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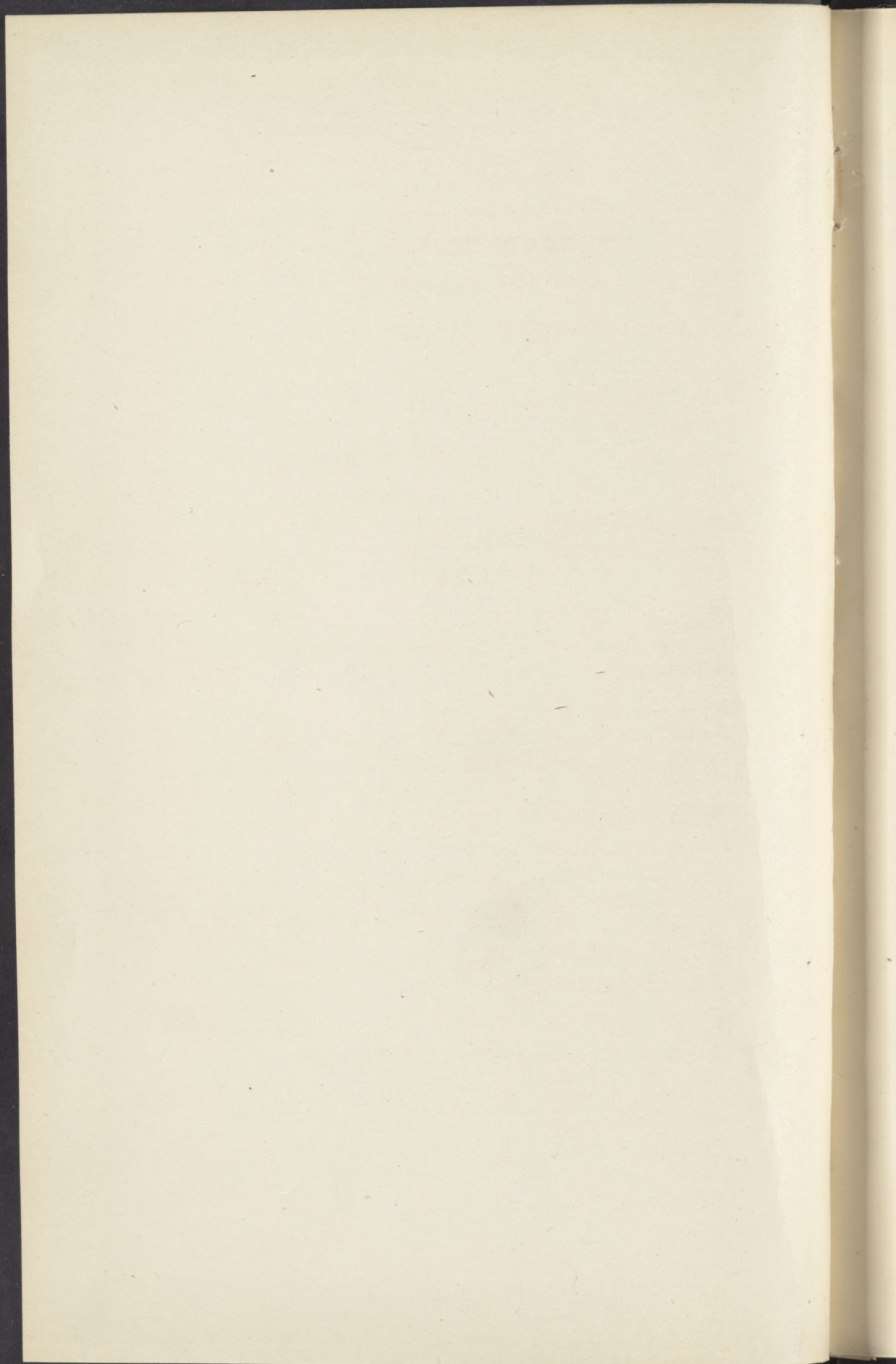
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**NOTICE OF APPEAL.**

Filed June 12, 1929.

PASSAIC COUNTY CIRCUIT COURT.

MILL FACTORS CORPORATION, a corporation,  <i>Plaintiff,</i>  <i>vs.</i>  IMHOFF BERG SILK DYEING COM- PANY, a corporation,  <i>Defendant.</i>	}	<i>In Replevin.</i>  <i>Notice</i> <i>of Appeal.</i>	10
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To Evans, Smith & Evans, Esqs., attorneys of  
defendant: 20

SIRS:

TAKE NOTICE, that the plaintiff appeals to the  
Court of Errors and Appeals in the last resort in  
all causes in New Jersey from the whole of the  
judgment entered in this cause.

Dated June 6, 1929.

BILDER & BILDER,  
Attorneys of Appellant. 30

Service of the within notice of appeal is here-  
by acknowledged this 7th day of June, A. D. 1929.

EVANS, SMITH & EVANS,  
Attorneys of Defendant.

## STIPULATION.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

*Between*MILL FACTORS CORPORATION, a  
corporation,*Plaintiff-Appellant,**and*IMHOFF BERG SILK DYEING  
COMPANY, a corporation,*Defendant-Appellee.**On Appeal.**Stipulation.*

20

It is hereby stipulated and agreed by and between the parties hereto that the following pleadings only shall be included in the state of the case:

Re-amended complaint.

Answer to amended complaint.

Answer to re-amended complaint.

Amended reply.

Rejoinder to amended reply.

30

BILDER &amp; BILDER,

Solicitors of Plaintiff-Appellant.

EVANS, SMITH &amp; EVANS,

Solicitors of Defendant-Appellee.

40

*Re-Amended Complaint.*

## PASSAIC COUNTY CIRCUIT COURT.

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MILL FACTORS CORPORATION, a  
corporation,

*vs.*

IMHOFF BERG SILK DYEING COM-  
PANY, a corporation.

---

*In Replevin.**Judgment  
on Verdict.*

10

Costs, \$46.75.

Evans, Smith &amp; Evans, attorneys.

The plaintiff's writ of replevin was duly executed and Imhoff Berg Silk Dyeing Company, a corporation, defendant in this cause, was summoned to answer until Mill Factors Corporation, a corporation, the plaintiff therein, upon the following complaint:

20

**Re-Amended Complaint.**

Plaintiff, a corporation of the State of Delaware, says:

**FIRST COUNT.**

1. On April 5, 1928, plaintiff was, and ever since has been, the owner of the following goods and chattels, to wit: 105 pieces of silk goods.

30

2. On that day plaintiff was, and ever since has been, lawfully entitled to the immediate possession of the same.

3. On that day defendant was in possession of the said goods.

4. On that day plaintiff demanded possession of said goods from the defendant.

40

*Re-Amended Complaint.*

5. The defendant wrongfully failed and refused to deliver possession of said goods to plaintiff pursuant to plaintiff's demand.

Plaintiff demands possession of said goods and chattels and \$5,000.00 damages for their detention on the first count.

10

## SECOND COUNT.

1. That on various dates heretofore there was delivered to defendant 105 pieces of silk goods which immediately prior to the time of the delivery thereof to defendant, were the property of Paramount Fabrics Corporation.

2. That at the time of the delivery of said goods to defendant, there was in existence an agreement between said Paramount Fabrics Corporation and plaintiff under which, among other things, said plaintiff agreed to make loans of money to said Paramount Fabrics Corporation, and said Paramount Fabrics Corporation agreed to pledge with plaintiff as security for the repayment of said loans, merchandise belonging to said Paramount Fabrics Corporation.

3. That on or about the dates and times of the delivery of said goods to defendant, the said Paramount Fabrics Corporation executed and delivered to plaintiff writings in the form of which a copy is attached hereto and made a part hereof, marked Schedule "A," in which writings the goods so delivered to defendant were mentioned and described.

4. That the delivery of said 105 pieces of silk goods was made by said Paramount Fabrics Corporation to defendant as bailee of plaintiff and upon an express understanding and agreement that said goods were being delivered by said

40

*Re-Amended Complaint.*

Paramount Fabrics Corporation to defendant as bailee of plaintiff and to be held by defendant subject to plaintiff's order.

5. That at or immediately after the time of the delivery of said goods by said Paramount Fabrics Corporation to defendant, defendant acknowledged to plaintiff that defendant held and would hold said goods for and on account of plaintiff, and subject to plaintiff's order. 10

6. The delivery of said 105 pieces of silk goods by said Paramount Fabrics Corporation to defendant was made pursuant to and in accordance with said agreement between plaintiff and said Paramount Fabrics Corporation by virtue of which the delivery of said 105 pieces of goods by said Paramount Fabrics Corporation to defendant for the account of plaintiff and to be held subject to plaintiff's order, was to be equivalent to and to be regarded as a delivery of said goods by said Paramount Fabrics Corporation to plaintiff as security for money loaned and to be loaned by plaintiff to said Paramount Fabrics Corporation under and pursuant to the aforementioned agreement between them. 20

7. That at the time of the delivery of said 105 pieces of goods by said Paramount Fabrics Corporation to defendant as bailee of plaintiff, said Paramount Fabrics Corporation was indebted to plaintiff in a sum in excess of the value of said merchandise for money loaned by plaintiff to said Paramount Fabrics Corporation pursuant to said agreement. 30

8. Defendant has done no work upon said 105 pieces of goods.

*Re-Amended Complaint.*

9. Plaintiff is not indebted to defendant in any sum whatsoever for any work done by defendant for plaintiff or on any other account.

10. On April 5, 1928, said goods were in the possession and are now in the possession of the defendant.

10 11. On said date plaintiff demanded possession of said goods from defendant.

12. Defendant wrongfully failed and refused to deliver possession of said goods to the plaintiff, pursuant to said demand.

13. Plaintiff alleges that plaintiff's right to possession of said goods is prior and superior to any claim or an alleged lien which the defendant may have upon the said goods.

20 WHEREFORE, plaintiff demands possession of said goods and chattels and \$5,000.00 damages for their retention on the second count.

BILDER & BILDER,  
Attorneys of Plaintiff.

SCHEDULE "A"

30 EXHIBIT A.....  
MILL.....DATE.....CASE NO.....  
CONSIGNMENT NO.....

THE GOODS DESCRIBED BELOW ARE  
HEREBY CONSIGNED TO MILL FAC-  
TORS CORPORATION TO BE HELD BY  
THEM SUBJECT TO THEIR LIEN FOR  
ADVANCES, OUTLAYS AND COMMIS-  
SIONS, AND ARE TO BE DISPOSED OF  
IN ACCORDANCE WITH OUR AGREE-  
MENT WITH THEM. Total.....Pieces

*Answer to Amended Complaint.***Answer to Amended Complaint.**

Defendant, a corporation of the State of New Jersey, answering the plaintiff's amended complaint says:

**FIRST DEFENSE.**

10

1. Defendant denies paragraphs 1, 2, 3, 4 and 5 of the first count.

**SCECOND DEFENSE.**

1. Defendant denies paragraph 1 of the second count, except that it admits that on various dates one hundred and five (105) pieces of silk goods were delivered to it for processing by Paramount Fabrics Corporation.

20

2. Defendant, at the time of delivery of the goods aforementioned, had no knowledge of the agreement mentioned in paragraph two of the second count.

3. Defendant denies paragraphs 3, 4 and 5 of the second count.

4. Defendant has no knowledge of the allegations contained in paragraph 6 of the second count.

30

5. Defendant admits paragraph 7 of the second count.

6. Defendant denies paragraph 8 of the second count.

7. Defendant admits paragraph 9 of the second count.

8. Defendant denies paragraphs 10, 11 and 12 of the second count.

40

*Answer to Amended Complaint.*

THIRD DEFENSE.

1. Defendant is engaged in the business of dyeing and finishing silk and artificial silk and goods of which the same are a component part.

10 2. The goods described in the plaintiff's complaint came into the possession of the defendant for the purpose of being dyed and finished.

3. The owner of such goods was Paramount Fabrics Corporation.

20 4. The fair and reasonable value of the work and labor performed and materials furnished in and about dyeing and finishing the goods of the Paramount Fabrics Corporation previously in the hands of the defendant was \$1,535.87, which was due and unpaid on the first day of April, 1927, and is still due and unpaid.

5. Defendant, by reason thereof, became entitled to a lien on the said one hundred and five (105) pieces of silk goods in the sum of \$1,535.87 in accordance with the statute in such case made and provided.

30 6. Such lien confers a paramount right upon the defendant to hold the said silk goods as against the plaintiff herein until the said indebtedness be paid.

FOURTH DEFENSE.

1. Defendant repeats the allegations of paragraphs 1, 2, 3, 4, 5 and 6 of the second defense with the same force and effect as if set forth herein at length.

40 2. The owner of such goods was the Paramount Fabrics Corporation, a corporation and the plaintiff herein.

*Answer to Amended Complaint.*

3. The fair and reasonable value of the work or labor performed and materials furnished in and about the dyeing and finishing of other goods of Paramount Fabrics Corporation, and the plaintiff, was \$1,535.87, which was due and unpaid on April first, 1927, and is still due and unpaid.

10

## FIFTH DEFENSE.

1. The goods herein described were manufactured and owned by Paramount Fabrics Corporation, a corporation, in Paterson, New Jersey.

2. Paramount Fabrics Corporation delivered said goods to the defendant, to be dyed and finished.

3. The plaintiff customarily, at the time or times in question financed Paramount Fabrics Corporation under a written agreement which is attached to the bill of particulars heretofore filed herein by the plaintiff.

20

4. Such written agreement is the basis upon which the plaintiff relies to recover the goods which are the subject of this action.

5. Such agreement destroys any common law lien in any goods of Paramount Fabrics Corporation which the plaintiff might be entitled to as factor, and the plaintiff may not claim the said goods described by virtue of any common law factors' lien.

30

6. The lien of the plaintiff is a contractual lien and is more fully described in paragraph 14th of said written agreement dated the 27th day of February, 1926.

"Fourteenth: The Factor shall at all times have the possession and control of said

40

*Answer to Amended Complaint.*

10 consigned goods, and as security for its advances now or hereafter made and whether or not the same shall be within or exceed the limits herein mentioned, and for its commissions, interest, expenses and other charges, excepting the expenses heretofore assumed by it, and for all indebtedness and liability of the Consignor to it, and for all liabilities which it may incur in connection with said business, except such as are herein expressly assumed by it, the Factor shall at all times have a general lien upon all of the consigned goods and upon all proceeds of sale thereof and upon any and all accounts, notes, drafts, bills receivable or evidences of indebtedness arising from any such sales."

20 7. Said contractual lien purports to be a transfer of a legal or equitable interest in the goods of Paramount Fabrics Corporation, to the plaintiff herein, as security for the payment of money, and is a chattel mortgage.

30 8. Said contract or chattel mortgage was not accompanied by an immediate delivery of the one hundred five (105) pieces of silk goods described, to the plaintiff, and was not followed by an actual and continued change of possession of the things mortgaged, as required by the statute in such case made and provided.

9. There was not affixed to said contract or chattel mortgage, an affidavit made and subscribed by the holder of such mortgage, his agent or attorneys, stating the consideration of said mortgage and as nearly as possible the amount due and to grow due thereon, as required by the statute in such case made and provided.

*Answer to Amended Complaint.*

10. Said contract or chattel mortgage was delivered by Paramount Fabrics Corporation, a corporation of the State of New York, having its principal place of business in the City of Paterson, County of Passaic, and State of New Jersey, and covered goods made, or to be made, including the one hundred and five (105) pieces of silk goods herein described, in Passaic County, New Jersey. 10

11. Said contract or chattel mortgage was not recorded in the office of the Register of Deeds and Mortgages of Passaic County, as required by the statute in such case made and provided.

12. Defendant had no notice of said contract or chattel mortgage.

13. Defendant re-alleges the contents of paragraphs 1, 2, 3, 4, 5 and 6 of the third defense, as if the same were here fully set forth at length, and made a part hereof. 20

14. Defendant is a creditor of Paramount Fabrics Corporation, and the debt described, amounting to \$1,535.87 fastened to the said one hundred and five (105) pieces of silk goods, and as against the lien of the defendant, the plaintiff's contract or chattel mortgage is wholly paid, as is set forth in the statute in such case made and provided. 30

## SIXTH DEFENSE.

1. Defendant repeats paragraphs 1, 2, 3, 4, 5 and 6 of the third defense, as if here fully set forth at length, and the same is made a part thereof.

2. The defendant acquired possession of said one hundred five (105) pieces of silk goods and 40

*Answer to Amended Complaint.*

also acquired the lien therein described prior to the time of the making of any advancements or expenditures against or on account of said silk goods, by the plaintiff.

## SEVENTH DEFENSE.

10 1. Defendant repeats all the allegations of paragraphs 1, 2, 3, 4, 5 and 6 of the third defense as if here fully set forth at length, and the same is made a part hereof.

2. The defendant acquired possession of said one hundred and five (105) pieces of silk goods prior in time to the plaintiff's acquiring any form of possession and prior in time to the goods coming into the hands or under the control of the plaintiff.

20

## EIGHTH DEFENSE.

1. Defendant repeats paragraphs 1, 2, 3, 4, 5 and 6 of the third defense, as if here fully set forth at length, and the same is made a part hereof.

2. Paramount Fabrics Corporation are not now and were not indebted to the plaintiff at the time this cause of action arose.

30

## NINTH DEFENSE.

1. The written contract of February 27, 1926, does not recite or set forth any amounts due or to grow due thereon and is therefore void for indefiniteness.

## TENTH DEFENSE.

40 1. Defendant had no notice of any rights or interests of the plaintiff in said goods, at the time said goods were delivered to the defendant.

*Answer to Amended Complaint.*

## ELEVENTH DEFENSE.

1. Said contract or chattel mortgage, dated February 27, 1926, purports to cover goods not in existence at the time of the making thereof, and is therefore void.

## TWELFTH DEFENSE.

10

1. Said contract or chattel mortgage, dated February 27, 1926, purports to cover future obligations, and indebtednesses, not in existence at the time of the making of such chattel mortgage, and is therefore void.

## THIRTEENTH DEFENSE.

1. Plaintiff has not made demand from the defendant for the return of said goods mentioned in plaintiff's complaint and defendant has not wilfully retained the possession of the same as against the rights of the plaintiff.

20

## FOURTEENTH DEFENSE.

1. That from the 21st day of April, 1927, until the month of December, 1927, said goods were in the custody of the Sheriff of the County of Passaic, under and by virtue of a writ of attachment secured at the suit of George Wenger, plaintiff, against Paramount Fabrics Corporation, a corporation of the State of New York, defendant.

30

## FIFTEENTH DEFENSE.

1. That there was, and still is, due and owing from the plaintiff to the defendant, the sum of \$1,535.87 from the first day of April, 1927, until the present time.

Defendant will move before trial to dismiss the plaintiff's complaint for the reason that the same,

40

*Answer to Re-Amended Complaint.*

with the bill of particulars attached, does not disclose a cause of action as against the defendant.

10 Defendant will move before trial to strike out paragraph five of the second count of plaintiff's complaint upon the ground that the same sets forth a conclusion of law and does not properly plead the facts upon which such conclusion is based.

EVANS, SMITH & EVANS,  
Attorneys of Defendant.

**Answer to Re-Amended Complaint.**

20 Defendant, a corporation of the State of New Jersey, answering paragraph three of the second count of plaintiff's complaint as re-amended by permission of the Court at the trial of the issue herein joined, says:

This defendant denies paragraph three of the second count of plaintiff's complaint as re-amended.

30 EVANS, SMITH & EVANS,  
Attorneys of Defendant.

*Amended Reply.***Amended Reply.**

Plaintiff, replying to defendant's answer, says:

1. Plaintiff denies paragraphs 2 and 3 of the third defense. 10
2. Plaintiff alleges that the goods were delivered to defendant for or on behalf of plaintiff to be held by defendant for plaintiff, subject to plaintiff's order. 10
3. Plaintiff alleges that upon the delivery of said goods to defendant as aforesaid, said goods then were or thereupon became subject to a lien in favor of plaintiff, paramount to any and all rights or title of Paramount Fabrics Corporation or any other person. 20
4. Plaintiff denies the allegations of paragraph 5 of the third defense.
5. Plaintiff denies the allegations of paragraph 6 of the third defense.
6. Plaintiff denies the truth of the allegations contained in paragraph 2 of the fourth defense.
7. Plaintiff alleges that the goods were delivered to defendant for or on behalf of plaintiff to be held by defendant for plaintiff subject to plaintiff's order. 30
8. Plaintiff alleges that upon the delivery of said goods to defendant as aforesaid, said goods then were or thereupon became subject to a lien in favor of plaintiff, paramount to any and all rights or title of Paramount Fabrics Corporation or any other person.
9. Plaintiff denies the truth of the allegations contained in paragraph 1 of the fifth defense. 40

*Amended Reply.*

10. Plaintiff denies paragraphs 2 and 3 of the fifth defense.

10 11. Plaintiff alleges that the goods were delivered to defendant for or on behalf of plaintiff to be held by defendant for plaintiff, subject to plaintiff's order.

12. Plaintiff alleges that upon the delivery of said goods to defendant as aforesaid, said goods then were or thereupon became subject to a lien in favor of plaintiff pursuant to any and all rights or title of Paramount Fabrics Corporation or any other person.

20 13. Plaintiff denies the truth of the allegations contained in paragraph 4 of the fifth defense.

14. Plaintiff denies the truth of the allegations contained in paragraph 5 of the fifth defense.

15. Plaintiff denies the truth of the allegations contained in paragraph 6 of the sixth defense, except as hereinafter admitted.

30 16. Paragraph "Fourteenth" of the contract referred to in paragraph 6 of the fifth defense is merely descriptive of the nature and extent of plaintiff's lien upon said goods, but said contract and said paragraph did not purport to create the said lien itself.

17. Plaintiff denies the truth of the allegations of paragraph 7 of the fifth defense.

40 18. Plaintiff alleges that the said contract did not create a lien in favor of plaintiff upon said goods, and that said contract did not purport to transfer title of such goods to plaintiff.

*Amended Reply.*

19. Plaintiff denies the truth of the allegations contained in paragraph 12 of the fifth defense.

20. With reference to paragraph 13 of the fifth defense, plaintiff makes the same reply as hereinabove made with reference to the third defense. 10

21. Plaintiff denies the truth of the allegations contained in paragraph 2 of the sixth defense.

22. Plaintiff alleges that the said goods were received by defendant as bailee of plaintiff, and as goods which were to be held by defendant for plaintiff, and subject to plaintiff's order. Said goods were delivered to defendant by Paramount Fabrics Corporation for and on behalf of plaintiff, defendant being informed at the time of such delivery that said goods were to be held by defendant for plaintiff, and subject to plaintiff's order. The said goods were so delivered by Paramount Fabrics Corporation as security to plaintiff for an indebtedness then owing by the Paramount Fabrics Corporation to plaintiff. 20

23. Plaintiff repeats with reference to the seventh defense all of the allegations hereinabove made by plaintiff in reply to the sixth defense. 30

24. Plaintiff repeats with reference to the eighth defense all of the allegations hereinabove made with reference to the third defense.

25. At the trial of this action, plaintiff will move to strike out the eighth defense as not constituting a good defense.

26. At the trial of this action, plaintiff will move to strike out the ninth defense as not constituting a good defense. 40

*Amended Reply.*

27. Plaintiff denies the allegations of the tenth defense. At the trial of this action, plaintiff will move to strike out the tenth defense as not constituting a good defense.

10 28. With reference to the eleventh defense, plaintiff denies that the contract therein mentioned is or purports to be a chattel mortgage. Plaintiff will move to strike out such defense as not a good defense.

29. With reference to the twelfth defense, plaintiff denies that the contract therein mentioned is or purports to be a chattel mortgage. Plaintiff will move to strike out such defense as not a good defense.

20 30. Plaintiff denies the truth of the allegations contained in the thirteenth defense.

31. Plaintiff has no knowledge or information of the truth of the allegations of the fourteenth defense. Plaintiff will move to strike out such defense as not a good defense.

32. Plaintiff denies the truth of the allegations contained in the fifteenth defense.

30 33. In reply to all of the defenses, plaintiff alleges that defendant is estopped to deny plaintiff's paramount right to the possession of the said goods by the fact that defendant received such goods as bailee for plaintiff and agreed to hold such goods for plaintiff, and subject to plaintiff's order.

40 34. Plaintiff alleges that the defendant has waived its alleged lien on said goods in that on or about December 6, 1927, the defendant refused to deliver said goods to plaintiff in response to plaintiff's demand for such delivery,

*Rejoinder to Amended Reply.*

alleging as the sole ground of said refusal, that the said goods had been attached for a debt under a writ of attachment which had been served upon the defendant on April 21, 1927.

BILDER & BILDER,  
Attorneys of Plaintiff.

10

**Rejoinder to Amended Reply.**

This defendant, by way of rejoinder to plaintiff's amended reply to the amended answer heretofore filed herein, says:

This defendant denies the following paragraph in plaintiff's amended reply:

"Plaintiff alleges that the defendant has waived its alleged lien on said goods in that on or about December 6, 1927, the defendant refused to deliver said goods to plaintiff in response to plaintiff's demand for such, alleging as the sole ground of said refusal that the said goods had been attached for a debt in a writ of attachment, which had been served upon the defendant on April 21st, 1927,"

being paragraph 34 of plaintiff's amended reply.

EVANS, SMITH & EVANS,  
Attorneys of Defendant.

40

*Judgment.*

**Judgment.**

This action was tried before Judge Clifford L. Newman, with a jury in the presence of the counsel of the respective parties, at the Passaic County Circuit Court, on February 6th, 7th and 8th, A. D. 1929.

10

The cause having been heard and submitted to the jury, they returned their verdict in favor of the defendant, Imhoff Berg Silk Dyeing Company, a corporation.

20

Whereupon, it is adjudged that the complaint of the plaintiff be dismissed and that the defendant, Imhoff Berg Silk Dyeing Company, a corporation, recover of the plaintiff, Mill Factors Corporation, a corporation, its costs, which are taxed at the sum of forty-six dollars and seventy-five cents (\$46.75). Judgment entered and signed February 11th, A. D. 1929, at 2:58 P. M.

Action No. 12072, Docket K. pages 481, &c.

NEWTON H. PORTER,  
Judge.

30

40

*Certificate of Clerk.*

STATE OF NEW JERSEY, }  
 COUNTY OF PASSAIC. } ss.

I, LLOYD B. MARSH, Clerk of said County and Clerk of the County Courts thereof, Do HEREBY CERTIFY, that the foregoing is a transcript of the Judgment Record, in re: Mill Factors Corporation, a corporation, Plaintiff, *vs.* Imhoff Berg Silk Dyeing Company, a corporation, Defendant, as the same is taken from and compared with the original entry thereof in Book "B-2" of Circuit Court Judgments, for said County and now remaining of record in my Office. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal (SEAL) of the said Courts and County at Paterson, this Twenty-second day of June, A. D. Nineteen Hundred and Twenty-nine. 20

LLOYD B. MARSH,  
 Clerk.

By FLOYD E. JONES,  
 Deputy Clerk.

230264

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**GROUNDS OF APPEAL.**

PASSAIC COUNTY CIRCUIT COURT.

10

MILL FACTORS CORPORATION, a  
corporation,

*Plaintiff,*

*vs.*

IMHOFF BERG SILK DYEING COM-  
PANY, a corporation,

*Defendant.*

*In Replevin.*

*Grounds  
of Appeal.*

20

The following are the grounds on which plain-  
tiff appeals in the above-entitled cause:

1. That the Court erroneously denied plain-  
tiff's motion for a direction of a verdict in favor  
of plaintiff and against the defendant.

2. That the Court erroneously granted de-  
fendant's motion for direction of a verdict in  
favor of defendant and against plaintiff.

30

3. That the Court erroneously refused to  
strike out the following testimony of the witness,  
Tomasulo:

“Q Well, but each time you got these  
yellow sheets it was handed to you by one  
or the other of them? A Well, yes, as a  
matter of passing over the mail, that is all.

Q I ask that the last part of the answer  
be stricken out as not responsive.

The Court: It may stand.

Mr. Bilder: May I ask an exception?

The Court: Yes.

40

*Grounds of Appeal.*

Mr. Bilder: On the ground that the latter part of the answer is not responsive and it states a conclusion of fact of the witness."

4. That the Court erroneously permitted the following testimony of the witness, Meadendorf: 10  
 "Q Did you have any specific authority to write that particular letter? A No.

Mr. Bilder: I object.

Q Referring to Exhibit P. 54.

Mr. Bilder: If the Court please, the witness answered so quickly—I object on the ground that it calls for a conclusion of law, and on the further ground it is improper cross examination and is part of the defendant's defense. 20

The Court: I think it is permissible, and I will permit it.

Mr. Bilder: May I take an exception?

The Court: Answer the question.

A No."

5. That the Court erroneously permitted the following testimony of the witness, Meadendorf: 30  
 "Q Well, would you have any authority, Mr. Meadendorf, to release any liens that the company might have? A No.

Mr. Bilder: I object.

A No authority—

The Court: I will permit it.

A No authority whatever.

Q Or waive any liens?

Mr. Bilder: I object.

A None whatever. 40

*Grounds of Appeal.*

The Court: I will permit it.

Mr. Bilder: On the ground that the witness is being asked a question of law, embodying a legal term with which the witness is not shown to be familiar."

10

BILDER & BILDER,  
Attorneys of Plaintiff.

Service of the within grounds of appeal is hereby acknowledged this 18th day of June, A. D. 1929.

EVANS, SMITH & EVANS,  
Attorneys of Defendant.

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*Amendments to Pleadings.***TESTIMONY.**

## PASSAIC CIRCUIT COURT.

MILL FACTORS CORPORATION, <i>Plaintiff,</i>  <i>vs.</i> IMHOFF BERG SILK DYEING COM- PANY,  <i>Defendant.</i>	}	<i>At Law.</i>	10
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Paterson, N. J., February 6, 1929.

Before Hon. Clifford L. Newman, judge, and  
 a jury.

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## Appearances:

For plaintiff, Bilder and Bilder, Esqs., by  
 Walter Bilder, Esq.

For defendant, Evans, Smith and Evans, Esqs.,  
 by John Evans, Esq.

(A jury was called and sworn.)

## AMENDMENTS.

Mr. Bilder: If the Court please, I desire to  
 apply to amend the plaintiff's amended com-  
 plaint in certain respects which I will ask to  
 have spread upon the minutes. There will be  
 no objection to these amendments. The notice  
 of this application was seasonable.

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It is desired to amend the amended complaint  
 by adding thereto the following paragraph:  
 "On or about the dates and times of the delivery  
 of said goods to defendant the said Paramount  
 Fabrics Corporation executed and delivered to

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*Amendments to Pleadings.*

plaintiff writings in the form in which a copy is attached hereto and made a part hereof, marked Schedule A, in which writings the goods so delivered to defendant were mentioned and described."

The Court: Any objection?

10 Mr. Evans: No.

Mr. Bilder: I will ask that the Court will incorporate this in the plaintiff's amended complaint.

The Court: I do not incorporate. The papers are here. If you want to amend it, you want to draw an amendment.

Mr. Bilder: May I submit this to your Honor so you can follow in the course of the trial, and then I will draw an amendment?

20 The Court: Yes.

Mr. Bilder: Also to amend the plaintiff's reply to the defendant's amended answer by adding thereto the following allegation: "Plaintiff alleges that the defendant has waived its alleged lien on said goods in that on or about December 6, 1927, the defendant refused to deliver said goods to plaintiff in response to plaintiff's demand for such delivery alleging as the sole ground of such refusal that the said goods had been attached for a debt under a writ of attachment which had been served upon the defendant on April 21, 1927."

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The Court: Any objection?

Mr. Evans: No.

The Court: The amendment will be allowed in both respects.

Mr. Evans: I desire to amend the answer to the amended complaint in this respect: The second defense, paragraph five, I desire to change

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*Amendments to Pleadings.*

that from "defendant admits paragraph seven of the second count," to say "that the defendant dyed and finished three of the pieces held and redyed and refinished seventeen other of the pieces held."

The way the original amended complaint states: "Defendant has done no work upon the said 105 pieces of silk," and we originally admitted that, but when we came to investigate we found that some work had been done on 20 of these pieces, and the amended answer, therefore, is in accord with the state of facts. 10

The Court: I suggest each counsel draw amended pleadings and see that they are filed.

Mr. Bilder: All right.

If I may suggest that in order that the issues be clarified, I think that it ought to be stipulated by counsel at this point that the defendant's amendment to paragraph five or the second defense as just set forth does not constitute a contention that the lien claim of the defendant upon these goods in this case is for any work done upon these goods, even though it is alleged that work was done upon some of these goods. 20

The Court: Well, I suppose the contentions of the parties will be outlined in the openings.

Mr. Evans: Just one moment. Of course, it is understood the defendant denies these pleadings. Of course, that new matter we really ought to answer. 30

The Court: That is what I say. Prepare your amended pleadings. The answer as amended will be allowed in that respect.

Mr. Bilder: We can have those in the next session.

The Court: You can file them at any time. 40

*Walter Tomasulo, direct.*

(Counsel for the respective parties opened to the jury.)

PLAINTIFF'S TESTIMONY.

10 WALTER TOMASULO, sworn.

*Direct examination by Mr. Bilder.*

Q Mr. Tomasulo, you are in the employ of the Imhoff-Berg Silk Dyeing and Finishing Company? A Yes.

Q Do you recognize the signature, "W. Tomasulo," on that paper that I show you? A Yes, sir. It is not mine, though.

20 Q Whose is it? A It is written by my assistant, Miss Ortell. Her initials are alongside of it. It is signed by Miss Ortell.

Q Who is she? A In my absence she is my assistant.

Q Was that signed by your instructions? A Yes.

Q And it was signed in the place of business of Imhoff Silk Dyeing and Finishing Company? A It was.

30 Mr. Bilder: Will you mark that for identification?

(Paper marked P. 1 for identification.)

Q Will you look at this paper and tell me whether you recognize the signature, "W. Tomasulo?" A I do. That is the same as the one we just spoke of.

Q Signed by whom? A Miss Ortell.

40 Q Under your instructions? A Under my instructions.

*Walter Tomasulo, direct.*

Mr. Bilder: Mark it for identification.

(Paper marked P. 2 for identification.)

Q I show you these two yellow papers and ask you whether you recognize the signatures "W. Tomasulo" on those? A I do. They were both signed by Miss Ortell under my instructions. 10

(Paper marked P. 3 for identification.)

Q You refer to two yellow sheets bearing date 4/22/27 and April 25, 1927? A I do.

(Paper marked P. 4 for identification.)

Q Recognize the signature "W. Tomasulo" on the yellow sheet stamped January 28, 1927? A I do. That was signed by Miss Ortell under my instructions. 20

Q At the place of business of the Imhoff-Berg? A At the place of business of Imhoff-Berg.

Q That also refers to each of the yellow sheets I have shown you so far? A Yes.

(Paper marked Exhibit P. 5 for identification.) 30

Q I ask you whether the yellow sheet stamped February 24, 1927, is recognized by you as the signature of W. Tomasulo? A No. It is the signature of Miss Ortell, my name written by Miss Ortell.

Q Under whose instructions? A Under my instructions.

Q At the defendant's place of business? A At the defendant's place of business, yes. 40

*Walter Tomasulo, direct.*

(Paper marked P. 6 for identification.)

The Court: The green slips attached to them—

The Witness: They were not attached. They came in separately.

10 Q I show you a yellow sheet stamped February 26, 1927, and ask you whether you recognize the signature, "W. Tomasulo?" A That is also signed by Miss Ortell under my instructions at the place of business of Imhoff-Berg.

(Paper marked P.7 for identification.)

20 Q Recognize the signature of W. Tomasulo on yellow sheet stamped March 4, 1927? A Signed by Miss Ortell under my instructions at the place of business of Imhoff and Berg.

(Paper marked P. 8 for identification.)

Q Recognize the signature of W. Tomasulo on yellow sheet stamped March 4, 1927? A It was signed by Miss Ortell under my instructions at Imhoff-Berg's place of business.

(Paper marked P. 9 for identification.)

30 Q Recognize the signature W. Tomasulo on yellow sheet stamped March 27, 1927? A That was signed by Miss Ortell under my instructions at Imhoff and Berg's place of business.

(Paper marked P. 10 for identification.)

40 Q When these yellow sheets came into the possession of Imhoff-Berg Company, by what means did they come into the possession of Imhoff-Berg? A By mail.

*Walter Tomasulo, direct.*

Q Do you recall whether they were accompanied by anything? A The yellow sheets or the blue?

Q The yellow sheets? A They were accompanied by blue sheets to which they refer, or green.

Q Green sheets. Will you produce those green sheets, the originals, Mr. Evans? 10

*By the Court.*

Q You say all these were mailed to the Mill Factors Corporation? A Yes, sir.

Q By your company? A Yes.

*By Mr. Bilder.*

Q Then, what was done with them after they were signed in this fashion? A The yellow slips that were signed were returned by mail to the Mill Factors Corporation. 20

The Court: By the Imhoff-Berg Company?

The Witness: By the Imhoff-Berg Company.

Q You recall in whose envelope the yellow sheet would come by mail to the Imhoff-Berg? 30

A To us, in Mill Factors' envelope.

Mr. Bilder: The defendant will admit that original blue sheet?

Mr. Evans: I do not think the time has come for that admission, because he has not offered this in evidence yet. As far as the receipts are concerned, I am going to interpose an objection to the admission of all of those receipts for several different reasons, 40

*Walter Tomasulo, direct.*

and therefore I do not want to be taken to admit anything.

Mr. Bilder: Then I will have to ask for the production of the originals.

Mr. Evans: Well, I have the originals here. Here they are (producing papers).

10 The Court: Were the blue slips which you say accompanied these yellow slips, also returned by the Imhoff-Berg Company?

The Witness: No; just the yellow slips.

Mr. Evans: I think your Honor asked if Imhoff-Berg returned them. I think Mr. Tomasulo returned them.

The Court: He said they were returned by Imhoff-Berg Company to the Mill Factors Company. He says that.

20 Mr. Evans: I do not think he said that.

The Witness: I did say that, but I meant I saw to it or it was mailed out from Imhoff and Berg's place of business.

Mr. Evans: You attended to that part?

The Witness: Yes.

Mr. Evans: He sent them personally.

30 Q When these yellow sheets came in in envelopes of Mill Factors to the Imhoff-Berg place of business, would you be the person to open the mail? A No.

Q By whom would this yellow sheet be turned over to you? A By either Dr. Imhoff, the president of the concern, or by the superintendent.

The Court: At the place of business?

40 Q What is his name? A At the place of business of Imhoff and Berg.

*Walter Tomasulo, direct.*

Q Was your signature or the signing of these yellow sheets pursuant to instructions of such person? A No.

Q Would Mr. Berg or the superintendent say anything to you when they handed this sheet over to you? A No.

Q Well, how did you know what to do with it? A Well, by the previous custom of business with the Paramount Fabrics Corporation, and I knew by the appearance of the name "Mill Factors Corporation" on each and every invoice and order coming in from the Paramount Fabrics Corporation that there was an affiliation of some kind, the amount of which I knew nothing, and inasmuch as Mill Factors were requesting we acknowledge receipt of those goods for the account of Paramount Fabrics Corporation, I did it merely as a matter of courtesy, as an accommodation to them. 10  
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The Court: By whom were you employed at that time?

The Witness: By the Imhoff-Berg Silk Dyeing Corporation.

Q You mean, then, that Mr. Berg or the superintendent would hand these yellow sheets over to you without saying anything to you at all; is that correct? A In reference to those particular sheets? 30

Q In reference to those particular sheets which you have testified to. Now, you had been signing similar yellow sheets many times before you signed these particular ones that you have testified to, had you not? A I believe so.

Q Do you recall when you first started to sign such yellow sheets which came in from Mill Factors with reference to Paramount, in 40

*Walter Tomasulo, direct.*

Bayer, Veit and Goldman Company? A I don't recall the exact date, but it would be when we started business with both Bayer, Veit and Goldman and the Paramount Fabrics Corporation.

10 Mr. Bilder: If your Honor please, I am quite sure it is not improper for me to state at this time that it is agreed or stipulated by the parties that Bayer, Veit and Goldman and Paramount—that the Paramount was successor to Bayer, Veit and Goldman, and as far as this case is concerned they may be considered identical.

The Court: All right.

20 Q At any rate, on a number of occasions prior to the occasions having references to these particular yellow sheets marked now for identification, you did sign similar yellow sheets coming in the same way from Mill Factors and having reference to the Paramount and being returned by you by mail but after signing to the Mill Factors; is that correct? A That is correct.

30 Q Do you recall when you first started to sign such yellow sheets, who it was that first turned over such a yellow sheet to you with any instructions? A As I say, those yellow sheets were turned over to me without instructions.

Q Even the first time they were sent over? A Even the first time.

Q By whom were they first turned over to you? A By either Dr. Imhoff or Mr. Lutz, our superintendent.

40 Q At the time that these particular yellow sheets were turned over to you, were you in a position to check up the goods to see that they were physically in the possession of the company? A I was.

*Walter Tomasulo, direct.*

Q Did you check up to see that those goods were physically in the possession of your company at the time you acknowledged these yellow sheets? A I did.

Q Now, will you pick out the original green sheets which accompanied these yellow sheets in the mail when they arrived, as you say, at the place of business of Imhoff-Berg? 10

Mr. Evans: Do not mix those up. I think it would be better if counsel would call for each one at a time, which one he wants. It is quite a job for him to check up personally maybe twenty different sheets and compare the numbers and so on. If he will ask which ones he wants he will produce it.

Q You want me to call it off? All right. Pick out a green sheet, if you have one there, referring to invoice No. D4079? A I just got through with that one. I haven't got that one here. 20

Q Will you please look carefully for that?

Mr. Evans: That is there, invoice D4079.

Q The green sheet is dated March 4, 1927? 30  
A Aren't others, Mr. Evans, in another folio?

Mr. Evans: Those are limited to the goods we have. These are goods which we sent back.

Mr. Bilder: You better get me the green sheets, anyhow.

The Witness: I beg your pardon.

The Court: There is not much dispute about the fact? 40

*Walter Tomasulo, direct.*

Mr. Evans: He has sheets there for every shipment that was ever made. We are only holding 100 pieces.

Q You find that? A 4079, yes.

10 Q You find a green sheet bearing invoice number D4079, bearing date March 2, 1927?

A I do.

Q Can you say that that is the sheet which accompanied the yellow sheet dated March 4, 1927, bearing reference No. D4079 and marked for identification P. 8? A Yes, that is the sheet that accompanied it.

Q Now, will you find the sheet that accompanied the yellow sheet referring to D6636?

A I have that here.

20 Q By the way, I want that marked for identification, please, that first one. Where is that? 4079? Have you got that? A The one I have or—

Q Yes, the 4079 you have.

The Court: Cannot counsel get these together and offer them in a bunch?

Mr. Bilder: Mark D4079 for identification, please.

30 (Paper marked P. 11 for identification.)

Q You produced a green sheet D6636 dated March 27, 1927, and say that is a green sheet which accompanied yellow sheet marked P. 1 for identification? A I do.

(Paper marked P. 12 for identification.)

40 Q Here they are, right here, one after the other.

*Walter Tomasulo, direct.*

Mr. Evans: Which one are you looking for now?

The Witness: 7024.

Mr. Evans: On 7024 we delivered all of those goods back again, so that has no possible relation to the case.

Mr. Bilder: How about that? 10

Mr. Evans: Why not mark this we are holding goods on, and then offer those?

Mr. Bilder: I am not offering them. I only want them marked.

The Court: If there are only five in dispute there is not much work.

Mr. Evans: If he marks every one we will be two hours marking these up, because they take every transaction. 20

The Court: There is no necessity for that.

Mr. Bilder: Mr. Bond, can you tell me if there is anything left on 7024?

Q Is that it Mr. Tomasulo—7024? A Yes, 7024.

Mr. Bilder: All right, we will pass that.

The Court: If there is no dispute about five we had better get those marked. 30

Q Will you find the one D3885? A I have that one here, 3885.

Q You say this sheet which you now produce accompanied yellow sheet marked P. 6 for identification? A I do.

(Paper marked P. 13 for identification.)

Q D2112? A 2112 consisting of three sheets. 40

*Walter Tomasulo, direct.*

Q You produce a green sheet referring to invoice No. 2112, and you say that that green sheet, together with two green sheets attached thereto, accompanied the yellow sheet marked for identification P. 5? A I do.

10 Q When it arrived at the Imhoff-Berg place of business? A Yes.

(Three green sheets marked P. 14 for identification.)

Q Will you find the green sheet that accompanied yellow sheet D7256? A Here it is.

20 Q You produce a green sheet referring to invoice D7256 and say that is the green sheet which accompanied the yellow sheet marked for identification P. 4 when it came to the Imhoff-Berg place of business? A I do.

(Paper marked P. 15 for identification.)

Q D3884. A (Witness produces.)

Q You produce a green sheet referring to invoice No. D3884 and say that is the green sheet which accompanied the yellow sheet marked P. 7 for identification when it arrived at the place of business of Imhoff-Berg? A I do.

30 (Paper marked P. 16 for identification.)

Q You produce a green sheet referring to invoice No. 2480 which you say accompanied the yellow sheet marked for identification P. 9 when it came to the Imhoff-Berg place of business? A I do.

(Paper marked P. 17 for identification.)

40 Q 4125? A 4125.

*Walter Tomasulo, direct.*

Q You produce green sheet referring to invoice No. D4125 and say that that green sheet accompanied the yellow sheet marked—yellow sheet not yet marked for identification, but dated March 27, 1927, when that yellow sheet came to the place of business of Imhoff-Berg?

A I do.

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Q And referring to this yellow sheet dated March 27, 1927, you recognize the signature thereon? A That is the signature made by Miss Ortell under my instructions while at the place of Imhoff-Berg place of business.

Q And this yellow sheet was handed to you at the Imhoff-Berg place of business by either Mr. Berg or the superintendent? A No, by either Dr. Imhoff or the superintendent.

Mr. Bilder: I ask that the yellow sheet be marked for identification.

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(Paper marked P. 18 for identification.)

Mr. Bilder: And that the green sheet just testified to be marked for identification.

(Paper marked P. 19 for identification.)

Q D7024, more than half returned, apparently, a little less than half remaining.

Mr. Evans: Yes, we have those goods, but I don't know whether we have this green slip. Could you find the green slip?

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The Witness: Not here, Mr. Evans.

Mr. Bilder: Well, can we admit that this yellow sheet refers among others to these goods?

Mr. Evans: I don't think they sent it. All we did was give you a receipt. All right, I will admit that. We will admit that

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*Walter Tomasulo, direct.*

we have those goods there in our possession, that is, seven pieces of it, but we do not admit that we received any green slips, because we haven't any in our possession, and I don't know whether we did or not.

10 Mr. Bilder: Suppose I put it as I understand it and see if you agree? It is agreed that the yellow sheet dated April 12, 1927, and marked identification P. 2 refers to fifteen pieces of goods which actually did come into the possession of the Imhoff-Berg Company at the time that this yellow sheet was signed.

Mr. Evans: Well, the yellow sheet came into our possession after the goods were received.

20 Q Mr. Tomasulo, referring to the sheet marked P. 2 for identification, when that was signed was there any written record or anything came in with that by mail? When this yellow sheet came in by mail in the Mill Factors' envelope, did anything come with it to which reference could be had? A I don't recall.

30 Q Looking at the white ticket which you observe purports to bear a signature Imhoff-Berg by someone, does that refresh your recollection as to what did accompany, if anything, the yellow sheet in the envelope? A No, it does not.

40 Q Does it refresh your recollection and enable you to say whether or not the yellow sheet was signed with any record in front of you or in front of Miss Ortell at the time? A We had other records by which we could check that yellow slip back, showing us we did receive those—that particular yellow sheet referred to. The white slip you have on this side is a receipt by our driver covering that same shipment.

*Walter Tomasulo, direct.*

Q But it is agreed, in any event, that the goods were in possession of Imhoff-Berg at the time this yellow sheet was signed?

Mr. Evans: Yes, and we have seven of them now.

Mr. Bilder: Yes, and that of these fifteen pieces referred to in this yellow sheet Imhoff-Berg now has in its possession seven involved in this action? 10

Mr. Evans: Yes.

The Court: It seems to me there are not so many disputes about the facts. The first question is as to how much goods were sent by somebody to the Imhoff-Berg Company and how many of those goods they still retain. Is there any dispute about that at all? 20

Mr. Bilder: No question about that at all.

The Court: What is this proof?

Mr. Bilder: Creation of a bailment. We are contending that the Imhoff-Berg is our bailee.

The Court: Can't you bunch it? You have been here a half hour and haven't proved anything. Can't you bunch your proof?

Mr. Bilder: I want these documents to get into this case, and I want to build up my case. The facts are of importance in order to spell out the legal situation. 30

The Court: You ought to be able to reduce them, I should think.

Q Did Dr. Imhoff or the superintendent know that you were signing these yellow sheets and sending them out by mail to Mill Factors? A That I don't know. I don't recall any time having brought it to their attention. 40

*Walter Tomasulo, direct.*

The Court: Well, when they turned these yellow sheets over to you, did they give you any instructions what to do with them?

The Witness: None whatsoever.

10 Q Well, but each time you got these yellow sheets it was handed to you by one or the other of them? A Well, yes, as a matter of passing over the mail, that is all.

Q I ask that the last part of the answer be stricken out as not responsive.

The Court: It may stand.

Mr. Bilder: May I ask an exception?

The Court: Yes.

20 Mr. Bilder: On the ground that the latter part of the answer is not responsive and it states a conclusion of fact of the witness.

Q Did Dr. Imhoff or the superintendent, when they handed you these sheets, say to you, "We are just handing these as a matter of passing over the mail"?

Mr. Evans: I object to it as leading.

30 A They did not.

The Court: I will permit it.

Q I show you a paper dated November 6, 1926, purporting to bear the signature W. Tomasulo, and ask you if you recognize that signature?

