepaid stock.**

To accelerate and give added stability to the process of accumulating the fund available to those who wished to receive money from the corporation, the law permitted these corporations to "provide for the payment of all or any part of their stock in advance." It is questionable whether such specific provision was necessary after the passage of the General Incorporation Act.

2. **Perpetual existence.**

Even under the Permanent plan, associations were faced with the necessity of at least authorizing a new issue of stock after all shares had been subscribed by borrowing and non-borrowing members. The Act of 1872 offered partial solution by making the corporation's entire capitalization consist of only unredeemed shares:

"[S]hares of stock . . . redeemed, advanced or loaned or purchased . . . shall be considered as redeemed shares and shall be cancelled: and it shall be lawful for such corporation to issue an equal number of new shares in their stead, so that the number of unredeemed shares may always equal and never exceed the number of shares fixed by the certificate of incorporation. . . ."

3. **Termination of membership.**

If there was any doubt about the status of a borrowing member after his shares had been "cancelled" in accordance with the above provisions, such was dispelled by provisions that the corporation was

". . . to receive from such member a transfer of all his or her interest in such share or shares of its stock, . . . and the member or members of such corporation, so redeeming their said share or shares of stock, shall cease to be stockholders, and shall not be entitled to vote at any meeting of such corporations, held for the pur-

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105 The provisions of the General Incorporation Act, into which the Act of 1872 was incorporated, contemplated the prompt payment for all stock. *Cf. supra, n. 97.*

pose of electing directors or for any other purpose, and shall not be eligible for any of the offices of the corporation.\textsuperscript{107}

4. \textit{Premium}.

It had been argued without success that the original statute contemplated either the addition of a sum to the par value of the shares of a borrowing member or the purchase of his shares at a discount from their par value.\textsuperscript{108} The Act of 1872 flatly authorized the corporation “[a] to deduct such premium or bonus [as may be agreed upon] in advance or [b] to make the same payable with and as part of the weekly dues in each week . . .;” and the mortgage could also secure the repayment of “the weekly premium agreed upon for each share. . . .”\textsuperscript{109}

Failure of the Non-Participating Associations

The Act of 1872 never purported to deal with “building and loan associations” \textit{eo nomine}.\textsuperscript{110} The Court of Appeals stated on many occasions that it referred to an entirely different class of corporation;\textsuperscript{111} but this was not strictly accurate, since the legislature placed the non-participating associations in the same class as building associations.\textsuperscript{112} Judge Markell, for the Court, has noted that the statute “in effect duplicates and also expands the Act of 1852, . . .”\textsuperscript{113} and it is conceivable that the Legislature saw little significance in severing the ephemeral relationship between the borrowing shareholder and the association.\textsuperscript{114} The matter was viewed as without \textit{legal} significance in Britain:

“The borrowers, of course, are not entitled to participate in the Surplus-Bonus, as they have secured the equivalent by the manner in which they obtained their advances. This point appears, since the publication of the first Edition of our Treatise, to have been mis-

\textsuperscript{107} Md. Laws 1872, Ch. 178.
\textsuperscript{108} See pages 11-12, \textit{supra}.
\textsuperscript{109} Md. Laws 1872, Ch. 178.
\textsuperscript{110} See \textit{supra}, n. 100.
\textsuperscript{111} Cf. Williar \textit{v. Loan Ass’n.}, 45 Md. 546, 562 (1877); Birmingham \textit{v. Md. Homestead Assn.}, 45 Md. 541, 545 (1877).
\textsuperscript{112} See \textit{supra}, n. 95.
\textsuperscript{113} Magness \textit{v. Loyola Sav. \& L. Ass’n}, 186 Md. 569, 578, 47 A. 2d 769 (1946).
\textsuperscript{114} Cf. Washington Bldg. Assn. \textit{v. Andrews}, 95 Md. 696, 53 A. 573 (1902), where the Court of Appeals treated the corporation there involved as a building and loan association, even though the borrower surrendered all of his interest in the shares but apparently did receive a portion of the profits.
understood, and several well disposed persons have exclaimed against an apparent disadvantage offered to borrowers by the new system. They should, however, have reflected that the borrower is in all cases, practically, equally well off, since by the very mode in which he obtains his loan, he secures at once the enjoyment of an immediate profit which is still only prospective to the investor. The money in hand is of at least as much advantage to the borrower as the deferred realisation of his shares can be to the subscriber, who has to wait to the end of his membership. So strong a notion, however, appears to prevail in some places, that a plan of so-called ‘mutuality,’ by which Borrowers should participate with Investors in the profits and the losses of the society, is preferable, that, on the ground of expediency, we have in some cases recommended the adoption of a ‘mutual’ plan.”

