

money borrowed by a company ultra vires, but applied by such company in the payment of their debts and liabilities properly payable by them at the dates of the borrowing, and also in the payment of debts and liabilities which became payable at dates subsequent to the original advances, should be allowed, and that the plaintiffs should be subrogated to the rights of the creditors of the company so paid out of such borrowed money.

But there is another ground upon which the plaintiffs' advances should be allowed. An agreement between the mortgagees and the lien-holders, dated the 13th November, 1901, recites that the mortgagees "have advanced to the said owner upon two certain building mortgages the sum of \$4,800," and that "there remains \$1,600 yet to be advanced upon the said mortgages." These recitals of advances made and to be made are not impeached, or in any way questioned by the other provisions of the agreement, and must be read as a confirmation of the advance of the \$4,800.

The agreement then recites the liens of the contractors, and goes on to authorize the mortgagees, "notwithstanding the said claims of lien," "to advance the balance of the said mortgage moneys, namely, the sum of \$1,600, and any further moneys necessary to complete; the said moneys to be applied towards the completion of the said buildings and to be a charge upon the said lands prior to the said claims of lien." The agreement then provides that it shall be without prejudice to the rights of the contractors to enforce their liens against the said lands or the parties primarily liable. And the mortgagees then agree "to advance, as aforesaid, the money, \$1,600, to complete the said houses, and if they shall advance the funds necessary, if any, over and above the amount of their mortgages, they shall be at liberty to add any such further advance to the amount of their mortgages."

Taking, therefore, the whole agreement, it is clearly a confirmation of the plaintiffs' mortgages, and a postponement of the claims of liens of the signing contractors.

The claims made by the signing contractors for priority over the \$4,800 above mentioned are therefore disallowed; and the extra costs caused to the plaintiffs by reason of such claims must be paid to the plaintiffs by the contesting contractors. Their claims will be allowed as subsequent to the plaintiffs'.