A (Witness examines paper.)

Q No; I am speaking of the paper you are looking at. No, the signature. Do you recognize it? A Yes.

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*Walter Tomasulo, direct.*

Q Whose it is? Why did you hesitate? A Why, because the W is a trifle different than the others that Miss Ortell signed for me.

Q Whose signature is this, if you recognize it? A Miss Ortell's.

Q Was that sheet signed under your directions at the Imhoff-Berg place of business? A 10  
It was.

Q Do you recognize that that sheet came through the mail to Imhoff-Berg? A Yes.

Q And was returned by mail from Imhoff-Berg's place to Mill Factors? A Yes.

Q Can you state whether that date, November 6, 1926, represents the date on or about which that paper was received and signed at the time?

Mr. Evans: May I object to all this line 20  
of questions?

A I don't recall.

Mr. Evans: Because it does not bear on any of the goods we are holding.

Mr. Bilder: No, but it fixes a date long prior to this when the course of dealings started.

The Court: I will receive it. 30

A I don't recall whether that particular date was on that sheet.

Q Do you recall whether that was about the date that the sheet was received and signed and sent back to Mill Factors? A I cannot remember any particular shipment.

Q Will you produce the sheet, green sheet, dated November 4, 1926, bearing invoice reference No. D693? 40

*Walter Tomasulo, direct.*

(Mr. Evans produces paper.)

Mr. Evans: Here are all of them we have got.

A D693?

Q Yes.

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Mr. Bilder: Your Honor's suggestion is something that just occurred to me. I can bunch them. Before you look for that, just a moment. If your Honor please, I served a notice to produce upon the defendant which set forth demand for these various green sheets numbering perhaps two dozen, of which this one I have just inquired about is one. Now I can ask a general question which can, as your Honor puts it, bunch the entire matter and elicit one answer that will probably save all of us time.

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The Court: Very well.

Q Do you have the green sheets in your possession which are referred to in this paper that I show you, beginning with memorandum No. 693 and ending with D6636? A Yes.

Q Which is marked for identification? A D693, D695, D858, D893, D915, D914, D1077, D1277, D1342, D1412, D1488, D4012, D4126, D4127, D4049, D7024.

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Q Did you receive those green sheets which have just been referred to by mail? A By mail.

Q In an envelope bearing the name Mill Factors? A The envelope bearing the name Mill Factors.

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Q Was each of those green sheets referred to accompanied by any other paper? A The

*Walter Tomasulo, direct.*

green sheets were accompanied by the yellow slips.

Q May they not in some cases have been white slips, for instance, the ones I show you? A Yes, they very likely were.

Q All in the same form as the yellow sheets?

A All in the same form.

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Q On each occasion the accompanying yellow or white sheet would be signed and returned by you to Mill Factors through mail; is that right?

A They would.

Q That was done in connection with each one of those green sheets just now referred to? A That is right.

Q Were each of those yellow or white sheets which you saw signed and returned by mail to Mill Factors from the Imhoff-Berg place handed to you either by Dr. Imhoff or the superintendent? A They were.

20

Q Can you recall any instructions even the first time that such sheets were sent to you? A I can recall no instructions.

Q Can you recall whether or not Dr. Imhoff or the superintendent at any time became aware of the fact that you were signing these and sending these back by mail? A I cannot recall.

The Court: What was your business there; what was your job?

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The Witness: Why, I am employed as order clerk, and was at the time.

Q In connection with each occasion when these yellow or white slips were turned over to you with the green sheets, were they turned over with the green sheets by Dr. Imhoff or the superintendent for the purpose of having you check over the receipt of the goods? A They

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*Walter Tomasulo, direct.*

were turned over to me in the envelopes in which they arrived.

Q My question is, were they turned over to you with the green sheets? A Turned over to me with the green sheets.

10 Mr. Bilder: If the Court please, it is agreed that each of the green sheets which the witness has testified to as having been received at the Imhoff-Berg place by mail with accompanying white or yellow sheets which were subsequently returned, being memorandums No. 693, 695, and so forth, as dictated by me to the stenographer—that the  
20 green sheets now in the possession of the defendant and so received all contained the printed matter which is contained upon this specimen sheet which was marked for identification, being dated November 4, 1926, referring to invoice No. D693.

(Papers marked P. 21 for identification.)

Q Now I show you a letter bearing date January 3, 1928, and ask you whether you recognize the signature purporting to be W. Tomasulo on that letter? A I do. That is my signature.

30 Q That letter was mailed out by you from the Imhoff-Berg Company plant by mail to Mill Factors Corporation? A It was.

Q Were the sheets which are now clamped to that letter clamped thereto and sent out by you with that letter? A I don't know that they were clamped at the time, but they were sent out with the letter.

Q The sheets now attached to the letter that accompanied that letter were sent out by you?

40 A Yes.

*Walter Tomasulo, direct.*

Q Whose writing is on the sheets which you recognize? A Miss Ortell's.

Q Done under your instructions? A Done under my instructions.

Q The sheets purport to show merchandise, piece goods then in the hands of Imhoff-Berg?

A Yes, on that particular day.

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Q At the time of the sending out of this letter and the sheets? A Yes, sir.

Mr. Bilder: Mark that.

(Paper marked P. 22 for identification.)

Q Was this letter sent out by you pursuant to instructions of anyone at the Imhoff-Berg plant? A No, it was not.

Q How did you come to send it out? A A request was made by the Mill Factors Corporation that we supply them with an inventory of merchandise on our premises on a given date, for their departments—Paramount Fabrics Corporation, and in that case Beverly Fabrics Corporation, also.

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Q Is that by letter? A By letter.

Q Produce the letter. Can you produce the letter? That is January 3rd.

Mr. Evans: The correspondence is all in there (indicating papers).

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A I am pretty certain that letter was not drawn from the files. It was not requested.

Mr. Evans: May have come in over the telephone?

The Witness: It may have.

Mr. Evans: You have no letter on it?

The Witness: Not here.

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*Walter Tomasulo, direct.*

Q Please look for the form letter which elicited this January 3rd letter from you. You must have it. It will be a letter received, probably, soon prior to January 3, 1928? A (Witness examines papers.)

10 Q Did you not receive requests for inventories from Mill Factors periodically? A Yes, periodically.

Q Produce one such request. A It is not in these records.

Q Where would it be? A Be in the files at the plant.

Q Can they be gotten at easily? A Yes.

Q Who should we inquire of there to get them? Can you get those during the noon session? A Yes, I could.

20 Q Please make a note to get during the noon session the written request which elicited the January 3, 1928, letter and inventory. Will you make a note of that, please? A Yes.

Q I show you a letter bearing date April 1, 1927, purporting to be signed W. Tomasulo by E. V., and ask whether you recognize the signature on that letter? A I do. That was signed by the typist.

30 Q Under your instructions? A Under my instructions while in the employ of Imhoff.

Q Sent out from the Imhoff-Berg plant by mail? A By mail.

Q To Mill Factors? A To Mill Factors Corporation.

Q Were the sheets which now appear to be attached to the letter sent with that letter by you? A Yes.

40 Q Which sheets were written out and made up in your plant? A Yes.

*Walter Tomasulo, cross—re-direct.*

Q They evidenced, then, piece goods then held in your plant at the time of sending out that letter? A Yes, sir.

Q Will you also find during the noon session the written request from Mill Factors which elicited this April 1, 1927, letter and inventory?

A Yes, I shall.

10

Mr. Bilder: Mark this for identification.  
(Paper marked P. 23 for identification.)

Q I guess that is all.

*Cross examination by Mr. Evans.*

Q These goods that were received, Mr. Tomasulo, after you got through with them, where did you ship them, those that you shipped? A To the Paramount Fabrics Corporation.

20

Q Where was that? A I don't recall their street address, but it will be on any one of their orders.

Q What place? A 247-249 West 38th street, New York City.

Q With reference to these yellow sheets that you sent back, which would arrive first in the possession of Imhoff-Berg or in your possession as agent for Imhoff-Berg, the yellow sheets or the goods themselves? A Goods themselves.

30

Q That is all.

*Re-direct examination by Mr. Bilder.*

Q Just a moment, Mr. Tomasulo. Which goods are you referring to? A Goods shipped to us by various mills for the account of the Paramount Fabrics Corporation and which we

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*Walter Tomasulo, re-direct.*

received orders from Paramount Fabrics Corporation.

Q Are you referring to these goods that you have been testifying about here in court? A Goods they were holding?

10 Q Are you referring to these goods that you have been testifying about here with reference to these various documents? A Yes.

Q Well, you certainly do not mean the goods which are now in your possession? A Certainly not.

Q Then, what goods do you mean? A There was goods that they sent us during the course of business with us.

20 Q Which goods? A Well, a portion of the goods, for instance, that we are holding. A portion of one of the shipments.

Q Have you any record of that? A Yes.

Q Produce it. A A portion of this shipment. You will find we are holding in the greig.

Q Is this sheet which you are now referring to one which contains a reference to goods which you are now holding and which are involved in this suit?

Mr. Evans: I object.

30

A No.

Mr. Evans: Counsel here brought out in his direct examination that they had received many pieces of goods. I suppose these various numbers recited would amount to four or five hundred pieces, so we are only holding 105. Now, I asked him if the goods that were shipped back, amounting to

40

*Walter Tomasulo, re-direct.*

the statistics you have here—where did you ship them?

Mr. Bilder: I am asking him which goods he referred to.

Mr. Evans: He said he always received the yellow slips before he received the goods in all instances, whether the goods he is holding or the goods he sent back. 10

The Court: The question is permitted.

Mr. Evans: I should have said after he received the goods.

(Answer repeated by the stenographer.)

Q You say that you received first the goods and then you received the green and yellow sheets which referred to those goods. Do you refer to the goods involved in this suit? A Yes. 20

Q How do you know when the goods themselves came in? A We have records showing us the exact date with the goods that came in.

Q Could you produce them? A These invoices sent out by Paramount.

Q No, no; I want your records as to when these particular goods arrived which you say arrived before the yellow and green sheets came from Mill Factors. Have you any record of when you got goods referred to by invoice No. D7256? A Yes, but not in here. 30

Q Where is the record? A At the plant.

Q Well, now, how can you tell that you got those particular goods before you signed the yellow sheet? A I don't recall ever having signed the yellow slips before we got the goods, and I would not sign the yellow receipt if I did not have the goods there. I would not receipt for goods that I did not have. 40

*Walter Tomasulo, re-direct.*

Q In other words, before signing the yellow slip you would check up and see if those goods were in the plant? A Yes.

Q Do you know how much time would elapse? Can you tell when these particular goods you checked up with reference to signing the yellow sheet came into the plant? A No; I can't tell what time elapsed between—

Q Their arrival at the plant and your signing the yellow sheet? A That is it.

Q You would simply know that by the time you signed that yellow sheet the goods were there? A The goods were there.

Q Because you saw them when you signed the yellow sheet? A Saw them and checked them.

Q How long before them they had come you don't know? A I could find out by referring back to my records.

Q You don't know now? A Not offhand, no.

Q Now, you said in answer to Mr. Evans' question something about returning the goods to Paramount? A Yes.

Q What goods did you refer to? A Any goods dyed and finished, ready for shipment, for the account of the Paramount Fabrics Corporation.

Q Would be shipped where? A Back to the Paramount Fabrics Corporation.

Q Well, does that refer to these goods here, involved in this case?

The Court: These goods have not been shipped.

Mr. Bilder: That is what I say.

A It would refer to these goods if we didn't hold it up.

*Milton G. Baum, direct.*

Q It is not a fact that you did ship any of these goods involved in this case to Paramount, is it? A No, it is not a fact we shipped any of those goods to Paramount.

Q What goods did you ship to Paramount that you refer to as having been shipped to Paramount? A Other goods on which they gave us orders, dye orders. 10

Q Other goods on which they gave you dye orders? A Yes.

Q Can you specify what other goods? I will withdraw that question. Never mind.

The Court: Is that all?

Mr. Bilder: Of course, this witness will be subject to recall to produce the documents he is going to look for during the noon session. 20

The Court: All right.

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MILTON G. BAUM, sworn.

*Direct examination by Mr. Bilder.*

Q Mr. Baum, you are connected with Mill Factors Corporation, the plaintiff in this action? 30  
A I am.

Q Referring to these sheets which have been marked for identification, green sheets with yellow sheets placed on the back thereof, take, for instance P. 5 for identification, did you have anything to do with the sending of those sheets to Imhoff-Berg? A They were sent out under my direction.

Q From where? A From our office at 354 Fourth avenue, New York City. 40

*Milton G. Baum, direct.*

Q You mean the office of the plaintiff? A  
The office of Mill Factors Corporation.

Q At the time that you sent those sheets out,  
the green sheets with the yellow sheets attached,  
with yellow sheets accompanying them, did you  
10 have any communication or document signed or  
executed before you—signed or executed by the  
Paramount Company? A We did.

Q Will you refer to those documents? A  
That appertains to this particular shipment?

Q That pertains to that particular green  
sheet. A There it is, that is part of it, the  
open pieces. I can get the balance of it.

Q You refer to the document. Will you pro-  
duce the document? A Here it is.

20 Mr. Evans: Just a minute. I don't know  
whether this is being offered in evidence.

Mr. Bilder: For identification only.

Mr. Evans: Of course, the only thing is,  
offering it for identification he is getting  
in evidence that really is not admissible.

The Court: When he undertakes to show  
what the documents show, of course, your  
objection is good.

30 Q You produce a document in this book, which  
documents bears a consignment No. 474-A? A  
Yes.

Q What is the connection between—without  
saying what is on the document or what is in it—  
what is the connection between this document and  
the sending out of a green sheet which is a copy  
of D2112 and accompanied by the yellow sheet  
P. 5 for identification? A Well, accompany-  
ing the green slips would be these supporting  
40 papers.

*Milton G. Baum, direct.*

Q Just a moment, please. This green sheet bearing the caption D2112 on the back of it is alongside the yellow sheet P. 5 for identification. Do you know whether that green sheet was written up in the place of business of Imhoff-Berg, or the Mill Factors? A It was not written in our premises.

10

Q Did it come into the possession of the Mill Factors, the plaintiff from outside? A It did.

Q By what means? A We have messengers going to all our—

Q Do you know where it came from? A I do.

Q Where? A Came from Paramount Fabrics Corporation.

Q Fully filled out as it appears at present? A Yes.

20

Q You are referring to the green sheet, 2112? A I refer to the green sheet, just the green sheet.

Q How about the yellow sheet, P. 5 for identification? Was that filled out in the Mill Factors place? A That was filled out in the Mill Factors place.

Q That is, the body of it? A Yes.

Q Meaning all but the signature of Imhoff-Berg? A All but the signature.

30

Q What connection is there between this yellow sheet—or between the blue sheet, 2112, and the sheet attached thereto, and the green sheets which have been produced here by the defendant bearing the same invoice numbers? A The defendant would produce an exact duplicate of these. That is a carbon copy of this original.

Q Where did that carbon copy come from? A Came from the same—came from Paramount Fabrics Corporation.

40

*Milton G. Baum, direct.*

Q Would it pass through the hands of Mill Factors? A It came to us from the Paramount Fabrics Corporation.

10 Q Well, tell me the practice or the actual facts with reference to the sending of the green sheets and the accompanying yellow sheets from Mill Factors to the Imhoff-Berg Company, and its connection with the green sheet which you now have on the back of your sheets, on the back of which you have pasted this yellow sheet.

Mr. Evans: I object to that on the ground that the defendant is not bound by anything that has taken place between the Paramount and Mill Factors. There is no evidence we know anything about this at all.

20 The Court: I do not think the question is quite proper, what the connection is.

Q The green sheet which you would send to the defendant and which the defendant has here produced, these green sheets having invoice numbers thereon, do you know where they came from just before they got into the hands of Imhoff-Berg? A The sheet that the defendant produced?

30 Q Yes. A They came from us.

Q You sent that out to them? A Mailed it to it.

The Court: Mill Factors Corporation?

The Witness: Yes.

40 Q At the time that those green sheets produced by the defendant were sent out by Mill Factors to the defendant with the yellow sheet accompanying the same, were those green sheets

*Milton G. Baum, direct.*

upon the backs of which the yellow sheets are now pasted in existence, to your knowledge?

Mr. Evans: I object. What difference does it make? Suppose they kept a lot of papers in their possession, that does not affect or bind us.

10

The Court: I do not suppose he knows anything about it personally.

Q Do you say that these green or yellow sheets that were sent out by Mill Factors were sent out under your supervision? A They were sent out under my supervision.

Q Do you know whether these green sheets which you now have before you were to your knowledge in existence at the time you sent out the green sheets and yellow sheets to the Imhoff-Berg? A I would say yes.

20

*By the Court.*

Q How do you know? A Because we retain the original for our file and the duplicate was mailed to Imhoff-Berg.

Q That is what he wants to know, how you know. A Because all those things pass through my hands. I give them to the various clerks.

30

Q The carbons sent to Imhoff-Berg, how did you know about that? Did you do the mailing? A No, I did not. It was done under my supervision.

Q Not both of them, the original and the carbon? A The original and carbon would come to me and I would hand them over to the clerk.

Q You sent them both out? A No; the Paramount Fabrics Corporation would furnish those in duplicate to us, an original and a duplicate.

40

*Milton G. Baum, direct.*

We retain the original, and the duplicate was mailed.

Q By your company? A By our company.

*By Mr. Bilder.*

10 Q To whom? A Mailed to the Imhoff-Berg Silk Dyeing Company.

Q So that you say these green sheets which you now have before you came into your possession with the duplicate green sheets? A Yes.

Q Both came from where, originally? A From Paramount Fabrics Corporation.

Q Fully filled out as at present? A Yes.

Q You would take one of the duplicate green sheets and do what with it? A We would keep the original.

20 Q What would you do with the carbon? A The carbon would be sent to Imhoff-Berg with a blank form.

Q With the yellow sheets which are now pasted on the back of the green sheets? A Yes.

Q Now, then, what happened? These yellow sheets, how did you receive them back again? A They were received in the mail, signed by the dyer.

30 Q Then what was done with them? A Pasted on the back; they were sorted out and pasted on the back of the originals.

Q Original green sheet? A Original green sheet.

Q Of which a copy had gone to Imhoff-Berg? A Correct.

The Court: That copy ever come back to you, or they keep that?

40 The Witness: No, they kept that. All we asked is the acknowledgment.

*Milton G. Baum, direct.*

Q Now, at the time that these green sheets in duplicate came into the possession of Mill Factors did any other document accompany them from Paramount? A A consignment.

Q Is the answer yes or no? A You asked me what accompanied them?

Q Whether any other document accompanied them? A Another document did accompany these papers. 10

Q Have you any document which accompanied the sheet D7256 when it came into the possession of the plaintiff from Paramount? A We have.

The Court: These are the originals?

Mr. Bilder: Yes. When the sheet came into the possession of the plaintiff from the Paramount. 20

The Court: Oh, the Paramount? What are you talking about, green ones or yellow ones?

Mr. Bilder: The green.

Q Is the answer yes or not? A Will you please read the other question?

(Question repeated by the stenographer.)

A Yes. 30

Q Will you produce that sheet? A It is right here, (indicating).

Q You refer to a sheet which—

Mr. Evans: I object.

A Redyed goods.

Mr. Evans: I caution your Honor he is going too far. 40

*Milton G. Baum, direct.*

The Court: Just the page number.

Q Just the page number. You refer, do you, to a sheet which is identified by the words in print "Consignment number," and then the figures in pencil, "500"? A 500.

10 Q Are you sure that that consignment—that that sheet accompanied the D7256? A No, it did not accompany that sheet.

Q I ask you, did any document accompany D7256 when the plaintiff received it from the Paramount, and your answer was yes. A The answer should be no.

Mr. Evans: Now he says no.

20 A The answer should be no.

Q Well, what is your answer with reference to the green sheet 274? Was there any document accompanied that when you got it from Paramount? A No.

Q Did you get any document from the Paramount Company which referred to the merchandise mentioned and described in sheet D7256? A We had previously gotten a document from Paramount.

30 Q Will you produce that document? A That is it.

Q You say the sheet entitled, "Consignment No. 500" refers to the goods mentioned and described in the green sheet and invoice No. D7256 in the back of which is pasted the yellow sheet P. 4 for identification? A Yes.

Q When did that document, consignment No. 500, come into the possession of the Mill Factors Corporation? A On or about February 26, 1927.

40

*Milton G. Baum, direct.*

The Court: How does that compare with the date of those?

Mr. Bilder: His green sheet is dated April 22, 1927.

The Court: Now, this sheet which he has identified refers to how many and which?

Mr. Bilder: Well, it refers to two pieces. 10

The Witness: To two pieces.

The Court: That is on that particular green sheet?

The Witness: Yes.

The Court: On the green sheet dated what?

Mr. Bilder: April 22, 1927, refers to two pieces, and it is with reference to that that this consignment No. 500 deals. 20

Q Is that so? A Yes, to those two pieces. They were in with a lot of others.

The Court: We will adjourn until two o'clock.

Mr. Bilder: I just want to mark that consignment for identification.

(A recess was taken until two o'clock P. M.)

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AFTERNOON SESSION.

MILTON G. BAUM, resumed.

*Direct examination* (continued) by Mr. Bilder.

Q Mr. Baum, are you able to tell from the records in front of you, referring to these green

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*Milton G. Baum, direct.*

sheets, which of the goods was in a raw state as referred to in those green sheets and which was not in the raw, or the greig, rather? A Yes.

10 Q Now, pick out the green sheets that refer to goods in the greig and tell me, if you can, whether, when the Mill Factors received such green sheets from the Paramount, the Mill Factors also received some other document in each case from the Paramount? A We did. We received another document with the green ticket.

Q Now, take the green sheets one by one which refer to goods in the greig and produce the document which respectively accompanied that green sheet when it came to the hands of plaintiff from Paramount? A Here is the first one.

20 Q You say that document, referring to the green sheet bearing number invoice D3884, that that was accompanied by what document? A By this document (producing paper).

Q You answer saying it was accompanied?

30 Mr. Evans: Don't you think it would be better to have the documents here that they are referring to? That just refers to the document. The document itself is not produced.

The Court: He says that is the document.

Mr. Bilder: This is the document.

Mr. Evans: Oh, that is the document itself?

Mr. Bilder: Yes.

Mr. Evans: I thought that was an account book.

Mr. Bilder: No; this is a loose-leaf.

40 Mr. Evans: Oh, I see. All right.

*Milton G. Baum, direct.*

Q You say that the green sheet, D3884, was accompanied by document described as consignment 498-A? A Yes.

Mr. Bilder: Will you mark for identification the consignment, sheet described as consignment 498-A?

10

(Paper marked Exhibit P. 24 for identification.)

Q Will you produce any document which you say accompanied sheet—

Mr. Bilder: I wish you would also mark for identification this sheet, D3884.

(Paper marked P. 25 for identification.)

Q Also produce any document which you say accompanied the green sheet entitled invoice number D3885. A 498.

20

Q You produce sheet designated consignment number 498.

Mr. Bilder: I ask that both the green sheet D3885 and sheet consignment No. 498, be marked for identification.

(Paper and book marked P. 26 for identification and P. 27 for identification.)

30

Q Please produce any document which you say accompanied green sheet entitled invoice No. D4079. A That is 572.

Q In answer you produce sheet entitled consignment No. 572.

Mr. Bilder: I ask that green sheet D4079 be marked for identification.

(Paper marked P. 28 for identification.)

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*Milton G. Baum, direct.*

Mr. Bilder: And that sheet entitled consignment No. 572 be marked.

(Paper marked P. 29 for identification.)

10 Q Will you produce any document which you say accompanied green sheet entitled invoice No. D4080? A Right here. That is two.

Q In answer you produce two sheets designated respectively consignment No. 501 and consignment No. 501-A, and I ask that green sheet designated invoice No. D4080 be marked for identification.

(Paper marked P. 30 for identification.)

Q And that the sheets designated respectively consignment No. 501 and 501-A be marked for identification.

20 (Sheets marked P. 31 and P. 32 for identification.)

Q Will you produce any document that accompanied green sheet invoice No. D4125? A Here.

Q Which has been marked for identification P. 10.

30 Mr. Evans: Wouldn't it be better if these documents were taken out of here, because if you are going to offer them in evidence—

Mr. Bilder: We will take them out.

Mr. Evans: It is going to be an awful job searching all through again.

Mr. Bilder: We will take them out, all right. As soon as the witness is through he can unbind it.

40 Q In answer you produce sheet designated consignment No. 503; is that right? A Yes.

*Milton G. Baum, direct.*

Mr. Bilder: I ask that sheet consignment 503 be marked for identification.

(Paper marked P. 33 for identification.)

Q Will you produce the document which you say accompanied sheet invoice No. D2112? A Yes, consignment 474-B. 10

Q You produce a sheet designated consignment No. 474-B.

Mr. Bilder: I ask that sheet invoice No. D2112 be marked for identification.

(Paper marked P. 34 for identification.)

Mr. Bilder: I ask that the sheet consignment 474-B be marked for identification.

(Paper marked P. 35 for identification.) 20

Q Do you find any more? A No. You have them all.

Q Have you got these? A Yes; these are re-dyes.

Q Now, you have finished your reference to all of the green sheets that refer to the goods in greig condition? A I have.

Q Now, will you refer to those green sheets that refer to goods in a processed condition and pick out any document which you say accompanied such sheets when they arrived in the hands of plaintiff from Paramount? A That refers to 320. D7024 refers to consignment No. 320, 424-A and 422-C. 30

Q You say that that sheet, invoice No. D7024, was accompanied by documents which are designated—strike that out. You say that the goods mentioned and described in the invoice No. D7024 are also described in the documents which are 40

*Milton G. Baum, direct.*

designated respectively consignment No. 320? A Yes.

Q 422-C and 424-A? A Yes, sir.

10 Mr. Bilder: I ask that this document be marked for identification, D7024, green sheet. (Paper marked P. 36 for identification.)

Mr. Bilder: I ask that three other consignment sheets be marked respectively for identification.

(Papers marked P. 37, P. 38 and P. 39 for identification, respectively.)

20 Q Referring to green sheet, invoice No. D6636, have you any consignment document which refers to the goods mentioned and described in that green sheet? A There.

Q Your answer is what? A We have the document accompanying D6636.

Q You do not mean accompanying, do you? Documents referring to invoice D6636 are consignment numbers 473, 493 and 498-A.

30 The Court: Those so-called consignment numbers, I understand, were in your possession when this green document, number whatever it was, was received?

The Witness: Yes, they were all in our possession prior to this.

Q That also is true as to the documents you referred to by consignment sheet numbers, which referred to the goods mentioned in P. 36 for identification? A Yes.

Q I ask that those be marked.

40 (Papers marked P. 40 and P. 41 for identification, respectively.)

*Milton G. Baum, direct.*

Q This 498-A refers to more than one green sheet; is that it? A Yes.

Mr. Bilder: I ask that green sheet, invoice No. D6636, be marked for identification.

(Paper marked P. 42 for identification.)

10

Q Referring to green sheet, invoice No. D7256, do you know of a consignment document which was in your possession at the time this green sheet came into your possession from—meaning by your possession plaintiff's possession—from Paramount? A We have.

Q Please produce it? A Consignment No. 500.

Q I ask that green sheet, invoice No. D7256, be marked for identification.

20

(Paper marked P. 43 for identification.)

Mr. Bilder: And that the sheet designated consignment No. 500 be marked for identification.

(Paper marked P. 44 for identification.)

Q You say P. 44 for identification was in your possession when the sheet marked P. 36— A No, that refers to two pieces.

30

Q When sheet, P. 43 for identification, came into the possession of plaintiff from Paramount? A Yes.

Mr. Evans: I do not think it is proper to make that admission until these are in evidence.

Mr. Bilder: Subject to their being offered in evidence and received—subject to the offer and admission in evidence of P. 4, that

40

*Milton G. Baum, direct.*

10 is to say, provided these documents P. 43  
for identification, P. 36 for identification, be  
offered and admitted in evidence, it is agreed  
and stipulated that the goods mentioned and  
described in these documents were received  
by the defendant, or taken possession of by  
the defendant at the place of business of  
Paramount in New York City on the dates—

Mr. Evans: No, I won't admit that. These  
slips we signed afterwards, as far as the  
yellow slips are concerned. Of course, if  
you have the delivery slips we will admit  
that.

Mr. Bilder: On the following dates as to  
the goods mentioned in P. 36 for identifica-  
tion, on April 12, 1927.

20 Mr. Evans: Just a minute. I think as to  
the dates we ought to wait until Mr.  
Tomasulo arrives, and he can identify as to  
the specific dates. I would not want to agree  
on that.

Mr. Bilder: The stipulation is that the  
goods were taken possession of by the Imhoff  
Berg's servant at the place of business of  
Paramount Fabrics Corporation in New  
York City on dates to be established.

30 Q Mr. Baum, can you state what the indebted-  
ness of Paramount Fabrics Corporation was to  
this plaintiff on January 1, 1927? A On Janu-  
ary 1, 1927, Paramount Fabrics—

Mr. Evans: I object to that, because the  
question is, what was the indebtedness at  
the time this cause of action arose?

Mr. Bilder: We will bring it down.

40 The Court: What is the point about it?

*Milton G. Baum, direct.*

Mr. Bilder: My purpose is to show the indebtedness from date to date during the period in which these goods came into the possession of Imhoff-Berg and as we say became subject to a lien in our favor for money owing by the Paramount.

The Court: You are asking him now what the indebtedness was from Paramount to Mill Factors?

10

Mr. Bilder: Yes, because we are claiming a lien. The giver of the lien—

Mr. Evans: I want to be heard on that in this respect: They are now going to give, as I understand it, the indebtedness at certain periods that they claim gives them a lien. Now, as I understand it, there is a contract between the Mill Factors and the Paramount upon which this whole thing is predicated. The indebtedness in itself does not make a lien, and these papers here, even if they were in evidence, would not make a lien, but there is a contract between the Paramount and Mill Factors which should be introduced to show just what the lien would cover. For example, they make advances of various sorts; some of them may be covered by a lien and some may not, some may just be a general advance.

20

30

The Court: But that does not have much to do with the question he is asking.

Mr. Evans: What relevancy would the amount due have in this case?

The Court: I don't know yet, but I can only tell by the testimony. I think he is entitled to put it in. It may not have any relevancy at all.

40

*Milton G. Baum, direct.*

Mr. Evans: Subject to that reservation I will make no objection.

The Court: There is no reservation about it.

10 Mr. Evans: To the reservation that it must be connected up with some form of lien.

The Court: Of course, it must be connected up.

Mr. Evans: I think he is reversing the order of proof. I think the contract should come in first.

The Court: I am only dealing with results.

Q Answer the question.

20 (Question repeated by the stenographer as follows:)

“Q Mr. Baum, can you state what the indebtedness of Paramount Fabrics Corporation was to this plaintiff on January 1, 1927?”

A The amount owing by the Paramount Fabrics on January 1, 1927, is \$57,225.54.

30 Mr. Bilder: It is agreed that a sheet to be designated as P. 45 in evidence shall be admitted in evidence to show the state of the account between plaintiff and Paramount Company during the period from December 31, 1926, to date.

40 Mr. Evans: I do not admit exactly that. I will admit that this is equivalent to their books of account, but I would like to examine with reference to these various items and the way Mr. Bilder has it framed, why, I

*Milton G. Baum, direct.*

would not be able to ask any questions about it. I do not accept this as proof.

The Court: What is the question?

Mr. Bilder: We would produce this statement here, which is a true reflection of that ledger.

Mr. Evans: I will waive any producing of the books. 10

Mr. Bilder: In place of the ledger and the books of account.

Mr. Evans: Of course, I want to be given an opportunity to ask questions about it.

Mr. Bilder: It is stipulated this sheet to be designated as P. 45 shall be admitted in evidence with the same force and effect as if competent proof of the facts therein set forth had been made. 20

Mr. Evans: As if the original books of account had been received in evidence.

Mr. Bilder: The original books of the plaintiff had been received in evidence bearing on the same matters.

The Court: All right.

Q Referring to Exhibit P. 45, Mr. Baum, and the balance shown there as of May 31, 1928, is the balance today any different from the balance on May 31, 1928? A Interest should be added from May 31, 1928. 30

Q Is the balance any less? A No.

Q It is greater? A Yes.

The Court: What was the balance on May 31, 1928?

The Witness: \$8,153.62.

The Court: Plus interest? 40

*Milton G. Baum, cross.*

The Witness: Plus interest.

Mr. Bilder: That is all.

*Cross examination by Mr. Evans.*

10 Q Why don't you collect that money from  
the Paramount Fabrics Corporation?

Mr. Bilder: I object to that as irrelevant.

Q Do you know what the condition of the  
Paramount Fabrics Corporation is today?

Mr. Bilder: I object to that as irrelevant.

The Court: I will permit the question.

Mr. Bilder: Exception.

20 A I do not.

Q Did the Mills Factors Corporation enter  
into an agreement with the Paramount Fabrics  
Corporation with reference to having any lien  
upon the goods of the Paramount Fabrics Cor-  
poration? A We did.

Q Where is that agreement? A We have it  
here.

30 Q Produce it. A It is among the papers on  
the table there.

(Mr. Bilder produces paper.)

Q Is this the agreement? A Yes, I believe  
that is.

Mr. Evans: I ask that this be marked  
for identification.

(Paper marked D. 1 for identification.)

40

*Milton G. Baum, cross.*

A An agreement was made with Bayer, Veit and Goldman and the contents show it was taken over by the Paramount.

Q Is this account kept under your supervision? A No.

Q Well, are you familiar with the details of it at all? A Yes. 10

Q I find here you have a balance of \$57,225.54 as of December 31, 1926. Was that amount owing by Paramount Fabrics Corporation to Mill Factors on December 31, 1926? A Well, that is the date that Bayer, Veit and Goldman Company went out of business and was succeeded by the Paramount Fabrics Corporation, and Paramount Fabrics assumed the assets and liabilities of their predecessor.

Q Have you any evidence here to show that the Paramount Fabrics Corporation assumed the liabilities of Bayer, Veit and Goldman? A Attached to the contract. 20

Q Eh? A Attached to the agreement, I believe, is that.

Q Just pick up the paper that you say creates that assumption? A Here.

Mr. Evans: I ask that that be marked for identification. 30

(Paper marked D. 2 for identification.)

Mr. Evans: We are marking just what we call the assumption of the indebtedness. It is a separate paper. I probably should detach it.

The Court: Well, all right.

Q Is this the only evidence that you have or know of whereby the Paramount Fabrics as-

*Milton G. Baum, cross.*

sumed the indebtedness of Bayer, Veit and Goldman? A I believe so.

Q That is the only thing that you know of, this paper marked D. 2 for identification, whereby the indebtedness of Bayer, Veit was assumed by Paramount; is that right? A I believe so. May  
10 I see that just a minute, please?

Q This is marked Exhibit D. 2. A This was accompanied by the letter previously.

The Court: Let it be marked.  
(Paper marked Exhibit D. 3.)

Q What did you mean by the "letter previous"? This letter marked D. 3? A Yes. That was a notification and the other one is a  
20 resolution of the board.

The Court: Let it be read.

Mr. Evans: Of course, I would like to say to your Honor that I am offering this evidence for the purpose of showing that this indebtedness was not assumed, because this paper is not what it should be.

The Court: You offered the evidence.

Mr. Evans: Yes; he says that this is the  
30 only evidence of any assumption of an indebtedness.

(Mr. Evans read Exhibit D. 3 to the jury.)

Mr. Evans: Of course, I want to argue the legal effect of this later on, whether it actually does create the assumption.

I would like to offer in evidence this agreement between Bayer, Veit and Mill Factors.

(Paper previously marked D. 1 for identification now marked Exhibit D. 1.)  
40

*Milton G. Baum, cross.*

The Court: Read it.

(Mr. Evans reads Exhibit D. 1 to the jury.)

Q Is this agreement which I have just read the authority in this case for claiming possession of these goods?

10

Mr. Bilder: I object to that as a matter of law.

The Court: I suppose that is more of a legal conclusion. You may ask him if there is any other document.

Q Do you rely upon this document in whole or in part?

The Court: I suppose he is not the plaintiff. 20

Mr. Evans: He is the president, isn't he?

Mr. Bilder: Oh, no.

Q Are there any other documents that you know of, outside of this agreement, having to do with your lien, alleged lien, as against goods of Paramount Fabrics? A Well, the documents under that agreement, such as these consignments.

Q The consignment that is not in evidence yet. Those papers you mention there, you call them consignments? A Yes. 30

Q Have you any other documents that bear upon that lien? A No.

Q So that all of the documents that you know of that bear upon the alleged lien of Mill Factors Corporation consist of this contract which I have just read, marked Exhibit D. 1, and the consignments, so-called consignment slips, which are not in evidence yet? A Yes. 40

*Milton G. Baum, cross.*

Q Where is your place of business, of Mill Factors Corporation? A 354 Fourth avenue, New York City.

Q Are Paramount Fabrics Corporation located at the same address? A As ours?

Q Yes. A No.

10 Q Where is Paramount Fabrics Corporation located? A At the address on 38th street.

Q 249 West 38th street? A Yes.

Q New York City? A Yes.

Q What is your position in Mill Factors? A Chief clerk.

Q As chief clerk you knew that Imhoff-Berg was dyeing goods for Paramount Fabrics from time to time? A Yes.

20 Q In fact, these goods were shipped by Paramount Fabrics Corporation that we hold or that are held by Imhoff-Berg today for the purpose of being dyed and finished? A Yes.

Q You knew that? A Yes.

Q It was with your consent; you had no objection to it? A No.

Q As a matter of fact, your company received copies of the bills that were rendered from time to time from Imhoff-Berg to the Paramount Fabrics, did you not? A We did not.

30 Q Never received any copies of any bills? A No.

Q Well, it is a fact that your company paid part of the account, isn't it? A We paid part of the account at the request of Paramount Fabrics.

Q Have you got the check that I subpoenaed? A Yes.

40 Q I show you check for \$5,000, dated April 15, 1927, signed by Mill Factors Corporation to the order of Imhoff-Berg Silk Dyeing Company,

*Milton G. Baum, cross.*

and ask you what that check is for? A The check is an advance we made for the Paramount Fabrics Corporation.

Q What is it in payment of? A I don't know.

The Court: Who was it payable to? 10

The Witness: Payable to Imhoff-Berg.

Q But that is a check from your company, is it, to Imhoff-Berg Silk Dyeing Company? A Yes.

Mr. Evans: I offer it in evidence.

A For the account of Paramount Fabrics.

Q In other words, to pay off part of the indebtedness of Paramount Fabrics to Imhoff-Berg Silk Dyeing Company? A That I don't know. 20

Q Well, now, haven't you any idea why you should be sending out a check to Imhoff-Berg Silk Dyeing Company on behalf of the Paramount Fabrics? A Because we had been requested to do so.

Q Well, weren't you at the same time told that there was that money due to Imhoff-Berg? A No.

Q You would not send a check out in this manner unless you knew that there was a credit coming to Imhoff-Berg, would you? A We would send a request at the request and for the account of Paramount Fabrics to whomever we may be asked to do so. 30

Q Well, didn't you assume that that money was owing by Paramount Fabrics to Imhoff-Berg? A That did not interest us.

Q You paid the \$5,000 to Imhoff-Berg, at any rate, didn't you? A At the request of Paramount Fabrics Company. 40

*Milton G. Baum, cross.*

Mr. Evans: I offer it in evidence.  
(Paper marked Exhibit D. 4.)

Q These slips that you mentioned, which you recall are not in evidence but they are referred to generally as consignment slips and also green slips—what do you call these, invoices?  
10

Mr. Bilder: I referred to them as green sheets, designated by invoice numbers.

Q And the green sheets designated by invoice numbers; I suppose, of course, they are supposed to express the truth, are they not? A I believe so.

Q The green sheets went out through your instrumentality, did they not? A They did.  
20

Q As a matter of practice these green sheets did not go out until after the goods had been delivered to Imhoff-Berg, did they? A I don't know.

Q Eh? A I don't know.

Q Well, read the sheet to refresh your recollection on that point. A Well, I cannot tell from this whether the goods had been delivered to Imhoff-Berg or not.

30 Q Don't you know what the practice was?

The Court: What do you mean, the custom?

Q Don't you know whether it was the practice to ship the goods first and then send the green slips? A I believe it was the practice of Paramount to purchase goods, order them shipped to Imhoff-Berg. I mean, if that is what you refer to.  
40

*Milton G. Baum, cross.*

Q Yes. A And Paramount Fabrics would consign the goods to us and give us these green slips showing that the goods had been shipped to the dyer.

Q Then you sent the green slip to the dyer after that? A After we got it, yes, with the form of acknowledgment.

10

Q Now, speaking of these re-dyes, some of these pieces that you mentioned were re-dyes and were sent directly from Paramount Fabrics, were they not? A What is that?

Q Those re-dyed pieces were sent to Paramount Fabrics, or at least were sent to Imhoff-Berg with your consent? A That is correct.

Q You had no objection to it; at least, your company had no objection to it? A No.

Q Now, according to this statement that you have here, you advanced money from time to time to Paramount Fabrics Corporation; is that right? A That is right.

20

Q In advancing money to them you were acting under this contract, so-called Factors contract, which is marked Exhibit D. 1? A That is right.

Q It was understood between you, was it not, that any advances that you made were to be made on goods that you had in your possession?

30

Mr. Bilder: I object to that question.

The Court: Understanding by whom?

Mr. Evans: Understanding between Mill Factors and Paramount.

The Court: Well, I suppose Mill Factors and Paramount probably are both corporations.

Mr. Bilder: The contract has been put in evidence. It is in writing.

40

*Milton G. Baum, re-direct.*

The Court: Yes, I think so.

Q Did you have goods in your possession in New York as security for these advances? A Well, we had goods in New York and elsewhere security for the advances.

10 Q Where were those goods located? A They were located on 38th street and at various dyers.

Q Have you still any goods in your possession of Paramount Fabrics? A No, sir.

Q All sold out? A Except the goods that are at Imhoff-Berg.

Q This is the last batch upon which you claim a lien? A Yes.

Q Then, you are not doing business with Paramount Fabrics any more?

20 Mr. Bilder: I object to that as being irrelevant.

The Court: Sustain the objection.

*Re-direct examination by Mr. Bilder.*

30 Q Mr. Baum, was there any written communication from the Paramount Fabrics to Mill Factors which resulted in this \$5,000 check being made out by Mill Factors to defendant and sent to defendant? A I believe Paramount Fabrics requested us to forward a check to Imhoff-Berg.

Q By written communication? A Yes.

Q Is that here? Have you got that here? A I believe you will find that in my brief case, if you will let me have that. (Produces paper.)

40 Q Does that letter have any connection with the \$5,000 check which has been marked in evidence? A Yes; it was upon receiving this request that we advanced the Paramount Fabrics that money.

*Milton G. Baum, re-cross.*

Q And sent that check to the defendant? A Sent the check as requested.

Mr. Bilder: I offer this.

(Paper marked Exhibit P. 46.)

Mr. Bilder: May it please your Honor, this is a letter on the stationery of Paramount Fabrics Corporation, 253 West 38th street, New York. "April 11, 1927.

Mill Factors, 355 46th street, City. Kindly pay the dye bills enumerated below and charge to our account." Then there is a statement of the names of various companies, and then finally, "Imhoff-Berg Silk Dyeing Company—\$5,000. Yours very truly, Paramount Fabrics Corporation, per Seymour Bayer."

*Re-cross examination by Mr. Evans.*

Q Then, Mr. Baum, you do know that this was in payment of a dye bill, this \$5,000? A Yes; it says, "pay the following dye bills."

Q The letter—that is so? A Yes.

Q Didn't you have this letter in mind when you answered a few minutes ago that you did not know what the bill was for or whether there was any money owing to Imhoff-Berg by Paramount? A I did not know.

Q You had this letter in front of you, didn't you? A No, I did not.

Q When you made the payment you had the letter in front of you? A Yes.

Q Did you forget this letter? A Why, no; you asked me whether I knew that Paramount owed Imhoff-Berg money.

*Milton G. Baum, re-cross.*

Q When it says, "Kindly pay dye bills," doesn't that indicate money owed? Is a bill for money owed or for a credit or what? A Usually for money owed.

10 Q Yes. So that this letter told you that Paramount owed \$5,000 to Imhoff-Berg, didn't it? A Told us to pay Imhoff-Berg \$5,000.

Q It says, "Kindly pay dye bills." Does a bill indicate money owing? A Yes, sir.

Q So that it was clear that Paramount owed Imhoff-Berg \$5,000, from this letter, wasn't it? A We were directed to pay it, yes.

Q It was clear to you, also, that the money was owing, wasn't it?

20 Mr. Bilder: I object. The witness has no personal knowledge of an indebtedness. The letter directs payment to be made to a third person.

The Court: He says that it has that effect. I do not think it is of very much importance.

Mr. Evans: He is told to pay the dye bill. That affects his credibility.

The Court: He says it was paid in pursuance of that letter.

30 Q To whom did those goods belong?

Mr. Bilder: I object. I would ask counsel to be specific as to those goods. I don't know which he is referring to.

40 Q These goods we have been talking about all morning and afternoon. Who was the real owner of the goods? A Paramount Fabrics Corporation.

*Daniel Veit, direct.*

Q You never bought the goods from Paramount Fabrics? A No.

Q All that you have had as against the goods that Imhoff-Berg hold is a claim to a lien; isn't that so, for advances? A We advanced on them, yes.

Q That is all. 10

Mr. Bilder: That is all.

DANIEL VEIT, sworn.

*Direct examination by Mr. Bilder.*

Q Mr. Veit, were you connected with Paramount Fabrics Corporation on January 1, 1927? 20

A Yes, I was.

Q What was your connection with that corporation? A President.

Q Did you continue to be president of that corporation throughout the year 1927? A I did not.

Q When did your presidency of that corporation terminate? A Latter part of January of that year. 30

Q Now, were you connected with Bayer, Veit and Goldman Company? A I was.

Q What was the relation, if any, between the business of Bayer, Veit Company and the business of Paramount Fabrics Corporation? A It was the same business, just the obligations of the Bayer, Veit, Goldman were assumed by the Paramount Fabrics Corporation in December of that year.

Q What year? A 1926. 40

*Daniel Veit, direct.*

Q Does your signature appear upon Exhibit D. 3? A Yes, it does.

Q Is the statement set forth in Exhibit D. 3 true, to your personal knowledge? A It does.

Q Were you the president of Bayer-Veit-Goldman, Incorporated on December 31, 1926?

10 A I was.

Q What connection did you have with Paramount Fabrics Corporation in February of 1927?

A No connection with them whatsoever. I left—I got through there around the latter part of January, I believe.

Q Of what year? A 1927.

Q You are sure that was 1927 and not 1928?

A 1927.

20 Q I refer you to sheet marked P. 39 for identification, being a sheet designated consignment No. 320, and ask you whether you recognize the signature on that sheet? A Yes, that was the vice-president, Louis M. Goldman.

Q Will you please read the signature which you say you recognize? A "Louis M. Goldman."

Q Do you recognize any other handwriting on the sheet? A Yes, I recognize the writing of the clerk.

30 Q What does it say? A "Bayer-Veit-Goldman, by Louis M. Goldman."

Q What was Louis M. Goldman on October 1, 1926? A Vice-president.

Q Of what company? A Bayer-Veit-Goldman.

Q What was your connection on that date with Bayer-Veit-Goldman? A President.

Q Do you recognize the signature on the sheet marked P. 38 for identification? A I do.

40 Q Read what you recognize? A "D. Veit."

*Daniel Veit, direct.*

Q Is that your signature? A It is.

Q And the words, "Bayer-Veit-Goldman," whose are they? A The clerk.

Q Was that on there when you signed it? A It was.

Q Do you recognize the signature on P. 37 for identification? A I do. 10

Q What signature do you recognize? A "D. Veit."

Q Whose is it? A Mine.

Q Do you recognize the handwriting on P. 40 for identification? A I do.

Q Whose is it? A The clerk's.

Q What handwriting do you recognize? A Paramount Fabrics.

Q Do you know whether that sheet was signed with authority? 20

Mr. Evans: I object to that on the ground it is dated after this gentleman severed his connection with the company.

Q Dated January 20, 1927. Can you state whether or not— A It was the latter part of January, probably might have been the 20th, might have been before, but it was the latter part of January that I think I severed my connections. 30

Q Can you say whether or not you were still connected on January 20th? A Offhand I cannot, no. I might have been.

Q Then, whose is the signature on P. 35 for identification? A Seymour B., that is the initials of Seymour Bayer.

Q Do you know his handwriting? A I do.

Q What was his connection? A Treasurer and secretary. 40

*Daniel Veit, direct.*

The Court: What is the date of that one?

Mr. Bilder: January 19, 1927.

Mr. Evans: You are not sure you were with the company at that time?

The Witness: Latter part of January I severed my connections.

10

Q But you recognize the handwriting? A I do, yes.

Q Recognize the handwriting on P. 41 for identification?

Mr. Evans: I object to this on the ground he says that the company on February 16th—

The Court: Only he can tell about the handwriting.

20

A That is Seymour Bayer's signature.

Q What was his connection with Paramount Fabrics? A Treasurer and secretary.

Q Do you recognize the handwriting on P. 27 for identification? A I do.

Q Whose is it? A Seymour Bayer.

Q Same person you testified heretofore? A Yes.

Q Recognize the handwriting on P. 24 for identification? A Seymour Bayer.

30 Q Do you recognize the handwriting on P. 44? A Seymour Bayer.

Q Recognize the handwriting on P. 31? A Seymour Bayer.

Q Recognize the handwriting on P. 32? A Seymour Bayer.

Q Recognize the handwriting on P. 28? A Seymour Bayer.

40 Q Recognize the handwriting on P. 33? A Seymour Bayer.

*Daniel Veit, direct.*

Q Now, Mr. Veit, are you familiar with the practice of dealing between the Bayer-Veit-Goldman Company and the Paramount Company, its successor, in connection with these consignment sheets? A I am.