The Maryland Court of Appeals, however, adopted this “notion” as a rule of law.

In Williar v. Loan Ass’n, a mortgage recited, inter alia, that the mortgagor had received an advance of $3300 on eleven shares of $300 par value stock of the mortgagee; that he promised to repay such advance with interest thereon in 300 installments; and that he “released to the mortgagee all his interest in, and the shares hereby redeemed, and to all profits that may be hereafter made by the mortgagee.” It otherwise appeared that a premium of $275 had been deducted from the amount actually received by the borrower — with the result that he was paying installments consisting of repayment of principal and premium, with interest on both. The Court held that:

“[The provisions of the Act of 1852] have no application to a corporation like the appellee, nor to such a transaction as the one under consideration, which was nothing more nor less than a loan of money by the association to the appellant, and a mortgage of his property for its repayment with usurious interest. The fact that he became a shareholder and the money advanced to him is called a redemption of his shares, makes no difference; he subscribed for the shares in order to borrow the money, and immediately transferred or released them to the association, and ceased

115 Scratchley, Benefit Building Societies (4th ed. 1868) § 60. It further appears that some British societies shared profits with the borrowers for competitive reasons. Davis, Benefit Building Societies (1887) p. 22.
116 45 Md. 546, 561 (1877).
to have any further interest in the assets or funds of
the corporation.'"117

Although the corporation argued that the Act of 1872
applied to the transaction,118 and the case was decided well
after its passage, the Court did not expressly consider the
effect of that statute. In this posture, the Williar decision
stood only for the simple proposition that where the bor-
rrower had no interest in the corporation after an "advance"
was made to him, the factors which made the transaction
"not one in which money is loaned"119 did not exist; and
there was therefore nothing upon which the original Act
of 1852 could operate.

The matter was laid to rest in Citizens Security & L.
Co. v. Uhler,120 where the Court viewed the Act of 1872
as an attempt to "authorize a certain class of corporations
to loan money at a higher rate of interest than is allowed
by the Constitution and general law of the State." A ma-
jority of the judges branded this "special class legislation"
and held that "in the absence of plain language, showing
such to be the intention, we are not to presume that
either the framers of the Constitution, or the people who
adopted it meant to confer a power so extraordinary on
the Legislature."121

Judges Alvey and Stewart dissented on the ground that
the Legislature did have such power;122 but, there was no
disagreement with the premise that the transaction was,
in fact, a "loan." As explained by the majority:

"[A]lthough the mortgagor [in a non-participating
association] becomes in a certain sense a shareholder,
that is, he subscribes for a certain number of shares,
yet immediately on borrowing the money, he executes
a mortgage releasing or transferring to the company
his shares of stock, and thereby ceases to have any
interest in the profits earned by the corporation. Such
a transaction is but a mere device to avoid the law
of usury."123

117 Id. 562-563.
118 Supra, n. 116, 554.
Beyer, 4 Balto. City Reports 177 (1923).
120 48 Md. 455, 459 (1878).
121 Id., 459-460. See also, Md. Const. Art. III, § 57. A similar result
had been indicated with regard to an association created by special act;
Birmingham v. Md. Homestead Asso., 45 Md. 541, 543 (1877). The holding
in the Uhler case must not be read without a simultaneous consideration
of Carozza v. Federal Finance Co., 149 Md. 223, 244-250, 131 A. 332 (1925).
122 Supra, n. 120, 460.
123 Supra, n. 120, 459.
With these decisions, the first of two attempts to change the basic character of the building and loan industry came to an end. The benefits of building and loan associations were born of mutuality; and if any corporation wished to reap these benefits, it must provide some form of this ingredient.

