

reading the covenant without the recitals he was of opinion that, on the authorities, the same conclusion must be reached as to the legal effect of the covenant.

BUILDING SOCIETY—POWER TO LOAN ON FIRST MORTGAGES ONLY—PAYMENT OF PART OF MORTGAGE MONIES—POSTPONEMENT OF SECURITY FOR BALANCE—*ULTRA VIRES*—SUBROGATION.

In *Portsea Building Society v. Barclay*, (1894) 3 Ch. 86; 8 R. Aug. 167, the plaintiffs were a building society, and under their rules they were only empowered to lend money on the security of first mortgages. They had lent £17,000 to a man named House on the security of a first mortgage. It was subsequently discovered that the plaintiffs had exceeded their borrowing powers, and notwithstanding this an application was made by the plaintiffs to the Imperial Life Insurance Company for an advance, and in pursuance of that application the following arrangement was made and carried out. The insurance company lent House £6,000 on the security of the property covered by the plaintiffs' mortgage. This sum he handed over to the plaintiffs, and they applied it on account of his mortgage to them, and the plaintiffs joined in House's mortgage to the insurance company, and thereby agreed to postpone the plaintiffs' mortgage to that of the insurance company for the £6,000 so advanced by them. The plaintiff company was subsequently ordered to be wound up, and the liquidator now contended that the above transaction was *ultra vires* of the directors, so far as the postponement of the plaintiffs' mortgage was concerned. Romer, J., was of opinion that the transaction amounted to an attempt to loan on a second mortgage, which was contrary to the rules, and that, therefore, the company was not bound by the deed whereby they purported to postpone their mortgage to that of the insurance company; and that the latter were not entitled to rank *pari passu* with the plaintiffs in respect of the £6,000 as purchasers *pro tanto* of House's security to the plaintiffs; neither could the insurance company be treated as creditors of the plaintiffs for the £6,000 advanced by them to House; and he, therefore, gave judgment in favour of the plaintiffs, declaring them to be entitled to priority over the insurance company for the balance due on their (the plaintiffs') mortgage.