Q What was that practice? A You mean the practice of sending down the invoices? 10

Q The practice of dealing between the Paramount or Bayer. A Purchase made by the Paramount Fabrics Corporation or Bayer, Veit and Goldman, there was a reproduction made in duplicate form similar to this sheet, and that was in the book.

Q Reproduction of what? A Reproduction of the original purchase.

Q What do you mean by that, so that the jury can understand? A Purchase of the merchandise made by Bayer-Veit-Goldman or Paramount Fabrics. 20

Q What do you mean by reproduction? A An exact duplicate.

Q Setting forth a description of the merchandise? A Description with piece numbers and yards and to whom the merchandise was ordered shipped for processing. An exact copy was made of these in quadruple form on green sheets furnished by the Mill Factors Corporation. After that copy was made this here sheet was signed by the president of that corporation, either Bayer, Veit and Goldman or Paramount, as the case might have been, and the green sheets or the blue sheets accompanied these to the Mill Factors Corporation. This here so-called consignment. 30

Q And was sent from where to where? A It was sent by Mill Fabrics Corporation—

Q No; I mean this was sent? A This was sent from the office of Paramount Fabrics Corpo- 40

*Daniel Veit, direct.*

ration or Bayer, Veit and Goldman, to the Mill Factors.

Q So far as you know, what was done with reference to these consignment sheets? A That ended it.

10 Q These consignment sheets were sent together with what else? A With the green sheets.

Q In how many numbers? A I believe in quadruple or triplicate; we kept the fourth copy.

Q How was the green sheet made out? A It was made out by the clerk who made out the consignment copy.

Q What connection was there between what was set forth in the green sheet and as to what was set forth as to goods in the white sheet?

20 The Court: Were they the same goods?

The Witness: Oh, yes, identically the same goods. Identical.

Q The description of goods on the white consignment sheet was identical? A The description of goods on the white consignment sheet was identical with the description of the goods on the green sheet.

30 Q Would there be an invoice number? A There would. There would be reference numbers.

Q How were these goods identified as far as the Paramount Fabrics Company was concerned? A By numbers.

Q By numbers? A Numbers of identification.

Q Would those numbers indicate to you the character and construction of the goods? A Construction of the goods.

40 Q Do you recall the goods having an identification number of 854? A I do.

*Daniel Veit, direct.*

Q Do you recall the character and construction of that goods? A I do.

Q Do you know what the value of that goods, the market value of goods of that construction in the greig was in December of 1927? A 95 cents to \$1 a yard.

Q Do you know what the market value of that goods was in April of 1928? A About 92½—90 to 92½. 10

Q What did you say, 95 to a dollar on the other? A Yes.

The Court: How do you describe that? Is that in the greig?

The Witness: That is in the greig.

The Court: This second price you have given us is the greig, too? 20

The Witness: It is.

Q The price in April was with reference to greig? A It is.

Q Are you familiar with the character and construction of goods which had an identification number of 605? A I am.

Q In the Paramount terminology? A I am.

Q What was the market value of that in December of 1927? A Between \$1.10 and \$1.15. 30

Q Do you know what the market value of that goods in the greig was in April of 1928? A 5 to 7½ cents a yard less than the year previous.

The Court: These first prices that you have given us, did that refer to any designated number?

The Witness: This particular number of ours which I—known as our quality 605 Canton crepe. 40

*Daniel Veit, direct.*

The Court: Before that? Now, the first one?

The Witness: 854.

Q Was there a class of goods or type of goods designated by the Paramount or Bayer-Veit-Goldman and known as 610? A Yes.

Q Are you familiar with the character and construction of that goods? A Yes.

Q Do you know what value that goods had in the market?

Mr. Evans: I object, unless it first appears what the construction actually is.

The Court: I think he ought to describe it.

20 Q Going back to 854, what was known as 854 in the Paramount or Bayer-Veit-Goldman business terminology, can you describe the goods in the greig? A Yes, I can. 90 by 88, three-thread Georgette.

Q Will you describe the character and construction of goods designated as 605 in the terminology of Bayer, Veit and Goldman or the Paramount? A 360 by 64, six-thread Canton crepe.

30 Q Can you describe the character and construction of the goods designated in the Bayer, Veit or Paramount terminology as 610? A 80 by 80 square, three-thread Georgette.

Q Now, you have not yet stated the market value of goods known as 610, in December, 1927.

Mr. Evans: I object on the ground it does not appear that we are holding any of these particular goods, construction 610.

40 Mr. Bilder: Subject to my showing that is so.

*Daniel Veit, direct.*

The Court: Yes.

A 85 and 87½.

Q Cents per yard? A Cents per yard.

Q How about the value of, the market value, of that goods in April, 1928? A Varied from 79 cents to 82 cents a yard.

10

Q Do you know what the value of the goods designated 854—what added value—would any of these goods being dyed have a greater or lesser value than in the greig? A They have a greater value.

Q With reference to goods designated 854, can you state what additional value per yard such goods would have in a dyed condition? A About 15 to 16 a yard for dyeing, and there would be about anywhere from 12 to 15 per cent. shrinkage, depending upon how the goods were ordered in work at the time, either 12 per cent. shrinkage or 15. Offhand, I just don't remember what the price is for finishing, but it was in the neighborhood of 15 to 16 cents.

20

Q What added value per yard would you put on an 854 in December, 1927, after having been dyed, per yard? A About \$1.32½.

Q You have already indicated that 854 in December, 1927, had a value of 95 to \$1. What value over that 95 or \$1 would that have after being dyed, in the market? A Would it have to bring dyed?

30

Q No. What added value, market value, would it have over and about the 95 to \$1 a yard, if it had any? A About 27½ cents.

Q Would that added value be any different in April, 1928, from what it would be in December, 1928? A No, it would be the same.

Q What added value would number 605 have over what it was in the greig to what it would

40

*Daniel Veit, direct.*

be, if any, in a dyed condition? A About 25 cents a yard.

Q Would that be true as of December, 1927?

A What quality was that, again?

Q 605? A 605 is a Canton. Yes, it would, about 25—25 to 27½.

10 Q Would that be true in December, 1927? A About the same.

Q Would that vary? A No, it would not vary more than a cent one way or the other.

Q From then until April, 1928? A About that.

Q How about goods known as 610 in a dyed state; what increased value, if any, over and above the price per yard you have testified to would dyeing give the goods? A Approx-  
20 imately 25 cents.

Q Would that be true both as to December, 1927, and April, 1928? A Yes.

Q Can you tell by looking at these various consignment sheets what number the goods had in the terminology of Bayer-Veit-Goldman or Paramount that was therein referred to? A Which number do you refer to?

30 Mr. Evans: Just a moment. These consignment sheets are not in evidence.

Mr. Bilder: All right. I will offer in evidence all of the consignment sheets which have heretofore been marked for identification.

Mr. Evans: I am objecting to the consignment sheets that Mr. Bilder is about to offer, on the ground that in the first place I would like to know the purpose of offering  
40 a consignment sheet.

*Daniel Veit, direct.*

The Court: Well, I suppose he is endeavoring to show these goods were sent by these people to the plaintiff.

Mr. Bilder: Yes, and on their face they set forth a lien, the giving of a lien. They are contractual in their character.

The Court: Have you seen the sheets? 10

Mr. Evans: This is a sheet comes from the Paramount to Mill Factors. Of course, there is no evidence before the Court that the dyer knew anything about these particular sheets.

The Court: That is a different question.

Mr. Evans: But it is a question whether we would be bound by these sheets, and furthermore, it is a question whether they are relevant in any way to establish what Mr. Bilder claims they do. If they establish a lien upon these goods, there is no evidence before the Court to show that that lien would affect our lien in any way. 20

The Court: Well, of course, all those things cannot appear at once. It would tend to show that there was or did exist a lien on the part of the plaintiff. Whether it affects your lien is another question. He is trying to build up his case, I suppose. 30

Mr. Evans: Of course, a good many of these consignment slips that are opened do not bear upon the goods that we hold.

Mr. Bilder: I would only offer those that have a bearing.

The Court: You better look those up.

Mr. Evans: As far as those that do bear on the goods, a good many of the pieces have already been returned, I mean a good 40

*Daniel Veit, direct.*

many of the pieces there are not the subject of this litigation at all, and I therefore object to that on the grounds stated.

10 The Court: Well, of course, I do not think that is any ground of objection. There is no use of having any sheets in that do not bear upon the goods which are the subject of this litigation.

Mr. Bilder: Mr. Baum tells me that all of those do contain—perhaps the sheet may mention goods which have come back. Certainly, to that the question is irrelevant, but in so far as it contains goods that are the subject-matter of this controversy it is relevant. I can get up an inventory which I can submit to Mr. Evans.

20 The Court: I think they are admissible. The only thing is, if it appears they bear upon any goods that are not in controversy, they may be expunged.

Mr. Bilder: Yes, excluded.

The Court: You may note an exception.

Mr. Evans: I ask for an exception.

The Court: Let them be marked.

30 (Papers marked Exhibits P. 24, P. 27, P. 28, P. 31, P. 32, P. 33, P. 35, P. 37, P. 38, P. 39, P. 40, P. 41, P. 44.)

Mr. Bilder: Consignment 423 is now marked Exhibit P. 47; 424 is now marked Exhibit P. 48; 491 is now marked Exhibit P. 49.

(Adjourned to February 7, 1929, at 10 A. M.)

*Daniel Veit, direct.*

Paterson, N. J., February 7, 1929.

(Trial of the cause continued.)

DANIEL VEIT resumed.

*Direct examination* (continued) by Mr. Bilder. 10

Q Mr. Veit, referring to Exhibit P. 39, do you find thereon any reference to the character of the goods as designated—to the character of the goods as described by any number? A Quality 605.

Q That describes the character and construction of the goods? A Yes.

Q Likewise with the number 605 as to the value of which you have heretofore testified? A Yes. 20

Q Is all of the goods set forth on Exhibit P. 39 of the quality or the character designated by the number 605? A It is.

Q Referring to Exhibit P. 38, what is the character or quality of the goods set forth in that exhibit? A 605.

Q And referring to Exhibit P. 47, what is the character of the goods set forth in that sheet? A 270. 30

Mr. Evans: Just a minute. I object to this on the ground the witness is simply reading these things from the consignments and memorandum so-called. I think they speak for themselves.

Q Referring to Exhibit P. 48, what is the character of the goods described on that?

The Court: He has that written out on there? 40

*Daniel Veit, direct.*

The Witness: They are.

Mr. Bilder: You see, there is a number on there.

The Court: Well, then, he says 270. That is what the number shows?

10

Mr. Bilder: Yes.

The Court: So what do you want to ask for? If 270 designates the goods, there is no use of reading off 270. You might ask him what 270 means.

Mr. Bilder: He has already testified.

The Court: What did he say?

Mr. Bilder: That is correct.

20

Q With reference to P. 47, will you just take the testimony from that point? Refer to Exhibit P. 47; is the character and construction of that goods therein referred to designated in any way upon that exhibit? A No, it is not, not on the exhibit.

Q Is it designated in any way? Is it symbolized in any way on the exhibit? A By the number 270.

Q Did the number 270 have any significance in the terminology of Bayer, Veit and Goldman or the Paramount Company? A It did.

30

Q What did it indicate?

Mr. Evans: If your Honor please, I object to all of this line of questions on the ground that these memorandum slips describe various goods that are not in all cases the same goods that we hold.

Mr. Bilder: Yes, they are.

Mr. Evans: It seems to me the only proper way of getting at this is to clearly

40

*Daniel Veit, direct.*

establish the goods that we hold, and then have this man testify with regard to them. He is simply testifying with regard to any quantity of goods, some of which we may hold and many more we absolutely do not.

The Court: Well, please refer to goods they hold, gentlemen.

10

Mr. Bilder: Yes, referring to goods they hold, and he is not testifying to quantity, he is testifying to character of goods.

Mr. Evans: There is no evidence that this man even looked at any of these goods, and all he is doing is reading from certain memoranda there. There is no evidence. He is testifying as an expert as to the value of these goods. Now, even he should look at those goods in order to be able to tell what their value is.

20

The Court: Not necessarily.

Mr. Bilder: He is the man that had the goods. He had personal knowledge of the character of the goods. We have the defendant's written acknowledgment that all of these goods on the carbon copies—

Mr. Evans: Well, he should confine himself to the goods we hold.

Mr. Bilder: They held some goods of the character 270.

30

The Court: What is the question?

(Question repeated by the stenographer as follows:)

“Q Did the number 270 have any significance in the terminology of Bayer, Veit and Goldman or the Paramount Company?  
A It did.

40

*Daniel Veit, direct.*

“Q What did it indicate?”

The Court: Answer that.

A Count 300 by 80, flat crepe.

Q What was the value per yard of goods of that character in December of 1927? A About  
10 95 cents.

Q Is that 95 cents in the greig? A In the greig.

Q What was its value in April of 1928? A About 5 cents a yard less than the previous year.

Q Referring to Exhibit P. 48, is there any designation of the character of the goods set forth upon that exhibit? A 605.

Q 605, is that the number with reference to which you have testified yesterday as to character and construction? A It is.  
20

Q Referring to Exhibit P. 39, is there a designation of the character of the goods on that exhibit? A 605.

Q That is the designation as to which you testified heretofore as used in the business of Bayer-Veit or Paramount? A It is.

Q With reference to Exhibit P. 40, is there any designation there as to the character of the goods? A 854.

Q With reference to Exhibit P. 35, is there a designation as to the character of the goods? A 610.  
30

Q With reference to P. 49, is there any designation of the character of the goods? A 854.

Q With reference to P. 41, is there any designation of the character of the goods? A 854.

Q With reference to P. 27, is there any designation of the character of the goods? A 854.

Q With reference to P. 27, is there any designation of the character of the goods? A 854.  
40

*Daniel Veit, cross.*

Q With reference to Exhibit P. 44, is there any designation of the character of the goods?

A 610.

Q With reference to Exhibit P. 31, is there any designation of the character of the goods?

A 610.

Q With reference to Exhibit P. 23, is there any designation of the character of the goods? 10

A 610.

Q Same question with reference to P. 28?

A 610.

Q Same question with reference to P. 33?

A 610.

Q Do these designation numbers that you have just mentioned in your answer correspond with the numbers to which you have heretofore testified as being used in the Bayer-Veit or Paramount Companies' business terminology to indicate the character of the goods? A They do. 20

Q That is all.

*Cross examination by Mr. Evans.*

Q Mr. Veit, the place of business of Paramount Fabrics was in New York City; is that right? A It was.

Q Where was your place of business located in New York? A 247 West 38th street. 30

Q Was your concern in the business of manufacturing silk goods yourselves? A We purchased most of our goods from mills and manufactured very little.

Q Did you have any mills of your own? A No; we just were doing some work on a commission basis.

Q Some work you did on a commission basis?

A Yes, sir. 40

*Daniel Veit, cross.*

Q That is, you procured the materials and then hired some manufacturer to weave them up in the greig, as you speak of. What do you mean by goods in the greig? A In the raw state before it is processed, finished, in certain colors or printed.

10 Q And when goods are received by the dyer usually they are in the greig or in the raw? A Well, yes, as a rule, but a good many—

Q There is one exception to that, and that is when they are being sent back for some re-processing? A That is right.

Q Some of the people that you dealt with were Lang and Loen? A Right.

Q Frank and Marks? A Right.

Q Salsburg? A Right.

20 Q And Joseph Berliner? A Yes.

Q Do you know where Lang and Loen were located? A Astoria, Long Island; I think they had one in Pawtucket, Rhode Island.

Q Where was Frank and Marks located, do you know? A I believe they were doing commission work, too. I think they were here in Paterson and probably had some mill in Phillipsburg.

30 Q Joseph Berliner, where was he located? A I believe his mill is in Pennsylvania somewhere, but the goods were purchased through their New York office and shipped through there, I believe.

Q Where was Berliner located, did you say? A Fourth avenue, 28th street.

Q Where was his mill located? A Towanda, Pennsylvania.

Q How about Salsburg? A I believe Salsburg had a mill at Pawtucket.

40 Q Have any in Paterson? A I don't know whether he did at the time, but he might have.

*Daniel Veit, cross.*

Q These deliveries to the dyer were made from the respective mills you are speaking of, were they not? A Right.

Q The Paramount Fabrics Corporation did not make deliveries direct? A We ordered them shipped to the dyer.

Q Did the manufacturer advise you when each shipment was made? A Yes, by mailing an invoice showing the shipment was made. 10

Q It was upon receipt of that invoice that you speak of that you thereupon caused these green sheets to be prepared and the consignment order; is that right? A Exactly.

Q And delivered the consignment order or the consignment memorandum to the factor? A That is right.

Q You never delivered any of these consignment memoranda or copies of the same to the dyer, did you? A We just mailed shipping memorandum to the dyer. 20

Q Just made a shipping memorandum. Would you recognize any of these shipping memoranda if they were brought to your attention? A I would.

Q I show you some pink sheets purporting to be titled, "Shipping memorandum from Paramount Fabrics and Bayer-Veit." Are those the papers you just spoke of? A Yes. 30

Q In each case when you were advised by the manufacturer that the goods had been shipped to the dyer, you in turn prepared one of those pink sheets and sent them to Imhoff-Berg? A We prepared all of the papers at the same time.

Q So that these pink sheets went out at exactly the same time as the green sheets and the so-called white consignment memorandum? A Absolutely. 40

*Daniel Veit, cross.*

The Court: Do these pink sheets refer to the goods we are talking about now or some others?

Mr. Evans: Yes, they refer to the goods in question.

10 The Court: Those you say you sent to Imhoff-Berg at that time?

The Witness: Yes, that was a memorandum or exact copy of these here consignment sheets or the green sheets which we sent together with our regular dyer order form in triplicate form; we kept the original triplicate and mailed out the triplicate to the dyer, so the dyer could check up.

The Court: When did you do that?

20 The Witness: Immediately upon receipt of the invoice and when we sent these consignments down to the factors.

The Court: Then you sent a duplicate of the consignment to Imhoff?

The Witness: We sent this pink sheet out.

The Court: What about the consignment sheet?

30 The Witness: This went down to the factor.

The Court: They did not go to Imhoff-Berg?

The Witness: No, they went down to the factor.

Mr. Evans: I am going to offer these pink sheets in evidence. Counsel has agreed.

Mr. Bilder: I do not agree, but I do not object.

40 (Papers marked Exhibit D. 5.)

*Daniel Veit, cross.*

Mr. Evans: These pink sheets which have been designated Exhibit D. 5 refer to the 85 pieces of silk which we hold in the raw.

The Court: Suppose you read us one of them, to show the subject-matter.

Mr. Evans: I will read one of them. The first memorandum refers to the time when Bayer, Veit and Goldman were doing business. 10

“Shipping memorandum, Bayer, Veit and Goldman, Incorporated, 247-249 West 48th street.

Mill Factors Corporation, New York:

Messrs. Imhoff-Berg Dyeing Company render following statement in duplicate for the account of Bayer-Veit-Goldman.” 20

Then follows a list of the stock numbers. 12 pieces altogether.

Then follows a list of the piece numbers to identify them—55, 684, 704, 674, et cetera, and then follow the yardage of each piece; and on the side appears this: 435, under which, our quality 720, mill quality 270, composition crepe de chine, greig, width, goods numbers standard.

“Important. These goods are to be checked and held for our dyeing instructions.” 30

Following that: “Kindly detach and return the annexed slip with your signature immediately upon receipt and check-up of these goods.”

That is all.

*Daniel Veit, cross.*

*By the Court.*

Q This pink slip, then, was sent by you to Imhoff-Berg preparatory to the goods being received by them? A That was sent.

10 Q Or after you had received word? A That they had been shipped, yes. That is so we would have a record that the goods were shipped, so we could immediately put them into work.

*By Mr. Evans.*

Q This receipt that is spoken of, did that appear in the original pink memorandum? A It did, in the lower right-hand corner.

Q On Exhibit D. 5? A On the lower right-hand corner there was a receipt.

20 Q Was the custom of the business or the course of dealings between you that these receipts were sent back by Imhoff-Berg to you? A Yes, they were.

Q Acknowledging receipt of these goods in all cases? A They were.

Q I draw your attention to the word, "Standard," on this particular pink sheet, opposite the words "Goods number." What does that refer to? A Standard Weaving Company.

30 Q In other words, the goods represented by that pink sheet? A Was shipped to the Imhoff-Berg.

Q From the Standard Weaving Company? A From the Standard Weaving Company, that is right.

40 Q I show you the following pink sheet that is marked at the top 517-A with words "Lang and Loen" on it. What does that refer to? A Shipment was made by Lang and Loen.

*Daniel Veit, re-direct.*

Q On the following I show you on the sheet the number 520, the words "Frank and Marks."

A The shipment was made by Frank and Marks.

Q On the following one with the number 521 on, the words "Lang and Loen;" what does that indicate? A Shipment made by Lang and Loen.

Q So that in all cases the shipper is indicated on the pink sheet itself? A That is right. 10

Q Did you keep in touch with the Paramount Fabrics after you left them in January, 1927?

A Just what do you mean by keeping in touch with them?

Q Were you aware of their affairs following that time? A No, I did not keep in touch with them after that.

Q That is all.

20

*Re-direct examination by Mr. Bilder.*

Q What was the purpose of the sending of the pink sheet, Mr. Veit? A So that we could know that the goods were received and that we could immediately put them in work. Very often when we made a shipment to a dyer we did not put the goods in work until two or three weeks later, and this here receipt was an indication to us that the goods had been received and we could immediately put them into work or— 30

Q What did the words "check-up" mean in the trade? A What did the word check-up mean? Check up the goods, amount, in each case, that the amount of pieces which was stipulated in the invoice was right.

The Court: These goods were for piece dyeing?

The Witness: Piece dyed, yes.

40

*Daniel Veit, re-cross.*

*Re-cross examination* by Mr. Evans.

Q Just one other thing. I would like to be permitted to ask one or two other questions. You are quite sure that you severed your relationship with Paramount Fabrics at the end of January, 1927? A I am pretty sure it was the latter part of January.

Q Well, I show you a letter on what purports to be the letterhead of Paramount Fabrics Corporation, dated April 4, 1927, and ask you if the signature thereon is yours? A Yes, it is.

Q Well, that would indicate that you were still connected with the Paramount Fabrics on April 4, 1927, would it not? A Well, I might have gone up there, I don't know; been probably called from Mr. Seymour Bayer. I don't remember. I might go several times on the outside, and I went into the place of business and did business with Mr. Bayer, Ed Bayer, after I left there, and I might have been asked by him to do some small detail work; I know at times I was asked to give him various information on different qualities and things, and I might have written a letter or so for them. I don't recall.

Q I wish you would examine this letter and see if there is anything that refers to qualities in the letter. A No. I do remember this transaction very distinctly. We had made a purchase sometime, that is, we ordered some goods from the Chelsea Silk Mills, sometime the latter part of January, and afterwards the goods were not shipped—that is, the goods were not shipped or they were shipped—yes; and I was asked to please write the letter, by Mr. Seymour Bayer. These goods transferred back to the Chelsea Silk

*Daniel Veit, re-cross.*

Mills because we never went through with the purchase.

Q Then, for some purposes you were still connected with the Paramount Fabrics? A No; as I said, I went up to Mr. Bayer's place and did business with them, sold merchandise.

Q You acted on their behalf with their authority? A With Mr. Bayer's authority, yes. 10

Mr. Evans: I offer this letter in evidence.

(Paper marked Exhibit D. 6.)

Q I have here some more pink sheets dealing with the finished pieces. I am now presenting to the witness two more pink sheets upon which we hold on each allotment one finished piece in our possession. These are pink sheets that were sent out by you to the dyer when you had received notice of their shipment to the dyer by the manufacturer? A Yes, they were. 20

Mr. Evans: I will offer these in evidence, the pink sheets.

(Bundle of pink sheets marked Exhibit D. 7.)

Q These papers here are all annexed together; they are the pink sheets that accompanied the goods which we are holding today on the re-dyes. I will offer these pink sheets in evidence in the same way. 30

(Bundle of pink sheets marked Exhibit D. 8.)

Q You stated yesterday in your examination that you sent the consignment memoranda and 40

*Daniel Veit, re-direct.*

the green sheets to the factor at the same time as the goods were shipped to the dyer, did you not? A I said that we sent them down immediately after we made the copy of the original invoice representing the shipment which we received from the mill. A copy was made in quadruple form on the green sheets and triplicate form on our dye sheets and in duplicate form on these here consignment sheet.

10 Q What you mean by that, Mr. Veit, was, was it not, that these slips that you sent out were sent out after the goods had been shipped?

The Court: Which slips?

Q Well, you sent out all of these slips at the same time in each case? A Yes; there was a copy of the invoice covering the shipment was made immediately upon receipt of the invoice.

20 Q In other words, the white consignment slips, the green sheets— A Went to the factor.

Q Went to the factor? A And we mailed the pink sheet.

Q And at the same time the pink sheet went to the dyer? A Went to the dyer.

Q The pink sheets that have been designated here as Exhibits D. 5, 6 and 7? A Yes.

30 Q That all took place simultaneously; they all went out together? A They did.

Q That was after, in each case, you had received advices that the goods had actually been shipped by the manufacturer to the dyer? A That is right.

*Re-direct examination by Mr. Bilder.*

40 Q Mr. Veit, who was the Chelsea Silk Company referred to in this letter marked Exhibit D. 5? A Manufacturers of broad silks.

*Daniel Veit, re-direct.*

Q Where were they located? A Paterson.

Q What was the name of the man that is connected with it? A Engel, I believe.

Q Did you know then the man personally? A I did.

Q Can you tell any reason why the Paramount asked you to sign your name to that letter? A 10  
Yes, I will tell you. I signed the original copy of order on this order which was placed with the Chelsea.

Q About when? A Before I severed my connections with the Paramount.

Q Yes? A And then, as these discussions came up, various things came up, Mr. Seymour Bayer might have called me on the 'phone and might have asked me to come up and straighten them out for him. In this case I recall I wrote 20  
the Chelsea Silk Company we could not use these particular goods.

Q Was there some dispute there? A Yes, controversy was on the question of terms.

Q But it was desired to return these goods, that is, the Paramount desired to return these goods to the Chelsea? A Yes.

Q You were familiar with the facts of the original transaction? A Yes.

Q You had had charge of the original trans- 30  
action? A Yes.

Q Did you have any particular influence with the Chelsea people of a personal nature? A Well, I was very well acquainted with Mr. Engel; I knew him very well.

Q Were you on the payroll of Paramount at the time you wrote this letter? A I was not.

Q Are you sure? A Positive.

Q You had severed your actual relations? A 40  
Positive. I was not on the payroll.

*Olaf Berg, direct.*

Q That was in January? A The latter part of January.

---

OLAF BERG, sworn.

10 *Direct examination by Mr. Bilder.*

Q Mr. Berg, you are an officer of the defendant corporation? A I am.

Q What officer are you? A I am treasurer.

Q You have been treasurer for at least two or three years? A Since 1912.

Q You have been actively connected with the conduct of the business? A I have.

20 Q Have you the records of the defendant with you which show the date of the actual arrival of the goods involved in this suit? A Yes.

Q And in the possession of the defendant? A Yes.

Q Will you produce those? A Let me have those records?

30 Q When you speak of the original records of the arrival of those goods, what do you mean, Mr. Berg? Suppose I withdraw that question and ask you, what was the practice of the defendant in making records in connection with the arrival of goods of third persons delivered to the defendant? A That I could not answer you, because I did not attend to that part.

Mr. Evans: Mr. Berg is the technical man; he doesn't know anything about this case.

40 Q Who would be better able to tell what the practice was in respect of making receipt of goods there? A Dr. Imhoff.

*Max Imhoff, direct.*

Q Now, the record which you have brought with you is something which you are not personally familiar with? A Right.

Mr. Evans: Mr. Berg does not check the goods when they arrive; he has employees for that purpose.

10

Q Mr. Berg, what were your activities in the business? A I am the treasurer.

Q Yes? A Of the company.

Q In connection with the actual conduct of the business itself? A Well, I attend to most signing of checks, and then I have a good deal to do with the inside work, but at this period I was spending most of my time, practically ninety-nine per cent. of my time, with an affiliated company called the Berg Silk Dyeing Corporation in Englewood.

20

Q So you were not— A I was not very active at Imhoff-Berg before 1928 in June, came back again.

Q I will call Dr. Imhoff.

No cross examination.

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MAX IMHOFF, sworn.

30

*Direct examination by Mr. Bilder.*

Q Dr. Imhoff, you are the president of the defendant corporation? A Yes, sir.

Q You were its president in 1926-1927? A Yes.

Q Also in 1928? A Yes.

Q Were you in 1926, 1927, acquainted with Mill Factors Corporation? Have you knowl-

40

*Max Imhoff, direct.*

edge of the fact that there was such an entity, such a corporation? A I never paid any attention to anything of that kind.

Q Oh, please answer the question. Did you know that there was such a firm or business establishment as Mill Factors Corporation? A  
10 Yes.

Q How long prior to 1927 did you say you knew there was a concern named Mill Factors Corporation? A I could not tell you.

Q For a number of years? A I could not tell you.

Q Would you say at least one year prior to 1927? A I could not tell you.

Q Did you know that the name "Mill Factors Corporation" appeared on correspondence and various documents which came into the possession of your company during the year 1926, 1927? A I never paid much attention.  
20

Q Did you know that? A Yes.

Q Isn't it a fact that you saw the name Mill Factors Corporation on letters and documents and writings in connection with the dealings of the defendant with many other or at least a number of other business establishments besides the Paramount Fabrics Corporation or Bayer-  
30 Veit-Goldman? A Yes.

Q Do you know what the business of Mill Factors Corporation is, in substance? A I know they are factors.

Q Now, what do you understand by "factors"? A They are financing certain houses that send goods to the dyer to be dyed and finished.

Q By that you mean that such factor lends or advances money, among other things, to the client or owner of the goods upon the security of the goods as a pledge?  
40

*Max Imhoff, direct.*

Mr. Evans: I object to this as calling for the interpretation of a legal question.

The Court: I think he may answer it.

A I only can tell that as far as I know they advance money to silk houses, but I don't know anything about the contract between the two, under what conditions. 10

Q But your understanding is that the advance is made on the strength of the goods being secured to the factor for the repayment of the money; isn't that so? A Well, I don't know if they are secured.

Mr. Evans: I object.

The Court: What are you trying to show?

Mr. Bilder: Notice of the relations between Mill Factors and Paramount. 20

The Court: I do not suppose the lien can be established by relations.

Mr. Bilder: I am not trying to establish a lien. You see, here is a contest between—

The Court: I do not think notice of prior relations between people can establish that the other fellow has a lien on certain goods, either.

Mr. Bilder: No, but can establish priority of rights. 30

The Court: I do not think so. I understand your theory is that knowing the relation he should have known that there was a lien on the goods. I do not think that is held.

Mr. Bilder: There is a case in New Jersey to the effect that a statutory lien is not looked upon with favor by the law, and the statutory lien attaches subordinate and subject to all existing and prior rights. 40

*Max Imhoff, direct.*

The Court: Well, prior rights of which they had knowledge, of course. What is the case you refer to?

Mr. Bilder: Court of Errors, law case—Sullivan versus Clifton, 55 New Jersey Law 324.

10

Q You know, and you did know in 1926 and 1927, did you not, that such a factor makes advances to a manufacturer of silk or a similar client or customer and relies upon or takes as security a pledge of the goods of that manufacturer, and that the manufacturer of the goods or owner of the goods gets money on those goods? You knew that some such situation was in substance the character of that dealing, did you not?

20

Mr. Evans: I object to this question, unless it be confined to his knowledge as to what the exact state of facts was between these parties. His knowledge of a general custom or practice has no bearing on this case.

The Court: Let me hear the question.

(Question repeated by the stenographer.)

30

Mr. Bilder: I will reframe it.

Q You say you knew what a factor was in connection with the silk business and silk manufacturers and silk dealers in 1926 and 1927? You were familiar with the term factor, were you not?

A Yes.

Q You also say that you knew that the factor was one who made advances of money? A Yes, sir.

40

*Max Imhoff, direct.*

Q To such a customer, whether it be the manufacturer of the silk or the owner of the silk?

A Yes.

Q Did you also know that the habitual arrangement between such factor and the customer, manufacturer or owner of silk goods included a pledge or placing of the goods of that manufacturer or owner with the factor as security for such advances? 10

Mr. Evans: I object, unless it be made to appear what goods.

The Court: I think it is a little too general.

Q Did you know that the Bayer-Veit-Goldman Corporation and its successor, Paramount Fabrics Corporation, at the time it was sending goods into the Imhoff-Berg place in 1926 and 1927 had dealings with Mill Factors Corporation? A I did not pay any special attention. 20

Q Did you know?

Mr. Evans: I object to that question, unless it be made to appear what dealings.

The Court: I think that is proper and I will permit it.

Mr. Evans: Otherwise it is irrelevant, unless he ties it down. 30

Mr. Bilder: I will.

Q What is your answer? A Yes.

Q You saw the name—you got letters from Mill Factors Corporation with reference to Bayer-Veit-Goldman's goods and also from Paramount, did you not? A Yes.

Q You saw papers, writings, documents, coming into the Imhoff-Berg place of business hav- 40

*Max Imhoff, direct.*

ing reference to goods in Imhoff-Berg's possession of either Bayer-Veit-Goldman or Paramount, and also bearing the name Mill Factors Corporation? A Yes.

10 Q You knew at that time that a factor is a person or corporation or firm which makes advances of money to manufacturers of silk or owners of silk with whom it deals? A Yes, sir.

Q You knew, did you not, that Mill Factors was sending in green sheets, of which I show you a specimen—green sheets like P. 10 for identification? A Yes, sir.

Q You saw many of those green sheets come filled out in that fashion to the place of business of Imhoff-Berg in 1926, 1927? A I can't recollect.

20 Q You saw some? A Some.

Q I call your attention to the words on this green sheet, "There has been shipped to you by Paramount Fabrics Corporation, for whom we act as factors, via M. Salsburg—"

Mr. Evans: I object to that on the ground that that paper is not in evidence.

Mr. Bilder: May I withdraw the question?

30 Q Will you produce the originals I have asked for, the green sheets that you have, and I will offer them in evidence?

Mr. Evans: The green sheets are attached to the pink sheets which are in evidence, Mr. Bilder. The ones that we have.

Mr. Bilder: You mean the pink sheets are in evidence?

40 Mr. Evans: Yes. We do not have green sheets on all of them, but on some of them.

*Max Imhoff, direct.*

Mr. Bilder: I will use any of them. I will offer in evidence a sheet marked P. 16 for identification, which is in the possession of the defendant.

Mr. Evans: I will object to this green sheet on several grounds. First of all, this is a communication from the plaintiff to the defendant. First, may I ask what the purpose of offering this evidence is? 10

The Court: Communications from the plaintiff to the defendant are always admissible, I guess.

Mr. Evans: The plaintiff cannot make evidence for himself, when he offers his own communication to somebody else, unless it has some particular reference—

The Court: I think it is admissible. 20

Mr. Evans: He cannot manufacture evidence.

The Court: The man says these green sheets were sent to you, and he offers it in evidence. What is the objection?

Mr. Evans: I would like to be heard on that point. As I understand it, your Honor, if I have a controversy with a person I may send him half a dozen letters in which I make a beautiful case out for myself. Those letters are positively not evidence, because you cannot make evidence for yourself in that way. Those are self-serving statements, and unless they have some other purpose I would object to those on that ground. 30

The Court: I will permit it.

Mr. Evans: I will ask for an exception for the reasons stated.

(Paper marked Exhibit P. 16.) 40

*Max Imhoff, direct.*

Q Exhibit P. 16 comes from the files of the defendant company, does it not, Dr. Imhoff? A Yes.

Q I call your attention to the statement on this exhibit: "Imhoff-Berg Silk Dyeing Company, Paterson, New Jersey. Dear Sirs: There  
10 has been shipped to you by Paramount Fabrics, for whom we act as factors,—"

The Court: Do not read it. Show it to him.

Q You are acquainted with the contents of this exhibit, are you not, Dr. Imhoff? A No, sir.

Q You mean this is the first time you ever  
20 saw it? A I never paid any attention to the work, never did.

Q How do you know you did not? A Because—

The Court: I do not suppose that makes any difference. Of course, it was received. Whether he looked at it or not, he received it. These were sent, from the testimony as I recall it, by Mill Factors, the green sheets.

30 Q You recall having repeatedly received, by you I mean the defendant Imhoff-Berg, having repeatedly received by mail from Mill Factors yellow sheets of which P. 18 for identification is an example? A Yes.

Mr. Bilder: I want to offer P. 18 in evidence.

The Court: Which is P. 18?

40 Mr. Bilder: That is the yellow sheet.

*Max Imhoff, direct.*

Mr. Evans: I object to it on the several grounds, first, that this green sheet is spoken of as a receipt that came—that was returned—

The Court: The yellow slip, I understand, he is offering in evidence.

Mr. Evans: Yes, but I mean both of them 10  
took place after Imhoff-Berg had received the goods, according to the testimony, undisputed testimony in the case; so that they can have no effect, so far as disturbing the paramountcy or the pre-eminence of our lien, since our lien attached at the moment they were received. I want to object to the admission of this yellow receipt on the ground that it is more than a receipt; it really purports to be a contract which has been signed 20  
by a person not proven to have authority to sign a contract to bind the corporation of Imhoff-Berg Silk Dyeing Company.

Further, on the ground that is immaterial, because the evidence is that we have a lien here. These communications took place after the fixing of that lien, and there is nothing in either one of these communications whereby we waived a lien, and even if there were, there is nothing to show that the 30  
people who waived it had the authority to do so.

The Court: I will admit it.

Mr. Evans: I ask an exception.

Mr. Bilder: I also desire to offer in evidence similar yellow sheets as follows:

P. 4 for identification, consisting of two yellow sheets, dated respectively April 22, 1927, and the other April 25, 1927. I offer 40

*Max Imhoff, direct.*

10 in evidence the following yellow sheets marked P. 8 for identification, P. 6 for identification, P. 7 for identification, P. 5 for identification, P. 2 for identification, P. 1 for identification, P. 9 for identification. Then I want to offer in evidence the following documents: Green sheet designated in voice number D4079, consisting of two sheets; D4080, consisting of three sheets; D6636, D7256; D6636 consisting of three sheets. They are separate when you come to mark them. D2112, consisting of three sheets.

Mr. Evans: I would just like to be heard on this for a moment.

20 I would like to object to all of these, for the reasons just stated, and furthermore I think, your Honor, that I have a right to know for what purpose these yellow slips that are marked P. 9 and 6 are being offered. If they are offered as merely receipts by us for the goods—

The Court: I suppose that is the receipt. There is no other purpose in the yellow sheets except that you got the goods.

30 Mr. Bilder: Oh, no; also for the purpose of showing the following, the creation of a bailment, waiver of any lien by inconsistent conduct.

The Court: Read me that provision about waiver.

40 Mr. Bilder: The defendant claims that at the time these goods came into their possession they came subject to a lien. I don't know whether that is true, because I don't know whether the work for which they claim a lien was then done, but let us assume

*Max Imhoff, direct.*

it was true; they are then followed by an acknowledgment by the lien claimant to the plaintiff that they were holding and would hold these specific goods for the account of the plaintiff; not for the account of the person for whom they had done work, but for the account of the plaintiff and subject to the plaintiff's orders. 10

The Court: Where do you say the waiver is?

Mr. Bilder: That is an act inconsistent with the subsistence of a lien under the rule of law would constitute a waiver.

The Court: I do not think that is a waiver.

Mr. Bilder: Well, that is my contention. Consequently, that this constituted the creation of a bailment. 20

The Court: Of course, the creation of a bailment is not inconsistent with retaining a lien.

Mr. Bilder: Is inconsistent.

The Court: I do not think so.

Mr. Bilder: I would contend it is.

The Court: In what respect?

Mr. Bilder: Because a bailee cannot deny title of his bailor nor assert any conflicting title. 30

The Court: The bailee is entitled to his lien, I suppose?

Mr. Bilder: Under the common law for work done on those goods?

The Court: I mean the statutory lien.

Mr. Bilder: No, I claim that the statutory— 40

*Max Imhoff, direct.*

The Court: Nevertheless, I think they are admissible. The effect they would have would have to be dealt with later on.

Mr. Bilder: Then, thirdly the matter of estoppel, too.

10 The Court: I will admit it.

Mr. Evans: The significance of them is to be argued later on?

The Court: Yes.

Mr. Bilder: Yellow sheet dated April 25, 1927, marked Exhibit P. 50.

I offer the green sheet designated D3884, Exhibit P. 16.

20 Green sheet D4079, consisting of two sheets, Exhibit P. 51.

Green sheet D4080, consisting of three sheets, Exhibit P. 52.

P. 12, consisting of three sheets.

D7256, that is P. 15.

Exhibit P. 14.

Mr. Evans: I will consent to that going out.

Mr. Bilder: Exhibit P. 36.

Exhibit P. 43.

30 Exhibit P. 26.

Mr. Bilder: Have you the letter requesting an inventory?

(Mr. Evans produces a paper.)

Mr. Bilder: This is the form that we use.

Mr. Evans: I do not seem to have any letter here.

40 Q Do you recall getting letters, of which this is a form, Dr. Imhoff, from Mill Factors in con-

*Max Imhoff, direct.*

nection with Paramount Fabrics or Bayer-Veit-Goldman? A No, I do not.

Q Did you read the letter? A Yes.

Q Did you read it entirely? A Yes.

Mr. Evans: Here is one letter. That is the only letter we have. 10

Q This letter comes out of the files of your company, doesn't it—the defendant company?

A Yes.

Q Recall ever seeing that letter? A No, sir.

Q Any of your writing on that letter? A No, sir.

Q Whose writing is it, do you know? A I don't know. 20

Q Look at that. What was your function in this business in 1926, 1927? A I was looking after the dyeing and the finishing of the silk which we got in from the customers to be dyed and finished.

Q What else did you do? A Well, that was my main occupation. Besides that I received the mail, opened the mail, and gave the mail to the different departments.

Q To whom the mail should go in accordance with the practice in your business? A Yes. 30

Q For their attention? A Yes.

Q Were your departments instructed what to do or were they supposed to do whatever came into their minds as a matter of caprice? A I never instructed anybody except my special attention was called, either by invoices or orders from manufacturers.

Q No. I ask you to answer the question. 40

*Max Imhoff, direct.*

(Question repeated by the stenographer as follows:)

“Q Were your departments instructed what to do or were they supposed to do whatever came into their minds as a matter of caprice?”

10

A They knew what to do.

Q How? A As a matter of routine.

Q What do you mean, as a matter of routine?

A Because they are doing that for years.

Q They have been what? Have been instructed originally what to do, were they not?

A Yes.

Q They followed original instructions? A More than likely.

20

Q They did, didn't they? A Very likely. I never gave instructions, so I don't know.

Q Who was running this business in 1926 and 1927? A Well, we have a head for every department.

Q Who was supervising the entire business—your shipping clerk? A I was supervising, more or less.

30 Q Who was supervising more than you? A I couldn't do any—I couldn't go into any details.

Q Who was supervising the entire business more than you? A I think our superintendent.

Q Was he subject to your orders? A Yes.

40 Q Now, the various departments were instructed as to what to do in various matters of a class, were they not, that is, a certain type of matter would go to a certain department for handling pursuant to original instructions covering such matters; is that correct? A Yes.

*Max Imhoff, direct.*

Q Whenever any new matter came up which was unlike, which did not belong to any type or class of matter which had ever been theretofore handled, there must have been an instruction how to handle it, that new type of matter, was there not? A Yes.

Q In other words, your departments ran under policies and instructions given and laid down by heads of the firm, not by caprice? A Well, the heads of the firm did not give all the instructions. 10

Q I say, your departments of the defendant's business did not run by caprice of those in charge of the department, but ran pursuant to instructions given at one time or another with reference to matters within their scope? A Yes.

Q Authoritative instructions; is that correct? A Not necessarily. 20

Q Instructions of a boy or instructions of an executive? A For instance, instructions from the superintendent.

Q Yes, authoritative instructions. A Well, our superintendent has a certain right to issue instructions, but when something very important comes up then he consults me.

Q Yes. A Or Mr. Berg.

Q So everything is always done under instructions? A It should be. 30

Q Was it not, in fact, to your knowledge? A I couldn't tell you, because I didn't bother with all the details.

Q It was supposed to be done under instructions; is that not so? A I suppose so.

Q Why do you suppose? A Because—

Q Was not that the rule in the business of the defendant that things were to be done in accordance with rules and regulations? Is that not so? A Yes. 40

*Max Imhoff, direct.*

Q This letter of December 27, 1927, which came from the defendant's files, you say, was turned over to the proper department, was it not? A I can't recollect this.

10 Q Looking at the letter and seeing what it refers to and knowing that that comes from the files of your company, was it turned over to the proper department or was it not? A I could not answer.

Q If that came in through the mail you got it, did you not? A Not necessarily.

Q Didn't you say you got all the mail? A Yes, but I do not always open the mail. Sometimes I am absent and the superintendent opened the mails, or Mr. Berg, or even our bookkeeper, Mr. Meadendorf.

20 Q Recall ever seeing such a letter as I show you now, this letter of December 27, 1927? A I don't recall it, no.

Q Recall ever being requested for inventories by Mill Factors and manufacturers of goods in your hands? A I don't remember, because I did not deal in details except they are called to my special attention.

30 Q Well, if you saw such a letter would you regard that letter as a detail or a matter to be called to your special attention?

Mr. Evans: I object to that as a hypothetical question.

The Court: I think that is speculation. I will sustain the objection to that question.

40 Q When a request comes from a factor to the defendant, requesting the defendant to communicate to the factor an inventory of goods on hand with the defendant which are the

*Max Imhoff, direct.*

goods of a person for whom that factor is acting as such, does the request for such inventory come under the head of detail or a special matter in the business of the defendant corporation? A A request for an inventory is a detail work.

Q Your answer to my question is it is a detail and not special matter; is that correct? A It is detail work, yes. 10

Q Detail matter? A A detail matter.

Mr. Evans: The defendant answered the question three times now. I think that is quite enough.

Mr. Bilder: He said detailed work. Making of an inventory is detailed the work. The matter is separate.

Mr. Evans: What do you call it?

Mr. Bilder: I desire to offer in evidence a letter of December 27, 1927. 20

(Paper marked Exhibit P. 53.)

Q I show you P. 22 for identification, being a letter upon the stationery of Imhoff-Berg Company, addressed to Mill Factors Corporation, and ask you to read that letter and note the sheets attached to the letter? A (Witness examines letter.)

Mr. Evans: I think we can save some time here. Counsel has an inventory of the goods which we are holding which we admitted in our pleading, and we have no objection to having the testimony go in as to the goods we are holding. 30

The Court: That part of, I think, you can produce.

Mr. Evans: I will consent to the admission of that. 40

*Max Imhoff, direct.*

Mr. Bilder: P. 22 becomes Exhibit P. 22.  
(Paper marked Exhibit P. 22.)

Mr. Bilder: How about this letter (handing paper to Mr. Evans)?

10 Mr. Evans: That is all right. I will consent to the admission of that. There are two different inventories; I don't know which one Mr. Bilder is speaking of.

Mr. Bilder: We are not seeking to bind you. Merely the goods held are evidential. It is not a matter of binding you with what you haven't got, because we are agreed as to what you have got. There can be no dispute.

Mr. Evans: Why not present one inventory?

20 The Court: What is the purpose?

Mr. Bilder: The fact that these communications have come from defendant repeatedly; I want to show they were familiar with Mill Factors, that they knew Mill Factors was on the scene and in the scene repeatedly, all the time.

(Paper marked Exhibit P. 2.)

30 Mr. Bilder: Letter of July 2, 1928, Imhoff-Berg to Mill Factors.

(Paper marked Exhibit P. 54.)

Mr. Bilder: Letter of December 27, 1927, becomes Exhibit P. 53.)

(Paper marked Exhibit P. 53.)

(Exhibit read by Mr. Bilder.)

(Mr. Bilder read letter of Imhoff-Berg dated July 2, 1928, being Exhibit P. 54.)

(Mr. Bilder read letter of April 1, 1927, to Mill Factors.)

40

*Max Imhoff, direct.*

(Mr. Bilder read letter of January 3, 1928, on stationery of Imhoff-Berg to Mill Factors Corporation.)

*By Mr. Bilder.*

Q You were evidently dyeing goods for Beverly Fabrics Corporation? A Yes. 10

Q And also for Eagle Mills? A Yes.

Q And in connection with your doing the work for both the Beverly and the Eagle corporations you were familiar with Mill Factors, communications from Mill Factors Corporation in connection with those companies and their dealings with you? A Yes.

Q You say you frequently saw these yellow sheets of which Exhibit P. 16 is a specimen?

A That is a specimen, yes. 20

Q That is to say, in 1926 and 1927? A Yes.

Q Now, as a matter of fact, a great many of your customers for whom you did dyeing during the years 1926 and 1927, and even theretofore, were to your knowledge dealing with factors, were they not?

(Objected to as immaterial; question admitted.)

A Well, I wouldn't say a great deal—some. 30

Q Well, perhaps we differ as to the words "great deal." I will say perhaps a dozen of them? A I couldn't tell you, because that is detail work which I did not pay any attention to.

Q Well, who would know? Who connected with Imhoff-Berg Company would know better than you? A Mr. Tomasulo.

Q Why would he know better than you? A Because whenever I got invoices or letters and they were not marked to my attention, I simply 40

*Max Imhoff, direct.*

referred those letters, these orders and invoices, to Tomasulo, who has charge of the department.

Q In charge of what department? A The raw goods department—raw department.

Q What was the work in that department?

10 A Well, they received the raw goods and they received the orders, that is, I turned over the orders to them, and then they lay out the silk, give it to be processed, according to instructions.

