There is no merit in appellee's contention that the appellant failed to plead surprise and meet the issue by the introduction of controverting testimony. When the appellant specifically objected to the testimony of Dr. Ponder, and afterward at the close of his testimony moved to exclude the same for the reasons stated, and these motions were overruled, the appellant saving its exceptions, it did all that it could to preserve its rights. The court should have sustained the objection and motion, and then the appellee, had she so desired, might have asked for leave to amend her complaint, which the court could have permitted, giving the appellant sufficient time to meet by answer and proof the new issue raised. *Bryant* v. *Swifton*, 85 Ark. 322, 108 S. W. 216.

For the error in the admission of the testimony of Dr. Ponder, the judgment is reversed, and the case is remanded for a new trial.

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FIDELITY & DEPOSIT COMPANY OF MARYLAND *v.* RIEFF.

Opinion delivered May 19, 1930.

1. ACKNOWLEDGMENTS—COMPLIANCE WITH STATUTE.—The statute providing for acknowledgments must be substantially complied with, though a literal compliance is unnecessary.
2. ACKNOWLEDGMENTS—OMISSIONS.—Courts cannot by intendment suggest important words omitted in a certificate of acknowledgment.
3. CORPORATIONS—AUTHORITY TO EXECUTE INSTRUMENT.—The seal of a corporation, accompanied by the signatures of the appropriate officers of the corporation, becomes *prima facie* evidence that such officers were authorized by the corporation to execute the instrument, so as to cast the burden of proof upon one who challenges its validity.
4. CORPORATIONS—FORM OF MORTGAGE.—A mortgage by a corporation, to be valid, need not recite a vote of the corporation authorizing that the officer executing it was authorized to execute the mortgage.
5. ACKNOWLEDGMENT—SUFFICIENCY.—An acknowledgment reciting that persons signing a mortgage were known to the notary as

president and secretary of a certain corporation *held* sufficient as showing execution of the mortgage by the corporation by its officers.

Appeal from Pulaski Chancery Court; *Frank H. Dodge,* Chancellor; affirmed.

STATEMENT OF FACTS.

H. F. Rieff brought this suit in equity against D. C. Horton, Inc., Mary P. Reed, and the Fidelity & Deposit Company to recover judgment against D. C. Horton, Inc., in the sum of $697.60 with accrued interest, and for a foreclosure of a mortgage on certain lots in his favor in default of the payment of the judgment within a stipulated time. The complaint alleges that the mortgage of the plaintiff is superior to one held by the defendant Fidelity & Deposit Company of Maryland, but admits that it is subject to a vendor's lien in favor of the defendant, Mary P. Reed. The Fidelity & Deposit Company of Maryland filed an answer in which it alleged that a mortgage on the lots in its favor by D. C. Horton, Inc., was a superior lien to the mortgage of H. F. Rieff.

The plaintiff introduced in evidence a promissory note for $697.60 of D. C. Horton, Inc., executed on November 2, 1927, and due thirty days after date. He then introduced a mortgage on the five lots described in the complaint in his favor to secure said note. The mortgage recites that D. C. Horton, Inc., is the mortgagor, and the body of the mortgage is in the usual form. It concludes as follows:

"Witness our hands and seals on this 2d day of November, 1927.

(Seal) (Signed) "D. C. Horton, Inc.,
"By D. C. Horton, President.

"Attest: E. F. Horton, Secretary."

The acknowledgment is in form as follows:

"State of Arkansas, County of Pulaski—

"Be it remembered, that on this day came before me the undersigned, a notary public, within and for the county aforesaid, duly commissioned and acting, D. C. Horton, president, and E. F. Horton, secretary, of D. C.

Horton, Incorporated, to me well known as the grantors in the foregoing deed, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.

"Witness my hand and seal of such notary public on this 2nd day of November, 1927.

(Seal) "Nancy N. Seymour,
"Notary Public."

The mortgage was duly filed for record on the 2d day of November, 1927.

On the 24th day of March, 1928, D. C. Horton, Inc., executed a mortgage to the Fidelity & Deposit Company of Maryland on said five lots to secure the sum of $6,504.83. This mortgage was duly acknowledged and filed for record on April 6, 1928.

Other facts appear in the transcript, but the conclusions we have reached render it unnecessary to state them.

The chancellor found that D. C. Horton, Inc., was indebted to H. F. Rieff in the sum of $726.12, and judgment was rendered against it in his favor for that sum with accrued interest. It was also decreed that the mortgage of H. F. Rieff on the five lots described in the complaint was a prior and paramount lien to that of the Fidelity & Deposit Company of Maryland on the same lots. The case is here on appeal.

*Horace Chamberlin,* for appellant.

*Carmichael & Hendricks,* for appellee.

HART, C. J., (after stating the facts). No contention is made about the validity of the indebtedness of D. C. Horton, Inc., to H. F. Rieff, and no objection is made to the form of the mortgage to him. The mortgage to Reiff by D. C. Horton, Inc., was also prior in point of time to that executed on the same lots in favor of the Fidelity & Deposit Company of Maryland.