The Rise of the Permanent Association

The failure of the non-participating associations (or, more properly, the British form of Permanent association) cast some doubt upon the other means which had been developed to overcome the difficulties of the Terminating plan. The Court of Appeals soon held, however, that the Permanent form as developed in the United States did not so vary the early principles as to change the basis upon which the benefits of a building and loan association transaction rested:

"[The borrowing member of the Permanent association] . . . after the advance was made to him, continued to have a joint interest in the association, this constitutes the mutuality between the members holding redeemed and unredeemed shares; and it can make no difference in principle whether the society is to terminate . . . or is a permanent association, and the contract of the mortgagor is to end, and his connection with the society to terminate, when the amount paid by him as . . . dues, and his share of the profits shall equal the sum advanced to him." 

The day had not yet come when many corporations which desired to operate in the area formerly occupied by the Terminating associations would wish to abandon the high return of the building and loan transaction for that of the non-participating association. With this sanction by the courts, corporations based upon the Permanent plan grew in great profusion. A composite picture of the industry in Maryland at the close of the century can be gathered

124 With the exceptions noted in Part IV, infra, pp. 111-112, no other cases have been found which purport to deal with non-participating associations. Amendments were made to the Act of 1872 by Md. Laws 1904, Ch. 239 (to include corporations formed "under the provisions of any acts of Assembly" and add the words "or borrower" as they now appear in the fifteenth line of the present [2 Md. Code (1957) Art. 23, § 154] codification) and by Md. Laws 1935, Ch. 233 (by adding the words "biweekly or monthly" and "participating or nonparticipating" as they now appear).

from the voluminous Ninth Annual Report of the Commissioner of Labor, "Building and Loan Associations," published in 1894.\textsuperscript{126}

At that time, there were 240 corporations in Maryland which styled themselves building and loan associations with total assets of nearly twelve and a half million dollars,\textsuperscript{127} 89.2\% of which were of the Permanent type.\textsuperscript{128} In 31 of the associations surveyed, 19.21\% of the members were "artisans and mechanics"; 17\% laborers; 15.62\% merchants and dealers; and 14.22\% housewives.\textsuperscript{129} 213 of the associations operated on a weekly basis,\textsuperscript{130} with 198 charging weekly dues of 25\(\cent\) per share.\textsuperscript{131} 143 had stock with a par value of $100, and 40 had $130 par value stock.\textsuperscript{132} All but 63 of the 183 associations questioned on the point indicated that they allowed only one vote per member, the others determining voting rights on the basis of shares.\textsuperscript{133} Fifteen associations took money on deposit.\textsuperscript{134} 121 associations reported yearly income from dues and profits to be under $25,000; and another 56 received less than $50,000.\textsuperscript{135} Most associations had made no "hypothecation" advances.\textsuperscript{136} Few had advanced more than $25,000.\textsuperscript{137} An overwhelming majority (152) of the State's associations reported their transactions to be of the following nature:

"[T]here is no auction of money or bidding for loans. Loans are usually awarded to members in the order of their applications by lot. The borrower makes his regular payment of dues and interest on his loan until the shares pledged for such loan have reached matur-ing value, unless the loan is previously settled; or the number and amount of his payments are fixed by the rules of the association."\textsuperscript{138}

Only 25 associations still charged a premium.\textsuperscript{139}

[To be continued in the next issue, p. 91.]

\textsuperscript{127} Id., 318.
\textsuperscript{128} Supra, n. 126, 14-15, 118-126, 281. Maryland was second only to Ohio in the percentage of Permanent associations.
\textsuperscript{129} Supra, n. 126, 321.
\textsuperscript{130} Supra, n. 126, 349.
\textsuperscript{131} Supra, n. 126, 352.
\textsuperscript{132} Supra, n. 126, 356.
\textsuperscript{133} Supra, n. 126, 361.
\textsuperscript{134} Supra, n. 126, 383. Presumably these associations were incorporated under special act. Cf. National Bank v. Crockett, 145 Md. 435, 125 A. 712 (1924).
\textsuperscript{135} Supra, n. 126, 314-315.
\textsuperscript{136} Supra, n. 126, 310-311.
\textsuperscript{137} Supra, n. 126, 302-303.
\textsuperscript{138} Supra, n. 126, 391.
\textsuperscript{139} Supra, n. 126, 388-391.