Q What else did they do? A Well, I don't bother with the department at all. Mr. Tomasulo can tell you better.

Q You are president of the company; don't you know what that department does? A Yes. I cannot—

20

Mr. Evans: He told what the department does. He says he doesn't know anything else.

Mr. Bilder: I am trying to see if he does not.

Mr. Evans. Counsel characterizes the answer of the witness as meaning he doesn't know anything about it, whereas he did indicate he did, did know the general lay-out of the department.

30

The Court: I think the witness is perfectly able to take care of himself. Proceed.

(Question repeated by the stenographer as follows: "Q What else did they do?")

A Well, entering in books, enter orders or memorandum, entering the invoices. About other smaller details I couldn't tell you, because I haven't any time to look after every detail.

40

*Max Imhoff, direct.*

Q How many departments were there, by name, in your business in 1926, 1927? A How many departments?

Q Yes, by name. Say the order department, and say all the other departments? A Well, the raw department.

Q What does that do? What was the scope of that department? A Why, they are receiving the raw goods. 10

Q Yes. By which you mean goods not yet manufactured into fabric? A Yes, and manufactured, too.

Q Yes. What other department? A Then we have the dyeing department, the boil-off department, the weighting department, the dyeing department—oh, I mentioned that—and the finishing department. 20

Q Those comprise all of the departments of the business? A In the raw department I also include the ordering department, which Mr. Tomasulo has charge of.

Q That ordering department would have complete charge of all goods that came in in a fabric state; is that so? A Beg pardon?

Q The order department which you say Mr. Tomasulo was in charge of would have charge of all goods which came in in a fabricated condition, in cloth form; isn't that right? A In cloth form? 30

Q Yes.

Mr. Evans: I object to that, unless he says what he means by having charge of. There are different ones that have charge of goods at different times. Have charge of for what purpose?

Mr. Bilder: I did not testify. 40

*Max Imhoff, cross.*

The Court: The witness said yes. He is the one to know.

Q And communications which had to be made by these various departments would be made by persons in charge of the departments; is that correct? A Yes.

10 Q That was the regular practice and order of business; is that correct? A Communications to whom?

Q To anyone with reference to goods that were in charge of that particular department. A Routine work, yes.

Q And communications might have to be made by the order department, for instance, with reference to matters in its charge which would not be routine work? A Important matters would not be routine work.

20 Q Would the giving of an inventory to a factor be an important matter, or would it be routine work? A This is routine work.

Q Have you the books of the company here showing payments made to the company by the Paramount Fabrics Corporation during the latter part of—during the year 1926, 1927? A Our bookkeeper, Mr. Meadendorf, has charge of that and still has charge of that. I think he could give you all information.

30 Q That is all.

*Cross examination by Mr. Evans.*

Q Your company is a corporation, is it not, doctor? A Yes.

Q Have you a board of directors? A Yes, sir.

40

*Max Imhoff, cross.*

Q What is the business of this company? A We are engaged in the weighting, dyeing, and finishing of silk piece goods.

Q You spoke of Mr. Tomasulo. Has he any authority to sign receipts for goods? A Yes.

The Court: What was the job of Tomasulo? 10

The Witness: He was receiving clerk and order clerk.

Q What was his position? A Receiving clerk and ordering clerk.

Q Did he have any authority at any time to sign any contracts on behalf of the company? A No, sir.

Mr. Bilder: I object to that as not cross examination. 20

The Court: That is not cross examination.

Mr. Evans: Yes; he went into great detail as to what the authority of the order department was, and what Mr. Tomasulo's department might be.

Mr. Bilder: I did not mention Mr. Tomasulo at all.

The Court: Well, he answered it, anyway. 30

Mr. Bilder: I ask that the answer be stricken out.

The Court: I do not think so, after it is answered, and then strike it out.

Mr. Bilder: I did not hear him answer, and I objected as seasonably as I could.

The Court: I say, it is harmless. I do not think I will strike it out.

Q That is all.

*Henry Meadendorf, direct.*

HENRY MEADENDORF, sworn.

*Direct examination by Mr. Bilder.*

10 Q Mr. Meadendorf, is this your signature on the letter of December 6, 1927? A It is, yes, sir.

Mr. Evans: I will object to this, your Honor please, unless it is shown that Mr. Meadendorf had authority.

A Signature. He asked me about the signature, Judge. He asked me if it was my signature. That is all he asked me.

20 Mr. Evans: I understand.

The Court: Purporting to be signed by the defendant.

30 Mr. Evans: The clear purpose of this is to argue that this amounts to a release of our property rights in this property. That is the only possible purpose that this letter could have. In waiving property right or surrendering a lien the defendant would have to act through its duly authorized officers; for example, a release signed by Mr. Meadendorf would have no effect at all as binding the company. He is the bookkeeper and he is giving certain information here.

The Court: I think you have to show it came through the mail or something.

A I only admit the signature.

Q Oh, no, you are not admitting anything. A The signature.

40 (Paper marked P. 54 for identification.)

*Henry Meadendorf, direct.*

Mr. Bilder: You have the original of this letter. I will have it now.

Mr. Evans: I do not seem to have any.  
(Produces letter.)

Q Mr. Meadendorf, this letter of November 18, 1927, comes from the files of the defendant, does it not? A Yes. 10

Mr. Bilder: I ask that it be marked in evidence.

(Paper marked Exhibit P. 55.)

(Mr. Bilder reads Exhibit P. 55, being letter on the stationery of Mill Factors Corporation to Imhoff-Berg Silk Dyeing Company, dated November 18, 1927.) 20

Q And the letter of December 6, 1927, marked P. 54 for identification was written by you in answer to this letter now marked P. 55, was it not?

A I surmise so, yes.

Q Look at it. A Yes. It was in answer to some letter; whether it is that particular one or not I do not know.

Q Look at this. A I do not recall this, but it is in answer to some letter.

Q Mr. Meadendorf— A I don't recall seeing this. 30

Q This comes from your files? A Yes.

Q Now, look at that and then read your letter and tell me whether—read them both and tell me whether your letter is in response to that communication of November 18, 1927? A I couldn't. This letter is a response to some letter, but not practically to this one.

Q Do you know that it is not a response to that one? A Because this would not come into 40

*Milton G. Baum, recalled, direct.*

my office. This would go into the raw receiving department.

Q Let me read you this letter, will you, please?

10 The Court: Do not read it. It is not in evidence. You cannot read it.

Mr. Bilder: May I withdraw the witness and then get this in evidence?

(Witness temporarily withdrawn.)

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MILTON G. BAUM, recalled.

*Direct examination* by Mr. Bilder.

20 Q Mr. Baum, I show you P. 54 for identification and ask you how that letter came into the possession of Mill Factors? A Came in the mail.

Mr. Bilder: I offer it in evidence.

30 Mr. Evans: I will object to the admission of this letter in evidence, on the ground that there is no authority that has been shown from Mr. Meadendorf to bind Imhoff-Berg Silk Dyeing Company to the legal consequences of writing this letter. If Mill Factors had sent a release, complete release, in to Imhoff-Berg and asked them to execute it, and that release had found its way into the bookkeeper, and the bookkeeper had thereupon, due to a misconception of his function in the concern, signed the release and sent it back, I do not think there is  
40 that the corporation was bound by that

*Milton G. Baum, recalled, direct.*

release signed by a bookkeeper. The only possible purpose for which this letter could be offered would be to show that Imhoff-Berg Silk Dyeing Company had released their property rights, their right to this lien. Of course, it has been held in countless cases that it can be only released by an executive officer, by people having authority to do so. The release of the lien or the waiver of the lien would be in exactly the same category, and there is no proof of Mr. Meadendorf's authority to do so, and I therefore object to the letter on that ground. 10

The Court: Was this letter received in answer to any letter that your firm had written them? 20

The Witness: Yes.

Q Have you a copy of the letter to which this letter, P. 54 for identification, was a response? A I have.

Q Will you produce yellow sheet dated November 18, 1927?

Mr. Bilder: I submit to the Court upon inspection it appears to be the carbon copy. 30

The Court: It would not be an answer to the carbon copy. It would have to be in answer to the other one which you have in your hand.

Mr. Bilder: Yes.

Q I show you Exhibit P. 55 and ask you what connection there is, if you know, between Exhibit P. 55 and the letter marked P. 54 for identification? A The letter marked P. 54 for 40

*Milton G. Baum, recalled, direct.*

identification is an answer to P. 55 that is in evidence.

Q Exhibit P. 55? A Exhibit P. 55.

Q And you have a carbon copy of that exhibit, P. 55, which comes from the files of the Mill Factors Corporation? A From our files, yes.

10

Mr. Evans: Now, are you offering this again?

Mr. Bilder: Yes.

20

Mr. Evans: I would like to object to it for the reasons already stated, and further to say that I am familiar, of course, with the rule that when you write a letter to a person and that person writes back to you and signs his name, that you authenticate the signature of that person to whom the letter was written by showing that a letter was written to him and this was in reply. That is a rule in order to prove handwriting. However, this case goes far deeper than to prove the handwriting of anybody. They are not now attempting to show the handwriting of Mr. Meadendorf, because he has knowledge that he signed it, but they are attempting by having addressed a letter, to show that this is an authoritative act of Imhoff-Berg, which is altogether a different proposition. I object to it, therefore, for the reasons stated, that Mr. Meadendorf, who was only the bookkeeper for this concern, had no authority to execute any release or anything that amounted to a release of this lien claim.

30

The Court: I will admit it.

40

Mr. Evans: In fact, the letter did not ask him to.

*Henry Meadendorf, direct.*

The Court: You may show what happened, but the letter is addressed from one party to the other and, of course, is admissible in evidence. You may show afterwards that Mr. Meadendorf hadn't any authority or it was written under a misapprehension or whatever it may be. 10

Mr. Evans: All right.

(Paper marked Exhibit P. 54.)

(Mr. Bilder reads Exhibit P. 54 to the jury.)

Mr. Bilder: I will withdraw this witness.

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HENRY MEADENDORF, resumed.

*Further direct examination* by Mr. Bilder. 20

Q Mr. Meadendorf, are you in charge of the records showing the account of the defendant with the Bayer-Veit-Goldman Company and Paramount, its successor? A Dollars and cents or pieces?

Q The money account? A Yes.

Q Have you those records with you? A Yes, they are there. 30

Q Will you produce them? A (Books produced.)

The Court: What is the purpose of this?

Mr. Bilder: To show that the dyeing bills were invariably paid.

The Court: You do not need the books to show that, do you?

Mr. Bilder: You mean he can testify from his recollection? 40

*Henry Meadendorf, direct.*

The Court: The books would not show who paid the bills, would they?

Mr. Bilder: Shows to whom the bill was rendered.

10 The Court: The books would not show that. I do not believe the books will show to whom the bill was rendered.

Mr. Bilder: Shall I ask him?

The Court: You may ask him.

Q Will these records enable you to say to whom these dyeing bills were rendered for goods dyed for Bayer-Veit and the Paramount? A Paramount Silk Company, Bayer-Veit—Bayer-Veit first, and then Paramount Silk Company afterwards.

20 Q Then, the bills were rendered to them? A Were rendered.

Q And were paid by Bayer-Veit-Goldman or its successor? A They were paid in part—Bayer, Veit and Goldman paid them first, Paramount paid them afterwards, and then the Mill Factors paid the last payment of \$5,000 on account.

Q Paid one check? A One check.

Q For \$5,000? A Yes.

30 Q Was that the only one you ever got from Mill Factors? A That is the only one, to the best of my knowledge and belief.

Q Yes. Now, was credit extended by you to the—I mean, to the defendant, Paramount and Bayer-Veit-Goldman in connection with the silk dyeing—were the bills rendered with any terms of credit? A No. Terms of credit as stated on the acceptances. They are thirty days net. On all the bills rendered it is a net proposition, no discount.

40

*Henry Meadendorf, direct.*

Q Thirty days net? A Yes.

Q After the bill is rendered? A Yes.

Q With reference to the completion of the work for which a bill was rendered, what was the relation of the date of the bill to the date of the completion of the work? A The goods were billed on the date that they were delivered finished to the customer. 10

Q In other words, the goods would be delivered to Bayer, Veit and Goldman or the Paramount in a finished state by the defendant and with the goods would be the—would the goods be accompanied by a bill? A An invoice and a bill would go the following day from my office.

Q Yes; for the work done on those goods? A Yes.

Q Is that correct? A Right. 20

The Court: I did not quite understand, Mr. Meadendorf. You got the goods and you say with it would go a bill?

The Witness: The goods are delivered by our truck, an invoice—

The Court: Delivered to whom?

The Witness: To the customer, and an invoice goes with this, but on the invoice there is not carried out in dollars and cents—then the following day my office ships out an invoice for dollars and cents to this would-be customer. 30

Q And the customer has thirty days from the date of the invoice to pay? A If they do not, why, we go after them.

Q No; I say, the bill itself or invoice? A The invoice does not state any terms on the bill. 40

*Henry Meadendorf, direct.*

Q Does not say thirty days net? A No.

Q But your practice with Paramount and Bayer, Veit and Goldman was, you allowed them thirty days after the rendition of the bill to pay the bill? A Yes. One minute. At the end of each month a statement is rendered to  
10 the customer of the previous amount of work done during the previous month, and during that following month that statement is supposed to be paid. So the average would be thirty days.

Q Yes, but the point is you do not require a payment on delivery, C. O. D.? A Oh, no.

Q So your practice with Bayer-Veit-Goldman or Paramount, its successor, was on each occasion, the goods having been processed or dyed or finished by defendant Imhoff-Berg, would be  
20 delivered to Bayer-Veit or Paramount, and then the following day a bill would go forward? A Right.

Q From the defendant to Bayer-Veit or Paramount for the dollars and cents charged for the work done on those goods, and with the result that the payment would be made within thirty days thereafter? A Yes.

Q Now, when you speak of the goods being delivered to Bayer-Veit-Goldman or Paramount,  
30 do your records show to what address your goods were delivered, delivered by the truck? A Yes.

Q Defendant's truck. Do your records show to what address? A That would be—those records would be in the receiving and shipping department, not in my records, not in my department.

Mr. Evans: Mr. Tomasulo will testify to that.

*Henry Meadendorf, cross.*

The Court: He has just finished, I think.

Mr. Bilder: Yes, your Honor, but witness has testified to a delivery to Paramount. I wanted to know what address.

A I am not familiar. The stenographer that makes out the bills, she puts the addresses. 10

Mr. Evans: Tomasulo testified as to all of that regarding where the goods were delivered.

Mr. Bilder: But what the witness is testifying is a delivery to Bayer-Veit or Paramount of goods processed by them. Now I want to know whether he knows where that delivery was made. If he doesn't know, he doesn't.

The Court: That is what he now says, he doesn't. 20

*Cross examination by Mr. Evans.*

Q Mr. Meadendorf, do you know how much is owing by Paramount to Imhoff-Berg? A A little over \$1,500.

Q Can you give us the exact figures and the dates, from your records there? A I give you the exact amount. 30

Mr. Bilder: I suppose this is more properly the defendant's case, but I have no objection if he wants to make it.

The Court: You have asked him all those books. I suppose he is entitled to that.

Mr. Evans: I might as well get it in now, because the case will be over then.

The Court: There is practically no dispute about it. 40

*Henry Meadendorf, cross.*

Mr. Bilder: No.

A \$1,535.87.

Q When was that due? A Due in January, 1926.

Q January, nineteen what? A 1927, rather.

10

The Court: That is \$1,535 charged to Paramount?

The Witness: That is the balance due.

The Court: Is that charged to Paramount?

The Witness: Yes.

Q That was due at the commencement of this action, was it, in April, 1927, April 28, 1927?

20

Mr. Bilder: No, April, 1928.

Q That was due in April, 1928, when this suit was started? A Past due.

Q Past due, and it was past due from what date?

The Court: January 27.

The Witness: January 27.

30

Q You better refresh your memory on that.  
A I could refresh it better if I looked at it.

Q Yes, you better look at it. A (Witness examines books.)

The Court: April, 1928, the writ was tested.

40

Q That was the amount due, exclusive of interest on April 8, 1928? Is that the date of the writ?

*Henry Meadendorf, cross.*

The Court: Here is the original writ.

Q April 5, 1928? A That was due.

Q And had been due from what time? A  
The last goods charged up to them was in April,  
early part of April, 1927.

Q A year before? A One minute. Yes, 10  
1927.

Q That is right.

The Court: Was that for dyeing on  
goods?

The Witness: For dyeing and finishing  
on goods.

The Court: For the Paramount Fabrics?

The Witness: For the Paramount Fabrics  
Company. 20

Q They were silk goods or goods containing  
silk? A Yes.

Q What is your position in Imhoff-Berg Silk  
Dyeing Company?

Mr. Bilder: I object to this question as  
improper cross examination and matter of  
defense.

The Court: I think you offered his letter, 30  
and I think he is entitled to cross examine.

Mr. Bilder: May I take an exception?

The Court: You may have it.

A Bookkeeper.

Q Did you at any time have authority of the  
corporation to discharge any liens or waive any  
liens?

Mr. Bilder: I object. 40

*Henry Meadendorf, re-direct.*

The Court: I do not think that is the question. You may ask him if he has authority to write this letter, if that is what you mean.

10 Q Did you have any specific authority to write that particular letter? A No.

Mr. Bilder: I object.

Q Referring to Exhibit P. 54.

20 Mr. Bilder: If the Court please, the witness answered so quickly—I object on the ground that it calls for a conclusion of law, and on the further ground it is improper cross examination and is part of the defendant's defense.

The Court: I think it is permissible, and I will permit it.

Mr. Bilder: May I take an exception?

The Court: Answer the question.

A No.

Q That is all.

30 *Re-direct examination* by Mr. Bilder.

Q You say that all of that \$1,500 was due by April of 1927? A The last bill, I said, was rendered in April, 1927. That would make the last bill due in the following month, May.

Q Well, this indebtedness of \$1,500 which you say is still due, is that evidenced by more than one separate invoice? A Oh, yes; it is a balance on account.

40 Q Balance of account? A You see—

*Henry Meadendorf, re-direct.*

Q No; wait a minute. I can see. A See it?

Q Yes. A All right.

Q How much of that fifteen hundred and odd dollars was due by April 15, 1927? A All but \$213 or \$214.50.

Q Now, referring to Exhibit D. 4, did not we pay all of the indebtedness that was due on the date of that check? A It did not. It did not. 10

Q What did that pay? A That paid \$5,000 on account of the entire indebtedness, which evidently, according to my books, was \$6,535.87. This \$5,000 was on account.

Q Looking at your books, tell me what the indebtedness of the Paramount was on the date that you got this check and used it.

Mr. Evans: Well, the witness has just answered it. He said it was sixty-five hundred and some odd dollars. 20

The Court: He is asking on what date.

A What is the date of the check?

Q April 15, 1927.

The Court: The question is on what date you got the check.

(Question repeated by the stenographer as follows:) 30

“Q Looking at your books, tell me what the indebtedness of the Paramount was on the date that you got this check and used it.”

Mr. Evans: I do not see what that has to do with the case.

The Court: I don't know, either, but I suppose we will see. 40

*Barnett Blumenthal, direct.*

A \$6,349.72.

Q And this check reduced that by \$5,000?

A By 5,000.

Q What date did you calculate? A The date that you said there, the 18th. There wasn't anything charged on the 19th or the 20th.

10

Q Now, what date—I want your date to connect up with your figures, as of what date did you say the balance was six thousand and some odd dollars? A The 20th of April, 1927.

Q You have given us the amount as of that date? A Yes.

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BARNETT BLUMENTHAL, sworn.

20

*Direct examination by Mr. Bilder.*

Q Mr. Blumenthal, you were connected with Bayer-Veit-Goldman Company and also its successor, the Paramount Corporation? A Yes.

Q During 1926 and 7? A Yes.

Q At what capacity? A As converter and bookkeeper.

30

Q Where was the place of business of Bayer-Veit and Paramount Fabrics? A 247-253 West 38th street, New York City.

Q What did the premises there consist of that were occupied by the company? A Store.

Q Any signs on those premises containing the name of Mill Factors Corporation? A Yes.

Q How? A Yes.

Q Will you describe those signs? A "Mill Factors Corporation, Factors for Bayer-Veit-Goldman or Paramount Fabrics."

40

*Barnett Blumenthal, direct.*

Q Were those signs on there from and after February, 1927? A Well, I only remember it from June, when we started with them.

Q What year? A 1926.

Q Up until when? A Up until about June, 1927, about a year.

Q Those signs were there continuously, were they? A Yes. 10

The Court: This is the place of business of what company?

The Witness: Bayer, Veit and Goldman and Paramount Fabrics Corporation.

Q Where were those signs located? A They had one sign on the receiving of goods, right at the back door where we received goods, and also on the window facing the street. 20

Q Front window? A Yes.

Q Were the signs conspicuous? A Yes.

Q Were they in English? A Yes.

Q And legible? A Yes.

Q Were they printed? A Yes.

Q Was that the place at which goods were received from Imhoff-Berg that had been processed or dyed? A Yes.

Q Was that the place at which the Imhoff-Berg truck picked up goods to be re-dyed by Imhoff-Berg? A Yes. 30

Q Is that the place at which the goods referred to on Exhibit P. 36 were delivered to the Imhoff-Berg truck? A Yes.

Q Is that the place at which goods referred to in Exhibit P. 43 were delivered to the Imhoff-Berg Company truck? A Yes.

Q The sign that you have been testifying to was—first had the Mill Factors name in reference 4)

*Barnett Blumenthal, direct.*

to Bayer-Veit-Goldman, and then after Bayer-Veit-Goldman was succeeded by Paramount the Paramount name was substituted for Bayer-Veit-Goldman? A Yes.

Q The sign remained the same otherwise? A Yes.

10 Q That is all.

Mr. Bilder: I desire to offer in evidence the personal property law of the State of New York, section 45, and my adversary has kindly consented that in the place of an exemplified transcript of the notice of lien which is required to be filed by the statute, I can substitute for—probably I can get the original. That is, he has consented that if it be admitted, there will be no objection to it as the best evidence.

20

The Court: This notice is given to whom? What is this?

Mr. Evans: This is something filed in New York State covering goods which are in New York. I do not see what it has to do with our case.

Mr. Bilder: Section 45 of the personal property law of the State of New York provides, in effect, for the preservation of the lien.

30

(Discussion.)

The Court: Suppose you stipulate something on the record.

40

*Stipulation.*

STIPULATION.

Mr. Bilder: It is stipulated that the fact that goods of the Bayer-Veit-Goldman Company or Paramount Company, its successor, which were processed by Imhoff-Berg and delivered by Imhoff-Berg to the place of business of the Bayer-Veit-Goldman Company or its successor, the Paramount, at blank address in New York City, did not operate to divest, to avoid or to divest Mill Factors Corporation of any lien that said corporation may have had— 10

Mr. Evans: I think you are getting in something there that is not consented to at all.

Mr. Bilder: You better dictate that. 20  
(Discussion off the record.)

Mr. Evans: That when goods of the Bayer-Veit or Paramount Corporation had been processed by the defendant and were delivered by the defendant to the place of business of the Bayer-Veit-Goldman or its successor, Paramount Fabrics Corporation, at 249 West 38th street, New York City—it is stipulated that when the goods were delivered by the defendant, whatever goods they may have been, they were delivered to the Paramount Fabrics Corporation at its address in New York City, at which place of business, however, the Mill Factors Corporation had actual control over the goods so as to comply with the New York statute dealing with liens, section 45 of the personal property law of the State of New York, which is admitted in evidence. With the further understanding that the New York lien law 30 4.)

*Milton G. Baum, recalled, direct.*

and the compliance with it does not in any wise affect the goods in controversy—does not in any way affect the alleged liens of either party hereto to the goods in controversy.

10

MILTON G. BAUM, recalled.

*Direct examination by Mr. Bilder.*

Q Mr. Baum, did you have that statement of the account of the Mill Factors? A No, it is over there somewhere. You have it in the other papers. I haven't got it here.

20

Q Mr. Baum, Exhibit P. 48, can you tell me what advances of moneys were made by Mill Factors Corporation to the Paramount Fabrics Corporation or Bayer-Veit-Goldman, whichever it was, or for the account of one or the other of those corporations on the dates which I shall mention.

The Court: Now what are we going to prove?

30

Mr. Bilder: Reliance upon these acknowledgements, with a future creation of an estoppel.

The Court: Creation of an estoppel of what kind?

40

Mr. Bilder: We made advances of moneys relying on these acknowledgments by which on their face the defendant agreed to their holding goods subject to our order and for our account, and we advanced moneys to the Paramount.

*Milton G. Baum, recalled, direct.*

Mr. Evans: The account speaks for itself as to the dates that the advances were made.

(Discussion.)

The Court: You may argue it, but I do not think he has to testify to it.

Q Mr. Baum, referring to Exhibit P. 4, can you say what date they came back in a signed state? A No. 10

Q These yellow sheets all come back by mail?

A All come back by mail.

Q Did you have any system of following up if you did not get them back promptly? A Yes.

Q What was that system? A One of the clerks follows it up in a few days if we do not get the receipt back, we send out a duplicate. That is the reason on that particular one there are two receipts. We did not have this one back promptly, so they sent a duplicate. That has a printed form there which states that, and this is attached to the letter. 20

Q In other words, you would see to it that all these yellow sheets got back within a couple of days after you sent them out? A Yes, within a reasonable time.

Q I am asking you, within a couple of days or— A Within a couple of days. 30

Mr. Evans: I object to it as leading.

The Court: There is no use of asking it again.

Q You say you had a system of following up these yellow sheets after they went out? A Yes.

Q Was there any system or practice including the following up within any particular time? A 40

*Milton G. Baum, recalled, direct.*

Well, they should come back within a few days of sending them out.

Q Now, is there anything on the yellow sheets which would indicate the date on which they were sent out? Are the yellow sheets dated?

10 A The yellow sheets are dated. This is the date this one was sent out, April 25.

Q Is there any connection between the date on the yellow sheet and the date it was sent out by Mill Factors to Imhoff-Berg? A The date on the yellow sheet was the date on which it was mailed to Imhoff-Berg.

Q That would be true of each of these yellow sheets that are in evidence? A On the original slip, the one not apparently torn off from the letter portion.

20 Q This yellow slip which is Exhibit P. 4, where was that filled out? A That was filled out in our office.

Q Well, there is a date on there? A That date corresponds to the date of the green ticket.

Q What relation was there between the date on each of these yellow tickets or yellow sheets and the date of the mailing of those yellow sheets with the green sheets by Mill Factors to Imhoff-Berg?

30 Mr. Evans: I object to that as quite a complicated question, and on the ground it is confusing, and on the further ground the witness has already stated what this date means on the yellow sheet. He stated that the date on the yellow sheet indicated the date that this yellow sheet was sent to Imhoff-Berg, and he has testified to it.

40 Mr. Bilder: I have not heard him say that.

*Milton G. Baum, recalled, direct.*

The Court: He just said so.

(Previous answer repeated by the stenographer as follows:)

“A The date on the yellow sheet was the date on which it was mailed to Imhoff-Berg.”

10

Q That is all.

(Adjourned to two o'clock P. M.)

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AFTERNOON SESSION.

MILTON G. BAUM, resumed.

20

*Further direct examination by Mr. Bilder.*

Q Mr. Baum, have you made a calculation of the market value of the goods in controversy here based upon the testimony as to value given by Mr. Veit? A I have.

Mr. Evans: I object to it.

The Court: He is only making a calculation. I was going to suggest that you calculate it.

30

Mr. Bilder: Yes. I want him to tell what his amount is.

Q What have you based your calculation upon so far as the yardage and character of the goods is concerned? A Upon the goods that we replenished in April, 1928.

Q I mean, upon what record of the character and piece yardages and qualities have you based

40

*Milton G. Baum, recalled, direct.*

your calculation? Have you anything before you that you employed? A I have.

Q You produce some sheets bearing the caption "Imhoff-Berg Silk Dyeing Company."

10 Mr. Bilder: Mr. Evans, will you admit that shows what the controversy is?

Mr. Evans: Is it 105 pieces here?

The Witness: 105 pieces.

Mr. Evans: I guess we can rely on Mr. Bilder.

Q You say you relied upon this sheet? A Together with the other records. This sheet together with the other records.

20 Mr. Bilder: I offer it in evidence.

(Paper marked Exhibit P. 56.)

The Court: Did you and Mr. Evans agree upon the figures?

Mr. Bilder: It will take me five minutes to reach the result.

30 Q Does the goods mentioned and described in this sheet also correspond with the inventory, Imhoff and Berg inventory, accompanying Exhibit P. 54? A Yes, it does.

Q Does that also correspond with the green sheets that you have been testifying about and which relate to the goods in controversy? A Yes.

40 Q Now, will you give us your calculation of the sum total market value based upon the values testified to by Mr. Veit? A Well, the value as of December, 1927, is \$6,362.57, and the value as of April, 1928, is \$6,043.16.

*Milton G. Baum, recalled, direct.*

The Court: Now, let me ask you: I notice in the testimony the value given is as of December, '27, and April, '28. What is the significance of those two dates?

Mr. Bilder: In December a demand was made by us by letter which was marked in evidence for a delivery of the goods, and the demand was responded to by the letter signed by Mr. Meadendorf refusing to deliver. The demand was November 18 and the refusal was December 6, 1927. 10

The Court: You say now you are entitled to the value as of what date?

Mr. Bilder: I have two dates in the alternative, either the date that our demand was made and refused in the letter of December 6, or if that be considered not binding, then in April, when I started our suit. 20

The Court: I do not suppose I can give two dates. What is the law?

Mr. Bilder: The date of the caption—the date on which the goods were wrongfully withheld.

The Court: The date of the replevin?

Mr. Bilder: Yes, the date of the replevin is April. 30

Mr. Evans: Nothing in the pleadings about December.

The Court: All right; I will confine the testimony, the calculation as to value, to the date of the replevin on April 5, or a few days later, I suppose, if they were rebonded.

Mr. Bilder: In April the value was \$6,043.16. 40

*Milton G. Baum, recalled, direct.*

The Court: The notice from the defendant to the sheriff has no date on it. I cannot read the sheriff's stamp. What do you say, Mr. Evans? What is the date?

10 Mr. Evans: I suppose it would be the date of the writ or the date of the rebond, which would be within twenty-four hours afterwards.

The Court: I suppose it would be about April 7 or 8. The date when the sheriff received this notice is marked here, but I cannot make it out.

Mr. Evans: I think it would probably be about the 7th, because it would be within twenty-four hours after they were rebonded.

20 Q What is the balance of money that was owing, if any was owing, by Paramount Fabrics Corporation to the plaintiff in this action from and after April 1 of 1928? A \$10,993.77.

Q Is that amount still owing? A No, not quite that amount.

Q What amount is still owing? A \$8,153.62, plus interest from May 31.

30 Q Now, Mr. Baum, did you have anything to do with the making of advances of moneys by the plaintiff to the Paramount? A Yes.

Q What connection did you have with that? A I kept perpetual inventories, and when we would get a request from the Paramount Fabrics Corporation I would tell the firm the inventory on hand, and if they owed us any money, the amount they owed us.

40 Q What would that inventory be made up of? A That inventory would be made up of all goods on their premises or at the dyers.

*Milton G. Baum, recalled, direct.*

Q By premises, do you mean their premises?

A On the premises of the Paramount Fabrics Corporation.

Q Where? A On 38th street.

Q What city? A New York City.

Q In addition to that, goods located where else? A All goods located at any dyers. 10

Q Would that include Imhoff-Berg? A Including Imhoff-Berg.

Q What relation was there between that inventory that you kept of goods both of Paramount, both at the dyers and on the premises in 38th street, and advances made? A I don't understand.

Q What relation was there between the goods on hand of the Paramount of which you kept an inventory and any on hand at the dyers and at the Paramount premises on 38th street, and the making of advances? A We made no distinction of where the goods may be; that is, whether they were at 38th street or at dyers. 20

Q Made no distinction as to what? A We kept track of all the goods, whether they were on the premises of Paramount Fabrics or at the dyers.

Q What connection was there between that inventory that you kept and the making of advances? A Well, our advances were based on a complete inventory. 30

Q Based in what way? A Based on the goods on the premises of Paramount Fabrics or at the dyers?

Q In what way? The jury wants to know what you mean by based? A On the value of the merchandise.

Q On the value of the merchandise. What relation was there between advances made by 40

*Milton G. Baum, recalled, direct.*

Mill Factors to Paramount and the inventory on hand? What connection was there? This jury is not in the factor's business. A We operate under an agreement, and we agreed—

The Court: He means, what proportion?

10 A Well, it varied at different times.

Q I was not even asking as to proportion. I only want to know what on earth the connection was between the inventory of goods which you kept of the Paramount, whether on hand at the Paramount premises on 38th street or in the dyers, and the making of advances. Was there any connection on earth between those two? A We advance on both goods at the Paramount Fabrics and at the dyers; there was no difference.

20 Q What do you mean by "advance on"? The jury don't know what advance on means. A We advance on the value of the merchandise on the premises of the Paramount Fabrics and the goods at the dyers.

Q Did you take account of the value of the goods on hand at the dyers and at the premises of Paramount in connection with making advances? A We did.

30 Mr. Evans: I object to that as leading.

Mr. Bilder: I certainly exhausted the witness, your Honor.

The Court: All right. Anything else?

Q Now, what would you do, if anything, when these yellow sheets came in each time from the Imhoff-Berg with signatures thereon? A We would increase—

40 Q What would you do? What would you do when you got an acknowledgment in from the

*Milton G. Baum, recalled, cross.*

Imhoff-Berg, the yellow acknowledgment I put in evidence here? What would you do? A We would get—

Mr. Evans: Ask him what he would do.

Q Would you do anything with reference to inventory? A We would increase the inventory by the value of the goods as represented by the acknowledgment that we got from the dyer. 10

Q You mean you would add those goods to the inventory on hand? A Yes.

Q Would you acquaint any executive of the firm with that inventory as so increased from time to time? A Yes, from time to time or whenever they asked it.

Q Whenever who asked it? A Whenever the executives of the concern would ask for the status of the Paramount Fabrics account we would give them the amount of merchandise that we had in inventory and the amount of money advanced against that. 20

Q You also kept track of the advances made to Paramount as against that inventory? A Yes.

Q Was that done during the period from January 1, 1927, right down to date? A Yes. 30

Q The date of the last acknowledgment put in evidence from Imhoff-Berg? A Yes.

*Cross examination by Mr. Evans.*

Q Under your contract advancements on goods and inventory amounted to 66 2/3 per cent., did it not, of the valuation of the goods?

Mr. Bilder: I object. The contract speaks for itself. 40

*Milton G. Baum, recalled, cross.*

The Court: I will permit it.

Q I am asking him if he followed the contract. A I followed the contract.

Q Did your firm follow the contract? A Yes.

10 Q So that at all times you had a liberal margin, did you not, between the amount of your advancement and the value of those goods which you held? A Not necessarily.

Q Well, do you say you advanced not in excess of  $66 \frac{2}{3}$  of the value of the goods?

Mr. Bilder: I object.

20 Q In accordance with the terms of the contract; is that right?

Mr. Bilder: I object to counsel imputing a definite statement to the witness which I have not heard made.

The Court: He asked him if he said so.  
(Question repeated by the stenographer.)

A No, it is not right.

30 Q Well, what is right? A Well, we may have advanced less than  $66 \frac{2}{3}$  per cent., and we may have advanced more.

Q Well, if you advanced more you advanced more than your contract called for, did you not? A No; the contract provides for any amount we may advance.

Q How much were you obligated to advance, do you know? A As much as we wanted to.

40 Q Does not the contract provide  $66 \frac{2}{3}$  per cent.? A I don't think—it has other clauses in there. It also says that the amount of—

*Milton G. Baum, recalled, cross.*

Q Does it provide anything about 66 2/3 per cent.?

Mr. Bilder: Let him answer.

The Court: The contract speaks for itself about that.

Mr. Evans: I want to bring out whether he was observing the contract. 10

The Court: You are asking him about the contract. The contract speaks for itself.

Q During this period you had goods in the premises of the Paramount, did you not? A We did.

Q And sometimes those goods amounted to a considerable sum of money in value? A Yes.

Q And when you advanced money there was nothing that required you to advance money to the Paramount on account of goods that were in the dyer's hands, was there? A Yes. 20

Q What was it? A What was it? On all goods consigned to us by Paramount Fabrics we were called upon to advance.

Q Goods in the hands of a dyer were not consigned to you, were they? A Yes, they were.

Q What do you mean by the word "consignment"? A Any goods that they—or any merchandise to which they pass title to us. 30

Q That is what you mean by consignment? A Yes.

Q You were not the absolute owners of these goods, were you? A No.

Q You did not actually have title to the goods? A Had title to them as far as our advances were concerned.

Q Well, did you own those goods? A No. 40

*Barnett Blumenthal, recalled, direct.*

The Court: Aren't we getting into legal questions now which we are not bound either way by his opinion? We will deal with them when we come to them. I do not think there is any use of arguing with this man as to what his views are.

10

*Re-direct examination by Mr. Bilder.*

Q When you speak of goods—being obligated to advance on goods consigned to you, do you have any reference to any writing, any instrument, which you have in mind? A I have reference to the consignment sheets.

Q The consignment sheets marked in evidence? A Yes, sir.

20

Q Those large white sheets? A Yes.

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BARNETT BLUMENTHAL, recalled.

*Direct examination by Mr. Bilder.*

Q Mr. Blumenthal, you were bookkeeper for Paramount Fabrics Corporation in 1927? A Yes, sir.

30

Q Were you familiar with the dealings of the Paramount with Mill Factors? A Yes.

Q Did you have anything to do with the obtaining of moneys, so-called advances, by the Paramount from Mill Factors? A Yes, sometimes at the bidding of the officers.

Q Do you know anything about it? A Yes.

40

Q Did you have anything to do with the keeping of a record of goods on hand at the Paramount, so-called Paramount place of business on

*Barnett Blumenthal, recalled, direct.*

38th street, New York City, during the period of these dealings with Mill Factors? A Yes.

Q Did you also have anything to do with keeping records of goods of Paramount on hand at dyers during that period? A Yes, sir.

Q Do you know what relation there was between any advances made by Mill Factors during that period and that record of goods on hand either at Paramount or at the dyers? A We took them both in consideration in figuring our advances which we were entitled to. 10

Q Did you keep a so-called inventory of goods? A Yes.

Q What did that inventory include as regards location of goods? A Goods on hand at our store and at various dyers.

Q Did it also include goods on hand at Imhoff-Berg during 1926, 1927? A Yes. 20

Q Was account taken of that inventory so made up in the procuring of advances by Mill Factors?

Mr. Evans: I object. That is something for Mill Factors to take into consideration.

The Court: What are you trying to prove, Mr. Bilder?

Mr. Bilder: Why, we made advances on goods in the hands of the dyers. 30

The Court: You may ask if they made any advances on these goods.

Q Well, were advances made by Mill Factors on goods in Imhoff-Berg's hands? A Yes, sir.

Q From time to time during that period? A Yes, sir.

Q That is, did you distinguish in your inventory—I mean, did the Paramount Company 40

*Barnett Blumenthal, recalled, cross.*

give notice— In taking inventory of goods upon which it was to obtain advances from Mill Factors was any distinction made between goods which were on hand at the premises of the Paramount or on hand at the Imhoff-Berg place? A No, sir; they were both taken into consideration.

10 Q That is all.

*Cross examination by Mr. Evans.*

Q Have you got the inventories on hand upon which these advances were made? A I have not, sir.

Q They were in writing, were they? A Yes, sir.

Q Who kept them? A I did.

20 Q Where are they? A They may be at the Paramount's offices.

Mr. Evans: I object, then, to this talking about what advances were made on the inventories, unless the inventories be produced themselves, and I therefore move to strike it out.

The Court: I do not think he was asked anything about the contents.

30 Mr. Bilder: No.

Q Do you know of any particular advance that was made against any particular lot of goods that we are holding today, for example? A That would all be taken into consideration.

Q They would? A Yes, sir.

40 Q Can you point to any specific advance that was made on the basis of those goods that we are holding? A Every advance was made on the basis of those goods, or taken in, as the perpetual inventory.

*Barnett Blumenthal, recalled, re-direct.*

Q Have you any documentary evidence to show that? A No, sir.

Q You don't know, in point of fact—where is that account? Where is that account that you had numbered? I noticed here on December 31, 1926, a balance due from Paramount to Mill Factors of \$57,225.54. Do you know what particular goods were pledged against that unpaid balance? A All the goods that we had. 10

Q What were they, do you know? A Goods in our premises and also at various dyers.

Q At that time they did not include any of the goods that are in the possession of Imhoff-Berg today, did they? A They included every piece of merchandise we had.

Q Well, did you know that Imhoff-Berg received all of the goods which it holds today after December 31, 1926? A I do not, but on the inventory. 20

Q Well, if you did know that, would you change your testimony with regard to these advances? A I would.

Q That is all.

*Re-direct examination by Mr. Bilder.*

Q Well, now, what do you mean by saying you would change your testimony with reference to these advances if you knew that these goods which are here in controversy—which are here in controversy were not in the hands of Imhoff-Berg at all, as Mr. Evans says, after December 31, 1926? A When I said I would change my testimony I meant that amount, \$57,000, or whatever it was, it was for advances on all goods that were on the premises at Paramount and also at various dyers on December 31, 1926. 30 40

*Henry Meadendorf, recalled.*

Q How about advances made thereafter? A We would get additional advances on additional merchandise shipped thereafter.

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10 HENRY MEADENDORF, recalled.

The Court: What is the object now?

Mr. Bilder: I want to ask Mr. Meadendorf whether or not there is any money owing to Imhoff-Berg for work done on these goods here in controversy, because it has been assumed all along—the matter is confused.

20 The Court: I do not think it makes any difference.

Mr. Bilder: Under my theory of the case it would make a difference.

The Court: What theory?

Mr. Bilder: Common law lien.

The Court: You are not standing on a common law lien. It is a statutory lien.

Mr. Bilder: The common law lien would trouble me, if there were one.

30 The Court: The statutory lien is what you are standing on.

Mr. Bilder: I would like it to appear in the case what I understand to be the fact, that there was no money owing for work done on these goods.

The Court: I do not think it would make any difference.

The Witness: There is.

40 Mr. Bilder: May I not have that in the case?

*Henry Meadendorf, recalled.*

The Court: First, on what theory would it be in the case?

Mr. Bilder: As I say, on the theory that our claim to a lien is not affected or embarrassed by any money owing for work done on these goods to this defendant.

The Court: I don't understand. You mean your lien would be superior to the defendant's lien, if they have one, because you have a common law lien? 10

Mr. Bilder: No, our lien is contractual in character, and theirs—the one they have been talking about, although their case is not in yet; I don't even know they are committed to a statutory lien.

Mr. Evans: We are committed by virtue of our pleadings to a statutory lien. 20

The Court: That is all they are claiming, a statutory lien, so why go into the other question?

Mr. Bilder: I would like the record to show that there is no money owing for work done on these specific goods.

The Court: What difference would it make, if they rely on their statutory lien? If they have no claim under any common law lien, that would make no difference. 30

Mr. Bilder: I think they would be entitled to a verdict even if they did not claim it, if a lien existed.

The Court: Mr. Evans says he disclaims any common law lien.

Mr. Bilder: Why doesn't he also state for the record that there was no work done on these goods?

The Court: Why go on? 40

*Henry Meadendorf, recalled, direct.*

Mr. Bilder: Because it is a fact.

The Court: What difference does it make?

Mr. Bilder: I conceive it makes a difference in my case.

The Court: If that is the purpose of it,  
10 I will overrule the offer.

Mr. Bilder: With the Court's permission  
I would like to ask him a question with refer-  
ence to the length of his employment.

The Court: Yes.

*Direct examination by Mr. Bilder.*

Q How long have you been in the employ of  
the defendant, Mr. Meadendorf? A Three years  
and a half.

20 Q Three years and a half. Are you not known  
as cashier?

Mr. Evans: I object to that. He has  
covered that on direct examination.

The Court: I will permit it.

A I am known as a bookkeeper.

Q Are you known as cashier, also? A Why,  
I handled the cash.

30 Q Please answer the question. A No, I am  
not known as a cashier; I am known as a book-  
keeper.

Q Are you in charge of the office where all  
of the books are kept? A No, not all of the  
books.

Q Are you in charge of an office? A I am in  
charge of the office.

Q The office. I see. Does ordinary mail that  
comes into that office come to your attention? A  
40 No, sir.

*Henry Meadendorf, recalled, direct.*

Q Do you conduct correspondence with persons dealing with the company? A Only regarding bills owing us or that we owe.

Q How about record of merchandise on your hands? A No correspondence that I handle at all pertaining to that.

Q Listen to my question. Do you write letters or receive letters for the company with reference to other matters than bills owing by you or bills owing to you? A No, sir, I do not, excepting you say other matters—insurance. 10

Q Well, name them. A Accidents, letters pertaining—

Q Go ahead. Accidents and insurance? A Accidents, the letters pertaining.

Q What else? A Well, supplies bought, contracts bought, chemicals bought. 20

Q Go ahead. A Anything pertaining to the financial end.

Q If someone wanted their goods, some customer wanted his goods, and owed you money, would you have to deal with that customer before he could get the goods? A Do you want me to explain the process?

Q No; you answer the question, please.

Mr. Evans: Yes. 30

Q Do not look at Mr. Evans. He wants you to explain, but I do not.

Mr. Evans: We want a full explanation.

The Court: He can answer.

(Question repeated by the stenographer.)

A Why, of course.

Q That is all. 40

*Henry Meadendorf, recalled, cross.*

*Cross examination by Mr. Evans.*

Q Well, would you have any authority, Mr. Meadendorf, to release any liens that the company might have? A No.

10 Mr. Bilder: I object.

A No authority—

The Court: I will permit it.

A No authority whatever.

Q Or waive any liens?

Mr. Bilder: I object.

20 A None whatever.

The Court: I will permit it.

Mr. Bilder: On the ground that the witness is being asked a question of law, embodying a legal term with which the witness is not shown to be familiar.

The Court: All right. Go ahead. Call the next.

30 PLAINTIFF RESTS.

Mr. Evans: If your Honor please, the defendant's evidence is really all in at the present time.

The Court: I believe so.

Mr. Evans: It was brought out in one way or another. Therefore, the defendant rests.

DEFENDANT RESTS.

40

*Defendant's Motion to Direct a Verdict.*DEFENDANT'S MOTION TO DIRECT A  
VERDICT.

Mr. Bilder: I move, your Honor, to direct a verdict in favor of the plaintiff and against the defendant.

Mr. Evans: Just a minute. I don't know 10  
whose turn it is to move for a direction.

The Court: You may come first.

Mr. Evans: Now, then, if your Honor please, the defendant would like to move for a directed verdict in this case upon the following grounds:

First of all, under the statute which is properly called the Dyers' Lien Act, the defendant is given a paramount right to the particular goods in question—a paramount lien to the particular goods in question. My second ground is that the burden is on the plaintiff in this case to show that he has some right to these goods which is paramount to ours. 20

There is no contention of this fact, that when these goods were received by the silk dyer in each particular lot, they were not subject to any lien or right whatsoever of the plaintiff. His right depended from the evidence upon certain slips which were called consignment memoranda, and the undisputed evidence is that the goods were first delivered in each case to the dyer and then later on, after the processor or the owner had been advised of the fact that the shipment had been made, he thereupon or they thereupon—Paramount made out a so-called consignment slip, which is relied upon by the plaintiff to give them some right or other in these goods. So that we therefore come to the general rule that whatever is prior in time is paramount in right. The secondary lien of the dyer being prior in time to 40

*Defendant's Motion to Direct a Verdict.*

any right that Mill Factors obtained in each particular case, is paramount in law to the right of the factor.

10 Third. My next ground is based upon the fact that the contract and the consignment slips, so-called, of the factor do not on their face cover the goods in question. The lien of the factor is defined by the 14th paragraph of the contract with Paramount, which was dated February 27, 1926, or, rather, the contract assumed by Paramount, and that contract provides in paragraph 14, that the factor shall at all times have control and possession of such consigned goods, and in-  
20 sofar as consigned goods may have been previously referred to in this contract they referred to goods that were delivered to the premises of the Paramount in New York City. (Reads paragraphs 9 and 14.)

Fourth. My next point is that the agreement of February 27, 1926, if it means anything, is a chattel mortgage. (Citing *Hastings v. Fithian*, 71 Law, 311.)

30 So, I say, no matter how strong the plaintiff's lien may be, or when it was acquired, it can make no difference in this case, because it is void for not having the necessary recording and affidavit attached, and there has been no change in possession to make it valid as against creditors.

Of course, I have already mentioned the fact that consignment is to be taken in its real significance and not because the parties say so, and in delivering these goods to the dyer they were not at the same time delivering them to the factor. We had independent receipts.

40 But there is a third point I desire to make about these consignment slips, and that is, taking

*Defendant's Motion to Direct a Verdict.*

them on their face value and reading them and giving them the ordinary interpretation, there is nothing on these consignment slips that indicates that there is any transfer of title by virtue of this instrument, or any transfer of any right whatsoever. It simply is an advice that the goods have been shipped; in fact, it says so. It says, "Ship to the dyer" in each particular case, and there is nothing there that transfers any right. Now, I do not think that the plaintiff can read his own interpretation into an instrument of this sort. It is to be considered by your Honor in accordance with law. I cannot see any transfer of any interest whatsoever, unless you read something into the word "consigned" which merely means send, that does not exist. 10

I would like to read this: "Dated October 1, 1926, case number blank, consignment number 320. The goods described below are hereby sent to Mill Factors Corporation to be held by them subject to their lien for advances due less commissions, and are to be disposed of in accordance with our agreement with them." Total ten pieces, description, quality, et cetera, of the goods follows: 20

Now, then, there is no word there that transfers any title to Mill Factors or any interest whatsoever, but it merely states that the goods are on their way, so to speak, they have been shipped to this particular dyer, and they are going forward, and they are really to be held in accordance with the contract that has been previously entered into. They do not create any new lien or any new pledge. 30

Now, there is evidence in this case to the effect that at the same time as these consignment slips were sent out by Paramount to Imhoff-Berg— 40

*Defendant's Motion to Direct a Verdict.*

by the way, before I pass this, I want to draw your Honor's attention to the fact that this nor any news of it ever reached Imhoff-Berg, that the memorandum slips never reached Imhoff-Berg, or any advices with regard to them.