It is earnestly insisted, however, by the Fidelity & Deposit Company that the acknowledgment of the mortgage by D. C. Horton, Inc., to Rieff was not in conformity

with the statute, and for that reason the mortgage to Rieff was not entitled to record, and under our statute did not constitute a lien on the lots as against the mortgage executed to it. Section 7380 of Crawford & Moses' Digest provides that mortgages shall be acknowledged in the same manner that deeds for the conveyance of real estate are now required to be acknowledged, and, when so acknowledged, shall be recorded in the county in which the real property is situated. Section 7381 provides that every mortgage for real property shall be a lien on the mortgaged property from the time it is filed for record and not before. It is conceded that these provisions of the statute were complied with, but it is insisted that the acknowledgment was defective.

In ordinary forms of acknowledgments, this court has held that a substantial compliance with what the statute requires to be done ought affirmatively to appear from the certificate. While a literal compliance is not required and while words of similar import to those used in the statute may be employed, yet there must be a substantial compliance with the statute. Courts cannot suggest by intendment important words omitted in the certificate of acknowledgment. *Jacoway* v. *Gault, Admr.,* 20 Ark. 194; and *Little* v. *Dodge,* 32 Ark. 453.

Section 1526 of the Digest relating to the acknowledgment of mortgages by corporations reads as follows:

"All deeds, conveyances, deeds of trust, mortgages and other instruments in writing affecting or purporting to affect the title to any real estate situated in this State and executed by corporations, the form of acknowledgment shall be as follows:

" 'On this..............day of..............................., 19......, before me, a notary public, duly commissioned, qualified and acting, within and for said county and State, appeared in person the within named...............................and..............................., (being the person or persons authorized by said corporation to execute such instrument, stating their respective capacities in that behalf), to me personally well known,

who stated that they were the..............................and..............................
of the....................................a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.' ''

At the outset, it may be stated that the seal of the corporation, accompanied with the signature or signatures of the appropriate officer or officers of the corporation becomes *prima facie* evidence that such officer or officers had due authority from the corporation to execute the instrument, so as to cast the burden of proof upon one who challenges its validity. 10 Cyc., page 1018. This court has recognized the rule, and has held that a deed executed by the president of a corporation and bearing its seal raises the presumption that he was authorized to execute the instrument. *Sibly* v. *England*, 90 Ark. 420, 119 S. W. 820; and *Cotton* v. *White*, 131 Ark. 275, 199 S. W. 116.

An examination of the certificate of acknowledgment of the mortgage from D. C. Horton, Inc., to H. F. Rieff made before a notary public, when read in connection with the mortgage itself, shows that the mortgage was executed by a corporation. In the body of the mortgage it is recited that the mortgagor is D. C. Horton, Inc. The mortgage is signed D. C. Horton, Inc., by D. C. Horton, president. To the left is the seal of the corporation, and under it appears the following: ''Attest: E. F. Horton, secretary.'' It is conceded that the word ''seal'' indicates the seal of the corporation.

So it will be seen that the mortgage itself purports to be the act of the corporation executed by its president and attested by its secretary with the corporate seal affixed. No effort was made to show that the president was not authorized to execute the mortgage, and it was not necessary that the mortgage should recite the vote

of the corporation that the president was authorized to execute the mortgage. This was not essential to the validity of the mortgage, and the statute did not require it to be done. The acknowledgment recites that D. C. Horton, president, and E. F. Horton, secretary, of D. C. Horton, Inc., well known to the notary as the grantors in the body of the deed, appeared and stated that they had executed the same for the consideration and purposes therein mentioned and set forth. In the absence of proof to the contrary, the recitals of the certificate of acknowledgment, taken in connection with the recitals in the mortgage itself, show that it was executed by a corporation, and that the president and secretary acted for the corporation affixing the corporate seal, and acknowledging that they had done so as officers of the corporation. This was equivalent to a recital that they were duly authorized in their respective capacities to execute the mortgage for the corporation, and that they were the persons authorized by the corporation to execute it.

As we have already seen, all that has ever been required with reference to the ordinary acknowledgment of a deed or mortgage is a substantial compliance with the statute. While the certifying officer does not declare in express terms that the president and secretary were authorized to execute the instrument, still that was the effect of the acknowledgment when read in connection with the recitals of the mortgage itself. The mortgage purports to be the act of the corporation executed by D. C. Horton, president and attested by E. F. Horton, secretary, with the corporate seal affixed. It is recited in the acknowledgment that these persons were known to the certifying officer as the president and secretary of the corporation, and this is a substantial compliance with the statute, and was sufficient to admit the mortgage to be filed for record. It constituted a prior and paramount lien to the mortgage given by the same corporation at a later date to the appellant. As we have already seen, the authority of the president and secretary to exe-

cute the mortgage will be assumed under the doctrine of our own cases above cited; and the affixing by the secretary of the corporate seal determines the sufficiency of the acknowledgment as to the corporate intent. Authorities on both sides of the question may be found in case notes to 29 A. L. R. at page 989 and 108 A. S. R. at page 573.

Therefore the decree will be affirmed.