10 The Court: I think the testimony was that the only thing that was sent to Imhoff-Berg were the green slips and the yellow slips.

Mr. Evans: Prior to that the pink slips were sent by the manufacturer, by the same person with whom these consignment slips originated. Now, I would like to address myself for the moment to these green slips, so-called, and the receipt that is sent in return. I do not see how these two documents, the green and yellow papers, created any new lien. There is nothing  
20 in the green slip or yellow slips whereby our lien was waived. This document comes in sometime later, and does not strip us of those rights.

Of course, there is the further point with regard to that, that there is no proof that the agent had any right to waive any lien, even if it were argued that it did take the lien away.

There is no evidence in this case that there was any request on the part of the Paramount or any information given us by the Paramount at  
30 the time we received those goods or prior thereto that Mill Factors had any particular right in the goods.

(Discussion.)

Mr. Evans: I want to make the further point that there is no evidence that we even knew about this consignment agreement, the original one of February, 1926.

40 The Court: The thing which has been running through my mind, which you have not touched on

*Defendant's Motion to Direct a Verdict.*

yet, is as to the comparative merits of the respective liens in New York and in New Jersey. You can talk upon that.

(Mr. Bilder argues in reply.)

The Court: I do not understand that there is any evidence on the part of the plaintiff undertaking to show any change in title. You stated the title still remained in the Paramount. 10

Mr. Bilder: Yes. We have a pledge, and not a transfer of title, as in the Fithian case. No change of title. \* \* \*

Mr. Bilder: My second point is that this very same course of conduct constituted an estoppel when followed, as it in fact was, by a reliance thereon and an acting thereon by the plaintiff

I contend that there was a contract of bailment between the plaintiff and the defendant. If the defendant is plaintiff's bailee by virtue of a contract of bailment, then the defendant is estopped as bailee to assert a contrary agreement. A bailee cannot assert a hostile title. 20

(Adjourned to February 8, 1929, at 10 A. M.)

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Paterson, N. J., February 8, 1929. 30

(Trial of the cause resumed at 10 A. M.)

Mr. Bilder: If the Court please, before proceeding with the argument on the motion to direct a verdict, I would like to present this situation to your Honor. I did not know yesterday or rather it was not clear in my mind, or I was under the impression that the defendant had not put in any testimony nor had any testimony been adduced as to when the lien accrued which de- 40

*Defendant's Motion to Direct a Verdict.*

fendant claims here, or, in other words, when the work was done for which it claims the lien. Now, I had the stenographer read me his testimony, and it says that Meadendorf swears that this bill of \$1,500 was owing since January. As a matter of fact, that cannot be true.

10 The Court: Since April, 1927. First he said April, 1926, and then changed it to April, '27.

Mr. Bilder: If that is so, then my point has no place. It might not be out of order, while my mind is on it, to say in that connection this: that much of these goods as might appear from an inspection of the documents in evidence—much if not the greater part of the goods here in controversy—came into the hands of the defendant and were acknowledged to us on these yellow  
20 sheets, accompanied by the green sheets, before that date which your Honor has in his notes.

The Court: I was going to ask you whether, to make it concrete, you were arguing on the question of estoppel, which, of course, means that pursuant to certain conduct of the defendant the plaintiff did certain things to his detriment. Now let us get that in concrete form. You say according to what conduct? What did the defendant do?

30 Mr. Bilder: The conduct on the part of the defendant was the sending of these written acknowledgments.

The Court: When?

Mr. Bilder: The dates?

The Court: Yes; I want to know which ones you are relying on and what the plaintiff did to his detriment after that date. I want to see what the facts are.

*Defendant's Motion to Direct a Verdict.*

Mr. Bilder: Here is an acknowledgment of March 29, 1927, acknowledgment, Exhibit P. 1, March 29, 1927. Subsequent to March 29, 1927, there were the following advances made by plaintiff to Paramount: 31st, \$12.01; 31st, \$18,846.42; 31st, \$5,619.68; April 15, \$6,290; \$60 00; 61 cents; \$126.72; \$3,341.59; 50 cents; \$1,000; \$764.50; \$202.83; \$509.27; \$25; \$1.05; \$46.17; \$536.82; \$14.98; \$189.30; \$307.32; \$9.20; \$4.02; \$521.34; \$198.05; \$35.16; \$89.93; \$78.13; \$23.50; \$168.77. 10

The Court: I do not think you need read any more. Now, according to the contract they were to advance not exceeding two-thirds, as I recall it. What do the figures show? What disadvantage has the plaintiff been subjected to? What do the figures show about that? What position has the plaintiff been put in to his disadvantage because of those alleged advances or those alleged receipts on the part of the defendant? 20

Mr. Bilder: The net result of it all is there is a balance owing to us of upwards of \$8,000, upon which we relied in part as well as upon other goods that are now here in controversy.

The Court: \$8,000, you say, you have advanced, for which you have how much security?

Mr. Bilder: For which we have nothing else but these goods that are in the case. 30

The Court: Nothing else except that?

Mr. Bilder: Nothing else, excepting the goods in the hands of the dyer, Imhoff-Berg, the defendant.

The Court: All right. Which you say is worth \$6,000?

Mr. Bilder: Yes.

The Court: All right, you may proceed. 40

*Plaintiff's Motion to Direct a Verdict.*

Mr. Bilder: Now, yesterday I left off at a point where I was discussing the various legal situations that I say resulted from these acknowledgments being made by the defendant to the plaintiff, and I enumerated them as follows: I said, one, that that constituted a waiver of lien; 10 second, that that gave rise to estoppel; third, that they constituted a contract of bailment, which precluded the defendant as bailee from setting up and opposing the title or lien as against the plaintiff in this case. By the writing of that letter of December 5th, the defendant, as a matter of law, waived his dyer's lien, because he therein and thereby asserted a different right or different ground for refusal, and that operated as a waiver of a lien.

20 (Discussion.)

The Court: Was there a motion on your behalf for judgment?

Mr. Bilder: Yes; I would make a motion for direction of a verdict in favor of the plaintiff and against the defendant upon the basis of what I have already said in my argument, for the sum of \$6,043.16, besides interest on that sum from the date of the institution of this action, 30 which I think was April 5, 1928. I think I better claim interest from about April 10th, because there was testimony that the replevin bond was put up around the 8th or 9th, and I better claim interest from April 10, 1928.

The Court: Your motion is for no cause of action, of course?

Mr. Evans: Yes.

*Decision of Court.*

## DECISION.

The Court: This is a case on an action brought by Mill Factors Corporation against Imhoff-Berg Silk Dyeing Company, and the facts are not in dispute, as far as the Court can see, and counsel for defendant has made a motion for a direction of a verdict for the defendant, while counsel for the plaintiff has made a motion for a direction of verdict embracing money damages which are not in dispute. 10

The facts, as the Court understands them, appear to be that the plaintiff was a factor for a concern known as the Paramount Silk Company, and that that company was in the business of manufacturing silk and turning it over to the plaintiff under an agreement between the plaintiff and the Paramount Silk Company, whereby the plaintiff made certain advances, and in consideration of such advances had a sort of lien, the exact nature of which may be gained from the contents of the agreement and certain papers which passed from and between the parties. 20

It appears that for some time silk was sent by the Paramount Silk Company, of which the plaintiff was the factor, to the defendant to be dyed. During the latter part of the course of these dealings certain silk had been sent to be dyed by the Paramount Silk Company to the defendant, and that the defendant had declined to give up the possession of this silk to the plaintiff, because the defendant alleged there was due it certain sums, about \$1,500, and that it exercised its right of lien under the statute as a dyer upon these goods. Demand was made upon the defendant by the plaintiff for the possession or return of the goods, which the defendant de- 40

*Decision of Court.*

clined to honor, and the letter of December 6th, as I recall the date, contains a refusal to honor, and alleging as the reason for failure to honor that the goods had been the subject of an attachment issued by some third party.

10 The plaintiff conceded that the title or ownership of these goods remained in Paramount, so that wherever the word title may be referred to in the papers it does not mean the absolute ownership, but it means the equitable title, or whatever it may have been in the law, of the Mill Factors Corporation in and to the goods. The fact remains that whatever title or equitable title or interest or lien which this plaintiff received in the goods, it received in the State of New York. These goods had been delivered to the defendant  
20 company in the County of Passaic, New Jersey. It has not been contended that there was any lien by the plaintiff which had been the subject of record or notice to this defendant, but the plaintiff contends that the lien which it received was good as against this defendant, whether in the State of New York or anywhere else, good everywhere. Of course, the title of the plaintiff cannot be predicated upon a recording or any act similar to that which would give this defendant notice  
30 of the prior lien, if any, of the plaintiff. It seems to the Court that inasmuch as the defendant was ignorant of the terms of a contract which existed between Paramount and Mill Factors, whereby it obtained whatever lien it had, that under those circumstances the lien which the defendant obtained pursuant to the statute was paramount to the lien which the plaintiff had obtained by virtue of its contractual relations with the Paramount Silk Company, known in the law as what are called secret liens, that is, un-  
40

*Decision of Court.*

known to this defendant. But the plaintiff suggests that, conceding that fact to be true, there had been a waiver of the lien, or an estoppel, by virtue of the so-called green papers which had been sent by the plaintiff to the defendant, and the yellow papers by reason of which the defendant had acknowledged receipt of these green papers. I do not think that these green papers or these yellow papers, which were the acknowledgements, constitute either a waiver or an estoppel of the lien of the defendant. An estoppel, of course, means that because of the existence of these papers and the circumstances or the result which must be read into these papers by the plaintiff, constituted circumstances under which the plaintiff changed its position, to its detriment, and that therefore it would be inequitable to permit the defendant to set up this lien. But I cannot see such a result in these papers. There is nothing in the language, in my judgment, which is inconsistent with the maintaining of the lien by the defendant company.

Plaintiff further suggests that because of the bailment between the plaintiff and the defendant, it was likewise inconsistent and improper for the defendant to maintain such a lien. With that contention I cannot agree. The next point raised by the plaintiff relates to this letter of December 6th, whereby he contends that there was a waiver of this lien on the part of the defendant by not setting up this lien of the statute as the reason for its failure to deliver.

I cannot agree that the mere writing of a letter such as that would constitute a waiver of the lien. If there had been subsequent conduct on the part of the defendant which had evidenced that intention, or if the plaintiff, acting

*Decision of Court.*

upon the statement in the letter, had altered his position, or something had occurred to his detriment because of his belief in the acceptance of the statement in the letter, then I am quite convinced there would have been a waiver; but I do not believe that the mere writing of this letter  
10 would have constituted a waiver.

This seems to the Court to dispose of the main points in the case. Counsel have agreed between themselves that this is a case of first impression, that is, that there are no precedents in the State of New Jersey which would guide the Court in its deliberations. The case has been most thoroughly argued by counsel on each side, and all the legal phases have been presented, and the Court ventures to express the hope that whosoever shall find itself aggrieved by the determination of the Court will undertake to have that  
20 error on the part of the Court corrected in the Court of Appeals, and I think it is a duty which counsel owe to their clients and to the public to have some precedent which may guide the Court in the further consideration of cases of this character.

Under the law, as I view it, counsel for defendant is entitled to the direction of a verdict  
30 of no cause, and I so direct you to render such a verdict, and the clerk will take your verdict, and an exception to that may be noted in behalf of Mr. Bilder.

Mr. Bilder: I ask an exception.

*Stipulation re Exhibits.*

10.1129

NEW JERSEY  
COURT OF ERRORS AND APPEALS.

<p><i>Between</i></p> <p>MILL FACTORS CORPORATION, a corporation, <i>Plaintiff-Appellant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>IMHOFF BERG SILK DYEING COMPANY, a corporation, <i>Defendant-Appellee.</i></p>	}	<p><i>On Appeal.</i></p> <p><i>Stipulation.</i></p>	<p>10</p>
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In order to abbreviate and simplify the state of the case in this cause, it is hereby stipulated and agreed by and between the parties hereto as follows: 20

1. That Exhibits P-1, P-2, P-5, P-6, P-7, P-8, P-9, P-18 and P-50 shall not be printed in the state of the case, but that Exhibit P-4 shall be printed in the state of the case with a notation that said Exhibit P-4 shall be taken to represent each of the aforementioned exhibits, and that said Exhibit P-4 shall be referred to by the court whenever mention is made in the testimony of any one of the aforementioned exhibits. 30

2. That Exhibits P-14, P-15, P-16, P-51 and P-52 shall not be printed in the state of the case, but that Exhibit P-12 shall be printed in the state of the case with a notation that said Exhibit P-12 shall be taken to represent each of the aforementioned exhibits, and that said Exhibit P-12 shall be referred to by the court whenever men- 40

*Stipulation re Exhibits.*

tion is made in the testimony of any one of the  
aforementioned exhibits.

10 3. That Exhibits P-27, P-28, P-31, P-32, P-33,  
P-35, P-37, P-38, P-39, P-40, P-41, P-44, P-47,  
P-48 and P-49 shall not be printed in the state of  
the case, but that Exhibit P-24 shall be printed  
in the state of the case with a notation that said  
Exhibit P-24 shall be taken to represent each of  
the aforementioned exhibits, and that said Ex-  
hibit P-24 shall be referred to by the court  
whenever mention is made in the testimony of  
any one of the aforementioned exhibits.

20 4. With reference to Exhibit P-22, only the  
letter contained in said exhibit shall be printed  
in the state of the case with a notation thereon  
that there was attached to said letter and con-  
tained in said exhibit an inventory of merchan-  
dise written in pencil on five separate sheets of  
paper. The said inventory shall not be printed  
in the state of the case.

30 5. With reference to Exhibit P-23, only the  
letter dated April 1, 1927, which is contained in  
said exhibit shall be printed in the state of the  
case, with a notation thereon that there was at-  
tached to the said letter and contained in the  
said exhibit an inventory written upon sixteen  
separate sheets of paper. Said inventory shall  
not be printed in the state of the case.

6. With reference to Exhibit P-54, only the  
letter dated July 2, 1928 which is contained in  
said exhibit shall be printed in the state of the  
case, with a notation thereon that there was at-  
tached to said letter and contained in said exhibit  
an inventory written in pencil on six separate  
sheets of paper. Said inventory shall not be  
printed in the state of the case.

*Stipulation re Exhibits.*

7. With reference to Exhibit P-56, which consists of seven separate invoices identical in form, only one of said invoices, viz. the invoice numbered 38725 shall be printed in the state of the case, with a notation thereon that the said exhibit consisted of said invoice and six other invoices similar in form.

10

8. With reference to Exhibit D-6, only the letter dated April 4, 1927 shall be printed in the state of the case, with a notation thereon that there was attached to said letter and contained in said exhibit two sheets setting forth a list of the merchandise mentioned and referred to in said letter, said list having the caption "Chelsea Silk Co."

9. That Exhibits D-5 and D-7 shall not be printed in the state of the case, but that Exhibit D-8 shall be printed in the state of the case, with a notation that said Exhibit D-8 shall be taken to represent each of the aforementioned exhibits, and that said Exhibit D-8 shall be referred to by the court whenever mention is made in the state of the case of any one of the aforementioned exhibits.

20

It is further stipulated and agreed by and between the parties hereto that Section 45 of the New York Personal Property Law shall be printed in the state of the case.

30

BILDER & BILDER,  
Solicitors of Plaintiff-Appellant.

EVANS, SMITH & EVANS,  
Solicitors of Defendant-Appellee.

40

Exhibit P. 4.

**EXHIBIT P. 4.**

Please Sign and Return Promptly to  
MILL FACTORS CORPORATION  
354 Fourth Avenue  
New York, N. Y.

10

Date 4/22/27

We acknowledge receipt of merchandise as per your memorandum Numbered D7256 totalling 2 pcs. approximately 100 yds. Estimated value 125 and assume responsibility therefore according to conditions stated on said memorandum.

Imhoff-Berg S D Co  
Per W. Tomasulo  
(Sign here)

Paramount Fabrics Lot #530

*(Exhibit P-4 is above <sup>20</sup> this line)  
(The context below this line is not part of any exhibit but is merely explanatory matter pursuant to stipulation re exhibits on pages 185-187 herein)*

The yellow sheets in evidence are in form similar to P-4, which is here set forth, differing only as to date, and describing the different lots of goods as follows:

Exhibit Number	Date	Number of Pieces
P-1 (to which is attached 3 green sheets)	3/29/27	51
P-2	4/12/27	15
P-5 (to which is attached 1 green sheet)	1/28/27	150
P-6	4/24/27	20
P-7 (to which is attached 1 green sheet)	4/26/27	20
P-8 (to which is attached 2 green sheets)	3/4/27	23
P-9 (to which is attached 3 green sheets)	3/4/27	35

40

Exhibit P. 12.

P-18 3/7/27  
(to which is attached 1 green sheet)  
P-50 4/25/27

20  
2

*This is not part of any exhibit but is a continuation of explanatory matter on bottom of preceding page.*

**EXHIBIT P. 12.**

Invoice No. D6636

MILL FACTORS CORPORATION

354 Fourth Avenue  
New York, Mar 28 1927

Name Imhoff Berg Silk Dye Co  
Address Paterson N J

Dear Sirs:

There has been shipped to you, by Paramount  
Fabrics for whom we act as factors, via your  
truck the items mentioned below. Title to these  
goods remains in us, merchandise is at all times  
subject to our order only and must be returned to  
us when finished. You assume full responsibility  
for merchandise until it is returned to us on our  
premises.

MILL FACTORS CORPORATION.

10 *(Exhibit P-12 is below this line)*

20

30

*(Exhibit P-12 is continued on next page)*

40

Exhibit P. 12.

Mill A/C	Stock Number	Mill Number	Yards	Description or Quality	Remarks
	11409	92	57.1	854	
	10987	33750	54.1	Georgette	
	11054	82	55.3		Lot #
	47	25	49.3		526
	411	95	56.2		
10	063	34055	52.4		Value
	65	57	52.1		1200.00
	68	60	53.2		
	69	140	52.4		
	58	050	53.3		
	62	054	52.4		
	61	053	55.1		
	59	051	51		
	60	52	53.1		
	64	56	53.4		
	67	59	51.3		
	18	33856	51.4		

(Above this line is remaining portion of Exhibit P-12)

(The contest below this line is not part of any exhibit, but is merely explanatory matter pursuant to stipulation re exhibits on pp. 185-187 herein)

The green sheets in evidence are in form similar to P-12, which is above set forth, differing only as to date, the means of delivery, and describing the different lots of goods as follows:

Exhibit No.	Date	Means of Delivery Via.	Number of Pieces
P-14	1-25-27	Jos. Berliner Co.	45
P-15	4-22-27	Imhoff Berg truck	2
P-16	2-23-27	Lang & Lewin	20
<del>P-36</del>	<del>4-11-27</del>	<del>Imhoff Berg Truck</del>	<del>15</del>
<del>P-43</del>	<del>4-22-27</del>	<del>Imhoff Berg truck</del>	<del>2</del>
P-51	3-2-27	Franck & Marx	23
P-52	3-2-27	Lang & Lewin	35

*Exhibit P. 22.***EXHIBIT P. 22.**

DR. M. IMHOFF, Pres.

O. BERG, Treas.

IMHOFF-BERG SILK DYEING COMPANY

Main Works: Wood, East Seventh and  
Lowe Streets

Branch: 67-77 Chadwick Street

PATERSON, N. J.

10

**Telephones**

Main Office Sher. 5487-5488

Branch Sher. 6227

New York Office

230 Fifth Avenue

N. Y. Telephone

Ashland 5624

Received Jan 4-1928

No. 32

Jan. 3, 1928.

Mill Factors Corp.,  
354 Fourth Avenue,  
New York, N. Y.

20

Gentlemen:—

We submit herewith, complete inventories of merchandise at our plant for your account, departments Beverly Fabrics Corp., and Paramount Fabrics Corp., as of Dec. 31, 1927.

Very truly yours,

IMHOFF-BERG SILK DYEING CO.,

W. Tomasulo,

W. Tomasulo,

Order Dept.

30

WT:C

(Attached to the above Exhibit is an inventory in pencil written on 5 long sheets.)

40

**New Jersey State Library**

*Exhibit P. 23.***EXHIBIT P. 23.**

DR. M. IMHOFF, Pres.

O. BERG, Treas.

IMHOFF-BERG SILK DYEING COMPANY

Main Works: Wood, East Seventh and  
Lowe Streets10 Branch: 67-77 Chadwick Street  
PATERSON, N. J.Telephones  
Main Office Sher. 5487-5488  
Branch Sher. 6227New York Office  
230 Fifth Avenue  
N. Y. Telephone  
Ashland 5624Received Apr 4-1927  
No. 45

April 1, 1927.

20 Mill Factors Corp., 354 Fourth Avenue,  
New York City.

Gentlemen:

As per your request of the 28th ultimo., we submit herewith complete inventory as of March 31, 1927, of all merchandise we are holding subject to your order, for whom you act as the factor.

Very truly yours,

30 IMHOFF-BERG SILK DYEING CO.,  
Order Dep't.  
W. Tomasulo  
W. Tomasulo

WT\*EB

By E.B.

(Attached to the above Exhibit is an inventory in ink written on 16 long sheets.)

Exhibit P. 26.

**EXHIBIT P. 26.**

Invoice No. D3885  
**MILL FACTORS CORPORATION**  
 354 Fourth Avenue  
 New York, 2/23/1927

Name Imhoff Berg Dye Co 10  
 Address Paterson N J

Dear Sirs:

There has been shipped to you, by Paramount  
 Fabrics for whom we act as factors, via Lang  
 & Lewin the items mentioned below. Title to  
 these goods remains in us, merchandise is at all  
 times subject to our order only and must be  
 returned to us when finished. You assume full  
 responsibility for merchandise until it is re-  
 turned to us on our premises. 20

MILL FACTORS CORPORATION.

Mill A/C	Stock Number	Mill Number	Yards	Description or Quality	Remarks
	11457	34780	59.6	Georgette	
	8	817	60.4		
	9	19	58.2	854	Lot 517
	60	24	60.2		
	1	31	60.2		Value
	2	32	60		1200.00
	3	42	49.4		
	4	43	60.4		
	5	44	59.4		
	6	45	54		
	7	85	40		
	8	905	60.2		
	9	06	60.4		
	70	07	59		
	1	45	58.2		
	2	55	59		
	3	755	60		
	4	56	61.4		
	5	57	60		
	6	54	60		

Dept. O. K.      Checked for Insurance      Entered in Stock Book  
                   Credit Check                              Packed by 40  
 Shipped by.....  
 Package Number.....E.....

Exhibit P 24. — opposite this page →

The white sheets in evidence are in form similar to P-24, which is here set forth, differing only as to date, the mill, and describing the different lots of goods as follows:

Exhibit Number	Date	Mill	Number of Pieces
P-27	2-23-27	Lang & Lewin	20
P-28	2-28-27	Franck-Marx, Inc.	23
P-31	2-28-27	Lang & Lewin	20
P-32	2-28-27	Lang & Lewin	15
P-33	2-26-27	M. Salzberg & Sons	20
P-35	1-19-27	Jos. Berlinger	20
P-37	11-9-27	Culpeper Silk Mills	20
P-38	11-8-27	Culpeper Silk Mills	15
P-39	10-1-26	Culpeper Silk Mills	10
P-40	1-20-27	Lang & Lewin	9
P-41	2-16-27	Franck & Marx	15
P-44	2-23-27	Sun Silk Co.	20
P-47	11-8-27	Standard Broad	12
P-48	11-9-27	Culpeper Silk Mills	20
P-49	2-15-27	Lang & Lewin	20

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(The matter below  
this line is not part  
of any exhibit, but is  
merely explanatory mat-  
ter pursuant to stipu-  
lation on pp 185-187  
herein)

Exhibit P-24

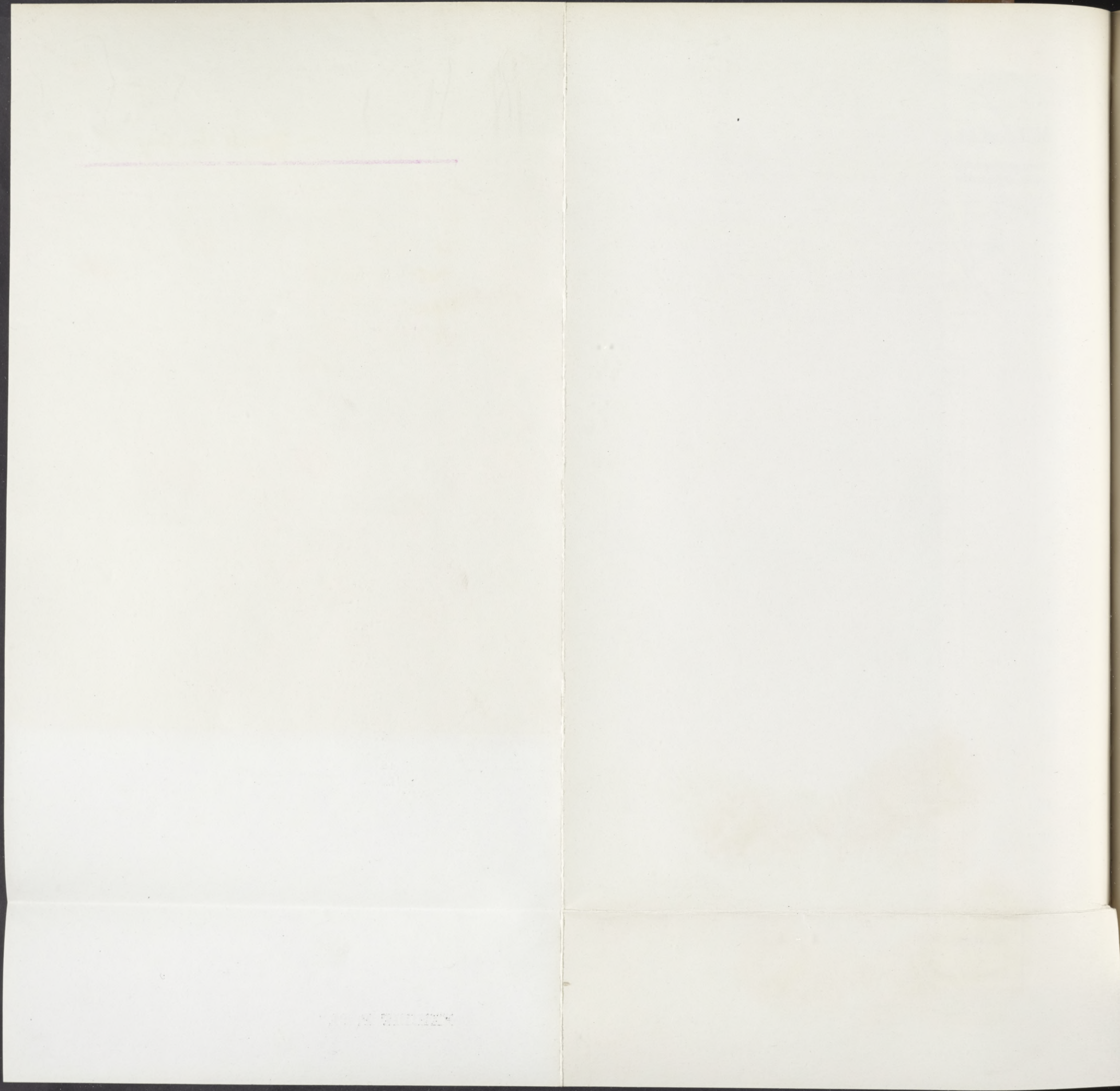
Mill Lany & Lewis Date 1/23/27 Case No. \_\_\_\_\_ Consignment No. 498A

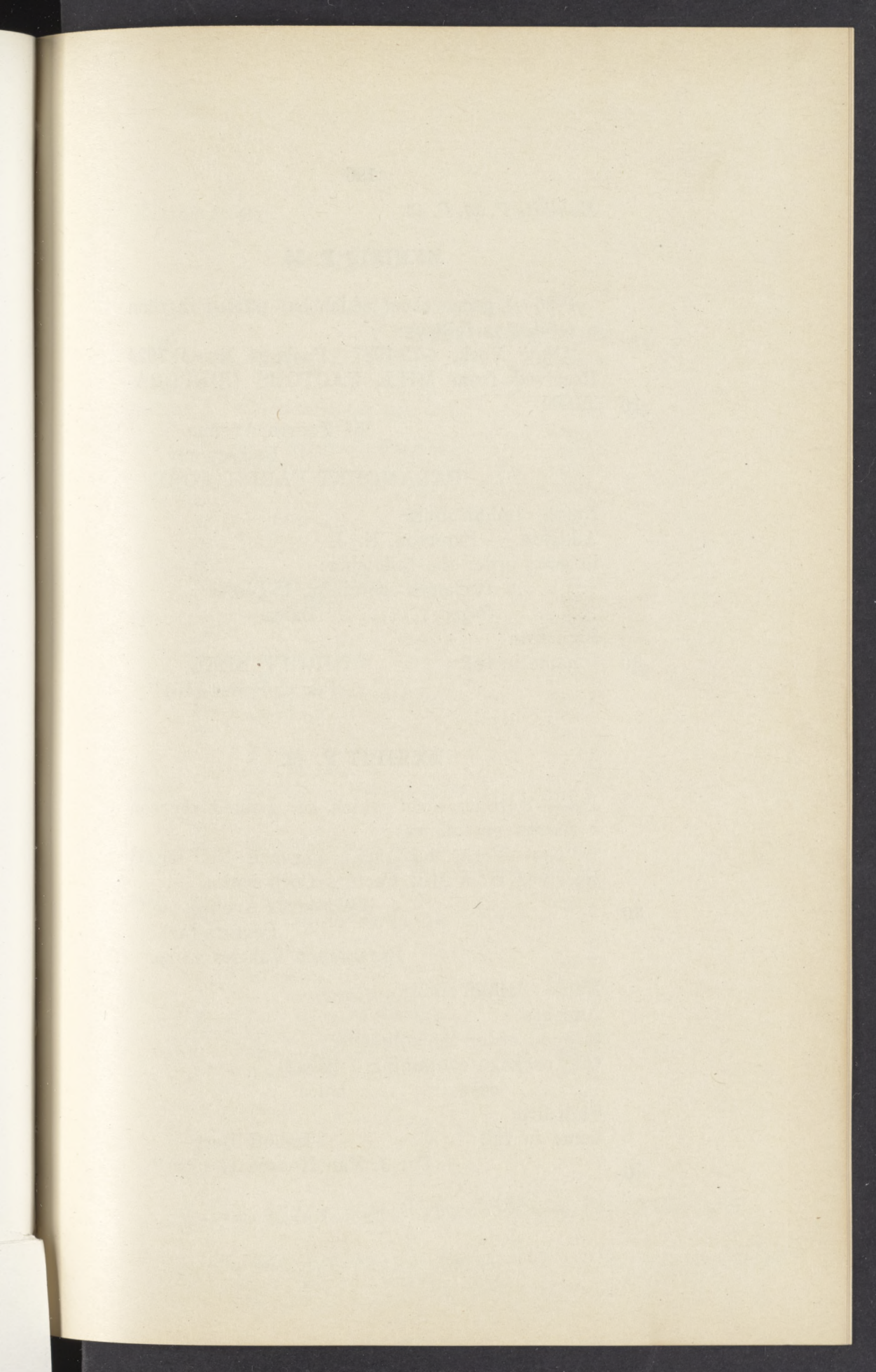
THE GOODS DESCRIBED BELOW ARE HEREBY CONSIGNED TO MILL FACTORS CORPORATION TO BE HELD BY THEM SUBJECT TO THEIR LIEN FOR ADVANCES, OUTLAYS AND COMMISSIONS, AND ARE TO BE DISPOSED OF IN ACCORDANCE WITH OUR AGREEMENT WITH THEM. Total \_\_\_\_\_ Pieces

	Description	Quality	Color	Mill No.	Stock No.	Dyer & Fin.				Greigh Yards	Fin. Yards	Price	Stock June 30	Stock Dec. 31	SALES RECORD
						To	From	To	From						
1	<i>Seamless</i>	<i>5Y</i>	0	✓	50365	✓	11477	18	3/8	60	54	5	100	0	
2			0	✓	469	X	8	"	"	58	51	7		0	
3			0	✓	378	X	9	"	3/8	60	54	"		0	
4			0	✓	87	X	80	"	2	61	55	"		0	
5			0	✓	271	✓	1	"	3/8	60	54	"		0	
6			0	✓	329		2			61				0	
7			0	✓	231		3			60	✓			0	
8			0	✓	415		4			60	✓			0	
9			0	✓	333		5			60	✓			0	
10			0	✓	270		6			61	✓			0	
11			0	✓	286		7			60	✓			0	
12			0	✓	440		8			59	✓			0	
13			0	✓	62		9			60	✓			0	
14			0	✓	382		90			61	✓			0	
15			0	✓	174		1			59	✓			0	
16			0	✓	341		2			60	✓			0	
17			0	✓	80		3			60	✓			0	
18			0	✓	64		4			58	✓			0	
19			0	✓	34730		5			59	✓			0	
20			0	✓	53		6			60	✓			0	

Receiving Number \_\_\_\_\_  
 Checked against receiving sheet \_\_\_\_\_  
 Recorded for advances \_\_\_\_\_  
 FEB 25 1927

Shipped to Jacoboff & Sons Signed Paramount Fabric  
 Total \$ 1200.00  
 By [Signature]





*Exhibits P. 36, P. 43.*

**EXHIBIT P. 36.**

P-36—1 green sheet which has pasted thereon a receipt as follows:

“New York, 4-12-1927 Package No. D.7024  
Received from MILL FACTORS CORPORA-  
10 TION

354 Fourth Avenue  
Factors for  
PARAMOUNT FABRIC CORP.

Name Imhoff Berg  
Address Paterson, N. J.  
in good order the following:

.....Packages containing 15 pieces  
.....Cases.....Bales

Sign firm  
20 name in full IMHOFF BERG  
Per C. Soder (15)”

**EXHIBIT P. 43.**

P-43—1 green sheet which has pasted thereon a receipt as follows:

“New York, 4-22-1927 Package No. D7256  
Received from Mill Factors Corporation

30 354 Fourth Avenue  
Factors for  
Paramount Fabrics Corp.

Name Imhoff Berg  
Address  
in good order the following

One package containing 2 pieces  
.....cases.....bales

Sign firm  
40 name in full Imhoff Berg  
Per J. Van Housen (1 pkg)”

Exhibit P. 45.

## EXHIBIT P. 45.

## PARAMOUNT FABRICS CORPORATION

1926

Dec. 31 To Balance ..... \$7,225.54

1927

January	1	" Correction Disct. Dec.....	2.48	10
	3	" Cash .....	3,500—	
	5	" a/co Rosenzweig-Standard.....	160.31	
	6	" Cash .....	10,000—	
	10	" " .....	12,500—	
	13	" " .....	7,000—	
	19	" " .....	12,000—	
	24	" " .....	5,000—	
	27	" " .....	15,000—	
	31	" Sundry Alles Guar a/ac.....	24.72	
		" Dis Com-Int. ....	5,495.47	
Feb.	4	" Cash .....	20,000—	
	8	" " .....	10,000—	
	18	" a/c Moyses Son.....	3.51	20
	18	" Cash .....	7,000—	
	23	" 3 Bills (M. Salzberg Sons).....	8,193.37	
	24	" Cash .....	4,000—	
	28	" " .....	5,000—	
		" Sunday Alles Guar a/ac.....	3.52	
		" Dis-Com. Int. ....	3,717.31	
March	2	" Bill 2/26 (M Salzberg Sons).....	4,525.59	
	7	" Cash .....	8,000—	
	24	" " .....	1,000—	
	31	" Sdry Alles-Guar a/ac.....	12.01	
		" a/co Rec-H. Rosenzweig.....	18,646.42	
		" Dis-Com-Int. ....	5,619.68	
April	15	" 7 Dye a/co pd.....	6,290—	
	25	" ½ yearly cost Tel Tie Line.....	60—	30
	26	" a/c Levy Schwan.....	.61	
	30	" Sdry Alles-Guar a/c.....	126.72	
		" Dis-Com-Int .....	3,341.59	
May	3	" a/c Crotona Dress.....	—50	
	5	" Fiory & Son Pc Dye Wks.....	1,000—	
	14	" a/c S. Tenenbaum Sons.....	764.50	
	31	" Sdry Alles-Guar a/c.....	202.83	
		" Dis-Com-Int. ....	509.27	
		Forward .....	235,925.95	

40

(The debit side of the account is continued  
on the following page, viz. 198, lines 20 to 38)

Exhibit P. 45.

*(Credit side of acct.)*

	1927			
	Jan	6	By Cash Standard B Silk.....	53.20
		31	" Guar a/cs Rec.....	47,624.25
			" Do Bayer Veit.....	23,511.22
	Feb	28	" Do .....	35,215.66
	Mar.	22	" a/cs. Rec. ....	1,115.97
		31	" Guar a/cs Rec.....	63,084.02
	Apr.	30	" Do .....	39,109.33
10	May	31	" Do .....	4,752.51
	June	30	" Do .....	4,499.65
	July	31	" Do .....	2,211.25
	Aug.	31	" Do .....	1,407.25
	Sept	30	" Do .....	157.51
	Nov.	30	" Do .....	664.34
		30	" Do .....	75.83
			Forward .....	223,481.99

*(Continued on next page lines 12 and 13)*

PARAMOUNT FABRICS CORPORATION

*(Credit side of account - continued from preceding page)*

	1927			
	May	31	To Amount Forward .....	235,925.95
	June	10	" Legal exp.-Serv. S. Tenenbaum.....	25—
		18	" a/c Schwartz & Shapiro.....	1.05
		30	" Sdry Alles-Guar a/cs.....	46.17
			" Dis-Com-Int. ....	536.82
	July	14	" a/c LaRice Dresses.....	14.98
		30	" Sdry Alles-Guar a/c.....	189.30
		31	" Dis-Com-Int. ....	307.32
	Aug.	3	" a/c I. Mittleman.....	—92
		11	" a/c Goldstein Miller.....	4.12
		31	" Sdry Alles-Guar a/c.....	521.34
			" Dis-Com. Int. ....	198.05
	Sept.	10	" a/c Biltwell D. C. Co.....	3.16
30		30	" Dis-Com-Int. ....	89.93
	Oct.	31	" Interest .....	78.13
	Nov.	11	" a/c Goldstein Miller.....	23.50
		30	" Dis-Com. Int. & Stadler H.....	168.77
	Dec.	23	" Com pd B. Blumenthal.....	44.07
		31	" Dis-Com-Int & Stadler.....	579.22
	1928			
	Jan.	31	" Interest .....	56.51
				238,814.31

Exhibit P. 45.

1928

Jan.	31	To Balance .....	10,993.77
May	31	" Interest May Sales.....	3.79
			10,997.56

1928

May	31	To Balance .....	8,153.62
1927			
Nov.	30	By Amount Forward ✓.....	223,481.99
Dec.	31	" Guar a/cs Rec.....	4,338.55
1928			
Jan.	31	By Balance ✓ .....	10,993.77
			238,814.31

1928

May	31	By Guar a/c Rec.....	2,843.94
May	31	By Balance ✓.....	8,153.62
			10,997.56

*net balance of acct  
 credit in favor of  
 Mill Factors Corp.  
 } - continuation of  
 credit side of acct.*

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\_\_\_\_\_   
 Bold face type appears in Red Ink.

*Exhibit P. 46.***EXHIBIT P. 46.**

DANIEL V. VEIT, Pres.      LEWIS M. GOLDMAN, Vice-Pres.  
SEYMOUR BAYER, Secy. & Treas.

**PARAMOUNT FABRICS CORP.**

BROAD SILKS

253 West 38th Street

NEW YORK

April 11, 1927.

Mill Factors Corp.,  
354-4th Av.  
City

Gentlemen:—

Kindly pay dye bills as enumerated below,  
and charge to our account:

20	Washington Piece Dye. & Fin. Co..\$	35.04✓
	Victory Dye. & Fin. Co.....	107.09✓
	United Piece Dye Works.....	419.42✓
	De Gise Silk Dyeing Co.....	609.92✓
	Star Silk Dyeing Co.....	27.68✓
	Sunbury Converting Works.....	90.85✓
	Do Not Pay—	
	Fiory & Son Pe. Dye Works....	1000.00
	See Sheriffs notice in Marks contract file.	
	See letter April 19th from Fiory.	
30	Imhoff-Berg Silk Dyeing Co.....	5000.00✓
		<hr/>
		7290.00

Yours very truly,

**PARAMOUNT FABRICS CORP.**

Per Sey Bayer.

DV/BG

*Exhibit P. 53.***EXHIBIT P. 53.**

MILL FACTORS CORPORATION  
 Factors & Commission Merchants  
 354 FOURTH AVENUE

Lieber's Code  
 Cable Address  
 Kayefanf-New York

10

New York Dec. 27, 1927.

Imhoff Berg Silk Dyeing Co.,  
 East 7th & Lowe St.,  
 Paterson, N. J.

Gentlemen:

Please send us a complete inventory as of  
 December 31st, 1927, of all merchandise you  
 are holding subject to our order, which was sent  
 to you by concerns for whom we act as the factor.

20

Kindly specify quality numbers, lot numbers,  
 etc. if in greige, process or held finished.

Thanking you for your prompt attention, we  
 are

Yours very truly,

MILL FACTORS CORPORATION

M. G. Bain

MGB:EM

30

o Miller Fabrics Corp

Beverly Fabrics

v Paramount Fabrics

o Eagle Mills

~~H & F Silk Co~~~~Blum Jahr & Friedlander~~

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*Exhibit P. 54.***EXHIBIT P. 54.**

DR. M. IMHOFF, Pres.

O. BERG, Treas.

IMHOFF-BERG SILK DYEING COMPANY

Main Works: Wood, East Seventh and  
Lowe Streets10 Branch: 67-77 Chadwick Street  
PATERSON, N. J.Telephones  
Main Office Sher. 5487-5488  
Branch Sher. 6227New York Office  
230 Fifth Avenue  
N. Y. Telephone  
Ashland 5624

Received Jul 5 1928

No. 79

July 2, 1928.

20 Mill Factors Corp.,  
354 Fourth Avenue,  
New York, N. Y.

Gentlemen:—

We submit herewith complete inventories of  
goods on our premises for the following of your  
departments as of June 30th, 1928.

M &amp; S Beverly Fabrics Corporation.

Paramount “ “

Eagle mills.

30 Very truly yours,

IMHOFF-BERG SILK DYEING CO.

Walter Tomasulo,

WT:C

W. Tomasulo,

Order Dept.

( Attached to the above Exhibit is inventory  
written in pencil on Six sheets. )

*Exhibit P. 54.***EXHIBIT P. 54.**

DR. M. IMHOFF, Pres.

O. BERG, Treas.

**IMHOFF-BERG SILK DYEING COMPANY**Main Works: Wood, East Seventh and  
Lowe Streets

Branch: 67-77 Chadwick Street

10

PATERSON, N. J.

Telephones

Main Office Sher. 5487-5488

Branch Sher. 6227

New York Office

230 Fifth Avenue

N. Y. Telephone

Ashland 5624

Received Dec 7

No. 37

December 6, 1927

Mills Factors Corporation

354 Fourth Avenue

New York, N. Y.

20

Gentlemen:

Replying to your favor of November 18, asking us to send all the merchandise, finished as well as in the gray, holding for the account of the Paramount Fabrics Corporation, we beg to inform you that we cannot comply with your request as the goods have been attached for debt and the attachment was served on us on the 21st day of April, 1927.

30

George Wenger is the plaintiff. The amount due seems to be \$3,424.16.

Very truly yours,

IMHOFF-BERG SILK DYEING CO.

H. Miedendorp.

HM:CP

40

*Exhibit P. 55.*

**EXHIBIT P. 55.**

MILL FACTORS CORPORATION  
354 Fourth Avenue

New York, Nov 18 1927

- 10 To Imhoff Berg Silk Dye Co  
67 Chadwick St  
Paterson N J.

Gentlemen:

Of the merchandise you are holding, subject to our order, kindly ship the following:

.....Cases.....Bales Numbers All the mdse you have finished as well as all greigh goods holding for us.

To Our premises

- 20 354 4th Ave

.....  
.....

Via .....

Mark all packages:—

From

MILL FACTORS CORPORATION  
Factors for  
Paramount Fabrics Corp.

- 30 Send two bills of lading to us at 354 Fourth Avenue, New York City. Kindly acknowledge receipt of these instructions.

Very truly yours,

MILL FACTORS CORPORATION  
Per Geo. W. Webb  
Secretary

## Imhoff-Berg Silk Dyeing Co.

PIECE DYEING DEPT.

Invoice No 38725

Wood, East Seventh and Lowe Streets

Paterson, N. J., April 5 1928

Delivered to Sheriff - Passaic County

ALL REDYES AT CUSTOMERS RISK

GOODS INSURED AGAINST LOSS BY FIRE

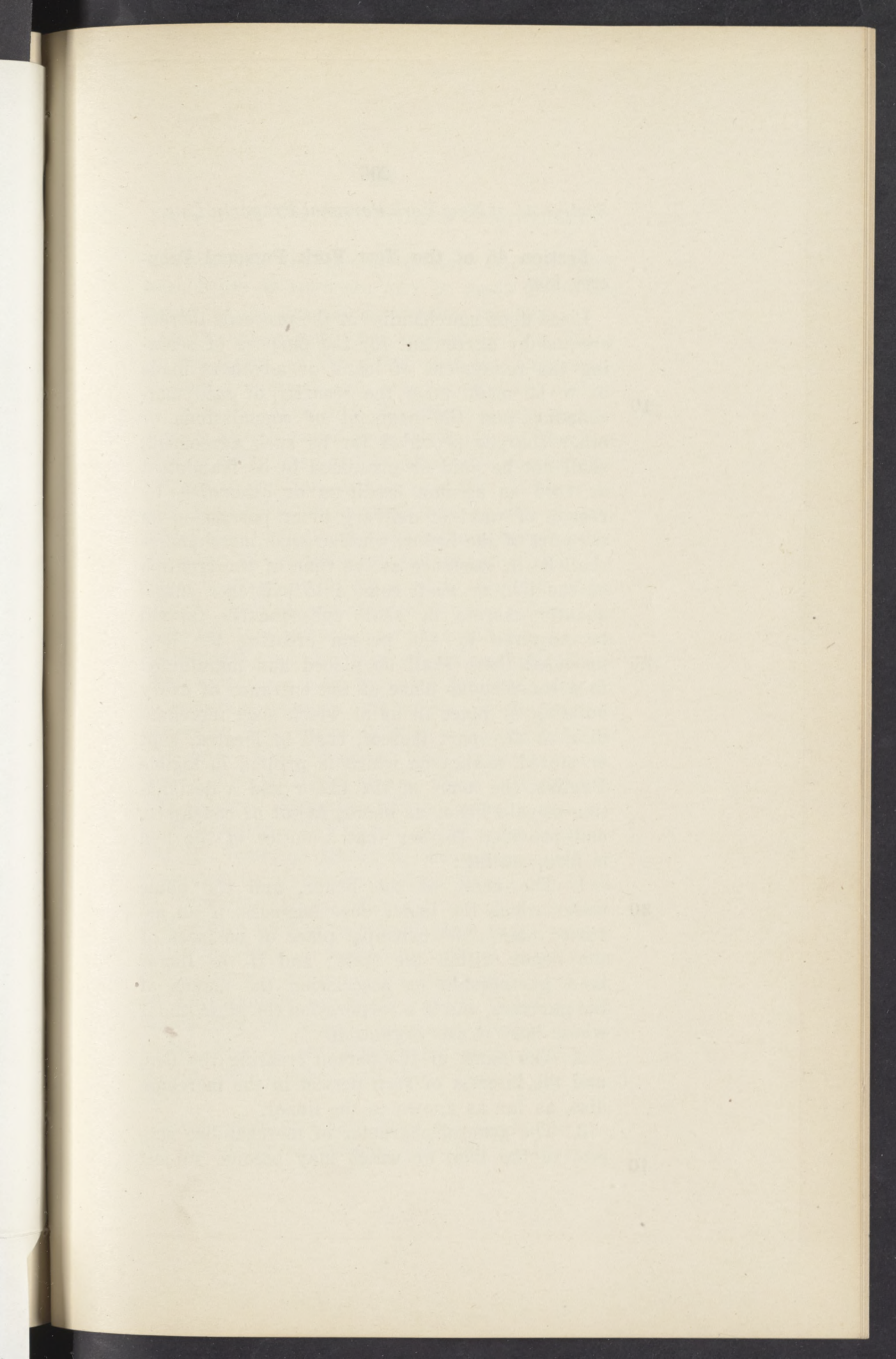
PC NUMBER	YARDS	COLOR	CLASS	QUAL.	PD. OR WGT.	RET. WGT.	ORDER	FINISH	REMARKS
✓ 1/384	52-7	Navy	Georgette	154			527		
✓ 2/477	54-4								
✓ 3/478	52-1								
✓ 4/80	55-2								
✓ 5/386	55-1								
489 ✓ 6/479	54-0								
7									
✓ 8/11481	53-3	Navy	Georgette	154			527		
9									
10									
✓ 11/983	64 <sup>3</sup>	Black	Canton Crepe	615			529		
12/7674									
✓ 13/1235	64 <sup>2</sup>								
14/9636									
15									
✓ 16/1196	63 <sup>5</sup>								
✓ 17/9585	19 <sup>2</sup>								
18									
✓ 19/34360	56 <sup>2</sup>	Navy	Georgette	610			530		
20/11552									
21									
✓ 22/34357	51 <sup>3</sup>	Black	Georgette	610			530		
23/11549									
24									
25									
26									
27									
3									

EXHIBIT P. 56.

P-56—consists of seven invoices, one of which is here set forth, the others differing only as to the description of the goods.

EXHIBIT 10

This exhibit is a copy of the original document  
as it appears in the records of the  
Department of the Interior.



*Section 45 of New York Personal Property Law.***Section 45 of the New York Personal Property law.**

Liens upon merchandise or the proceeds thereof created by agreement for the purpose of securing the repayment of loans or advances made or to be made upon the security of said merchandise and the payment of commissions or other charges provided for by such agreement, shall not be void or presumed to be fraudulent or void as against creditors or otherwise, by reason of want of delivery to or possession on the part of the lienor, whether such merchandise shall be in existence at the time of the creation of the lien or shall come into existence subsequently thereto or shall subsequently thereto be acquired by the person creating the lien, provided there shall be placed and maintained in a conspicuous place at the entrance of every building or place in or at which such merchandise, or any part thereof, shall be located, kept or stored, a sign on which is printed in legible English, the name of the lienor and a designation of said lienor as lienor, factor or consignee, and provided further that a notice of the lien is filed, stating:

1. The name of the lienor, and the name under which the lienor does business, if an assumed name; the principal place of business of the lienor within the state; and if the lienor is a partnership or association the names of the partners, and if a corporation the state under whose laws it was organized.

2. The name of the person creating the lien, and the interest of such person in the merchandise, as far as known to the lienor.

3. The general character of merchandise subject to the lien, or which may become subject

*Section 45 of New York Personal Property Law.*

thereto, and the period of time during which such loans or advances may be made under the terms of the agreement creating the lien.

Such notice must be verified by the lienor or his agent, to the effect that the statements therein contained are true to his knowledge. It must be filed with the officer designated in section two hundred and thirty-two of the lien law, in every town or city where the merchandise subject to the lien, or any part thereof, is or at any time shall be located, kept or stored, and also in the town or city where the principal office or place of business of the lienor within the state is or at any time shall be located. Such officers shall file every such notice presented to them for that purpose and shall endorse thereon its number and the time of its receipt. They shall enter in a book provided for that purpose, in separate columns, the names of the parties named in each notice so filed under the head of "owners" and "lienors," the number of such notice and the date of the filing thereof, and the general character of the merchandise as therein stated. The names of the persons creating the liens, as stated in the notice, shall be arranged in alphabetical order under the head of "owners." Such officers at the time of filing such notice shall upon request issue to the person filing the same a receipt in writing, containing the substance of the entries made or to be made as hereinabove provided. Such officers shall be entitled to receive for their services hereunder, fees at the same rates as provided in section two hundred and thirty-four of the lien law.

Such notice may be filed at any time after the making of the agreement, and shall be effectual

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*Section 45 of New York Personal Property Law.*

from the time of the filing thereof as against all rights of third parties thereafter arising. Upon the payment or satisfaction of indebtedness secured by any lien specified in this section, the lienor or his legal representative, upon the request of any person interested in the said merchandise, must sign and acknowledge a certificate setting forth such payment or satisfaction. The officer or officers with whom the notice of lien is filed must, on receipt of such certificate or a copy thereof certified as required by law, file the same in his office and write the word "discharged" in the book where the notice of lien is entered opposite the entry thereof, and the lien is thereby discharged.

If the agreement creating such lien shall also give the lienor a right to or lien upon accounts receivable resulting from or which may result from a sale or sales of the merchandise subject to the lien, or of part of such merchandise, such right or lien shall not be void or ineffectual as against creditors or otherwise, by reason of want of possession of any such account on the part of the lienor or by reason of failure to make or deliver a further assignment of any such account, provided a bill, invoice, statement or notice shall be mailed, sent or delivered to the person owing such account receivable, stating or indicating that the account is payable to the lienor, and such mailing, sending or delivery of such bill, invoice, statement or notice shall have the same effect as a formal assignment of such account to the lienor named therein.

*Exhibit D. 1.*

**EXHIBIT D. 1.**

AGREEMENT made this 27th day of February, 1926, between BAYER, VEIT & GOLDMAN, INC., a Corporation organized under the laws of the State of New York, and having its principal place of business at 249 West 38th Street, New York City, party of the first part, hereinafter designated as the Consignor, and MILL FACTORS CORPORATION, a Corporation organized under the laws of the State of Delaware, and having its principal place of business at 354 Fourth Avenue, New York City, party of the second part, hereinafter designated as the Factor, WITNESSETH:

WHEREAS, the party of the first part is desirous that MILL FACTORS CORPORATION should act as its Factor

NOW, THEREFORE, it is hereby mutually understood and agreed as follows:—

*First:*—The Consignor hereby constitutes and appoints Mill Factors Corporation its sole and exclusive Factor, and agrees to consign and deliver to the Factor for sale on commission, free of all liens and charges at the premises of Mill Factors Corporation, 354 Fourth Avenue or 249 West 38th Street, Borough of Manhattan, New York City, or at such other place or places as may be mutually agreed upon, all goods belonging to the Consignor, or which may be hereafter acquired by it or the sale of which it may control.

*Second:*—All sales of said goods shall be made on behalf of the Factor and in its name, and no sales shall be made without its approval. All of the goods shall be invoiced to purchasers in the name of "Mill Factors Corporation,

*Exhibit D. 1.*

Factor for Bayer, Veit & Goldman, Inc." and all accounts shall be owned by and be payable only to the Factor, who shall have the right to collect and receive the proceeds and who shall also have the rights of the Consignor, including the right of stoppage in transitu, subject only to its obligations as such Factor to account for the proceeds of such sales.

*Third:*—It is agreed that upon the premises upon which said goods are consigned to the Factor and sold hereunder, there shall be displayed at the entrance thereof and within the said premises, and at any other place or places where the same may be required, a sign or signs of the kind and character as follows:—

BAYER, VEIT & GOLDMAN, INC.  
MILL FACTORS CORPORATION

Factor.

*Fourth:*—The Consignor may designate persons to be employed in and about the sale of said goods and shall defray all selling expenses, but the Factor shall not be liable for any acts or omissions of any persons employed by the said Consignor in connection with the sale of said goods and the Consignor agrees to hold the Factor free and harmless from any liability by reason thereof and from any merchandise risk in connection with the sale of said goods and from any loss or liability resulting from cancellations, returns or claims by purchasers, or for loss, deterioration, damage or injury to any of the consigned goods from any cause, and it shall also not be liable for any goods missing from inventory.

*Fifth:*—The Factor agrees to guarantee the due payment of all accounts arising from the

*Exhibit D. 1.*

sale of said consigned goods, provided said accounts have been approved and checked by its Credit Department, and that the merchandise so sold is finally accepted by the respective purchasers thereof, and to render account sales monthly within fifteen days after the end of each calendar month, and thereupon, provided that the Consignor carries a stock of merchandise with the Factor sufficient to secure the Factor against any loss on account of returns, rejections or merchandise claims, the Factor agrees to discount such sales at the rate of six percent (6%) per annum as of the date of the sale, on the last day of the month in which they shall have been made, adding ten days for delay in collection to the average due date. 10

*Sixth.*—The net amount of such sales shall be credited to the Consignor on the last day of the month, but in case after any of such sales have been so discounted, the purchaser of the merchandise represented thereby shall make a claim for breach of contract, defect in goods, for prices, discounts, shortages, etc., imperfections, breach of warranty or right to reject merchandise, the amount thereof credited to the Consignor upon the sale of such merchandise together with interest thereon from the date of such credit may be charged back to the Consignor by the Factor and the entire obligation of collection or adjusting such disputed claim is assumed by the Consignor, who also assumes full credit risk from the date of maturity of said item, and the Factor is relieved of its credit guarantee on said item and will refund the commission charged thereon. It is the sense of this agreement that all risks and losses pertaining to merchandise and merchandising, belong to and are assumed by the Consignor. 20  
30  
40

*Exhibit D. 1.*

*Seventh:*—In the event that in the judgment of the Factor the credit of any customer shall have become impaired, subsequent to the acceptance of any order from such customer, and prior to the actual delivery of the merchandise hereunder, the Factor shall have the absolute  
10 right to refuse to deliver the merchandise contracted for to such customer, and in such an event it shall not assume any responsibility, or be or become liable in any manner whatsoever for the failure to deliver such merchandise. The Factor shall furnish to the Consignor upon its request, a statement in writing that the Factor refuses to check the account. In the event that the Factor should consider it necessary to recover or replevin merchandise  
20 previously shipped, the Consignor agrees to accept the merchandise at the price originally billed.

*Eighth:*—All merchandise is to be kept fully insured against fire and burglary, the premiums to be paid by the Consignor, but the policies to be in the name of the Factor for itself and as agent for the Consignor, and in companies approved by the Factor. The amount of insurance carried is to be at all times within the  
30 discretion of the Factor.

*Ninth:*—The Factor agrees to advance to the Consignor upon request, an amount equal to sixty six and two-thirds percent (66-2/3%) of the net cost or net cash market value, whichever is lower, of the goods consigned to it and in its possession, it being understood and agreed, however, that the amount to be advanced under this agreement shall at all times remain in the discretion of the Factor.

*Exhibit D. 1.*

*Ninth A:*—In the event of goods being in stock for one year or more, it is understood that such merchandise is not considered for the purpose of cash advances, although same remains in stock as equity in general account, according to the terms and provisions of this agreement.

*Tenth:*—The Factor shall be entitled to charge and receive interest at the rate of six percent (6%) per annum upon all moneys advanced to or paid out for the account of or which may from time to time be due from the Consignor. Account current shall be rendered monthly and interest shall be charged and credited therein at the rate of six percent (6%) per annum. 10

*Eleventh:*—For the purpose of ascertaining the value of the merchandise of the Consignor, consigned to the Factor, a true and correct inventory shall be taken on June 30th and December 31st of each year, and at such other times as the Factor may elect. At the taking of each inventory, a re-valuation of the stock on hand shall be made according to any change in market value. 20

*Twelfth:*—For its services hereunder and for guaranteeing payment of the accounts approved by it as aforesaid, the Factor shall be entitled to charge and shall receive a commission of two percent (2%) on the net amount of all sales of said consigned goods. Said commission shall be charged as of the middle of the month in which goods are charged to customers. The commission on the sales of grey goods shall be only one (1%) percent and shall be computed on that basis on the monthly statements hereunder; with the understanding however, that if it appear at the end of each yearly term that the total net sales of grey goods exceed ten 30 40

*Exhibit D. 1.*

(10%) percent of the total sales under this agreement, during such annual period, then the excess thereof shall be chargeable with an additional commission of one (1%) percent. Terms of sale on grey goods not to exceed ten days E. O. M.

10 *Thirteenth*:—It is also understood that in the event of loss, any expense which may be incurred by the Factor in adjusting insurance and collecting the same, shall be charged to the Consignor.

20 *Fourteenth*:—The Factor shall at all times have the possession and control of said consigned goods, and as security for its advances now or hereafter made and whether or not the same shall be within or exceed the limits herein mentioned, and for its commissions, interest, expenses and other charges, excepting the expenses heretofore assumed by it, and for all indebtedness and liability of the Consignor to it, and for all liabilities which it may incur in connection with said business, except such as are herein expressly assumed by it, the Factor shall at all times have a general lien upon all of the consigned goods and upon all proceeds of sale thereof and upon any and all accounts, notes, drafts, bills receivable or evidences of indebtedness arising from any such sales.

30

*Fifteenth*:—The rights of the Factor under this agreement, including the right to have, hold and sell the goods consigned as aforesaid, and to collect and receive the proceeds thereof, and of said accounts and to its said commissions, shall not be affected by any devolution or transfer of the rights or interests of the Consignor, whether the same shall be voluntary or by act of law. Any expense in connection with the

40

*Exhibit D. 1.*

carrying into effect of this paragraph, including all reasonable counsel fees, is to be borne by the Consignor.

*Sixteenth:*—The Consignor shall not pledge the credit of the Factor for any purchases or upon any contracts, or for any purpose whatsoever, nor will it represent itself as the agent of the said Factor, nor do any act which might involve the Factor in any responsibility whatsoever, it being expressly understood that the sole relationship herein created between Consignor and Factor is that of Principle and Agent respectively. 10

*Seventeenth:*—It is understood and agreed that should any litigation arise and should there be any necessity of employing counsel for any reason whatever except credit risks, any such employment of counsel, litigation or the adjustment thereof, may be handled by the Consignor acting on behalf of the Factor and at the expense of the Consignor. The Factor may make due re-assignment to the Consignor of any such accounts, for the purpose of such litigation or adjustment when requested. 20

*Eighteenth:*—Upon the termination of this agreement and the payment to the Factor of all amounts due it on account of its advances, commissions, interest and other charges, and upon delivery of the customary form of indemnity, it will release the goods consigned to it by the Consignor and hold them subject to the order of the Consignor. 30

*Nineteenth:*—In the event that all of the indebtedness and claims of the Factor are not paid within twenty days from the termination hereof, whether at the end of the term of this agreement or otherwise, the Factor shall have 40

*Exhibit D. 1.*

the absolute right and privilege to sell any and all the merchandise held by it for advances, charges and commissions, at public sale (with ten days written notice to the Consignor, sent by registered mail to the Consignor's last known business address) for cash to the highest bidder. The  
10 net proceeds thereof, after deducting all costs of such sale, its commissions and charges therefor and any and all reasonable expenses including legal expenses which may be incurred in connection therewith or in connection with the liquidation of this account shall be applied to the indebtedness of the Consignor under this agreement. Any surplus remaining after deduction of all such charges shall be turned over to the Consignor and in the event that there  
20 shall be a deficit, the Consignor shall remain liable therefor.

*Twentieth:*—This agreement shall commence on the 27th day of February, 1926, and shall continue in full force and effect until the 31st day of December, 1926, and from year to year thereafter unless either party hereto shall give two months notice in writing to the other of an intention to terminate the same on the 31st day of December in any year,—such notice shall  
30 be deemed sufficient if sent by United States registered mail to either party, directed to their last known business address.

IN WITNESS WHEREOF:—The parties hereto have caused these presents to be executed by their duly authorized officers and their Corporate

*Exhibit D. 1.*

seals to be hereunto affixed the day and year  
first above written.

BAYER, VEIT & GOLDMAN, INC,  
By DANIEL V. VEIT, Pres.

MILL FACTORS CORPORATION,  
By M. YANKAUER, **10**  
Vice President.

(Factors Corporation  
Seal)

GEO. W. WEBB,  
Secretary.

WITNESS:

SEYMOUR BAYER,  
Secy. & Treas. of  
BAYER, VEIT & GOLDMAN, INC. **20**

30

40

*Exhibit D. 2.***EXHIBIT D. 2.**

Phone Wisconsin 4882

BAYER-VEIT-GOLDMAN, INC.

BROAD SILKS

249 West 38th Street

NEW YORK

10

Jan. 3, 1927.

RESOLUTION TO BE ADOPTED BY  
PARAMOUNT FABRICS CORP.

The PARAMOUNT FABRICS CORP. will assume all of the obligations of BAYER-VEIT-GOLDMAN, INC., under the terms of the agreement existing between Mill Factors Corp., and said BAYER-VEIT-GOLDMAN, Inc. and will continue the operation of its business under and in accordance with the terms of the said agreement.

20

Adopted by the Board of Directors, this third day of January, 1927.

PARAMOUNT FABRICS CORP.

President Daniel V Veit

Vice President Lewis M Goldman

Secretary-Treas. Seymour Bayer.

30

40

*Exhibit D. 3.***EXHIBIT D. 3.**

Phone Wisconsin 4882

BAYER-VEIT-GOLDMAN, INC.

BROAD SILKS

249 West 38th Street

NEW YORK

10

December 31, 1926.

Mill Factors, Inc.,  
354-Fourth Avenue,  
New York City.

Dear Sirs:

This is to inform you that the business of Bayer-Veit-Goldman, Inc. has been taken over by Paramount Fabrics Corporation, which has assumed all the liabilities in consideration of the receipt of all the assets of said Bayer-Veit-Goldman, Inc. This arrangement is to take effect on January 3, 1927.

20

Very truly yours,

BAYER-VEIT-GOLDMAN, Inc.

By Daniel V. Veit

President

Lewis M. Goldman

Vice-President

Seymour Bayer

Secretary

30

PARAMOUNT FABRICS CORP.

By Daniel V. Veit

President.

40

CHAPTER II

THE HISTORY OF

THE UNITED STATES

FROM 1776 TO 1861

BY

W. H. CHAPMAN

NEW YORK

1861

1861

1861

1861

1861

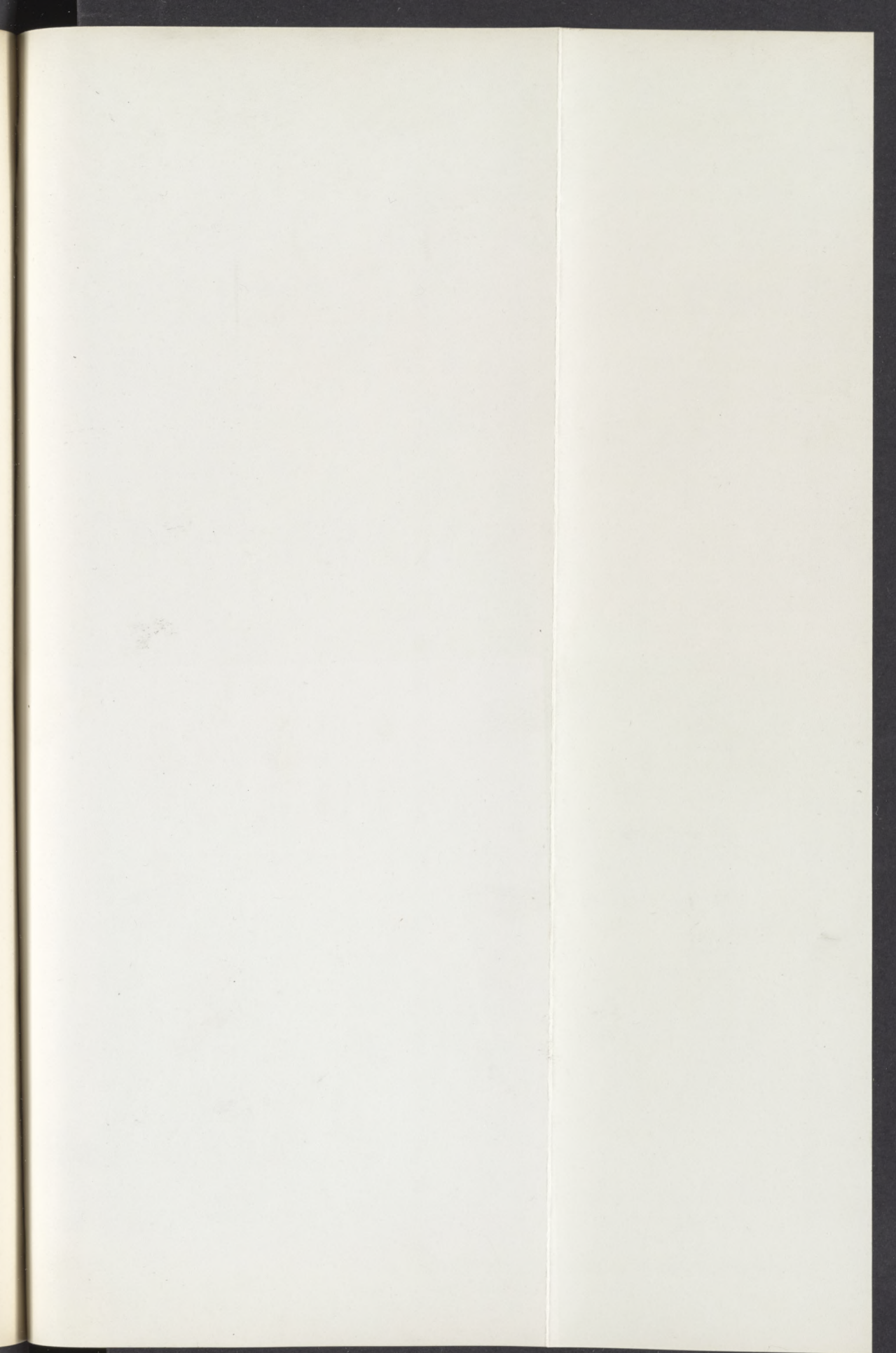
1861

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MILL FACTORS CORPORATION  
354 FOURTH AVENUE

NEW YORK APR 15 1927 192 No 4885

**IRVING BANK COLUMBIA TRUST COMPANY**

1-67

COLUMBIA OFFICE  
SIXTY BROADWAY

PAY TO THE ORDER OF *Imhoff-Berg Silk Dyeing Co.* \$5000.<sup>00</sup>  
PAYABLE THROUGH NEW YORK CLEARING HOUSE

THE SUM OF \$5000 AND 00 CTS. DOLLARS  
MILL FACTORS CORPORATION

*724.12*

*[Signature]*  
PRES.

BY REQUEST AND FOR ACCOUNT OF  
*Imhoff-Berg Silk Dyeing Co.*

PAY ANY BANK, BANKER OR TRUST CO.  
OR ORDER  
UNITED STATES TRUST CO.  
APR 16 1927  
55-65 PATERSON N. J. 55-65  
FRANK E. SMITH, TREAS

RECEIVED PAYMENT THROUGH THE NEW YORK CLEARING HOUSE ENDORSEMENTS GUARANTEED  
APR 16 1927  
THE CHATHAM AND PHENIX NATIONAL BANK OF THE CITY OF NEW YORK  
METROPOLITAN TRUST COMPANY  
CHATHAM PHENIX NATIONAL BANK AND TRUST CO.  
H. R. JOHNSTON, CASHIER

*[Dotted pattern]*

*Exhibit D. 6.***EXHIBIT D. 6.**

DANIEL V. VEIT, Pres.      LEWIS M. GOLDMAN, Vice-Pres.  
SEYMOUR BAYER, Secy. & Treas.

**PARAMOUNT FABRICS CORP.**

BROAD SILKS  
253 West 38th Street      10  
NEW YORK

April 4, 1927.

Imhoff-Berg- Piece Dyeing Co.,  
Paterson, N. J.

Gentlemen:—

We wish to refer you to merchandise shipped  
to you for our account by the Chelsea Silk Co.  
under dates of March 19th and 23rd.

Kindly transfer and hold these goods for 20  
their account.

Yours very truly

**PARAMOUNT FABRICS CORP.**

Per D. V.

36 Paterson St.  
City  
DV/BG

Attached to this exhibit are two yellow sheets      30  
having the caption Chelsea Silk Co. bearing  
dates respectively March 23, 1927 and March  
19, 1927, covering 30 and 35 pieces of goods  
respectively.

40

Exhibit D. 8.

**EXHIBIT D. 8.**

SHIPPING MEMORANDUM  
 BAYER-VEIT-GOLDMAN, INC.  
 247-249 West 38th Street  
 Mill Factors, Corp. Factors

- 10 M Imhoff Berg Silk Dye Co  
 Render billing and statements  
 in duplicate for account Paramount Fab

Stock #	Piece No.	Grey Yds.	
7674	983	64.6√	Liberty
75	84	65.2√	"
73	82	63.1√	"
9636	1235	65.1√	Queen
31	30	51.5√	"
13	12	63.2√	"
9585	1196	64.2√	Goosebery

- 20 New York, 4/11/27  
 529

Our Quality 605  
 Mill Quality .....  
 Composition Canton Crepe  
 Grey Width .....  
 Case No. Your truck 4/12

IMPORTANT

- 30 These goods are to be checked and held for  
 our dyeing instructions.

—————  
 No charge

Kindly detach and return the annexed slip  
 with your signature immediately upon receipt,  
 and check up of these goods.

D-5 and D-7 are exactly similar to the above  
 exhibit, except that they cover 85 and 30 pieces  
 of goods respectively.

## New Jersey Court of Errors and Appeals

MILL FACTORS CORPORATION, a  
corporation,

*Plaintiff-Appellant,*

*vs.*

IMHOFF-BERG SILK DYEING COM-  
PANY, a corporation,

*Defendant-Appellee.*

*In Replevin.*

*On Appeal.*

### BRIEF ON BEHALF OF PLAINTIFF-APPELLANT.

#### General Statement of the Case.

This action was brought by plaintiff-appellant to recover possession of 105 pieces of silk goods from the defendant-appellee. The owner of the said goods is Paramount Fabrics Corporation, by whom, as plaintiff-appellant claims, the said goods were pledged with plaintiff-appellant as security for moneys loaned and other indebtedness. The goods were shipped to defendant-appellee by various manufacturers who manufactured the goods for Paramount Fabrics Corporation, and who had shipped same directly to the defendant-appellee pursuant to the request and instructions of the said Paramount Fabrics Corporation. The pledge of the goods by the Paramount Fabrics Corporation to plaintiff-appellant, as plaintiff-appellant claims, was made at the time that the shipments of said goods went forward to defendant-appellee as aforesaid.

The defendant-appellee in this action claims the right to retain possession of said goods on the ground that defendant-appellee has a statutory lien thereon under the laws of the State of

New Jersey for moneys owing to defendant-appellee by the owner of said goods, Paramount Fabrics Corporation, for work done *on other goods* of the said Paramount Fabrics Corporation by defendant-appellee. It appears that no work has been done on any of said goods in controversy, excepting 20 out of said 105 pieces, but there is no proof as to which 20 pieces the work was done on. Defendant-appellee, however, makes no claim to any lien on any of said goods by virtue of the work which appears to have been done on the said 20 pieces.

At the trial, plaintiff-appellant and defendant-appellee respectively, moved for the direction of a verdict. The court denied plaintiff-appellant's motion, but granted the motion made by defendant-appellee. Plaintiff-appellant takes this appeal on the ground that the court erred respectively in denying plaintiff-appellant's said motion, and in granting the defendant-appellee's said motion. Plaintiff-appellant also bases its appeal upon alleged errors by the Court made in respect of the rulings on evidence which are enumerated in the grounds of appeal (See State of Case, pp. 22, 23 and 24.)

**Statement of Facts Established by the Evidence.**

1. Defendant-appellee claims a lien on said 105 pieces of silk goods under the statute relating to Dyer's Liens. It appears that defendant-appellee did no work whatsoever on 85 of said pieces, but did do some work on 20 of said pieces. Defendant-appellee, however, did not prove which 20 pieces it had done work on or the charge made for such work and expressly disclaimed any right to a lien for such work, relying wholly on its statutory lien based upon work done on other goods of Paramount Fabrics Corporation theretofore re-delivered by defendant-appellee. Hence the legal situation in this case is wholly unaffected by any work done on said 20 of said 105 pieces by defendant-appellee and is the same as if no work had been done by defendant-appellee on any of said pieces. (See State of Case, p. 168, l. 10, to p. 170, l. 14, inclusive.)

2. The goods involved in this suit, *viz.* 105 pieces of silk goods, were delivered into the possession of defendant-appellee by Paramount Fabrics Corporation or by third persons on its behalf in installments on various dates during the months of January 1927 to April 1927, inclusive. (See State of Case, p. 7, ll. 15 to 19, and pp. 185 to 190 inclusive.)

3. During the said period from January 1927 to April 1927, defendant-appellee from time to time on various dates received by mail from plaintiff-appellant certain papers or documents exemplified by plaintiff-appellant's Exhibit P. 12, each such paper consisting of one or more blue or green sheets of paper bearing a reference to an "invoice number" and reading as follows:

"Invoice No. D6636

MILL FACTORS CORPORATION

354 Fourth Avenue  
New York, Mar 28, 1927

Name Imhoff Berg Silk Dye Co.

Address Paterson N. J.

Dear Sirs:

There has been shipped to you, by Paramount Fabrics for whom we act as factors, via your truck the items mentioned below. Title to these goods remains in us, merchandise is at all times subject to our order only and must be returned to us when finished. You assume full responsibility for merchandise until it is returned to us on our premises.

MILL FACTORS CORPORATION"

(Below this appears a list of goods.) (See State of Case, pp. 189 and 190; and pp. 28 to 46.)

4. Each or each set of such "blue or green sheets" was accompanied by a paper or document exemplified by plaintiff-appellant's Exhibit P. 4, consisting of a single sheet of yellow paper, which contained the following language:

"Please Sign and Return Promptly to  
MILL FACTORS CORPORATION

354 Fourth Avenue  
New York, N. Y.

Date (4/22/27)

We acknowledge receipt of merchandise as per your memorandum Numbered (D7256) totalling (2) pcs. approximately (100) yds. Estimated value (125) and assume responsibility therefore according to conditions stated on said memorandum."

(See State of Case, pp. 188, 30, 31 and 35 to 46 inclusive.)

5. The said green sheets which defendant-appellee thus received from plaintiff-appellant, originally emanated from Paramount Fabrics Corporation from whom plaintiff-appellant received said green sheets in duplicate accompanied by a document known as a consignment sheet, exemplified by plaintiff-appellant's Exhibit P. 24. Such consignment sheet contained the following language:

"The goods described below are hereby consigned to Mill Factors Corporation to be held by them subject to their lien for advances, outlays and commissions, and are to be disposed of in accordance with our agreement with them."

(See State of Case, p. 195.) Below such statement was a list of goods with specifications of piece number, yardage, description, etc. The document contained a statement that the said goods had been shipped to defendant-appellee. The document was signed by Paramount Fabrics Corporation. The goods mentioned in each consignment was the same goods mentioned and described in the aforesaid green sheet or set of green sheets which it accompanied. (See State of Case, p. 53, ll. 29 to 40; p. 54 to p. 67, inclusive; p. 78, ll. 19 to 40; p. 79, ll. 4 to 10; pp. 83 to 88 inclusive.)

6. Each "green sheet" and the accompanying "consignment sheet" was sent by Paramount Fabrics Corporation to plaintiff-appellant practically at the same time as the merchandise referred to therein was sent to defendant-appellee. (See State of Case, p. 101, ll. 4 to 40; p. 102, ll. 4 to 22; p. 107, ll. 39 to 40; p. 108, ll. 4 to 35.)

7. Immediately after receipt of said green sheet and consignment sheet, plaintiff-appellant

mailed the green sheets and yellow sheets (acknowledgements) to defendant-appellee. (See State of Case, pp. 57 and 58; p. 79, ll. 4 to 10.)

8. Each of said blue or green sheets and corresponding yellow sheets (acknowledgements) referred and related to some portion of the said merchandise involved in this case, so that all of said merchandise, *viz.* 105 pieces of goods, was mentioned in and covered by said documents. (See State of Case, p. 34, ll. 35 to 40; p. 35, ll. 4 to 7; p. 51, ll. 8 to 40; p. 156, ll. 6 to 35.)

9. Each time that such blue or green sheets and yellow sheets (acknowledgements) were received by defendant-appellee through the mail in an envelope bearing plaintiff-appellant's letterhead, they passed through the hands of defendant-appellee's president or superintendent, who then turned the papers over to Mr. Tomasulo, who was then in defendant-appellee's employ, and who had charge of such matters in defendant-appellee's business. (See State of Case, p. 30, ll. 36 to 40; p. 31, ll. 4 to 9 and ll. 29 to 31; p. 32, ll. 28 to 40; p. 42, ll. 9 to 32; p. 124, ll. 6 to 17 and ll. 32 to 40; p. 125, ll. 15 to 19; p. 129, ll. 35 to 40; p. 130, ll. 4 to 17.)

10. After receiving said papers Mr. Tomasulo ascertained that the goods therein referred to were in defendant-appellee's possession, and thereafter Mr. Tomasulo signed or directed his secretary to sign defendant-appellee's name to the yellow sheets (acknowledgements) and mailed such yellow sheets back to plaintiff-appellant, defendant-appellee retaining the green sheets. (See State of Case, p. 30, ll. 36 to 40; p. 31, ll. 4 to 31; p. 34, ll. 36 to 40; p. 35, ll. 4 to 7; pp. 36, 37, 38, 39; pp. 43 to 45; pp. 51 and 52; p. 31.)

11. Defendant-appellant had been receiving from plaintiff-appellant by mail similar green sheets and yellow sheets (acknowledgements) relating to goods of Paramount Fabrics Corporation for a considerable period of time prior to the receipt of the particular green sheets and yellow sheets (acknowledgements) involved in this suit, *viz.* since November 6, 1926. All of such documents passed through the hands of the defendant-appellee's president or superintendent, and were then turned over by them to Mr. Tomasulo and handled by him in similar fashion as aforesaid. (See State of Case, pp. 33 and 34, ll. 10 to 40; pp. 42 to 46 inclusive; p. 129, ll. 9 to 21.)

12. It was well known to defendant-appellee during all of said period that plaintiff-appellant was a silk factor, that plaintiff-appellant's business was that of lending money to silk manufacturers on the security of merchandise pledged for that purpose and that plaintiff-appellant was dealing as factor with Paramount Fabrics Corporation. (See State of Case, p. 111, ll. 34 to 40; pp. 112 to 116 inclusive; p. 118, ll. 30 to 40; p. 129, ll. 9 to 30; exhibits on pp. 188 to 194 inclusive.)

13. At the time that the goods involved in this suit came into defendant-appellee's possession, Paramount Fabrics Corporation, being the owner of said goods, was indebted to plaintiff-appellant in a sum in excess of the value thereof for loans made by plaintiff-appellant to Paramount Fabrics Corporation pursuant to an agreement theretofore made between them. (See State of Case, p. 5, ll. 29 to 37; and p. 7, ll. 31 to 32; p. 70, ll. 23 to 40; p. 71, ll. 4 to 38; Exhibit P. 45, pp. 197 to 199 inclusive.) From said date to date of suit, said Paramount Fabrics

Corporation continued to be indebted to plaintiff-appellant on said account to an extent of more than \$8,000.00. (See State of Case, p. 71, ll. 29 to 40; Exhibit P. 45, pp. 197 to 199 inclusive.) Under said agreement, plaintiff-appellant agreed to make loans to Paramount Fabrics Corporation on the security of goods to be pledged by Paramount Fabrics Corporation for that purpose. (See Agreement, State of Case, p. 214, ll. 15 to 31.)

14. Pursuant to said agreement and the practice of the parties thereunder, plaintiff-appellant made loans to Paramount Fabrics Corporation on merchandise which had been consigned by Paramount Fabrics Corporation to plaintiff-appellant as aforesaid, where the goods were delivered to defendant-appellee and yellow sheets (acknowledgements) covering said goods, and signed by defendant-appellee, were received by plaintiff-appellant from defendant-appellee. Such goods were added by plaintiff-appellant on the "inventory" of pledged goods on the basis of which plaintiff made loans to Paramount Fabrics Corporation. (Exhibit D. 2, State of Case, p. 212, ll. 30 to 40; p. 158, ll. 29 to 40; pp. 159 to 164 inclusive; p. 164, ll. 27 to p. 166, l. 10 inclusive.)

15. During the period in which plaintiff-appellant received from defendant-appellee the signed yellow sheets (acknowledgements) relating to goods involved in this suit, *viz.* January to April, 1927, plaintiff-appellant made actual loans to Paramount Fabrics Corporation as aforesaid from time to time, in reliance on said merchandise as security, as follows:

1927				
January	3—	To	Cash	3,500.00
	5—	“	a / c o    Rosenzweig- Standard	160.31
	6—	“	Cash	10,000.00
	10—	“	“	12,500.00
	13—	“	“	7,000.00
	19—	“	“	12,000.00
	24—	“	“	5,000.00
	27—	“	“	15,000.00
February	4—	“	“	20,000.00
	8—	“	“	10,000.00
	18—	“	“	7,000.00
	23—	“	3 Bills (M. Salz- berg Sons)	8,193.37
	24—	“	Cash	4,000.00
	28—	“	“	5,000.00
March	2—	“	Bill 2/26 (M. Salz- berg Sons)	4,525.59
	7—	“	Cash	8,000.00
	24—	“	“	1,000.00
April	15—	“	7 Dye a/co pd.	6,290.00

(See Exhibit P. 45, State of Case, p. 197.)

16. After the date of the latest of said yellow sheets (acknowledgements) received by plaintiff-appellant from defendant-appellee, *viz.* April 26, 1927, plaintiff-appellant made actual loans to Paramount Fabrics Corporation as aforesaid in a total sum of \$2,924.09, besides earned commissions, discounts and interest amounting to \$5,853.17. (See State of Case, pp. 188 and 189 inclusive, and page 197.)

17. Previous dealings between Paramount Fabrics Corporation and defendant-appellee were on a credit basis, the course of dealing being as follows: After dyeing goods for Paramount Fabrics Corporation, defendant-appellee would ship said goods to Paramount Fabrics Corporation at New York City, and mail bill for its charges to Paramount Fabrics Corporation, which bill was payable thirty days after being

rendered. (See State of Case, p. 139, l. 24 to p. 142, l. 29 inclusive.)

18. All goods which theretofore were delivered to defendant-appellee by Paramount Fabrics Corporation or in its behalf, and which were dyed and re-delivered by defendant-appellee, were shipped by defendant-appellee to Paramount Fabrics Corporation at its New York address, 247 West 38th Street, where, by virtue of the New York Personal Property Law, plaintiff-appellant's lien on said goods was preserved. (See provisions of New York Personal Property Law set forth in the State of Case on pages 206 to 208, and see stipulation of the parties in State of Case, pp. 151 to 152, l. 8, inclusive. See also State of Case, p. 49, ll. 18 to 27; pages 148 to 150 inclusive.) Hence where plaintiff-appellant had received from defendant-appellee signed yellow sheets (acknowledgements) as aforesaid, (relating to other goods than those in controversy), the subsequent re-delivery of such goods by defendant-appellee to the Paramount Fabrics Corporation's said New York address, was not a delivery of possession to Paramount Fabrics Corporation, since Paramount Fabrics Corporation's apparent place of business aforesaid, was in legal contemplation the place of business and the premises of plaintiff-appellant under said New York Personal Property Law.

19. Although it appears that the goods (in controversy) referred to by any particular yellow sheet (acknowledgement) signed and returned by defendant-appellee to plaintiff-appellant, was already in defendant-appellee's possession when defendant-appellee did sign and return the yellow sheet (acknowledgement), there is no proof in the case as to whether or not said goods came into defendant-appellee's possession before

defendant-appellee had received by mail from plaintiff-appellant the green sheets and the corresponding (unsigned) yellow sheets (acknowledgements). (See State of Case, pp. 51 to 53.)

20. From time to time defendant-appellee furnished to plaintiff-appellant at plaintiff-appellant's request, an inventory of goods in possession of defendant-appellee as being held by defendant-appellee for plaintiff-appellant's account.

Exhibit P. 22 is as follows:

“Dr. M. Imhoff, Pres.                      O. Berg, Treas.  
IMHOFF-BERG SILK DYEING CO.

Main Works: Wood, East Seventh and  
Lowe Streets

Branch: 67-77 Chadwick Street

Paterson, N. J.

Telephones	New York Office
Main Office Sher. 5487-5488	230 Fifth Avenue
Branch Sher. 6227	N. Y. Telephone
	Ashland 5624

Received Jan 4-1928

No. 32

Jan. 3, 1928

Mill Factors Corp.,  
354 Fourth Avenue,  
New York, N. Y.

Gentlemen:—

We submit herewith, complete inventories of merchandise at our plant for your account, department Beverly Fabrics Corp., and Paramount Fabrics Corp., as of Dec. 31, 1927.

Very truly yours,

IMHOFF-BERG SILK DYEING CO.,

W. Tomasulo

WT:C

Order Dept.

(Attached to the above Exhibit is an inventory in pencil written on 5 long sheets.)”

(See State of Case, p. 191.)

Exhibit P. 23 is as follows:

“Dr. M. Imhoff, Pres. O. Berg, Treas.  
IMHOFF-BERG SILK DYEING CO.

Main Works: Wood, East Seventh and  
Lowe Streets

Branch: 67-77 Chadwick Street  
Paterson, N. J.

Telephones New York Office  
Main Office Sher. 5487-5488 230 Fifth Avenue  
Branch Sher. 6227 N. Y. Telephone  
Ashland 5624

Received Apr 4-1927  
No. 45

April 1, 1927

Mill Factors Corp., 354 Fourth Avenue  
New York City.

Gentlemen:

As per your request of the 28th ultimo,  
we submit herewith complete inventory as of  
March 31, 1927, of all merchandise we are  
holding subject to your order, for whom you  
act as the factor.

Very truly yours,  
IMHOFF-BERG SILK DYEING CO.,

Order Dep't.

W. Tomasulo

WT:EB

By E. B.

(Attached to the above Exhibit is an in-  
ventory in ink written on 16 long sheets.)

(See State of Case, p. 192; p. 46, ll. 25 to 40;  
p. 47, ll. 4 to 15; p. 48, ll. 24 to 40; p. 49, ll. 4  
to 14; pp. 191 and 192.)

### Discussion of Plaintiff-Appellant's Legal Contentions.

Plaintiff-appellant makes the following legal contentions on this appeal:

1. That the plaintiff-appellant was and is a pledgee of the goods in controversy, said goods having been pledged with plaintiff-appellant by the owner thereof, Paramount Fabrics Corporation.

2. That defendant-appellee was and is the bailee of plaintiff-appellant with respect to said goods.

3. That defendant-appellee as bailee of said goods for plaintiff-appellant cannot assert a lien thereon as against plaintiff-appellant based upon the New Jersey Statute relating to Dyer's Liens for an indebtedness owing to defendant-appellee by Paramount Fabrics Corporation, the owner of said goods.

4. That, if defendant-appellee had any right to such a statutory lien on said goods, said lien was waived by defendant-appellee as between defendant-appellee and plaintiff-appellant.

5. That, if defendant had a right to any such statutory lien on said goods, defendant-appellee is estopped by its conduct to assert such a lien as against plaintiff-appellant.

6. That if defendant had a right to any such statutory lien on said goods, defendant-appellee is precluded from asserting such a lien as against plaintiff-appellant because, prior to the time of asserting such a lien, defendant-appellee refused to deliver said goods to plaintiff-appellant upon another ground than the existence of such a lien.

These various legal contentions will be separately discussed.

1. That the Plaintiff-Appellant was and is a pledgee of the goods in controversy, said goods having been pledged with Plaintiff-Appellant by the owner thereof, Paramount Fabrics Corporation.

The evidence, hereinabove set forth, establishes that the Paramount Fabrics Corporation, the owner of the goods in controversy, executed and delivered to plaintiff-appellant documents (marked in evidence as Exhibits P. 24, P. 27, P. 28, P. 31, P. 32, P. 33, P. 35, P. 37, P. 38, P. 39, P. 40, P. 41, P. 44 P. 47, P. 48, P. 49.) which taken together refer to and cover all of the goods in controversy and each of which contained the following statement:

“The goods described below are hereby consigned to Mill Factors Corporation to be held by them subject to their lien for advances, outlays and commissions, and are to be disposed of in accordance with our agreement with them.”

(See State of Case, p. 194, and Exhibit P. 24, p. 195.)

At the time of executing each of such documents respectively, Paramount Fabrics Corporation filled out a corresponding “green sheet” exemplified by Exhibit P. 12. (see State of Case, pp. 189 and 190), and which set forth a list of the same merchandise described in the corresponding document aforesaid and which contained the following statement:

“Imhoff Berg Silk Dye Co.  
Paterson, N. J.

Dear Sirs:—

There has been shipped to you, by Paramount Fabrics for whom we act as factors,

via your truck the items mentioned below. Title to these goods remain in us, merchandise is at all times subject to our order only and must be returned to us when finished. You assume full responsibility for merchandise until it is returned to us on our premises.

MILL FACTORS CORPORATION”

All of said green sheets were marked in evidence. (See State of Case, p. 190.) The execution and delivery of the above-mentioned documents and green sheets by Paramount Fabrics Corporation to plaintiff-appellant, constituted a pledge by Paramount Fabrics Corporation of the goods therein mentioned to plaintiff-appellant because they showed an intention to make a pledge and they constituted a constructive delivery of the said goods.

In 31 *Cyc.* at page 785, it is stated that:

“A pledge is a transfer of personal property as a security for a debt or other obligation.”

At page 787, it is further stated that:

“The three elements necessary to constitute a contract one of pledges are: (1) The possession of the pledged property must pass from the pledgor to the pledgee or to someone for him; (2) the legal title to the pledged property must remain in the pledgor; (3) the pledgee must have a lien on the property for the payment of a debt or performance of an obligation due him by the pledgor or some other person.”

In the case of *Union Trust Co. v. Wilson*, 198 U. S. 530, 536, 25 S. Ct. 766, 767 (49 L. Ed. 1154), the Court said:

“It always is recognized that if the bailee of the owner, by direction of the latter, assents to becoming bailee for another to whom the owner has sold, mortgaged or pledged

the goods, the change in the character of the bailee's holding satisfies the requirement of a change of possession to validate the sale or pledge."

This language was quoted and relied upon by the Court in the case of *Cornelius v. C. C. Pictures* (Circuit Court of Appeals) 5 Fed. (2d) 157. In that case the situation was practically identical with the situation in the case at bar so far as change of possession of the goods in controversy is concerned. That case related to a chattel mortgage and the question was whether or not there had been a sufficient change of possession to satisfy the provisions of the statute relating to chattel mortgages. In that connection the Court said:

"The question at bar is whether, considering that the mortgaged chattels were at the time of mortgage given, and thereafter continued, in the physical possession of a third person, the facts proven constitute or are equivalent to that immediate delivery and actual and continued change of possession required by the law of New York."

\* \* \* \* \*

"Let it be admitted that actual possession means more than a paper transfer, something more than an effect produced by the mortgage instrument itself. But with these assumptions the question is pertinent; what can a mortgagee do when the chattels mortgaged to him are in the possession of a third person who is neither the agent nor tenant of the mortgagor, more than to make that third person his bailee as he had been the bailee of the mortgagor? Short of choosing another bailee, often at very material expense, no other method of effecting an actual and continued change of possession occurs to us, nor has any other method been suggested in argument."

\* \* \* \* \*

“The language of *Holmes, J.*, in *Union Trust Co. v. Wilson*, 198 U. S. 530, 536, 25 S. Ct. 766, 767 (49 L. Ed. 1154), is directly applicable. That learned judge remarks: ‘It always is recognized that if the bailee of the owner, by direction of the latter, assents to becoming bailee, for another to whom the owner has sold, mortgaged or pledged the goods, the change in the character of the bailee’s holding satisfies the requirement of a change of possession to validate the sale or pledge.’ This it seems to us is the real test, *viz.*: Was there a change in the character of the bailee’s holding?

In this instance there assuredly was, for on the records of the Evans Company, which in the view most favorable to the appellants was no more than the mortgagor’s bailee, absolute dominion over these cinema negatives passed to Wener, in that Wener alone was recognized by Evans Company as having authority to release the films producible from the negatives. The text-writers unanimously recognize similar doctrine, which is summed up in 11 C. J. 585, declaring in substance that the rule as enunciated by *Holmes, J.*, *supra*, ‘is applied by the weight of authority to cases where the property is in the possession of a bailee of the mortgagor.’ ”

By executing and delivering the aforesaid documents to plaintiff-appellant, Paramount Fabrics Corporation did all that it could have done under the circumstances to effect and evidence a pledge of said goods to plaintiff-appellant. At the time of the execution and delivery of said documents, the goods therein referred to and here in controversy were either in transit or on their way to defendant-appellee or in defendant-appellee’s possession. Short of getting these goods back from defendant-appellee for the purpose of making an actual and physical delivery thereof to plaintiff-appellant, Paramount Fabrics Corpora-

tion could have effected and evidenced a pledge thereof to plaintiff in no other or better way than by executing and delivering said documents to plaintiff-appellant. When thereafter and pursuant to the manifest contemplation of the Paramount Fabrics Corporation and plaintiff-appellant, plaintiff-appellant procured from defendant-appellee an acknowledgement that the latter would hold the said goods *for plaintiff-appellant*, the *legal transfer of possession* of said goods from Paramount Fabrics Corporation to plaintiff-appellant became complete not only as between Paramount Fabrics Corporation and plaintiff-appellant, but as between each of said parties and the defendant-appellee, and indeed as to all third persons. See cases cited, *supra*.

**2. That Defendant-Appellee was and is the Bailee of Plaintiff-Appellant with respect to said goods.**

It is incontrovertible, of course, that defendant-appellee was originally the bailee of Paramount Fabrics Corporation with reference to the goods in controversy. When thereafter the defendant sent to the plaintiff-appellant written acknowledgements signed by defendant-appellee, acknowledging that it held said goods for plaintiff-appellant and subject to plaintiff-appellant's order, the defendant-appellee became plaintiff-appellant's bailee. The Court in the case of *Cornelius v. C. C. Pictures, supra*, speaks of such an acknowledgement as an "attornment" by analogy with the attornment of a tenant to a new landlord. The language of the acknowledgements made by defendant-appellee to plaintiff-appellant is significant:

“Please sign and return promptly to  
**MILL FACTORS CORPORATION**  
 354 Fourth Avenue  
 New York, N. Y.

Date 4/22/27

We acknowledge receipt of merchandise as per your memorandum Numbered D7256 totalling 2 pcs. approximately 100 yds. Estimated value 125 and assume responsibility therefor according to conditions stated on said memorandum.

Imhoff-Berg S D Co  
 Per W. Tomasulo  
 (Sign here)

Paramount Fabrics Lot #530”

(See Exhibit P. 4, State of Case, p. 188.)

This language must be related to and connected with the statements contained in the so-called green sheet which was received by defendant-appellee from plaintiff-appellant, together with the acknowledgement, and which green sheet contained the following statement:

“There has been shipped to you, by Paramount Fabrics, for whom we act as factors, via your truck, the items mentioned below. Title to these goods remains in us, merchandise is at all times subject to our order only and must be returned to us when finished. You assume full responsibility for merchandise until it is returned to us on our premises.

**MILL FACTORS CORPORATION”**

(See Exhibit P. 12, State of Case, p. 189.)

Thus, by such acknowledgement the defendant-appellee must be held to have promised and agreed with plaintiff-appellant to hold the said merchandise subject to plaintiff-appellant's order only, and to return said merchandise to plaintiff-appellant. The words “We \* \* \*

assume responsibility" must be construed to mean "We take upon ourselves the obligation." In 5 Corpus Juris it is stated that "Assume" means to take to or on one's self. In 34 Cyc. 1675, it is stated that "Responsibility" means liability, obligation, bounden duty. Whether or not defendant-appellee knew that the said goods had been pledged by Paramount Fabric Corporation to plaintiff-appellant at or prior to the time that the defendant-appellee made such "acknowledgements" to plaintiff-appellant, is immaterial, although the evidence hereinabove set forth fully warrants an inference of that fact. Certainly, the fact that defendant-appellee received from plaintiff-appellant the above mentioned green sheet and the yellow sheet (acknowledgement), the latter to be signed by defendant-appellee and returned to plaintiff-appellant, wherein a right of plaintiff-appellant to the possession and control of said goods was declared, charged the defendant-appellee with notice of what inquiry would have disclosed *viz*: that the said goods had been pledged by the Paramount Fabrics Corporation to plaintiff-appellant.

Indeed, it is obvious that defendant-appellee would not have made such acknowledgements repeatedly for a long period of time if defendant-appellee had not *in fact* known the facts. Moreover, and independently of the foregoing considerations, it is clear that a contract of bailment arose between defendant-appellee and plaintiff-appellant with reference to said goods from the promise of defendant-appellee to hold said goods for plaintiff-appellant (set forth in the acknowledgement) coupled with plaintiff-appellant's consequent action in reliance thereon.

In 6 *Corpus Juris*, 1102, it is stated that:

“It is the element of lawful possession, however created, and the duty to account for the thing as the property of another that create the bailment, regardless of whether such possession is based on a contract in the ordinary sense or not.”

In the case of *Burns v. State*, 145 Wis. 373, 128 N. W. 987, 140 Am. S. R. 1081, it is said that:

“It is said, generally, in the books, that a bailment is created by delivery of the personalty to one person by another to be dealt with in specie as the property of such other person under a contract, express or implied, but the word ‘contract’ is used in a broad sense. The mutuality essential to the contractual feature may be created by operation of law as well as by the acts of the parties with intention to contract. So it makes no difference whether the thing be intrusted to a person by the owner, or another, or by some one for the owner or by the law to the same end. Taking possession without present intent to appropriate raises all the contractual elements essential to a bailment.”

In 6 *Corpus Juris*, on page 1106, it is stated that:

“The bailment of personal property needs no consideration other than the transaction itself to support it; it is sufficient if the bailor, on the faith of the bailee’s undertaking, parts with some present right, delays the present use of some right, suffers some immediate prejudice or detriment.”

In the light of the foregoing authorities, it is clear that a contract of bailment was created between plaintiff-appellant and defendant-appellee. Plaintiff-appellant, after receiving acknowledgments from defendant-appellee, permitted the goods in controversy to remain in defendant-ap-

pellee's possession, although plaintiff-appellant as pledgee of said goods could immediately have demanded and obtained possession of the said goods from defendant-appellee. Plaintiff-appellant also, in reliance on said acknowledgements, made loans and advances to Paramount Fabrics Corporation. Thus, the consideration, if any were needed for such contract, was manifestly furnished.

**3. That Defendant-Appellee as Bailee of said goods for Plaintiff-Appellant cannot assert a lien thereon based upon the New Jersey Statute relating to Dyers Liens for an indebtedness owing to Defendant-Appellee by Paramount Fabrics Corporation, the owner (and pledgor) of said goods.**

The rule is well settled that a bailee is estopped to assert any title as against his bailor. In the case of *Wheeler & Wilson Mfg. Co. v. Brookfield*, 70 *N. J. Law*, 703 (Court of Errors and Appeals), the Court said at page 706:

“The bailee could not dispute the bailor's title, hence he could not set up ownership in himself, or, as some of the cases hold, in another.”

See also 6 *Corpus Juris*, 1108, 1109.

It is to be observed that the statutory lien claimed by defendant-appellee in this case is not based upon any indebtedness of the plaintiff-appellant and is not even based upon any work done on the goods in controversy. Under the foregoing authorities defendant-appellee is clearly estopped to assert the alleged lien as against plaintiff-appellant.

4. That, if Defendant-Appellee had any right to such a statutory lien on said goods, said lien was waived by Defendant-Appellee as between Defendant-Appellee and Plaintiff-Appellant.

The rule is well settled that a waiver of lien may result from conduct inconsistent with the existence of a lien or the parties' intention to rely on it. It may also arise by implication. An intention to abandon the lien may be inferred from the conduct of the party.

See *Avery v. Hackley* (U. S. Supreme Court), 22 L. Ed. 385, and 37 *Corpus Juris* 334.

In *Jones on Liens*, Section 998, the following rule is stated:

"But if the conduct of the lienholder be inconsistent with the preservation of his lien, it will be presumed that he intended to waive it. Thus, if a person has a lien upon logs for driving them into a boom, and afterwards, with knowledge that the owner has sold them, assists the purchaser to take possession of the logs for the purpose of having them sawed and converted to his own use, without making known that he has any lien or claim upon them, he will be regarded as having abandoned or waived his lien."

In the case of *McMaster v. Merrick*, 41 Mich. 505, 2 N. W. 895, the Court in discussing the conduct of the claimant of the alleged lien says:

"It was inconsistent with their lien, if they claimed one, that they took no steps to assert it distinctly when the whole facts appearing indicated its non-existence."

The Court further says:

"The lumber after November 15th was on the premises of the general owner, and whether under such circumstances a lien could have existed in any one else without removal, it certainly could not exist without some distinct possession, and was effectually

negated by the recognition without denial or qualification, of a right of possession and disposal in the assignees and transferees of the general owner."

The same rule is cited in 40 Cyc. 254, as follows:

"A waiver occurs where one having a right, by law or contract, does or forbears to do something inconsistent with the existence of that right or his intention to rely on it. In consequence, he is precluded from claiming it afterwards."

The evidence hereinabove set forth fully establishes a waiver within the above mentioned rule. A summary of the salient facts makes this clear.

1. Defendant-appellee knew the nature of plaintiff-appellant's business, viz. "factoring" or lending money to silk manufacturers on the security of goods pledged with plaintiff. (See State of Case, pp. 33 and 34, ll. 10 to 40; pp. 42 to 46 inclusive; p. 129, ll. 9 to 21.)

2. Defendant-appellee knew that plaintiff was "factoring" Paramount Fabrics Corporation. (See State of Case, pp. 33 and 34, ll. 10 to 40; pp. 42 to 46 inclusive; p. 129, ll. 9 to 21; p. 111, ll. 34 to 40; pp. 112 to 116 inclusive; p. 118, ll. 30 to 40; p. 129, ll. 9 to 30; exhibits on pp. 188 to 194 inclusive.)

3. Defendant-appellee knew or must have known the purpose of plaintiff-appellant in sending to defendant-appellee the "green sheets" and getting defendant-appellee's acknowledgment on the "yellow sheet", viz., to effect a pledge of the goods upon which plaintiff-appellant would make advances to the Paramount Fabrics Corporation. (See State of Case, pp. 189 and 190; and pp. 28 to 46; p. 30, ll. 36 to

40; p. 31, ll. 4 to 9 and ll. 29 to 31; p. 32, ll. 28 to 40; p. 42, ll. 9 to 32; p. 124, ll. 6 to 17 and ll. 32 to 40; p. 125, ll. 15 to 19; p. 129, ll. 35 to 40; p. 130, ll. 4 to 17; pp. 33 and 34, ll. 10 to 40; pp. 42 to 46 inclusive; p. 129, ll. 9 to 21; p. 111, ll. 34 to 40; pp. 112 to 116 inclusive; p. 118, ll. 30 to 40; p. 129, ll. 9 to 30; exhibits on pp. 188 to 194 inclusive.

4. Defendant-appellee had participated with plaintiff-appellant in such course of conduct for more than a year prior to the dates of the transactions involved in this suit, and during that time had dealt with Paramount Fabrics Corporation on a credit basis. Credit: thirty days from delivery date. (See State of Case, pp. 33 and 34, ll. 10 to 40; pp. 42 to 46 inclusive; p. 129, ll. 9 to 21; p. 139, l. 24 to p. 142, l. 29 inclusive.)

5. Defendant-appellee had never before done any act or made any statement to negative or qualify its express acknowledgement that it was holding all the "acknowledged" goods for plaintiff or to negative the inference that it was holding the goods for plaintiff-appellant free from any lien for Paramount Fabrics Corporation's indebtedness to defendant-appellee. (See State of Case, pp. 33 and 34, ll. 10 to 40; pp. 42 to 46, inclusive; p. 129, ll. 9 to 21.)

6. Defendant-appellee's frequent furnishing to plaintiff-appellant of inventories of goods described therein as being held by defendant-appellee "subject to your (plaintiff-appellant's) order", repeatedly confirmed that inference. (See State of Case, p. 192; p. 46, ll. 25 to 40; p. 47, ll. 4 to 15; p. 48, ll. 24 to 40; p. 49, ll. 4 to 14; pp. 191 and 192.)

Furthermore, the existence of a lien in favor of defendant-appellee on said goods for any indebtedness of Paramount Fabrics Corporation to defendant-appellee, was inconsistent with defendant-appellee's above-said conduct, because:

(a) The existence of a lien would defeat the obvious purpose plainly intended to be served by said "acknowledgements" of defendant-appellee to plaintiff-appellant, viz: to make defendant-appellee the bailee of plaintiff-appellant as to such "acknowledged" goods, and thereby to enable Paramount Fabrics Corporation to get loans from plaintiff-appellant upon the security of such goods as have been "pledged" with plaintiff-appellant.

*The existence of a lien*  
 (b) would conflict with the statement contained in the "green sheets" sent by plaintiff-appellant to defendant-appellee, viz: "there has been shipped to you, by Paramount Fabrics for whom we act as factors, via your truck the items mentioned below. Title to these goods remains in us, merchandise is at all times subject to our order only and must be returned to us when finished. You assume full responsibility for merchandise until it is returned to us on our premises." (Signed Mill Factors Corporation), and the defendant-appellee's acquiescence in and consent thereto in the statement in the corresponding "acknowledgements" sent by defendant-appellee to plaintiff-appellant, viz.

"We acknowledge receipt of merchandise as per your memorandum Numbered D.... totaling.... pcs. approximately.... yards. Estimated value....and assume responsibility therefore according to conditions stated on said memorandum."

*The existence of a lien*  
 (c) would enable Paramount Fabrics Corporation to obtain additional credit from defend-

ant-appellee on the strength of defendant-appellee's possession of these very goods which had thus been "acknowledged" by defendant-appellee to plaintiff-appellant, thereby impairing or wiping out the interest or equity of plaintiff-appellant in said goods upon the security of which plaintiff-appellant had advanced large sums to Paramount Fabrics Corporation.

*The evidence of a lie*  
 (d) <sup>^</sup> would put the goods virtually under the control of Paramount Fabrics Corporation, the pledgor, instead of under the control of plaintiff-appellant, the pledgee, by enabling Paramount Fabrics Corporation to utilize defendant-appellee's possession of said goods as a basis for obtaining credit from defendant-appellee for the dyeing of other goods of Paramount Fabrics Corporation.

The evidence above-mentioned established that defendant-appellee's president and superintendent had been turning these green sheets and yellow sheets over to Mr. Tomasulo in the regular course of business for a long period of time prior to the dates involved in this suit, and that during all of said time the defendant-appellee's said executive knew the nature of plaintiff-appellant's business and must have known the purpose of plaintiff-appellant and Paramount Fabrics Corporation intended to be served by sending defendant-appellee said green sheets and procuring defendant-appellee's yellow sheets or acknowledgements, or at any rate defendant-appellee had notice of such purpose. Hence, defendant-appellee must be held to have acquiesced in Mr. Tomasulo's signing of said yellow sheets (acknowledgements) and returning same to plaintiff-appellant and defendant-appellee must be held to have acquiesced in the appearance of authority in Mr. Tomasulo, to do said acts.

5. That, if Defendant-Appellee had a right to any such statutory lien on said goods, Defendant-Appellee is estopped by its conduct to assert such a lien as against Plaintiff-Appellant.

In 37 *Corpus Juris* 332, the following rule is stated:

“A person is estopped to assert a lien where he has failed to assert it when under the circumstances it is his duty to do so, or where by his other acts or representations, he has induced another so to act upon the belief that the lien does not exist, that the latter would be prejudiced by its enforcement.”

In 3 Fed. (2), 621, the Court said:

“Brokers’ pledgees, who took over the management of the business of the brokers are estopped to assert lien on stock of customer, which they failed to assert when the customer demanded the securities; the customer being prejudiced because he refrained from taking steps which would have resulted in investigation by the Stock Exchange.”

In 21 *Corpus Juris* 1166, the following rule is stated:

“Where a person having a claim sees another doing an act inconsistent therewith, and stands by in such a manner as to induce the person doing the act, and who might otherwise have abstained from it, to believe that he assents to its doing, he cannot afterward be heard to complain of it.”

\* \* \* \* \*

“If a mortgagee or other lien holder stands by while another acquires an interest in the property, and fails to make known or assert his lien, he will be afterward estopped to do so to the prejudice of that other.”  
(See page 1167.)

The same principle was applied in the case of *Race v. Groves*, (Court of Errors and Appeals),

43 N. J. Eq. 284. The syllabus states the case as follows:

“Complainant held the lease of a storehouse from Groves and occupied it himself as a country store. The lease gave him the option of buying the premises at any time during his term, at whatever price might be offered Groves therefor. Groves offered to sell to Emmons and entered into written agreement therefor, of which complainant was ignorant until after the agreement had been executed. Emmons had no knowledge of complainant’s rights until notified thereof by the latter; whereupon on January 6th, 1886, he bought out and paid complainant for his stock of goods in the storehouse, and on March 25th, 1886, complainant surrendered possession of the premises to him. Complainant never stated that he intended to insist on a conveyance of the lands, under the provisions of the lease, until the service of the injunction restraining the transfer to Emmons. Held, that the complainant is estopped, by his acts and conduct towards Emmons, from interfering with Emmon’s obtaining a conveyance of the premises from Groves.”

It was well known to defendant-appellee during all of said period that plaintiff-appellant was a silk factor, that plaintiff-appellant’s business was that of lending money to silk manufacturers on the security of merchandise pledged for that purpose and that plaintiff-appellant was dealing as factor with Paramount Fabrics Corporation. (State of Case, p. 111, ll. 34 to 40, pp. 112 to 116 inclusive; p. 118, ll. 30 to 40; p. 129, ll. 9 to 30; exhibits on pp. 188 to 194 inclusive.

Defendant-appellee knew or must have known that plaintiff-appellant would rely upon the security of the goods in controversy in making advances of money to the Paramount Fabrics Corporation. By its conduct, defendant-appellee

certainly led plaintiff-appellant to believe that defendant-appellee did not or would not assert a statutory lien upon said goods as against plaintiff-appellant.

At the time that the goods involved in this suit came into defendant-appellee's possession, Paramount Fabrics Corporation, being the owner of said goods, was indebted to plaintiff-appellant in a sum in excess of the value thereof for loans made by plaintiff-appellant to Paramount Fabrics Corporation pursuant to an agreement theretofore made between them. (State of Case, p. 5, ll. 29 to 37, and p. 7, ll. 31 to 32; p. 70, ll. 23 to 40; p. 71, ll. 4 to 38; Exhibit P. 45, pp. 197 to 199 inclusive.) From said date to date of suit, said Paramount Fabrics Corporation continued to be indebted to plaintiff-appellant on said account to an extent of more than \$8,000.00. (State of Case, p. 71, ll. 29 to 40 and Exhibit P. 45 on pp. 197 to 199 inclusive.) Under said agreement, plaintiff-appellant agreed to make loans to Paramount Fabrics Corporation on the security of goods to be pledged by Paramount Fabrics Corporation for that purpose. (See agreement, State of Case, p. 214, ll. 15 to 31.)

Pursuant to said agreement and the practice of the parties thereunder, plaintiff-appellant made loans to Paramount Fabrics Corporation on merchandise which had been "consigned" (pledged) by Paramount Fabrics Corporation to plaintiff-appellant as aforesaid, where the goods were delivered to defendant-appellee and yellow sheets (acknowledgements) covering said goods, and signed by defendant-appellee, were received by plaintiff-appellant from defendant-appellee. Such goods were added by plaintiff-appellant to the "inventory" of pledged goods on the basis of which plaintiff-appellant made loans to Para-

mount Fabrics Corporation. (Exhibit D. 2, State of Case, p. 212, ll. 30 to 40; p. 158, ll. 29 to 40; pp. 159 to 164 inclusive; p. 164, l. 27 to p. 166, l. 10 inclusive.)

In reliance upon the defendant-appellee's conduct and the plain implication thereof, plaintiff-appellant actually made large advances of moneys to the Paramount Fabrics Corporation after receiving the "acknowledgements" from the defendant-appellee which are hereinabove mentioned.

During the period in which plaintiff-appellant received from defendant-appellee the signed yellow sheets (acknowledgements) relating to goods involved in this suit, *viz.* January to April, 1927, plaintiff-appellant made actual loans to Paramount Fabrics Corporation as aforesaid from time to time, in reliance on said merchandise as security, as follows:

1927				
January	3—	To	Cash	3,500.00
	5—	"	a / c o Rosenzweig- Standard	160.31
	6—	"	Cash	10,000.00
	10—	"	"	12,500.00
	13—	"	"	7,000.00
	19—	"	"	12,000.00
	24—	"	"	5,000.00
	27—	"	"	15,000.00
February	4—	"	"	20,000.00
	8—	"	"	10,000.00
	18—	"	"	7,000.00
	23—	"	3 bills (M. Salz- berg & Sons)	8,193.37
	24—	"	Cash	4,000.00
	28—	"	"	5,000.00
March	2—	"	Bill 2/26 (M. Salz- berg Sons)	4,525.59
	7—	"	Cash	8,000.00
	24—	"	"	1,000.00
April	15—	"	7 Dye a/co pd.	6,290.00

(See Exhibit P. 45, State of Case, p. 197.)

The foregoing facts clearly establish a case of estoppel against the defendant within the authorities above cited.

6. That if Defendant-Appellee had a right to any such statutory lien on said goods, Defendant-Appellee is precluded from asserting such a lien as against Plaintiff-Appellant because, prior to the time of asserting such a lien, Defendant-Appellee refused to deliver said goods to Plaintiff-Appellant upon another ground than the existence of such a lien.

On November 18, 1927, plaintiff-appellant wrote defendant-appellee a letter. This letter was produced by the defendant-appellee at the trial and was marked in evidence as Exhibit P. 55. Said exhibit is as follows:

“MILL FACTORS CORPORATION

354 Fourth Avenue

New York, Nov 18 1927

To Imhoff Berg Silk Dye Co.

67 Chadwick St.

Paterson, N. J.

Gentlemen:—

Of the merchandise you are holding, subject to our order, kindly ship the following:  
 .....Cases.....Bales Numbers All the  
 mdse you have finished as well as all greigh  
 goods holding for us.

To Our premises

354 4th Ave

Via .....

Mark all packages:—

From

MILL FACTORS CORPORATION

Factors for  
Paramount Fabrics Corp.

Send two bills of lading to us at 354 Fourth Avenue, New York City. Kindly acknowledge receipt of these instructions.

Very truly yours,

MILL FACTORS CORPORATION

Per Geo. W. Webb  
Secretary”

(See State of Case, p. 135, ll. 9 to 19.)

This letter was answered by a letter from defendant-appellee to plaintiff-appellant dated December 26, 1927. This letter was marked in evidence as Exhibit P. 54. Said exhibit is as follows:

“Dr. M. Imhoff, Pres.            O. Berg, Treas.  
IMHOFF-BERG SILK DYEING CO.

Main Works: Wood, East Seventh and  
Lowe Streets

Branch: 66-77 Chadwick Street  
Paterson, N. J.

Telephones	New York Office
Main Office Sher. 5487-5488	230 Fifth Avenue
Branch Sher. 6227	N. Y. Telephone
	Ashland 5624

Received Dec 7

No. 37

December 6, 1927

Mills Factors Corporation  
354 Fourth Avenue,  
New York, N. Y.

Gentlemen:—

Replying to your favor of November 18, asking us to send all the merchandise, finished as well as in the gray, holding for the account of the Paramount Fabrics Corporation, we beg to inform you that we cannot

comply with your request as the goods have been attached for debt and the attachment was served on us the 21st day of April, 1927.

George Wenger is the plaintiff. The amount due seems to be \$3,424.16.

Very truly yours,

IMHOFF-BERG SILK DYEING CO.  
HM:CP H. Miedendorp"

(See State of Case, p. 134, ll. 8 to 10; p. 135, ll. 21 to 64; p. 136, ll. 20 to 24; p. 137, ll. 37 to 40; p. 139, l. 12.)

There is a presumption that Mr. Miedendorp had authority to write this letter on behalf of the defendant-appellee. It is stated in 22 *Corpus Juris*, 909, that:

"Where a letter in reply to another purports to have been written under the authority of the alleged sender, proof of such authority is unnecessary."

There was no evidence introduced by the defendant-appellee to rebut this presumption. The only testimony offered by defendant-appellee in this regard was as follows:

"Q Did you have any specific authority to write that particular letter?

A No."

(See State of Case, p. 146, ll. 9 and 10.)

Obviously, a want of specific authority would not negative or preclude an implied authority or a general authority. As a matter of fact Mr. Miedendorp's testimony warrants the inference that the writing of said letter was within the scope of his duties. He testifies that he was defendant-appellee's bookkeeper, was in charge of defendant-appellee's office, had charge of correspondence relating to bills owing to defendant-appellee and bills owing by defendant-appellee,

as well as correspondence relating to accidents, insurance, contracts, purchase of supplies and "anything pertaining to the financial end." (See State of Case, pp. 170, 171.)

Mr. Miedendorp also testified in this connection as follows:

"Q If someone wanted their goods, some customer wanted his goods, and owed you money, would you have to deal with that customer before he could get the goods?"

A Do you want me to explain the process?

Q No; you answer the question, please.

Mr. Evans: Yes.

Q Do not look at Mr. Evans. He wants you to explain, but I do not.

Mr. Evans: We want a full explanation.

The Court: He can answer.

(Question repeated by the stenographer.)

A Why, of course."

(See State of Case, p. 171, ll. 29 to 39.)

From this it is plain that Mr. Miedendorp's authority included within its scope the writing of the above mentioned letter. There was no evidence offered by defendant-appellee to show that the writing of such a letter was out of the usual course of Mr. Miedendorp's duties or that the writing of said letter was a violation of his duty.

It is well settled that a refusal to deliver goods on other grounds as evidenced by defendant-appellee's said letter, prevents the defendant-appellee from asserting an alleged lien.

The leading case upon the subject is the case of *Boardman v. Sill*, 1 Campb. 410. That was

an action for trover for some brandy which lay in the defendant's cellars, and which, when demanded, he had refused to deliver up, saying it was his own property. At this time certain warehouse rent was due to the defendant on account of the brandy, of which no tender had been made to him. It was contended that the defendant had a lien on the brandy for the warehouse rent, and that till this was tendered, trover would not lie. *Held*: "That, as the brandy had been detained on a different ground, and as no demand of warehouse rent had been made, the defendant must be taken to have waived his lien, if he had one."

In the case of *White v. Gainer*, 130 Eng. Rep. Reprint 212, the defendant, who had a lien on some cloth, purchased it of the bailor after he became bankrupt, and when the cloth was demanded of him by the assignees in bankruptcy, refused to give it up saying: "I may as well give up every transaction of my life." *Held*: That these words were no waiver of his lien, and that the lien was not merged on the purchase. Rule *nisi* to set aside verdict refused. The Court said:

"I agree in the law as laid down in *Boardman v. Sill*, (1. Campb. 410), but not in the application of it now proposed. In that case it was holden, that if a party, when goods are demanded of him, rests his refusal on grounds other than that of the lien, he cannot afterwards resort to his lien as a justification for retaining them. Therefore, if even in this case, the defendant, when applied to, to deliver the goods, has said: 'I bought them, they are my property,' I should have holden there was a waiver of his lien; but he said no such thing, but only, 'If I deliver them, I may as well give up every transaction of my life,' etc. \* \* \*"

In the case of *Lehman v. Schmidt* (Sup. Ct. Cal.) 25 Pac. 161, which was an action for conversion, defendant agreed with owner of some wine to receive and sell it \* \* \* and under the agreement did receive part of it. He then refused to sell the wine or have anything more to do with the contract, or to return the wine which he had received, or to account for it. When demand was made on the defendant, he made no claim of lien. He stated to witnesses that it was so mixed up with his wine that he could not make any statement of it. *Held*: That there had been a conversion and that defendant had waived his lien for advances and expenses. Affirmed, Paterson, *J.*

“The defendant waived his lien, if any he had, for moneys advanced or expenses incurred on account of the wine by repudiating the contract, refusing to deliver the wine and by declining to account to Smith for the amount received or expended. It has been held in England that a person having a lien on goods does not waive it by the mere fact of his omission to state that he claims them in that right when they are demanded, but, if a different ground of retention than that of the lien be assumed the lien ceases to exist. In this country, the weight of authority seems to support the contention that if the bailee refuse upon demand to deliver the property without setting up his lien thereon, he waives his right to claim a lien after suit brought. *Hanna v. Phelps*, 7 Ind. 24; *Everett v. Saltus*, 15 Wend. 478.”

The following cases also are authorities in support of the above mentioned rule: *Weeks v. Goode*, 191 English Reports, 499; *Jones v. Cliff*, 172 English Reports, 1099; *Folsom v. Barrett*, 62 N. E. 723 (Mass.); 37 *Corpus Juris*, 338.

Upon the foregoing grounds, it is respectfully submitted that the trial court erred in refusing

plaintiff-appellant's motion for a direction of verdict, and on the same ground erred in granting defendant-appellee's motion for direction of a verdict.

#### Fourth Ground of Appeal.

The fourth ground of appeal set forth in the grounds of appeal is as follows:

"That the Court erroneously permitted the following testimony of the witness, Miedendorf:

'Q Did you have any specific authority to write that particular letter?

A No.

Mr. Bilder: I object.

Q Referring to Exhibit P. 54.

Mr. Bilder: If the Court please, the witness answered so quickly—I object on the ground that it calls for a conclusion of law, and on the further ground it is improper cross examination and is part of the defendant's defense.

The Court: I think it is permissible, and I will permit it.

Mr. Bilder: May I take an exception?

The Court: Answer the question.

A No."

(See State of Case, p. 23, ll. 8 to 26.)

It seems obvious that the question called for a conclusion of law or for an opinion from the witness, and on that ground should have been excluded.

### Fifth Ground of Appeal.

The fifth ground of appeal set forth in the grounds of appeal is as follows:

“That the Court erroneously permitted the following testimony of the witness, Miedendorf:

‘Q Well, would you have any authority, Mr. Miedendorf, to release any liens that the company might have?

A No.

Mr. Bilder: I object.

A No authority—

The Court: I will permit it.

A No authority whatever.

Q Or waive any liens?

Mr. Bilder: I object.

A None whatever.

The Court: I will permit it.

Mr. Bilder: On the ground that the witness is being asked a question of law, embodying a legal term with which the witness is not shown to be familiar.”

(See State of Case, p. 23, ll. 27 to 40, and p. 24, ll. 4 to 10.)

It is obvious that the foregoing question also called for a conclusion of law and should have been excluded on that account.

It is respectfully submitted that the verdict of the court below should be set aside.

Respectfully submitted,

BILDER & BILDER,  
Solicitors of Plaintiff Appellant.

Of counsel,  
WALTER J. BILDER.



## New Jersey Court of Errors and Appeals

MILL FACTORS CORPORATION, a  
corporation,  
Plaintiff-Appellant,

vs.

IMHOFF-BERG SILK DYEING COM-  
PANY,  
Defendant-Appellee.

In Replevin

On Appeal.

### BRIEF ON BEHALF OF DEFENDANT-APPELLEE.

#### General Statement of the Case.

This is an action in replevin brought by a New York factor, Mill Factors Corporation, against a New Jersey dyer, Imhoff-Berg Silk Dyeing Company, to recover possession of 105 pieces of silk goods sent to the dyer by the owner, Paramount Fabrics Corporation, a New York Corporation, to be dyed and finished. For the more easy reference of the Court we shall designate the parties respectively the Factor, the Dyer and the Owner.

The Owner had its showrooms at 249 West 38th Street, New York City. It itself was not a manufacturer.

The goods in question, 105 pieces, were goods which had been purchased by the Owner from manufacturers or had been woven for the Owner by commission manufacturers. The regular course of business was for the Owner to direct the manufacturer to ship the woven goods, still in their raw or unprocessed state, to the Dyer, to be dyed and

finished. Upon receipt of advices that such shipment had been made, the Owner then advised the Factor on duplicate green forms, and the Dyer on duplicate pink forms, of such shipment. The Factor in turn would forward one of these forms (a green duplicate received by it) to the Dyer. The Dyer would mail back receipts to the Factor, (a yellow sheet) and Owner (a duplicate pink sheet) on forms prepared by the latter. These forms are set forth in detail later, and for convenience are often referred to by their colors.

The Factor claims that the goods in the possession of the Dyer were pledged to it, and that it has a superior right to possession to that of the Dyer, by reason of an indebtedness of \$8,153.62 against the Owner. The alleged pledge was made after shipment to the Dyer. (Case, page 101.)

The Dyer claims ~~that~~ a lien under the statute of this State relating to Processors, for the amount due on the unpaid account of the Owner in the sum of \$1,535.87, and that his right to retain the possession of the goods in dispute is prior in time and paramount in law to any rights the Factor might have.

At the trial, plaintiff-appellant and defendant-appellee respectively, moved for the direction of a verdict. The court denied the plaintiff-appellant's motion, but granted the motion made by defendant-appellee.

### **Statement of Facts Established by the Evidence.**

1. The goods in question were delivered to the Dyer for the purpose of being dyed and finished, (Case, page 105, ll. 37-40).

2. There was a large sum of money due and owing the Dyer by the owner for the dyeing and finishing account of the Owner, the balance now being \$1,535.87. (Case, page 147, ll. 1-16).

3. There was a contract between the Factor and the Owner, upon which their relations were based (Case, Ex. D-1, page 209). Paramount Fabrics Corporation, the owner herein described, succeeded to all the rights and liabilities of Bayer-Veit-Goldman, Inc., and for the purposes of this case the two are treated as one and the same corporation. (Case, Ex. D-2 and D-3, pages 218 and 219).

4. The document prepared by the Owner, and forwarded to the Dyer, (pink sheets), upon its learning of the shipment of goods to the Dyer by its manufacturers, was in the following form:

"Shipping Memorandum  
Bayer-Veit-Goldman, Inc.  
247-249 West 38th Street,  
Mill Factors, Corp. Factors  
M Imhoff Berg Silk Dye Co  
Render billing and statements in duplicate  
for account Paramount Fab  
(detailed description of goods)  
New York, 4/11/27  
529  
Our Quality 605  
Mill Quality.....  
Composition Canton Crepe  
Grey Width.....  
Case No. Your truck 4/12  
Important  
These goods are to be checked and held for  
our dyeing instructions.

No charge

Kindly detach and return the annexed slip with your signature immediately upon receipt, and check up of these goods. D-5 and D-7 are exactly similar to the above exhibit, except that they cover 85 and 30 pieces of goods respectively."

(Case, page 222). Attached was a form of receipt to be returned.

5. The documents prepared by the Owner and forwarded to the Factor, upon its learning of shipment of goods to the Dyer by the manufacturer, were of several kinds:

(a) Green sheet memorandum of shipment in quadruplicate in following form:

Invoice No. D6636

Mill Factors Corporation  
 354 Fourth Avenue  
 New York, Mar 28, 1927  
 Name Imhoff Berg Silk Dye Co.  
 Address Paterson N. J.

Dear Sirs:

There has been shipped to you, by Paramount Febrics for whom we act as factors, via your truck the items mentioned below. Title to these goods remains in us, merchandise is at all times subject to our order only and must be returned to us when finished. You assume full responsibility for merchandise until it is returned to us on our premises.

Mill Factors Corporation"

(Below this appears a list of goods.)

(See State of Case, pp. 189 and 190; and pp. 28 to 46.)

(b) Attached to the green sheet was a yellow sheet containing a form of receipt as follows:

"Please Sign and Return Promptly to  
 Mill Factors Corporation  
 354 Fourth Avenue  
 New York, N. Y.

Date (4/22/27)

We acknowledge receipt of merchandise as per your memorandum Numbered (D7256) totalling (2) pcs. approximately (100) yds. Estimated value (125) and assume responsibility therefore according to conditions stated on said memorandum."

(See State of Case, pp. 188, 30, 31 and 35 to 46 inclusive.)

(c) A white sheet in the following form:

“Mill Lang & Lewin, Inc. Date 2/23/27  
 Case No.....Consignment No. 498A  
 The goods described below are hereby con-  
 signed to Mill factors Corporation to be held  
 by them subject to their lien for advances,  
 outlays and commissions, and are to be dis-  
 posed of in accordance with our agreement  
 with them. Total.....Pieces  
 (containing detailed statement of goods)  
 Receiving number....  
 Checked against receiving sheet....  
 Recorded for advances Feb. 25, 1927.  
 Shipped to Imhoff Berg Silk Dye Co.  
 Signed Paramount Febrics  
 by Sey. Bayer.”

(Case, page 195).

5. This latter white sheet, consignment sheet, (Exhibit P-24, Case, page 195) never came to the notice of the Dyer. (Case, page 101, lines 20-23). This is stressed because the plaintiff's brief is not altogether clear on this point.

6. The Factor, however, mailed out one of the duplicate green memorandum sheets to the Dyer, accompanied by the yellow receipt, to be returned. (Case, page 58, lines 1-15).

7. The testimony of the Factor's own witnesses showed conclusively that the delivery of documents to the Factor, did not take place until after the goods covered thereby had been shipped to the Dyer. Daniel Veit, Factor's witness, at page 101, states that the manufacturer notified the Owner by mail of the shipment already made to the Dyer; the Owner then notified Factor. (Case, page 108, lines 18-35) (See also Case, page 49, line 28; see also testimony of dyer's shipping clerk at page 49, line 28). This point is stressed because the plain-

tiff-appellant erroneously states at pages 1 and 5 of its brief, that the shipment to the Dyer was made at the same time as the delivery of documents by the owner to the Factor.

8. The Dyer had no notice or knowledge of the contents of any agreement between the Owner and Factor; no copy of the factoring agreement was ever brought to the Dyer's attention and other than knowledge of the naked use of the word "Factor" in the documents passing between them, the Dyer knew nothing of the transactions between the Owner and Factor.

9. Dyer had no knowledge of advances or payment of bills by the Factor for the Owner, as against the goods in dispute, contrary to the inferences urged by the plaintiff-appellant throughout its brief.

10. No notice of the information contained in paragraph 16, page 9, of counsel's brief is shown to have been brought to the Dyer by the Factor.

11. The basis of credit between Dyer and Owner is of no consequence for at the time of the receipt of the goods in question, the Owner was indebted to the Dyer in a sum upwards of \$6,500. (Case, page 147, lines 10-15).

## POINT I.

**The defendant-appellee (the dyer) had a lien on the goods in controversy by virtue of the "Processor's Lien Act" of this State.**

The statutory lien in effect at the time in controversy reads as follows:

"All persons or corporations engaged in the business of spinning, throwing, manufacturing, bleaching, mercerizing, dyeing, printing, finishing, dressing or scraping linen, cotton, wool, silk, artificial silk, skins, pelts, furs or hide or goods of which linen, cotton, wool, silk, artificial silk, skins, pelts, furs or hides form a component part shall be entitled to a lien upon the goods or property of others that may come or may have come into their possession for the purpose of being spun, thrown, manufactured, bleached, mercerized, dyed, printed, finished, dressed or scraped for the amount that may be due to them from the owners of such linen, cotton, wool, silk, artificial silk, skins, pelts, furs or hides for a component part by reason of any work or labor performed or material furnished in and about the spinning, throwing, manufacturing, bleaching, mercerizing, dyeing, printing, finishing, dressing or scraping or otherwise treating or processing of the same or other goods of such owner or owners."

*Chapter 288, Laws of 1926, page 479.*

The legislation giving a special statutory lien to processors of goods, runs back many years. From time to time it has been amended and changed but in its essentials it has remained the same for some time.

See

- Chap. 175, Laws 1888, page 222.  
 Chap. 284, Laws 1890, page 469.  
 Chap. 202, Laws 1921, page 635.  
 Chap. 200, Laws 1924, page 423.  
 288, Laws 1926, page 479.

The statutory lien has been approved by Courts of this State.

*Olympic Silk Mills v. Washington Piece Dye Works*, 147 Atl. 47, 7 Misc. 648.

*Saroy Silk Manufacturing Co. v. Royal Piece Dye Works*, (E. & A.) 134 Atl. 663.

The statutory lien is the logical and normal development of the common law artificer's lien. At common law it was early recognized that one who had put his labor into an article was entitled to special protection for the enhancement in value of another's chattel. The artificer not having title, was at a special disadvantage and, therefore, the law gave him a lien upon goods in *his possession* for the amount of work, labor and materials that he put into those goods and he might retain that possession until he had been fully paid. This right to a lien has even been approved when the article was brought to him by one other than the owner, where it might be inferred that the owner had given his consent.

See

*White v. Smith*, 44 N. J. L. 105.

*Ruppert v. Zang*, 73 N. J. L. 216.

*Sullivan v. Clifton*, 55 N. J. L. 324 (E. & A.)

Since the early times when business was on a

small scale and each transaction considered by itself, there has been a vast development in the scope of business. Today, industry is on a great credit basis. It is not feasible or practical for a processor to be paid for each separate job as he does it. No concern could live under modern conditions which undertook such a policy. Today, artificers do the work on a large scale manner and bills are rendered, as a matter of common knowledge, monthly, and credit given on thirty, sixty and ninety days. It is no longer practicable for the processor to hold each individual lot of goods processed until he is paid for that particular job, nor is it practicable for him to hold goods processed over the course of a month or more until the monthly bills be paid. Industry moves swiftly today. It is unprofitable for all concerned for processed goods to lie in storage in order to conform to an ancient law which developed under quite different conditions.

It therefore became necessary for the law to be extended so as to meet these changes in economic conditions. The common law artificer's lien no longer affords the protection which it was meant to give. Those putting work and labor into articles and goods need protection as much as they ever did and are just as much entitled to it as they ever were. But the common law artificer's lien fails to give it to them today.

The Legislature, therefore, has wisely extended the common law artificer's lien in the effort to meet these changing economic conditions. It gives to the processor a lien on all goods *in his possession*, for the full amount of the *account* due and owing. It is admitted that as soon as he parts with possession to those goods, he loses his lien on those particular goods, but it attaches to other goods coming into his possession.

The Act, covers all goods whether processed or not, and it is a matter of common knowledge that silk dealers are in the habit of accumulating vast amounts of unprocessed silken goods at the dyers and processors, for the purpose of protecting accounts; thereby their credit becomes indefinitely enlarged. Often-times the dealer is uncertain as to what particular shades and effects are going to be in style, so it suits his purpose very well to have these goods in the greige or raw state at the dyer's, protecting his account until he can determine what particular dyeing and finishing instructions he should give with regard to them.

Thus it will nearly always be found that the goods which the processor holds are mostly unprocessed, because the silk dealer can use the processed goods immediately, and the dyer or processor, always ready to oblige, makes no objections to shipping these processed goods, providing he still retains sufficient unprocessed goods in his possession to cover the account.

The law recognizes and conforms to the general practice of the trade, extending the lien to all goods, whether processed or not processed. The extension of the common law lien has proven workable and practicable.

The basis of both the common law lien and the statutory lien is the same, resting as they do upon the possession of the goods upon which the lien is claimed. The change from the common law lien is only in fixing the lien upon the same, or *other goods* than for which the account is owing. It is still the common law lien, but amended and enlarged to accord with changed conditions.

## POINT II.

**The plaintiff-appellant (the factor) consented to the shipment of the goods in controversy to the defendant (the dyer) and it may not complain therefore of the attachment of the processor's lien to the goods in dispute.**

The act provides that the processor shall have,

“A lien upon the goods or property of *others* \* \* \* \* for the amount that may be due to them from the owners \* \* \* \*” (Italics ours)

See the Processors Act, Chap. 288, laws of 1926, page 479.

It will be noted *that the lien attached to the goods “of others”*. If the Factor had any interest in the goods, and in its notice to the Dyer it falsely claimed to have title, that interest would be a “property right” of the Mill Factors Corporation. The words “property of others” would certainly include that property right of the Mill Factors Corporation. That property right by the language of the statute is subject to the lien of the Dyer irrespective as to how and when it arose.

This is especially true when, as in this case, the Factor not only consented to the shipment of the goods to the Dyer, but actually participated in it by mailing to the Dyer a memorandum of the shipment and asking for an acknowledgment of receipt in each case. (*State of Case*, page 58, lines 10-40, and Exhibits P-12 and P-4, pages 189 and 188.) This memorandum is the green sheet so often referred to in the testimony, and the acknowledgment is the yellow sheet.

Under these circumstances whatever property right the Factor acquired was at all times subordinate to the processor's lien for the unpaid account of the Owner. The plaintiff in this case is not in the position of an innocent purchaser for value. He went into the transaction with his eyes open and never appears to have objected to the sending of these goods to the Dyer and the consequent attachment of the Dyer's lien thereto. In fact the Factor on one occasion paid part of the Dyers' account in the sum of Five thousand (\$5,000) dollars. (See Exhibit D-4, page 220 of the *State of Case*). This check made to the order of Imhoff-Berg Silk Dyeing Corporation in the sum of Five thousand (\$5,000) dollars, dated April 15, 1927, and signed by Mill Factors Corporation, was made after the Dyer had received and had in its possession most of the pieces of silk in dispute in this case. (See plaintiff's Exhibit P-12 and the information contained thereunder, at page 190 of *State of Case*).

This payment was in response to a request from the Paramount Fabrics Corporation on April 11, 1927, addressed to the Mill Factors Corporation to make such payment for dye bills. (See Exhibit P-46, page 200 of *State of Case*).

Where a party having a property right and goods are sent to one who thereby acquires a lien therein, with the former's consent, that lien is paramount to the property right of the one consenting. This principle is laid down in a case dealing with the artificer's lien for repairs on a wagon. The wagon was operated by the husband of the owner and was brought by him to the wheelright for repairs. There was no proof that the husband was the agent of the wife in taking the wagon to the wheelright. Nevertheless, the court sustained the wheelright's right to possession as against the

owner, stating that her "consent" to the transaction might be inferred and she was therefore bound by the lien, *even though she did not owe the debt*, and even though her property right was prior in time to the lien of the wheelright.

*White v. Smith*, 44 N. J. L. 105.

To the same effect *Ruppert v. Zang*, 73 N. J. L. 216. While the lien in that case was a common law lien, the lien of the Dyer in this case is subject to the same rule, for the processor's statutory lien is merely the common law artificer's lien extended and enlarged to meet modern business conditions, and the Act itself specifically includes the property "of others" whoever they may be. It is therefore the type of lien which attaches to the article.

There is another aspect which should be constantly borne in mind. The Dyer's bill represents the work and labor performed on other goods in which the Factor acquired an interest. These goods were improved in value because of the Dyer's work. The enhancement in value of these other goods accrued to the benefit of the Factor who loaned money against them. These other goods were freely delivered to the Factor and the right of lien in them was extinguished, because, as the Factor well knew, the Dyer held other unprocessed goods as security for the unpaid account. Now, after having profited from this course of dealing, the Factor would strip the Dyer of its security without paying the indebtedness. The Factor enjoyed the advantage of the work and labor performed on the goods by the Dyer and now attempts to take possession of the goods in dispute, the holding of which as security was the inducement which led the Dyer to part with possession of the processed goods.

## POINT III.

**The defendant-appellee's lien was also prior in time and paramount in law to any interest of the factor, (plaintiff-appellant.)**

A resume of the facts discloses the Dyer's lien to have been first in time. The manufacturers who were making goods for or selling them to the Paramount, regularly delivered them to the Dyer (the defendant-appellee). Immediately upon such delivery the Dyer's lien attached, by right of possession.

Thereupon, the manufacturers advised the Paramount Fabrics Corporation, the Owner of the goods, of such delivery, and the Paramount Fabrics Corporation compiled certain white and green documents which it dispatched to its factor, Mill Factors Corporation, the plaintiff-appellant in this case. These documents, prepared by the Owner and sent to the factor consisted of the following: (1) A large memorandum on a white sheet of paper (plaintiff's Exhibit 56, *State of Case*, page 205), whereby the plaintiff contends the owner pledged the goods for the account of the factor. The white memorandum was never sent to the dyer nor was he informed of its existence; (2) Certain green sheets, form of which is shown on page 193 of *State of Case*, which when received by the factor were remailed to the dyer.

Obviously the alleged pledge of goods which had already been shipped to the dyer was subsequent in each case, in time, to the attachment of the dyer's lien, and was therefore subject to it. The documents which plaintiff contends effected a pledge to it, were only delivered in each case after deliv-

ery of the goods had already been made to the dyer. The entire practice is described by plaintiff's witness, Mr. Veit, at page 101 of *State of Case*:

"Q. These deliveries to the dyer were made from the respective mills you are speaking of, were they not? A. Right.

Q. The Paramount Fabrics Corporation did not make deliveries direct? A. We ordered them shipped to the dyer.

Q. Did the manufacturer advise you when each shipment was made? A. Yes, by mailing an invoice showing the shipment was made.

Q. It was upon receipt of that invoice that you speak of that you thereupon caused these green sheets to be prepared and the consignment order; is that right? A. Exactly.

Q. And delivered the consignment order or the consignment memorandum to the factor? A. That is right.

Q. You never delivered any of these consignment memoranda or copies of the same to the dyer, did you? A. We just mailed shipping memorandum to the dyer.

Q. Just made a shipping memorandum. Would you recognize any of these shipping memoranda if they were brought to your attention? A. I would.

Q. I show you some pink sheets purporting to be titled, "Shipping memorandum from Paramount Fabrics and Bayer-Veit." Are those the papers you just spoke of? A. Yes.

Q. In each case when you were advised by the manufacturer that the goods had been shipped to the dyer, you in turn prepared one of those pink sheets and sent them to Imhoff-Berg? A. We prepared all of the papers at the same time.

Q. So that these pink sheets went out at exactly the same time as the green sheets and the so-called white consignment memorandum? A. Absolutely."

The Paramount Fabrics Corporation was a dealer in manufactured silken goods at their show-rooms, #247 West 38th Street, New York City. The goods at the show rooms were under the control and in the legal custody of the factor. At the entrance thereto there was a sign reading as follows:

"Mill Factors Corporation, factors for Bayer-Veit-Goldman or Paramount Fabrics."

*State of Case*, page 148, lines 37-39.

so as to give it constructive possession of the goods and to comply with the New York Lien Act. It was to this address that the processed silk was delivered by the dyer's truck habitually after the same had been dyed and finished. *State of Case*, page 149, lines 27-38.

The Paramount Fabrics Corporation did not manufacture directly itself, but secured other concerns to weave up the silk for which it paid them a commission, or else purchased the manufactured goods from independent manufacturers. These goods were woven "in the raw", that is, they were not processed prior to the weaving. Such goods when woven are called goods "in the greige" and are dyed and finished after being woven into yardage. The yardage is cut off from the loom at regular intervals in fifty to sixty yard strips, folded and made into bolts or "pieces", in which condition it reaches the dyer and finisher on shipment from the manufacturer. (See *State of Case*, page 99, lines 27-40, and page 100, lines 1-40).

*PARAMOUNT FABRICS*

The ~~Fabrics Finishing~~ Corporation habitually directed the concerns manufacturing for it, to ship these pieces in the greige to the dyer. Upon receipt of advices from the manufacturer that shipment to the dyer had been made Paramount Fabrics Corporation would send a shipping memorandum to the dyer, that is a "pink sheet" detailing the goods which had been delivered, upon which was stated,

"Important, these goods are to be held for our dyeing instructions."

as Well as a description of the goods. *State of Case*, Exhibit D-8, page 222.

This pink sheet contained a receipt which was torn off and returned to the Paramount Fabrics Corporation. Mr. Veit the plaintiff's witness explained the sending of this pink sheet as follows:

"Q. What was the purpose of sending of the pink sheet, Mr. Veit? A. So that we could know that the goods were received and that we immediately put them in work. Very often when we made a shipment to a dyer we did not put the goods in work until two or three weeks later and this here receipt was an indication to us that the goods had been received and we could immediately put them to work or—"

*State of Case*, page 105, lines 23-31.

Upon receipt of advices from the manufacturer that goods had been delivered to the dyer, the Paramount Fabrics Corporation also prepared certain green sheets described in the plaintiff's brief, and the so-called white consignment sheet, which has heretofore been referred to and sent them to the Mill Factors Corporation, the plaintiff-appel-

lant. (*State of Case*, page 87, lines 1-40 and page 88, lines 1-35).

The Mill Factors Corporation in turn sent one of the green sheets on to the defendant together with a yellow sheet which amounted to a receipt for the goods to the Mill Factors Corporation. The form of these papers is shown in Exhibits P-4 and P-12, *State of Case*, page 188 and 189. The Mill Factors Corporation did not send a copy of the so-called white consignment sheet to the defendant, and there is no evidence in the case the defendant had any knowledge of it.

The priority of liens is ordinarily determined by the date as of which they attach.

“The time as of which priorities are to be determined is the date of the attaching of the liens.”

*Majewski v. Greenberg*, 101 N. J. Eq. 134  
at page 139.

*Sullivan v. Clifton*, 55 N. J. L. 324 (E.  
& A.)

## POINT IV .

**The defendant-appellee is excused from any responsibility to the plaintiff-appellant, by reason of the plaintiff-appellant's misrepresentation.**

The printed form (green sheet) sent to the defendant-appellee by the plaintiff-appellant, contained the following words: "Title to these goods remains in us." (See Exhibit P-12, *State of Case*, page 189).

This statement is admittedly false. Plaintiff's counsel contends that it had a "pledge" of the goods in dispute. The evidence indicates a "lien". (See Exhibits P-24, page 195, and Exhibit D-1, page 209). Certainly the plaintiff never had *title* to the goods in dispute contrary to its representation. This misrepresentation must have been made knowingly, for the purpose of inducing the defendant to sign and return the printed yellow receipt. (Exhibit P-4, *State of Case*, page 188), which accompanied the document containing the misrepresentation, and it is fair to assume that in dealing with the Mill Factors Corporation, Imhoff-Berg Silk Dyeing Company (defendant-appellee) believed this representation that title had actually been given by the Paramount Fabrics Corporation to the Mill Factors Corporation.

In receipting for the goods, therefore, to the "new owner" and in furnishing it with inventories and in writing to it the letter of December 6, 1927, it is to be assumed that the defendant believed that the plaintiff was the owner of the goods. Certainly therefore the plaintiff cannot take advantage of its own wrong to hold the defendant to any re-

sponsibility whatever that was incurred as a result of that wrongful misrepresentation.

*McVey v. Order of United Workmen*, 53  
N. J. L. 17.

The whole theory that defendant was the bailee of the plaintiff rests on the form of receipt that had been procured from the defendant, but the wilful misrepresentation of the plaintiff in regard to its holding title absolves the defendant from any contractual responsibility towards the defendant which may have been prescribed by such receipt.

#### POINT V.

**The plaintiff-appellant had no interest in the goods in dispute, by way of pledge or any other interest.**

The plaintiff-appellant does not base its supposed right to the goods upon any common law or contractual factor's lien. It contends that the goods in dispute were *pledged*, to ~~it~~, by the Paramount Fabrics Corporation to secure advances. The facts in the case do not support this contention. The contract between the parties described the defendant's property rights as follows:

"The factor shall at all times have a general *lien*, (italics ours) upon all of the consigned goods."

*State of Case*, page 24, lines 27-29.

The white consignment sheet delivered to the plaintiff by the Paramount states:

“The goods described below are hereby consigned to Mill Factors Corporation to be held by them subject to their *lien* for advances, outlays and commissions, and are to be disposed of in accordance with *our agreement with them.*” (italics ours).

*State of Case*, Exhibit P-24, page 195.

At no time was there any indication that the plaintiff was relying on a pledge. There is no reference to a pledge until counsel for the plaintiff argued to that effect at the trial. There is a difference between a pledge and a lien.

“Derivatively the word lien means a ‘string’ a ‘tie’, a ‘bind’ \* \* \* In its pure legal sense it implies that one is in possession of property of another and that he detains it as security for some demand which he has in respect to it. \* \* \* A lien is neither a right of property in a thing, nor a right of action for a thing; it is simply a right of detainer. \* \* \* It differs from a pledge, in that a pledge is a transfer of possession as security, whereas in the case of the lien the transfer of possession is not for the purpose of security, but in order that the service may be rendered to the chattel in question and the lien arises from the rendering of that service if such service be not paid for. It is essentially a right to detain. \* \* \*”

*Lanterman v. Luby*, 96 N. J. L. 255, page 257-258 (E. & A.).

A lien certainly implies that the chattel in question is detained. Certainly the Dyer in this case was detaining the goods for its own lien. It had an independent right of detainer. It was not holding the goods for the factor’s lien. The contentions of the plaintiff rest on the theory of pledge,

but there was no pledge according to the intentions of the parties and the facts in the case.

Furthermore, a careful reading of paragraphs first, ninth and fourteenth of the contract between the plaintiff-appellant and the Paramount Fabrics Corporation (page 209 of *State of Case*) in connection with the evidence and practice of the Paramount in doing business (see *State of Case*, p. 148, lines 29-33 and page 149, lines 27-38); discloses an undoubted intention that the factor should have a factor's lien on the goods delivered at the show-rooms of the Paramount at No. 249 West 38th Street, New York City, where there was a sign displayed advertising Mill Factors Corporation as the factor. It was to this building that the trucks of the dyer habitually made delivery of goods after they had been dyed and finished. It would appear that there had never been any intention that the goods in the hands of the dyer who had an independent right of lien should be subjected to the lien described in the contract between the parties.

The cases of *Union Trust Company v. Wilson*, 198 U. S. 530, and *Cornelius v. C. C. Pictures*, 5 Fed. (2) 157 cited by plaintiff-appellant, are not in point. In those cases the issue did not involve liens between contending lienors which were inconsistent and repugnant one to the other. They dealt with constructive possession so as to satisfy the Chattel Mortgage Act, where the bailee apparently had no independent right of lien itself. Constructive possession was therefore consistent with the bailment so as to take the case out of the Chattel Mortgage Act.

Those cases are quite different from the case at bar, where there are conflicting liens involved, but where the one in actual possession has an independent right to retain that possession it is not possible for the factor also to have possession by

any rule of construction where his claims are in conflict with the one in actual and physical possession.

The effect of the receipting for the goods by the dyer to the factor has already been considered under Point IV. Sufficient to say here that receipt was induced by the wilful misrepresentation of the plaintiff as to its title and there is nothing contained in the receipt itself which would indicate that the defendant was surrendering or giving up his right of lien in favor of the plaintiff.

Finally, assuming the Owner actually did pledge the goods in dispute to the Factor, the Owner's right in the goods, at the time of the alleged pledge, was already subject to the Dyer's lien. The goods were in the possession of the Dyer. The Owner could not confer upon the Factor any better rights than it, itself, had. Consequently, the alleged pledge was subject to the Dyer's lien. A mere transfer by the Owner could not operate to extinguish that lien.

## POINT VI.

The defendant-appellee may assert its lien as against plaintiff-appellant irrespective of any doctrine of bailment.

~~As~~<sup>in</sup> plaintiff-appellant's Point III, counsel cites *Wheeler & Wilson Manufacturing Co. v. Brookfield* as authority for the proposition that defendant-appellee may not assert his lien as against the plaintiff-appellant.

That case is not authority for any such proposition. The case does refer to a rule which is subject to many exceptions and limitations that the "bailee could not dispute the bailor's title, hence he could not set up *ownership* in himself, or, as some of the cases hold, in another." (italics ours).

The defendant in this case is not setting up ownership as against either the Paramount Fabrics Corporation or the plaintiff-appellant. It is setting up a right of possession for a lien which is quite a different matter. There has never been any question but that the bailee if he has a lien may assert it, as against his bailor.

See

*Smith v. White*, 44 N. J. L. 105.

*Ruppert v. Zang*, 73 N. J. L. 216.

*Sullivan v. Clifton*, 55 N. J. L. 324.

## POINT VII.

**Defendant-appellee did not waive its lien as against the plaintiff-appellant nor is it estopped by its conduct to assert its lien.**

The arguments of counsel under his Points 4 and 5 will be herein construed together.

Practically all of the cases dealing with waiver of lien and estoppel, involve a state of facts where the third party acquiring an interest in the goods, had no knowledge or means of knowing that the good were subject to a prior lien. The failure to make known a secret lien, when the holder thereof was under a duty to speak, may in such case possibly amount to a waiver or estoppel. Sometimes the loss of actual possession by the lienor is also spoken of as a waiver, but this strictly speaking is not a waiver. It amounts to an extinguishment of the lien by an act inconsistent with the preservation of the lien. The lien as has been shown above is always associated with possession.

See *Luby v. Lanterman* (supra).

In this case, however, we are not dealing with a case where the lienor has lost actual possession; nor are we dealing with a state of facts where the lien was unknown to the third party. The whole world knew of the Processor's Lien Act of this State, and that the processor had a lien on goods in its possession for the amount of the indebtedness of the owner. Furthermore, possession itself was constructive notice of the lien, and in corresponding with regard to the goods, it was not necessary constantly to reassert what everyone was presumed to know, namely, that the Dyer had a lien

for his unpaid bill on the goods in its possession.

There is no evidence in the case that the plaintiff-appellant ever undertook to find out what the amount of that indebtedness was, although he could have ascertained by simple inquiry.

Possession is constructive notice of the bailee's rights.

See *Grain v. Fitzgerald*, 4 Daly (N. Y.)

If the lienholder gives up actual possession that is an act inconsistent with the preservation of the lien.

The cases cited by counsel for the plaintiff-appellant are where the lienor had lost possession or where his lien was unknown, and the lienor made no disclosure of the same when he was under a duty to. (See *McMaster v. Merrick*, 41 Mich. 505 (2) N. W. 895, cited by the plaintiff:

“The lienholder took no steps to assert a lien distinctly *when the whole facts indicated its non-existence.*” (italics ours)

“The lumber after November 15th, was on the premises of the general owner.”

That is quite a different case from where the lienholder retains actual possession.

In *Rice v. Groves*, 43 N. J. Eq. 284, cited by plaintiff, the tenant holder of an option surrendered possession of the store to the buyer of the property and sold his stock in trade to him. That conduct was certainly fair proof that the tenant holder of the option intended to give up his rights under his lease.

In the Fischer case, 3 Fed. (2) 621 cited by the plaintiff, the plaintiff had paid his account at the broker's which naturally led him to believe that he had the immediate right to possession of the se-

curities in the hands of the broker. The broker, however, had pledged the security with another party and that third party on inquiry never suggested that he himself had a lien which the court held operated to the plaintiff's prejudice. This again is the typical case of undisclosed lien, where having paid his margin account the owner had reasonable cause to believe he was entitled to immediate possession and had no notice from the third party as to a counterclaim. To the same effect are the several quotations from *Corpus Juris*, cited by plaintiff.

In attempting to make out a case of estoppel under plaintiff-appellant's Points 4 and 5, Counsel inadvertently makes some statements which are not supported by the evidence. He states that "defendant must have known the purpose of plaintiff-appellant in sending to defendant-appellee the 'green sheets' and getting defendant-appellee's acknowledgments on the 'yellow sheet', viz, to effect a pledge of the goods upon which the plaintiff-appellant did make advances to the Paramount Fabrics Corporation."

There is no evidence whatever that defendant knew or had grounds for knowing that the plaintiff was actually making advancements on goods in the dyer's possession. The one communication which the factor sent to the dyer, the green sheet (Exhibit P-12, *State of Case*, page 189) made no reference to any such practice. The white consignment sheet which did make a reference to advancements, was not sent to the dyer. (*State of Case*, page 101, lines 20-23). Nor is there any evidence to show that the dyer was ever informed orally that such advancements were being made, and so far as inferring that advancements were being made on the goods in dispute, the only possible inference is that the contrary would be true.

The factor had no knowledge or means of knowing what the goods in the possession of the dyer were actually like: Whether they were of the quality or quantity described in the invoice; whether the goods were of the proper yardage and whether they had been properly woven, dyed and finished. Certainly according to the customs of the trade which are well known to everyone, factors were not advancing money on goods they had never seen and which were not in their physical control. The agreement between the factor and the owner itself provided that the goods should be delivered to the "factor" for sale, free of all liens and charges, at the premises 354 - 4th Avenue, or 249 West 38th Street, Borough of Manhattan, New York City, or at such other places as may be actually agreed upon.

Certainly delivery to the dyer at Paterson was not delivery to the factor within the meaning of the contract. Even if the dyer had known that payments were being made it would make no difference because his lien had already attached. His right of lien was well known to the world and he could certainly assume that any advances being made were subject to his own lien. In receipting for the goods to the factor on the yellow sheet, the dyer was simply showing ordinary courtesy. He was trying to accommodate his customers and there is nothing in the wording of the documents that would indicate that he intended to give up his right of lien.

When analyzed it would appear that the whole case of the plaintiff-appellant regarding estoppel is built around the signing of a receipt which had been prepared at the factor's instigation and sent to the defendant-appellee. This receipt was in the following language:

"Please Sign and Return Promptly to  
Mill Factors Corporation  
354 Fourth Avenue,  
New York, N. Y.

Date 4/22/27

We acknowledge receipt of merchandise as per your memorandum Numbered D7256 totalling 2 pcs. approximately 100 yds. Estimated value 125 and assume responsibility therefore according to conditions stated on said memorandum.

Imhoff-Berg S. D. Co  
Per W. Tomasulo  
(sign here)

Paramount Fabrics Lot #530."

*Case*, page 188.

There is nothing in the language of this receipt or in the green memorandum to which it refers, which was also prepared and sent at the instigation of the factor, which would indicate in any way that it was the expectation that the dyer's lien should be waived. There is nothing to show but that it was the factor's means of keeping track of what goods were at the Dyer's.

Moreover, the goods had been held by the dyer for seven or eight months before the factor demanded possession.

So far as the furnishing of inventories is concerned, the first inventory was furnished April 1, 1927 and the second July 2, 1928. (See page 192 and 202 of *State of Case*.) The furnishing of these inventories again was an ordinary courtesy which the silk dyer would naturally extend to its customers.

## POINT VIII.

**The defendant-appellee did not waive his lien by the bookkeeper's letter of December 26, 1927.**

Answering plaintiff-appellant's Point 6, the matters set forth under the previous point of this brief should be read together with the arguments herein specifically set forth. Assuming that the bookkeeper had actual authority to write the letter in question to Mill Factors, it was simply an advice that the goods in question had been attached for a debt, and that the attachment had been served on the 21st day of July, 1927. (*State of Case*, Exhibit P-54, page 203.) This was a plain statement of fact. The goods actually had been attached. Does the mere statement of fact without reasserting the lien, waive the lien?

The cases cited by the plaintiff-appellant do not sustain his contention that it does. They are all cases where the bailee asserted a claim of ownership which was inconsistent with his own lien. In *Boardman v. Sill*, 1 Campbell, 410 (English case) cited by plaintiff, the defendant in response to a demand for brandy in his possession, claimed to be the owner. Later he contended that he had a lien for unpaid rent. His first representation of ownership was false and inconsistent with the right of lien. It is reasonable under such circumstances to draw from the facts a waiver or estoppel. It is quite different where the representation is true as in this case. There was an actual attachment. Defendant's only omission was to declare its lien which the factor must have known about.

The lien as has been argued under the previous point, was known to the world and did not require reiteration. The dyer had a right to assume that its bill would of course be paid upon delivery of the goods.

In *Boardman v. Sill*, supra, moreover it was not even clear that the defendant had a lien on the brandy. It was "contended" that he had. Possession therefore was not equivalent to notice, where the lien is secret or doubtful. At common law there was no lien for mere storage except by innkeepers, common carriers or warehousemen. The lien for storage has in modern times been extended by statute. (See 6 C. J. 132). It does not appear whether or not the defendant in the Boardman case was a warehouseman, so that as in all cases of secret lien, disclosure at the proper time should have been made.

In *Lehman v. Schmidt*, Supreme Court of Calif. 25 Pac. 161 cited by the plaintiff, it appeared that the defendant had stored wine and mixed it with his own. That would be conversion and would naturally destroy his lien. It was unnecessary for the decision to rest upon the reasoning adopted by the court. The court's language with reference to waiver of liens, in that case is much broader than the facts in that case and other cases would appear to justify.

There is no case holding that the mere failure to assert a lien where the demanding party knew or should have known about it, amounts to a waiver or an estoppel.

In *White v. Gainer*, 130, Eng. Rep. 212, defendant had a lien on cloth and when it was demanded of him by the assignees of the owner stated: "I may as well give up every transaction of my life." There was no assertion of the lien. The court held

there was no waiver of the lien. The English court distinguished the case from that of *Boardman v. Sill*, supra, saying:

“Therefore, if even in this case, the defendant, when applied to, to deliver the goods has said: ‘I bought them, they are my property’, I should have holden there was a waiver of his lien; but he said no such thing, but only, ‘If I deliver them, I may as well give up every transaction of my life,’ \* \* \* ”

To the same effect

*Kirtley v. Morris*, 43 Mo. A. 1144.

*Williams v. Asche*, 111 Cal. 180, 43 P. 595.

## POINT IX.

**The admission of certain evidence by the trial court described in the fourth and fifth grounds of appeal, was proper.**

Plaintiff-appellant on pages 38 and 39 of his brief cites the fourth and fifth grounds of appeal which involve the questioning of the bookkeeper on cross examination as to whether he had “specific authority” to write the letter of December 6, 1927, and whether he had any authority to release any liens his company might have. The trial court permitted the questions to be asked over objection by defendant’s counsel and the latter now contends that they are grounds for reversal as conclusions of law and opinion.

Whether or not the questions were properly asked is immaterial for the trial court directed a verdict in favor of the plaintiff after assuming that

the letter bound the defendant, and this case is argued as though the bookkeeper did have the authority which he, in answer to the questions, denied. (See *Decision of Court, State of Case*, page 183, lines 30-40 and page 184, lines 1-10).

However, the evidence was properly admitted. The words "specific authority" and "authority" when examined with relation to the context of the line of cross examination, indicated "instructions" or "directions". Moreover the latitude given the discretion of the court is much broader on cross examination than where the question had been asked on direct examination. The following cases support the direct questioning of a witness as to authority or agency.

*People v. Mingy*, 190 N. Y. 61, 82 N. E. 728.

*Fritz v. Chicago*, 136 Ia. 699, 114 N. W. 193.

*Mobile v. Hawkins*, 163 Ala. 565, 51 So. 37.

The text writer on the subject in *Corpus Juris* states as follows:

"As a practical matter the rule excluding conclusion of law cannot be extended so far as to reject every statement that may possibly involve such conclusion, and the exercise of the Judge's discretion in receiving or ejecting conclusion of law is divided by consideration to the extent to which legal inference predominates over a mere statement of fact, and how far the conclusion relates to a matter in issue \* \* \* Accordingly, witness-

es have been permitted to state the existence of agency, indebtedness, ownership or possession of property or the making of a gift."

*22 C. J. page 638.*

Just where opinion and fact part company is often difficult to define. In a sense everything a witness says is a matter of opinion or impression.

**It is respectfully submitted that the verdict of the court below should be sustained.**

Respectfully submitted,

EVANS, SMITH & EVANS,  
Attorneys of Defendant-Appellee.

JOHN F. EVANS,  
Of Counsel.

41  
New Jersey Court of Errors and Appeals.

MILL FACTORS CORPORATION, a  
corporation,  
*Plaintiff-Appellant,*

*vs.*

IMHOFF-BERG SILK DYEING COM-  
PANY, a corporation,  
*Defendant-Appellee.*

IN REPLEVIN  
ON APPEAL.

10

REPLY BRIEF ON BEHALF OF  
PLAINTIFF-APPELLANT.

20

With Reference to Defendant-Appellee's "State-  
ment of Facts Established by the Evidence."

On page 5 of its brief in paragraph numbered  
"7", defendant-appellee makes the statement  
that:

"The testimony of the Factor's own wit-  
nesses showed conclusively that the delivery  
of documents to the Factor, did not take  
place until after the goods covered thereby  
had been shipped to the Dyer."

30

That statement is true, but it is important to add  
that the testimony **does not show** by affirmative  
proof that the said shipment of goods had actu-  
ally **reached** defendant-appellee before defendant-  
appellee received from plaintiff-appellant the so-  
called "green sheets" and "yellow sheets" relat-  
ing to said goods. The evidence, indeed, **warrants**  
**a strong inference** that the said documents actually

40

reached defendant-appellee **before** the goods, as will be hereinafter fully shown.

On page 6 of its brief in paragraph numbered "8", defendant-appellee makes the statement that:

10 "The Dyer had no notice or knowledge of the contents of any agreement between the Owner and Factor; no copy of the factoring agreement was ever brought to the Dyer's attention and other than knowledge of the naked use of the word 'Factor' in the documents passing between them, the Dyer knew nothing of the transactions between the Owner and Factor."

This statement is wholly inaccurate and contrary to the testimony of defendant-appellee's own officers and agents. In this regard the testimony shows the following:

20 Each time that the "green sheets" and "yellow sheets" (acknowledgments) were received by defendant-appellee through the mail in an envelope bearing plaintiff-appellant's letterhead, they passed through the hands of defendant-appellee's president or superintendent, who then turned the papers over to Mr. Tomasulo, who was then in defendant-appellee's employ, and who had charge of such matters in defendant-appellee's business. (State of Case, p. 30, lines 36 to 40; p. 31, lines 4 to 9 and lines 29 to 31; p. 32, lines 28 to 40; 30 p. 42, lines 9 to 32; p. 124, lines 6 to 17 and lines 32 to 40; p. 125, lines 15 to 19; p. 129, lines 35 to 40; p. 130, lines 4 to 17.)

40 After receiving said papers Mr. Tomasulo ascertained that the goods therein referred to were in defendant-appellee's possession, and thereafter Mr. Tomasulo signed or directed his secretary to sign defendant-appellee's name to the "yellow sheets" (acknowledgments) and mailed such "yellow sheets" back to plaintiff-appellant, defendant-appellee retaining the "green sheets". (See State of

Case, p. 30, lines 36 to 40; p. 31, lines 4 to 31; p. 34, lines 36 to 40; p. 35, lines 4 to 7; pp. 36, 37, 38, 39; pp. 43 to 45; pp. 51 and 52; p. 31.)

Defendant-appellee had been receiving from plaintiff-appellant by mail similar green sheets and yellow sheets (acknowledgments) relating to goods of Paramount Fabrics Corporation for a considerable period of time prior to the receipt of the particular green sheets and yellow sheets (acknowledgments) involved in this suit, viz. since November 6, 1926. All of such documents passed through the hands of the defendant-appellee's president or superintendent, and were then turned over by them to Mr. Tomasulo and handled by him in similar fashion as aforesaid. (See State of Case, pp. 33 and 34, lines 10 to 40; pp. 42 to 46 inclusive; p. 129, lines 9 to 21.)

It was well known to defendant-appellee during all of said period that plaintiff-appellant was a silk factor, that plaintiff-appellant's business was that of lending money to silk manufacturers on the security of merchandise pledged for that purpose and that plaintiff-appellant was dealing as Factor with Paramount Fabrics Corporation. (See State of Case, p. 111, lines 34 to 40; pp. 112 to 116 inclusive; p. 118, lines 30 to 40; p. 129, lines 9 to 30; exhibits on pp. 188 to 194 inclusive.)

## AS TO DEFENDANT-APPELLEE'S POINT I. 30

In Point I of defendant-appellee's brief, defendant-appellee contends that:

"The defendant-appellee (the dyer) had a lien on the goods in controversy by virtue of the 'Processor's Lien Act' of this State."

Defendant-appellee's argument under that point is of a general character and lends no support 40

whatsoever to the proposition advanced. It is undeniable that defendant-appellee **would have had** a lien on said goods under said statute as between defendant-appellee and the **Paramount Fabrics Corporation**, the owner of the goods. But on the facts in this case, said statute did not operate **as against plaintiff-appellant** for the reasons assigned and discussed by plaintiff-appellant in its principal brief.

## AS TO DEFENDANT-APPELLEE'S POINT II.

Under this point, defendant-appellee contends that the statute expressly gives a dyer a paramount lien upon property in which **others than the owner** have a **property right**, because the statute uses the words:

“A lien upon the goods or property of others \* \* \* for the amount that may be due to them from the owners \* \* \*”

It is a sufficient answer to this to say that the statute obviously uses the word “others” as synonymous with “owners”, that is, that the word “others” refers to the same persons as the word “owners”. Chapter 288, Laws of 1926 (page 479) is as follows:

“All persons or corporations engaged in the business of spinning, throwing, manufacturing, bleaching, mercerizing, dyeing, printing, finishing, dressing or scraping linen, cotton, wool, silk, artificial silk, skins, pelts, furs or hide or goods of which linen, cotton, wool, silk, artificial silk, skins, pelts, furs or hides form a component part shall be entitled to a lien **upon the goods or property of others** that may come or may have come into their possession for the

purpose of being spun, thrown, manufactured, bleached, mercerized, dyed, printed, finished, dressed or scraped for the amount that may be due to them from **the owners** of such linen, cotton, wool, silk, artificial silk, skins, pelts, furs or hides for a component part by reason of any work or labor performed or material furnished in and about the spinning, throwing, manufacturing, bleaching, mercerizing, dyeing, printing, finishing, dressing or scraping or otherwise treating or processing of the same or other goods **of such owner or owners.**” 10

But if the statute meant what defendant-appellee contends it means, it would be unconstitutional. For then it would mean that where a **pledgee of goods** himself delivered them to a dyer to whom the pledgor (owner of said goods) happened to be indebted for work done **for him** on other goods, the said goods would immediately become subject to a lien in favor of the dyer for that indebtedness of the owner, and such lien would be paramount to the lien of the pledgee. The enforcement of such a statute as against the pledgee, would, under such circumstances, manifestly operate to deprive him of his property (his right to the possession of said goods) without due process of law. For according to the statute, on defendant-appellee's interpretation thereof, such dyer's lien would attach regardless of whether or not the pledgee, when **he** delivered the goods to the dyer, did or did not know that the **owner** was then indebted to the dyer. 20 30

In the case of *Crucible Steel Company v. Polack Tyre & Rubber Co.* (Court of Errors and Appeals), 92 N. J. L. 221 at page 226, *the court said:*

“In support of the broad contention that the statute is unconstitutional, counsel adds a general assertion that the act permits the deprivation of property without due process of 40

10 law in contravention of Section 1, Article 14 of the amendment to the constitution of the United States. The gist of the argument to support this claim is that the statute in permitting a person, who has acquired a lien upon a chattel and lets it go out of his possession, to retake the same wherever he may find it in this state, might prejudicially affect the rights of a third party, who ignorant of the existing lien, had in good faith and for a valuable consideration acquired a property interest therein. But no such case is before us for decision. We cannot indulge the presumption that a court will place a construction upon the statute so that it will operate to deprive a person of his property without due process of law. There is nothing in the language of the act itself from which any such legislative declaration or intent may be properly inferred."

20 Of course, this court will not construe a statute in such a manner as to render it unconstitutional, where any other reasonable construction is permissible. Here it is **more** reasonable to construe the word "others" to signify "owners", than to construe it otherwise.

30 But defendant-appellee seems to argue further that plaintiff-appellant impliedly consented to having the dyer's lien attach to the goods in controversy, **paramount to his (plaintiff-appellant's) lien**, because plaintiff-appellant **consented** to and participated in the **delivery** of the goods to defendant-appellant. Obviously this argument begs the whole question in the case. For plaintiff-appellant's whole case rests upon the propositions that defendant-appellee received the goods **for plaintiff-appellant's account**, acknowledged the goods **to plaintiff-appellant** and agreed to hold them as plaintiff-appellant's **bailee**, did such acts as indicated an intention not to assert a statutory lien as against plaintiff-appellant, and with knowledge **or notice** of

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the relevant facts permitted plaintiff-appellant to make advances of money to Paramount Fabrics Corporation on the security of these goods and in reliance on defendant-appellee's written declaration that it recognized plaintiff-appellant's "title" to said goods and that it was holding the goods for plaintiff-appellant's account and subject to plaintiff-appellant's control.

10

Defendant-appellee's reference (on page 12 of its brief) to the fact that plaintiff-appellant paid defendant-appellee \$5,000.00 in payment of an indebtedness of Paramount Fabrics Corporation, has no significance whatsoever, especially since, as defendant-appellee itself admits, "This payment was in response to a request from the Paramount Fabrics Corporation on April 11, 1927, addressed to the Mill Factors Corporation to make such payment for dye bills." It was an indirect advance of money by plaintiff-appellant for Paramount Fabrics Corporation **at the latter's request.**

20

The case of *White v. Smith*, 44 N. J. Law 105, cited by defendant-appellee on page 13, is not in point. That case involved "a common law lien", that is, a lien for work done **on the specific goods in controversy.** The court there held that:

"A workman who, by his skill and labor, has enhanced the value of a chattel, under an employment to render the services by the consent, express or implied, of the owner, has a lien on the chattel for his reasonable charges."

30

The court further says:

"Indeed, it is one of the characteristics of common law liens which arise by operation of law, as distinguished from liens created by contract or statute, that the former, as a general rule; override all other rights in the property to which they attach, and the latter are

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subordinate to all prior existing rights therein." (At page 113)

The following statement is significant:

10 "In the present case the wagon was owned by the wife. It was put in the husband's charge for use in a business which was carried on for the support of the family, and was probably owned and kept for that purpose. It was in the contemplation of all parties that the wagon could be made useful for the purpose for which it was designed to be used only by being kept in repair. The repairs were beneficial to the interests of both parties—to the husband in fitting the wagon for use; to the wife in enhancing the value of the property by the repairs put upon it.

20 I think it clear, on the facts certified by the court below, that the husband had authority from the wife—implied from the manner in which she permitted the wagon to be used—to have the repairs done; and if so, the property became by law subject to a lien for the workman's charges." (At page 113).

The case of *Ruppert v. Zang*, 73 N. J. Law 216, cited by defendant-appellee on page 13, is obviously not in point. In that case the Court held:

30 "Where a mortgagee permits the mortgagor of chattels to retain and use them, authority is impliedly conferred upon the mortgagor to have necessary repairs done upon the chattels, and the lien of an artificer for repairs done under employment by the mortgagor will have priority over the lien of the mortgage, although the latter be duly recorded."

It is notable that in the case of *Sullivan v. Clifton*, 55 N. J. Law, the Court held:

40 "The lien given by our statute to a livery stable keeper for keeping a horse left with

him by the owner, is subsequent and subject to a prior recorded mortgage on the horse given by the owner.

It is one of the characteristics of common law liens, as distinguished from liens created by contract or statute, that the former, as a general rule, attach to the property itself, without any reference to ownership, and override all other rights in the property, while the latter are subordinate to all prior existing rights therein." 10

On page 13 of its brief, defendant-appellee makes statements as to alleged facts and matter which are wholly outside the evidence in this case. Thus defendant-appellee says that the indebtedness of **Paramount Fabrics Corporation** for which defendant-appellee claims its right to a lien in this case, arose from work done on other goods "in which the Factor (plaintiff-appellant) acquired an interest" and that plaintiff-appellant got the benefit of said work. Such a statement is improper and will of course be disregarded by this Court. But even if it were supported by evidence, the argument would be without any legal force, for it suggests and can suggest **no legal principle** or rule by virtue of which such alleged facts would give defendant-appellee a lien on the goods in controversy as against plaintiff-appellant. 20 30

## AS TO DEFENDANT-APPELLEE'S

### POINT III.

This point, by **assuming** that a "dyer's lien" attached to the goods in controversy, begs the question with the assertion that plaintiff-appellant's (dyer's) lien "was prior in time". This case does 40

not involve a mere question of priority as between **two admitted liens**. On the contrary, plaintiff-appellant contends that defendant-appellee had **no lien** whatsoever on said goods, as against plaintiff-appellant. Defendant-appellee seems to assert that the goods were actually received by defendant-appellee before the documents of pledge, viz. the "white sheets" and the "green sheets" (State of Case, pages 193 & 195) were filled out and delivered by Paramount Fabrics Corporation to plaintiff-appellant. But this is not supported by any evidence in the case. The evidence merely shows that the **shipments** of the goods by "the manufacturers" to defendant-appellee **were made** before such documents were delivered by Paramount Fabrics Corporation to plaintiff-appellant. These documents were sent by Paramount Fabrics Corporation to plaintiff-appellant immediately upon notice of shipment. (State of Case, page 102, lines 18 to 21). The testimony is that on receipt of these documents, plaintiff-appellant immediately mailed the "green sheets" to defendant-appellee together with the "yellow sheets" (State of Case, pp. 57 and 58 and p. 79, lines 4 to 10), and for aught that appears in the evidence, these documents were received by defendant-appellee before the shipment of the goods therein described arrived at defendant-appellee's place of business. There is no testimony as to **when** these shipments were actually **received** by defendant-appellee. There was testimony by Mr. Tomasulo, an employee of defendant-appellee, on cross-examination by defendant-appellee's counsel, that the goods did arrive before defendant-appellee received the "green sheets" and the "yellow sheets" from plaintiff-appellant, but this testimony was absolutely nullified by his subsequent

testimony on re-direct examination. The testimony here referred to was as follows:

“Cross examination by Mr. Evans.

Q. With reference to these yellow sheets that you sent back, which would arrive first in the possession of Imhoff-Berg or in your possession as agent for Imhoff-Berg, the yellow sheets or the goods themselves? A. Goods themselves.

10

Q. That is all.”

(State of Case, page 49).

On re-direct examination the witness testified as follows:

“Q. You say you received first the goods and then you received the green and the yellow sheets which referred to those goods. Do you refer to the goods involved in this suit? A. Yes.

20

Q. How do you know when the goods themselves came in? A. We have records showing us the exact dates with the goods that came in.

Q. Can you produce them? A. These invoices sent out by Paramount.

Q. No, no; I want your records as to when these particular goods arrived which you say arrived before the yellow and green sheets came from Mill Factors. Have you any record of when you got goods referred to by invoice number D7256? A. Yes, but not in here.

30

Q. Where is the record? A. At the plant.

Q. Well, now, how can you tell that you got those particular goods before you signed the yellow sheet? A. I don't recall ever having **signed** the yellow slips before we got the goods, and I would not sign the yellow receipt if I did not have the goods there. I would not receipt for goods that I did not have.

40

Q. In other words, before signing the yellow slips you would check up and see if those goods were in the plant? A. Yes.

Q. Do you know how much time would elapse? Can you tell when these particular goods you checked up with reference to signing the yellow sheet **came into the plant**? A. No; I can't tell what time elapsed between—

10 Q. Their arrival at the plant and your signing the yellow sheet? A. That is it.

Q. You would simply know that by the time you signed that yellow sheet the goods were there? A. The goods were there.

Q. Because you saw them when you signed the yellow sheet? A. Saw them and checked them.

Q. How long before them they had come you don't know? A. I could find out by referring back to my **records**.

20 Q. You don't know now? A. Now offhand, no."

(See State of Case, pages 52 and 53).

It thus appeared that the witness **did not** in fact **know** whether the documents or the goods arrived first. He does, however, say that defendant-appellee has **records** from which the fact of the matter could be ascertained, but significantly enough, these records **were not produced** in Court by defendant-appellee although defendant-appellee's place of business and office was in the city in which the trial took place and the witness (and defendant-appellee) had an opportunity to procure these records during the remaining one and one-half days of the trial. See State of Case, pages 53, 30 61, 107, and 155.

The non-production of these records, in the light of said testimony, raises a presumption that if produced they would have established that the said documents (the "green sheets" and the "yellow sheets") were received by defendant-appellee 40

from plaintiff-appellant **before** the goods described therein respectively, reached defendant-appellee.

*Eckel v. Eckel*, 49 N. J. Eq. 587;

*Burgess v. Vreeland*, 24 N. J. Law 71;

*Haines v. DuBois*, 30 N. J. Law 263.

If then these documents **did reach** defendant-appellee first, then when defendant-appellee **re-** 10  
**ceived** said goods into its possession, it did so with knowledge of the title or interest claimed by plaintiff-appellant therein, and hence must be presumed to have accepted delivery of the goods as plaintiff-appellant's bailee. The very fact that defendant-appellee signed the "yellow sheets" sent to it by plaintiff-appellant also raises a strong presumption that said documents did reach defendant-appellee **before** the goods mentioned therein arrived. 20

Yet regardless of whether or not the said documents reached defendant-appellee before the goods arrived, the question of whether or not defendant-appellee acquired a lien on the goods in controversy can be determined solely with reference to the legal effect of defendant-appellee's signing and delivering to plaintiff-appellant the "acknowledgments" (yellow sheets). These "ac- 30  
 knowledgments", as we contend, operated (1) to constitute defendant-appellee the bailee of plaintiff-appellant, (2) to estop defendant-appellee from asserting a lien after plaintiff-appellant advanced money to Paramount Fabrics Corporation on the security of these goods and in reliance on defendant-appellee's written declaration that it recognized plaintiff-appellant's "title" to said goods and it was holding the goods for plaintiff-appellant's account and subject to plaintiff-appel- 40  
 lant's control, and (3) to evidence a waiver by defendant-appellee of any claim to a lien because they were inconsistent with any such claim.

**AS TO DEFENDANT-APPELLEE'S  
POINT IV.**

This point could be disposed of summarily by remarking that the word "title" signifies any property right or legal interest in property. *50 C. J. at page 783*, The statement is made that

"Title" does not necessarily mean absolute ownership, and the term may mean possession or the right of possession."

In the case of *Roberts v. Wentworth*, 5 Cush. (Mass.) 192, 193 the Court says:

"A party may have a title to property although he is not the absolute owner. If he has the actual or constructive possession of property or the right of possession, he has a title thereto, although another party may be the owner."

Defendant-appellee apparently supposes the word "title" to mean necessarily "absolute ownership". But even if the word "title" were inappropriate to describe plaintiff-appellant's interest or right in the goods (which we deny), defendant-appellee had sufficient knowledge of the facts to interpret the term correctly. For defendant-appellee knew that plaintiff-appellant was Paramount Fabrics Corporation's **factor**, and not **vendee**, and defendant-appellee had been signing similar "yellow sheets" for a considerable time previously.

It should not be overlooked that under this point defendant-appellee actually **admits** that, by signing the "yellow receipts" or acknowledgments, defendant-appellee acted on the belief that said goods **belonged to plaintiff-appellant**, and that

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“in dealing with plaintiff-appellant,” defendant-appellee did so in the belief that “title had actually been given to plaintiff-appellant, etc.” This is precisely what plaintiff-appellant contends, viz., that defendant-appellee, acting on the information contained in the “green sheets” and the “yellow sheets”, authenticated and verified by defendant-appellee’s course of dealing with the parties over a period of <sup>many months</sup> years (see State of Case, pages 33 & 34, <sup>10</sup> lines 10 to 40; p. 129) received and held these goods for plaintiff-appellant’s account and benefit, became plaintiff-appellant’s bailee as to such goods, and made written acknowledgment of such bailment to plaintiff-appellant, who, as the uncontradicted evidence shows thereafter made large advances of money to Paramount Fabrics Corporation in reliance on said bailments and said acknowledgments.

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### AS TO DEFENDANT-APPELLEE’S POINT V.

Under this point, defendant-appellee argued that the Paramount Fabrics Corporation (owner) did not intend to pledge the goods in controversy to plaintiff-appellant because the factoring agreement (see State of Case, page 209, ~~lines~~) showed an intention to give plaintiff-appellant “a lien”. But the authorities cited by defendant-appellee says:

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“Derivatively the word lien means a ‘string’ a ‘tie’, a ‘bind’ \* \* \* In its pure legal sense it implies that one is in possession of property of another and that he detains it as security for some demand which he has in respect to it.”

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That is precisely what plaintiff-appellant claims. Again, defendant-appellee says Paramount Fabrics Corporation intended to give plaintiff-appellant a lien only on goods located at 249 West 38th Street, New York. This, of course, is conclusively disproved by the uncontradicted testimony that Paramount Fabrics Corporation filled out the "green sheets" which refer to the goods as "shipped to defendant-appellee", sent these to plaintiff-appellant, added said goods to the "inventory" of goods pledged with plaintiff-appellant and **received advance of money from plaintiff-appellant on said goods.** In the face of these facts, it is preposterous for defendant-appellee to contend that **Paramount Fabrics Corporation** did not intend that plaintiff-appellant should have a lien on the goods in controversy while on the premises of the defendant-appellee.

On page 22, defendant-appellee says:

"The cases of *Union Trust Company v. Wilson*, 198 U. S. 530, and *Cornelius v. C. C. Pictures*, 5 Fed. (2) 157 cited by plaintiff-appellant, are not in point. In those cases the issue did not involve liens between contending lienors which were inconsistent and repugnant one to the other."

In these statements, defendant-appellee is confusing two different matters. We cited the above mentioned cases only in connection with the proposition that there was a **sufficient change of possession to support a pledge**, in this case (see plaintiff-appellant's principal brief, pages 161-6). In other words, we argued and established that delivery of possession of the goods in controversy to defendant-appellee to hold (as bailee) for plaintiff-appellant, was a sufficient change of possession. Defendant-appellee's reference to "liens

between contending lienors'' is relevant to an entirely different branch of the case, viz., the issue of whether or not defendant-appellee did in fact and in law become plaintiff-appellant's bailee. We contend that defendant-appellee did, by virtue of its own conduct, become plaintiff-appellant's bailee, and hence precluded the existence of any "inconsistent" lien on said goods in its own favor. Hence defendant-appellee begs the question when it says:

"where the one in actual possession has an independent right to retain that possession it is not possible for the factor also to have possession by any rule of construction where his claims are in conflict with the one in actual and physical possession."

The statement by defendant-appellee on page 23 that:

Finally, assuming the Owner actually did pledge the goods in dispute to the Factor, the Owner's right in the goods, at the time of the alleged pledge, was already subject to the Dyer's lien." \* \* \* "Consequently, the alleged pledge was subject to the Dyer's lien."

is a mere reiteration of the contention made by defendant-appellee under its own points II and III, and hereinabove been dealt with by us. Its obvious fallacy consists in the fact that it **takes for granted** two things, viz.: that defendant-appellee actually had possession of the goods before they were pledged by Paramount Fabrics Corporation to plaintiff-appellant, and that defendant-appellee actually had a lien on said goods before they were pledged by Paramount Fabrics Corporation to plaintiff-appellant. Yet these are the very points which form the subject of the controversy in this case.

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**AS TO DEFENDANT-APPELLEE'S  
POINT VI.**

Defendant-appellee contends that:

10           “The defendant-appellee may assert its  
lien as against plaintiff-appellant irrespec-  
tive of any doctrine of bailment.”

As support for that proposition, defendant-appel-  
lee cites the cases of:

*Smith v. White*, 44 N. J. L. 105;  
*Ruppert v. Zang*, 73 N. J. L. 216;  
*Sullivan v. Clifton*, 55 N. J. L. 324.

20           Those, however, were cases in which the respec-  
tive defendants asserted a lien for work done **on**  
**the very goods** in controversy pursuant to the ex-  
press or implied **request of the bailor himself**. Of  
course, such a lien is not inconsistent with the bail-  
ment, for it arose **out of the very contract of bailment**  
itself. But in the case at bar, the alleged lien  
claimed by defendant-appellee is not based upon  
work done on the goods in controversy and is not  
derived from and connected with the contract of  
bailment between defendant-appellee and plain-  
tiff-appellant, but has an alleged extrinsic and in-  
30           dependent source, viz.: a debt of a **third** person  
(the Paramount Fabrics Corporation), and is an-  
tagonistic to the said bailment contract. It is  
precisely this kind of an independent and antago-  
nistic claim that is precluded by the rule that a  
bailee may not dispute his bailor's title or set up  
any claim hostile thereto.

**AS TO DEFENDANT-APPELLEE'S  
POINT VII.**

Defendant-appellee contends that:

“Defendant-appellee did not waive its lien  
as against the plaintiff-appellant nor is it  
estopped by its conduct to assert its lien 10  
\* \* \*”

Defendant-appellee then proceeds to argue this  
point **as if** the case were one in which plaintiff-ap-  
pellant were relying upon defendant-appellee's  
**mere silence** to work an estoppel or waiver, where-  
as in truth, plaintiff-appellant is relying on de-  
fendant-appellee's affirmative acts in accepting  
possession of the goods with knowledge **or notice**  
of plaintiff-appellant's rights or interest in the 20  
goods, and, especially, in signing and returning  
to plaintiff-appellant the acknowledgments (“yel-  
low sheets”) for said goods. Thus defendant-  
appellee says there was no waiver or estoppel  
because plaintiff-appellant knew or should have  
known that defendant-appellee “had a lien on said  
goods,” a point which could only be relevant if  
plaintiff-appellant were relying on defendant-ap-  
pellee's **mere silence**. For this reason, defendant-  
appellee's argument of this point is wholly irrele- 30  
vant.

On page 27, defendant-appellee makes the fol-  
lowing statement:

“In attempting to make out a case of es-  
toppel under plaintiff-appellant's Points 4  
and 5, Counsel inadvertently makes some  
statements which are not supported by the  
evidence. He states that ‘defendant must  
have known the purpose of plaintiff-appellant  
in sending to defendant-appellee the “green  
sheets” and getting defendant-appellee's ac- 40

knowledgments on the "yellow sheet", viz., to effect a pledge of the goods upon which the plaintiff-appellant did make advances to the Paramount Fabrics Corporation'."

Defendant-appellee's foregoing assertion is unwarranted. The uncontradicted evidence shows:

10           1. Each time that the "green sheets" and yellow sheets (acknowledgments) were received by defendant-appellee through the mail in an envelope bearing plaintiff-appellant's letter-head, they passed through the hands of defendant-appellee's president or superintendent, who then turned the papers over to Mr. Tomasulo, who was then in defendant-appellee's employ, and who had charge of such matters in defendant-appellee's business. (See State of Case, p. 30, ll. 36 to 40; p. 31, ll. 4 to 9 and ll. 29 to 31; p. 32, ll. 28 to 20           40; p. 42, ll. 9 to 32; p. 124, ll. 6 to 17 and ll. 32 to 40; p. 125, ll. 15 to 19; p. 129, ll. 35 to 40; p. 130, ll. 4 to 17).

2. After receiving said papers Mr. Tomasulo ascertained that the goods therein referred to were in defendant-appellee's possession, and thereafter Mr. Tomasulo signed or directed his secretary to sign defendant-appellee's name to the yellow sheets (acknowledgments) and mailed such yellow sheets back to plaintiff-appellant, defendant-appellee retaining the green sheets. (See 30           State of Case, p. 30, ll. 36 to 40; p. 31, ll. 4 to 31; p. 34, ll. 36 to 40; p. 35, ll. 4 to 7; pp. 36, 37, 38, 39; pp. 43 to 45; pp. 51 and 52; p. 31).

3. Defendant-appellee had been receiving from plaintiff-appellant by mail similar green sheets and yellow sheets (acknowledgments) relating to goods of Paramount Fabrics Corporation for a considerable period of time prior to the receipt of the particular green sheets and yellow sheets (acknowledgments) 40           involved in this suit, viz. since November 6,

1926. All of such documents passed through the hands of the defendant-appellee's president or superintendent, and were then turned over by them to Mr. Tomasulo and handled by him in similar fashion as aforesaid. (See State of Case, pp. 33 and 34, ll. 10 to 40; pp. 42 to 46 inclusive; p. 129, ll. 9 to 21).

4. It was well known to defendant-appellee during all of said period that plaintiff-appellant was a silk factor, that plaintiff-appellant's business was that of lending money to silk manufacturers on the security of merchandise pledged for that purpose and that plaintiff-appellant was dealing as factor with Paramount Fabrics Corporation. (See State of Case, p. 111, ll. 34 to 40; pp. 112 to 116 inclusive; p. 118, ll. 30 to 40; p. 129, ll. 9 to 30; exhibits on pp. 188 to 194 inclusive.) 10

The following statement by defendant-appellee, on page 28, is made in [REDACTED] disregard of the evidence in the case: 20

"Certainly according to the customs of the trade which are well known to everyone, factors were not advancing money on goods they had never seen and which were not in their physical control."

The facts of this case, established by the evidence, are

"that pursuant to their agreement and the practice of the parties thereunder, plaintiff-appellant made loans to Paramount Fabrics Corporation on merchandise which had been consigned by Paramount Fabrics Corporation to plaintiff-appellant as aforesaid, where the goods were delivered to defendant-appellee and yellow sheets (acknowledgments) covering said goods, and signed by defendant-appellee, were received by plaintiff-appellant from defendant-appellee. Such goods were added by plaintiff-appellant on the 'inventory' 30 40

of pledged goods on the basis of which plaintiff made loans to Paramount Fabrics Corporation. (Exhibits D2, State of Case, p. 212, ll. 30 to 40; p. 158, ll. 29 to 40; pp. 159 to 164 inclusive; p. 164, ll. 27 to p. 166, l. 10 inclusive.)”

10 On page 28, defendant-appellee makes the following astonishing statement:

“In receipting for the goods to the factor on the yellow sheet, the dyer was simply showing ordinary courtesy.”

If that is all defendant-appellee really intended by such “acknowledgments”, we submit that defendant-appellee **should have explicitly said so** in the acknowledgments themselves.

20 On page 29, defendant-appellee says that the language of the “acknowledgments” (which were prepared by plaintiff-appellant) merely indicated “that it was the factor’s means of keeping track of what goods were at the Dyer’s”. The language referred to is as follows:

“Please Sign and Return Promptly to  
MILL FACTORS CORPORATION  
354 Fourth Avenue,  
New York, N. Y.

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Date 4/22/27

We acknowledge receipt of merchandise as per your memorandum Numbered D7256 totalling 2 pcs. approximately 100 yds. Estimated value 125 and assume responsibility therefor according to conditions stated on said memorandum.

IMHOFF-BERG S. D. Co.  
Per W. Tomasulo (Sign Here)

Paramount Fabrics Lot #530.”

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(See State of Case, page 188, Exhibit P. 4.)

“Invoice No. D6636

MILL FACTORS CORPORATION  
354 Fourth Avenue

New York, Mar. 28, 1927

Name Imhoff Berg Silk Dye Co.  
Address Paterson N. J.

*Dear Sirs:*

10

There has been shipped to you, by Paramount Fabrics for whom we act as Factors, via your truck the items mentioned below. Title to these goods remains in us, merchandise is at all times subject to our order only and must be returned to us when finished. You assume full responsibility for merchandise until it is returned to us on our premises.

MILL FACTORS CORPORATION.”

(See State of Case, page 189, Exhibit P. 12.)

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Respectfully submitted,

BILDER & BILDER,

*Attorneys of Plaintiff-Appellant.*

WALTER J. BILDER,

*Of Counsel.*

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